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April 15, 2011

Via Hand Delivery

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

Re: Guntram Weissenberger, 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 Petition for Leave to Withdraw Complaint of Complainants Guntram Weissenberger, et al, in the above-referenced matter. Copies of the Petition have been served in accordance with the attached Certificate of Service.

Should you have any questions, please feel free to contact 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**

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

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Guntram Weissenberger, <i>et al.</i>	:	
Complainants	:	
	:	
v.	:	Docket No. C-2010-2182281
	:	
PECO Energy Company	:	
Defendant	:	

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**PETITION FOR LEAVE TO WITHDRAW COMPLAINT  
OF COMPLAINANTS GUNTRAM WEISSENBERGER, *ET AL.***

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AND NOW, comes Guntram Weissenberger, *et al.* (“Complainants”), by its attorneys, and, pursuant to 52 Pa. Code § 5.94, petitions the Pennsylvania Public Utility Commission (“Commission”) for leave to withdraw their Complaint in the above-referenced proceeding. In support of their Petition for Leave to Withdraw, the Complainants submit as follows:

1. 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 (i) whether the Complainants are “Landlord Ratepayers” under the provisions of Sections 1521-1533 of the Public Utility Code, 66 Pa.C.S. §§ 1521-1533, for electric bills submitted by PECO to a third party, ConServe Corporation (“ConServe”), in connection with service provided by PECO 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

(the “Properties”), and (ii) if so, to what extent 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.”

2. On July 7, 2010, PECO filed a Preliminary Objection to the Complaint contending insufficient specificity of the pleading. Following the filing of Complainants’ Amended Complaint on July 15, 2010, PECO filed a Second Preliminary Objection on August 12, 2010, again contending insufficient specificity of the pleading. On August 26, 2010, the Complainants filed a Response thereto.

3. On December 10, 2010, the Complainants propounded their Set I Interrogatories and Request for Production of Documents on PECO.

4. A Prehearing Conference was scheduled and held in Philadelphia on February 16, 2011, with Administrative Law Judge Dennis J. Buckley presiding. Counsel for the Complainants and PECO appeared and participated, and it was agreed that the proceeding should be continued until further discovery could be conducted before Complainants could proceed with their Complaint. By Order dated February 17, 2011, Judge Buckley established a February 28, 2011 response deadline for PECO to answer the Complainants’ Set I Interrogatories and continued the matter until April 19, 2011, at which time a second prehearing conference is scheduled to be held in Harrisburg. Judge Buckley also ordered that a ruling on PECO’s Preliminary Objections be held in abeyance.

5. On February 28, 2011, PECO served its responses to the Set I Interrogatories.

6. The Complainants recently completed their review of PECO’s discovery responses and have concluded that the facts contained therein suggest that the Westover Companies are, in fact, the parties responsible for payment for electric service provide by PECO to the Properties even though service was billed to ConServe. Therefore, the Complainants hereby concede that they are

“Landlord Ratepayers” under the provisions of Sections 1521-1533 of the Public Utility Code, 66 Pa.C.S. §§ 1521-1533.

7. Having conceded the landlord ratepayer issue, the Complainants submit that there no longer is a need to pursue their Complaint or expend future time and resources of the parties and the Commission on this matter. The remaining issues of the dispute concern the appropriate level of damages and are premised on a breach of contract claim, which are issues that should be referred back to the Delaware County Court of Common Pleas for resolution. It is well established that the Commission lacks the authority to award damages. *Pa. P.U.C. v. UGI Utilities, Inc.*, Docket No. M-2010-2138591 (Order entered 25, 2010); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977) (“[The Commission’s] remedial and enforcement powers [do] not include the authority to award damages for a breach of contract by a public utility.”).

8. Accordingly, the Complainants seek to withdraw the subject Complaint with prejudice. The Complainants aver that the withdrawal of the Complaint is justified and is in the public interest.

9. The Complainants have notified PECO of their intention to withdraw the Complaint and the reasons for doing so, but PECO has not yet informed the Complainants whether it has any objection to the petition.

WHEREFORE, for the reasons set forth above, Complainants Guntram Weissenberger, *et al.*, respectfully request that the Pennsylvania Public Utility Commission grant their Petition for Leave to Withdraw the Complaint with prejudice in the above-referenced proceeding.

Respectfully submitted,

By 

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*Attorneys for  
Complainants Guntram Weissenberger, et al.*

DATE: April 15, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 15<sup>th</sup> day of April, 2011, served a true and correct copy of the foregoing Petition for Leave to Withdraw Complaint 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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