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February 14, 2011

Via Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2nd Floor)
Harrisburg, PA 17105-3265

Re: Guntram Weissenberger, Gen. Partner Panonia Associates, L.P., *et al.*, v. PECO
Energy Company, Docket No. C-2010-2182281

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are an original and three (3) copies of the Prehearing Conference Memorandum Of Complainants Guntram Weissenberger, Gen. Partner Panonia Associates, L.P., *et al.* A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By: 
Charles E. Thomas, III

cc: Dennis J. Buckley, Presiding Administrative Law Judge

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**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Dennis J. Buckley, Presiding**

| | | |
|---|---|---------------------------|
| Guntram Weissenberger, Gen. Partner | : | |
| Panonia Associates, L.P., <i>et al.</i> | : | |
| Complainants | : | |
| | : | |
| v. | : | Docket No. C-2010-2182281 |
| | : | |
| PECO Energy Company | : | |
| Defendant | : | |

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**PREHEARING CONFERENCE MEMORANDUM
OF COMPLAINANTS GUNTRAM WEISSENBERGER,
GEN. PARTNER PANONIA ASSOCIATES, L.P., *ET AL.***

AND NOW, comes Guntram Weissenberger, Gen. Partner Panonia Associates, L.P., *et al.* (“Complainants”), by its attorneys, and submits this Prehearing Conference Memorandum in accordance with the Prehearing Conference Order of Administrative Law Judge Dennis J. Buckley, dated February 1, 2011, and in connection with the Prehearing Conference scheduled to be held in the above-captioned matter on February 16, 2011.

I. Introduction

This proceeding involves a formal complaint filed with the Pennsylvania Public Utility Commission (“Commission”) on June 14, 2010 against PECO Energy Company (“PECO”). The complaint, as subsequently amended on July 15, 2010, seeks to determine whether the Complainants are liable for electric bills submitted by PECO to a third party service provider, ConServe

Corporation (“ConServe”), to 1,153 separately metered residential apartment units owned by the Complainants in four (4) different apartment complex properties located in the Counties of Delaware, Bucks, Chester, and Montgomery and, if so, the extent to which the Complainants are liable for the electric service provided by PECO which is unpaid by ConServe. Complainants generally trade and conduct business in the Commonwealth of Pennsylvania under the name, the “Westover Companies.”

II. Counsel for Complainants

The names, mailing and e-mail addresses, telephone and fax numbers of Complainants’ counsel for this matter are as follows:

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Complainants designate Norman J. Kennard as its counsel for purposes of inclusion on the service list for this proceeding.

III. Additional Parties

Complainants do not anticipate the joinder of additional parties is necessary at this time to resolve this case, but reserve the right to join additional parties in the future should circumstances warrant based on the development of the record.

IV. Issues

Complainants are unable to determine at this time all of the issues and sub-issues that will be raised in this proceeding. The issues and sub-issues which Complainants intend to raise in this proceeding, and Complainants' respective positions related thereto, include the following:

- (1) Whether Complainants are "Landlord Ratepayers" under the Section 1521 of the Public Utility Code, 66 Pa. C.S. § 1521, in connection with service provided by PECO to four apartment complex properties owned by Complainants and located in the Counties of Delaware, Bucks, Chester, and Montgomery (the "Properties")?

Position of Complainants: Answered in the negative

- (2) Whether Complainants are liable to PECO for electric service account arrearages accrued at the Properties?

Position of Complainants: Answered in the negative

- (3) Whether PECO violated Sections 1301 and 1303 of the Public Utility Code, 66 Pa. C.S. § 1301 and 1303, in the provision of electric utility service to the Properties, when it, *inter alia*, applied improper tariff rates and overcharged Complainants for electric utility service at the Properties since September 25, 2003?

Position of Complainants: Answered in the affirmative

- (4) Whether Complainants are entitled to an accounting of all charges and application of tariffs since September 25, 2003, to the accounts for the Properties and a set-off against monies owed to PECO for overdue and unpaid electric bills?

Position of Complainants: Answered in the affirmative

- (5) Whether PECO was negligent and/or violated 66 Pa. C.S. § 1501 for failing to provide timely billing information to Complainants?

Position of Complainants: Answered in the affirmative

Complainants had little exposure to the transaction between ConServe and PECO. While Complainants are still in the process of discovery, they submit that the following documents are or

may be relevant to this proceeding and that such documents are in the custody of the persons identified below:

- Utility Services Agreement, by and between Complainants and ConServe Corporation, dated September 23, 2003

Custodian: Complainants

- Forbearance Agreement, by and between PECO and ConServe Corporation (date unknown)

Custodian: PECO

V. Witnesses

The witnesses that Complainants may call and the subject matter of their proposed testimony include:

| <u>Witness</u> | <u>General Subject Matter</u> |
|--|---|
| 1 Guntram Weissenberger 550 American Ave. King of Prussia, PA 19406 | Substantive relationship among the Westover Companies, ConServe, and PECO |
| 2 Kenneth Coffman 550 American Ave. King of Prussia, PA 19406 | Substantive relationship among the Westover Companies, ConServe, and PECO |
| 3 Kelly Cheula 550 American Ave. King of Prussia, PA 19406 (610) 337-3994 | Substantive relationship among the Westover Companies, ConServe, and PECO; billing and account issues |
| 4 Frank Wellman (Former PECO employee) [Business address and phone number unknown] | Billing and account issues |

Complainants are attempting to locate former ConServe employees to testify and will advise Judge Buckley and PECO if any such employees will do so. Complainants reserve the right to call

additional witnesses, including an expert, to address any issues that may arise during the course of this proceeding.

VI. Evidence

In addition to the supporting evidence appended to Complainants' formal Complaint and Amended Complaint, the direct evidence that Complainants expect to submit in the proceeding will consist of the prepared direct testimony and accompanying exhibits of the witnesses identified above. Complainants likewise expect to submit additional information and evidence in testimony and exhibit form prior to the close of the record in this proceeding based on the conduct and development of discovery. Complainants also may present additional evidence including, but not limited to, the following:

- (1) Rebuttal and oral rejoinder testimony and exhibits related thereto.
- (2) Responses to discovery.
- (3) Documentary materials such as agreements, letters, and records.
- (4) Revisions to and updates of evidence previously submitted.

VII. Discovery

Discovery is underway for the proceeding with the Complainants having propounded their Set I Interrogatories and Request for Production of Documents on PECO on December 10, 2010. To date, PECO has not provided responses to any of Complainants' Set I Interrogatories. Originally, the parties agreed that objections, if any, were due on January 7, 2011 and answers were due on January 17, 2011. Those dates passed and, thereafter, PECO agreed to answer discovery on February 13, 2011. PECO also agreed that it had no objections to Complainants' Set I discovery.

Complainants agree to abide by the standard rules for discovery set forth in the Commission's regulations at 52 Pa. Code § 5.321 *et seq.*, but are prepared to cooperate with Judge Buckley and PECO at the Prehearing Conference to develop any reasonable and appropriate modifications to the Commission's Rules of Practice and Procedure for the conduct of discovery as are necessary.

VIII. Procedural Schedule

Complainants are prepared to discuss and cooperate in the finalization of a litigation schedule acceptable to Judge Buckley at the Prehearing Conference.

Respectfully submitted,

By 

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*Attorneys for
Complainant Guntram Weissenberger,
Gen. Partner Panonia Associates, L.P., et al.*

DATE: February 14, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of February, 2011, served a true and correct copy of the foregoing Prehearing Conference Memorandum in the above-captioned proceeding, upon the persons and in the manner set forth below:

EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

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