

Legal Department

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June 1, 2009

Via Federal Express

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Digital 833 Chestnut LLC v. PECO Energy Company, PUC Docket No. C-2008-2068267

Dear Mr. McNulty:

Enclosed please find an original and three copies of the Prehearing Conference Memorandum of PECO Energy Company for filing in the above referenced matter. Kindly return a time-stamped copy of the same to me in the self-addressed stamped envelope.

Please do not hesitate to contact me should you have any question.

Very truly yours,



Ward L. Smith
Assistant General Counsel

WLS/zr

Enc.

cc: Administrative Law Judge Guy M. Koster (Via E-Mail and Hand Delivery)
Service List (e-mail and U.S. Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Digital 833 Chestnut, LLC	:	
v.	:	Docket No. C-2008-2068267
PECO Energy Company	:	
PGW, and UGI	:	

**PREHEARING CONFERENCE MEMORANDUM
OF PECO ENERGY COMPANY**

PECO Energy Company ("PECO"), pursuant to the e-mail request from Administrative Law Judge Guy M. Koster, hereby submits its prehearing conference memorandum, and states as follows:

(a) Service List Entry

1. PECO's entry on the service will be its attorney:

Ward L. Smith
Assistant General Counsel
Exelon Corporation
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(b) Consolidation

2. This case is already consolidated. PECO has no objection to it proceeding on that basis.

PECO does note, however, that this Administrative Law Judge did issue *sua sponte* stay orders in three similar proceedings – *Philadelphia HGI Associates v. PECO et al.*, Docket No. 2008-206907; *Crescent Hotel v. PECO et al.*, Docket No. 2008-2068258; and *Rama Construction v. PECO et al.*, Docket No. 2008-2058320. Each of those proceedings included an explicit claim or claims against Celeren Corporation. The ALJ consolidated the various cases involving each customer and then, because Celeren is in bankruptcy and its trustee invoked the automatic stay provisions of the Bankruptcy Code, the ALJ stayed those proceedings.

The only key difference between the three stayed proceedings and the instant proceeding is that, in the instant proceeding, Celeren was not named by the customer as a party – and its bankruptcy trustee has therefore not been notified of the pendency of this proceeding by either the Commission or by Digital 833 Chestnut. The factual allegations contained in the instant complaint, however, deeply involve Celeren and will require that the Commission make factual and legal determinations regarding the actions of Celeren, and to make determinations that will affect the rights of Celeren. In particular, paragraphs 26-29 of the Complaint effectively request that the Commission find that Celeren was operating as an EGS (notwithstanding its failure to register as such) and that in that role “Celeren was solely responsible to PECO for payment of electric services rendered to Complainant.”

PECO would prefer to obtain resolution of its dispute with Digital 833 Chestnut. Such a ruling would also provide guidance for PECO and other utilities for their future

dealings with designated agents of commercial customers who are not registered as EGS's. However, PECO believes that, before the parties and Commission commit their resources to litigating and resolving this matter, the parties should address, and the ALJ should resolve, the question of whether the Commission can and should proceed in this docket, given that (a) Celeren is in bankruptcy, (b) in all cases in which the Celeren trustee was notified that Celeren rights could be affected by ongoing litigation, the trustee invoked the automatic bankruptcy stay provisions, and (c) the bankruptcy trustee has not been notified of the pendency of this proceeding.

PECO requests that this matter be addressed by the parties at the prehearing conference.

(c) and (d) Discovery

3. PECO proposes that the normal Commission discovery rules and procedures, as set forth at 52 Pa. Code § 5.321 et seq., should be used in this docket. PECO has received discovery from Digital 833 Chestnut and will answer it shortly.

4. PECO has no other proposed orders with respect to discovery at this time. It reserves the right to raise such objections as may be appropriate toward any discovery requests that it receives in the future.

(e) Witnesses

5. PECO believes that this proceeding primarily involves legal, rather than factual, issues. As needed, however, PECO intends to call the following witnesses:

Ms. Teresa A. Ferrier
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
215-841-4000

Ms. Ferrier is a Regulatory Assessor at PECO who will testify regarding the Digital 833 account and billing history.

Mr. Sam Melendez
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
215-841-4000

Mr. Melendez is an Account Manager/Executive at PECO who will testify with regard to the Digital 833 Chestnut account and service history, as well as certain matters related to PECO practice in interacting with Electricity Generation Suppliers and with customer agents.

Mr. Scott Neumann
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
215-841-4000

Mr. Neumann is a Rates Engineer at PECO who will testify with regard to PECO's tariff and to PECO practice in interacting with Electricity Generation Suppliers and with customer agents.

Mr. John McCawley
PECO Energy Company

2301 Market Street
Philadelphia, PA 19103
215-841-4000

Mr. McCawley is PECO's Manager of Energy Acquisition and will testify regarding PECO practice in interacting with Electricity Generation Suppliers and with customer agents.

PECO may substitute other witnesses with the requisite technical expertise, depending upon scheduling availability. PECO also may supplement this list if additional issues surface in this proceeding.

(f) and (g) List of Issues and Sub-Issues

6. PECO believes that the following are the primary issues and sub-issues that will be addressed in this proceeding.

(a) Whether PECO provided service to Digital 833 Chestnut, and whether PECO received payment for those services. PECO expects to address this issue by having Ms. Ferrier present the Digital 833 Chestnut account statement, which will demonstrate that PECO provided utility service to the customer but has not yet received payment for that service.

(b) What are the relevant rules and procedures for utility interaction with Electric Generation Suppliers (EGS) and how those rules have been implemented. PECO expects to address this issue by having Mr. Neumann and/or Mr. McCawley present testimony as to PECO's procedures for interacting with EGS's, its Tariff regarding the same, and the source of those procedures in Commission law and practice. This testimony will show that, in order to qualify as an EGS, an entity must register with the Commission and that

the interaction with between the EGS and the utility is thereafter primarily conducted pursuant to a clearly defined electronic data interchange (EDI) protocol.

(c) What are the relevant rules and procedures for utility interaction with customer agents who fill a role other than Electric Generation Supplier and how those rules have been implemented. PECO expects to address this issue by having Mr. Neumann and/or Mr. Melendez present testimony as to PECO's procedures for interacting with non-EDS agents of customers. This testimony will show that customers frequently designate a third party to act as their agent other than as an EGS, and that in those situations the interactions do not occur through the EGS/EDI protocol, but rather take place with the customer's management agent effectively stepping into the customer's shoes for communication and interaction with the utility.

(d) Whether Celeren was acting as an Electric Generation Supplier or as a non-EGS agent. PECO expects to address this issue through the testimony of Mr. McCawley, Mr. Neumann and/or Mr. Melendez, with that testimony demonstrating that Celeren did not register as an EGS or engage in transactions through the EDI protocol, but that Celeren instead simply acted as a management agent for the customer.

Additional issues or sub-issues may develop as PECO conducts discovery in this case or upon review of the other parties' testimony.

Calendar/Schedule

PECO Energy has had preliminary discussions with Digital 833 re a proposed schedule, and hopes to have a joint proposal to present at the prehearing conference or earlier.

Conclusion

PECO respectfully requests that the ALJ issue an Order establishing the procedural matters and schedule as set forth in this prehearing conference memorandum.

Respectfully submitted,



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June 1, 2009

