

Philadelphia Gas Works



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June 12, 2009

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

RE: Digital 833 Chestnut, LLC,v. PECO, PGW, UGI,
Docket Nos. C-2008-2076610, C-2008-2076235, C-2008-2076623

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.102, the Philadelphia Gas Works ("PGW") hereby files its Motion for Judgment on the Pleadings in above captioned consolidated matters.

If additional information is needed about this matter, please contact me at my direct-dial number above. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laureto Farinas", is written over a blue circular graphic that matches the PGW logo. The signature is fluid and cursive.

Laureto Farinas

cc: Service List
Anne Marie Cromley

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Digital 833 Chestnut, LLC,	:
Complainant	:
v.	: Docket No. C – 2008 – 2076610
	: Docket No. C – 2008 – 2076235
PECO Energy Company,	: Docket No. C – 2008 – 2076623
Philadelphia Gas Works,	:
UGI Energy Service, Inc.,	:
Respondents	:

NOTICE TO PLEAD

Digital 833 Chestnut, LLC, Complainant

PECO Energy Company

UGI Energy Service, Inc.,

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objection within twenty (20) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

June 12, 2009



Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Digital 833 Chestnut, LLC,	:
Complainant	:
v.	: Docket No. C – 2008 – 2076610
	: Docket No. C – 2008 – 2076235
PECO Energy Company,	: Docket No. C – 2008 – 2076623
Philadelphia Gas Works,	:
UGI Energy Service, Inc.,	:
Respondents	:

**Philadelphia Gas Works’
Motion for Judgment on the Pleadings**

Pursuant to 52 Pa. Code §5.102, the Philadelphia Gas Works (PGW) hereby files this Motion for Judgment on the Pleadings for the dismissal of the above captioned complaint as against PGW and states the following:

1. On November 19, 2008, the Complainant, filed a Complaint with the Commission averring that the Respondents had each known that the Celeren Corporation (Celeren), the Complainant’s agent, was responsible for remitting payment for utility service and that the Respondents did not inform the Complainant that the Complainant’s utility accounts were delinquent.
2. PGW was served with the Complaint on November 26, 2008 and timely filed an answer to the Complaint December 16, 2008. As to the averments pertaining to PGW, the Complaint avers that PGW had a duty to inform the Complainant that its agent, Celeren, had failed to remit payment for gas service and that PGW breached that duty.
3. The Complainant further avers that to keep the account for gas service current, the Complainant paid the delinquent amounts to PGW, stating that the Complainant has paid for gas service twice, once to it agent, Celeren and once to PGW.
4. The Complainant seeks relief in the nature of damages the result of PGW’s alleged failure to notify the Complainant that Celeren was not remitting payments for gas service. These would in the form of a refund or credit from

PGW to the Complainant of the amount that the Complainant paid directly to PGW to keep the account current. (See: Complaint, Paragraph 41 through 43)

5. Pursuant to the Complaint, Paragraph 12, the Complainant provides a copy of the contract between the Complainant and Celeren, executed on November 2, 2005 for "Utility Payment Services."¹ (Complaint Exhibit "A") The agreement sets forth the nature of the relationship between the Complainant and Celeren. Pursuant to that contract, the Complainant and Celeren agreed that Celeren would "be and otherwise act as" *inter alia*, agent on behalf of the Complainant as defined by application of law. (See: Complaint, Paragraphs 12 and 13 and Complaint Exhibit "A")

6. Pursuant to the Complaint, Paragraph 40, the Complainant provides a copy of the contract between PGW and Celeren, executed on June 19, 2006 for service under PGW's Interruptible Transportation Rate (Rate IT Contract), which is attached hereto as Exhibit "A." (Also, Complaint Exhibit "B") The Rate IT Contract sets forth the terms of service under that Commission approved rate. Pursuant to the Rate IT Contract, pages 1 and 15, Celeren is the signatory party to the contract, and by an initialed, hand written insertion, Celeren contracts as agent for the Pami Renaissance Properties Inc., the Complainant's property manager at that time. (See: Complaint, Paragraphs 40 and 10) and PGW Exhibit "B," herein)

7. Under the Rate IT Contract, Section 20-Notice, Section 20.1, the parties agreed that written notices, requests, statements, and bills under this Agreement shall be given to the parties as designated in that section, unless changed by either party upon written notice, with confirmation, to the other. As to the communication with the Customer, the Rate IT Contract designates Celeren at the address appearing below, as the entity to receive all bills, letters and notices including delinquent payment and termination notices. (See Exhibit "A," herein) These communications were to be made to:

¹ The contract between the Complainant and Celeren also includes Pami Renaissance Properties Inc., the Complainant's property manager at that time. (See Complaint, Paragraphs 10 and Exhibit "A")

Celeren Corporation
c/o Celeren Department A
P.O. Box 527
Bala Cynwyd, PA 19004
Attn: Michael Kelly
Phone: 610-784-8990, x8153
FAX: 610-784-8992

8. The parties made no changes pursuant Section 20.1 of the Rate IT Contract, amending the designation for Notice. Each month PGW billed the appropriate party and expected payment for gas service rendered. When payment was not received, PGW mailed the appropriate notice and demand for payment to the entity designated in the Rate IT Contract, Celeren.

9. Paragraphs 37 through 43 of the Complaint attempt to advance the Complainant's theory of PGW's alleged violation for which relief against PGW is sought. The Complaint states that under the Public Utility Code at 52 Pa. Code §56.41, a public utility must notify a residential (or small commercial) customer when an account has become delinquent. It states further that as PGW is a natural gas distribution company providing gas service to the Complainant, PGW owed a duty to notify the Complainant when Celeren, its agent, was delinquent in the payment on the account for gas service.

10. While, 52 Pa. Code §56.41 sets forth the utility notification procedures in order to request a deposit when an account is delinquent, the Complaint fails to establish that this section of the Pennsylvania Code and Commission precedent work to create a utility's additional obligation to notify the Complainant when its agent failed to make payments on the Complainant's behalf. Under the Rate IT Contract, Section 20.1, PGW was obligated notify only Celeren of the status of the account for gas services. The Complaint does not aver that PGW failed to notify its agent of the status of the account. The Complaint avers that PGW has a special duty to notify the Complainant of its agent's the behavior. The Complaint fails to provide even a colorable connection between 52 Pa. Code §56.41 and this special duty. As such, the Complaint fails to identify any statutory source of this special duty.

11. Paragraph 40 of the Complaint specifically introduces the Rate IT Contract stating that PGW knew that Celeren was acting as agent for the Complaint under

the Rate IT Contract. Without citing a specific section of that contract, the Complaint seems to infer that PGW's special duty to notify is somehow contained in the Rate IT Contract and that PGW breached its special duty. As stated above, the Rate IT Contract designated Celeren as the entity to receive all bills, letters and notices including delinquent payment and termination notices. The Complaint fails to aver a contractual source of the alleged special duty to notify.

12. Paragraphs 41 through 43 of the Complaint states the relief sought from PGW in the form of a refund of, or credit for the amount that the Complainant paid directly to PGW to keep the account current. Citing 66 Pa. C. §1312(a), the Complaint asserts that the Commission has authority to award the relief sought by its application. The use of 66 Pa. C. §1312(a) in this case is a complete misapplication of the Pa Code. First, the 66 Pa. C. §1312 is applicable to proceedings where the rates charged by a public utility were determined unreasonable, charged in violation of a Commission order, in excess of the applicable rate. In the instant matter, PGW charged only the rates in effect under the Rate IT Contract. There has been no averment that those rates unjust or excessive within the meaning of 66 Pa. C. §1312(a).

13. The Complaint appears to rely upon its alleged "excess" payment for gas service when the Complainant paid PGW after its agent Celeren failed to do so. As such, 66 Pa. C. §1312(a) does not authorize the Commission to grant the relief sought. As PGW was paid only once for the gas service rendered, the Complainant's request for a refund or credit, (because its agent, Celeren had failed to pay for gas service) is a request for monetary damages. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant.² In this matter, the Complainant only seeks monetary damages as its relief. The Commission is without the power to award such damages. To the extent that the Complainant wishes to pursue such relief, the appropriate forum is a Court of Common Pleas.

² *Feingold v. Bell Of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Morrow v. Bell Telephone Co. of Pennsylvania*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Public Utility Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991).

14. The pleadings of this matter show that there is no genuine issue as to a material fact. The Complainant has failed to state a claim that PGW has violated any statutory or contractual obligation over which the Commission has jurisdiction. Furthermore, the Complainant seeks relief that the Commission has no authority to grant.

Wherefore, for all the reasons set forth above, PGW respectfully requests that this Commission grant its request for a Judgment on the Pleadings and dismiss the Complain with respect to PGW.

Respectfully submitted,

June 12, 2009

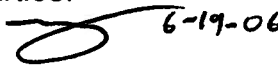


Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

EXHIBIT A

**INTERRUPTIBLE TRANSPORTATION AGREEMENT
RATE IT**

THIS INTERRUPTIBLE TRANSPORTATION AGREEMENT RATE IT (this "Agreement") is made on June 19, 2006, by and between PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, a Pennsylvania non-profit corporation, in its capacity as operator and manager of the municipally owned PHILADELPHIA GAS WORKS, pursuant to an Agreement with the City of Philadelphia dated December 29, 1972, as amended (together "PGW") and CELEREN CORPORATION, ("Customer"). PGW and Customer are sometimes hereinafter referred to as, individually, "Party" and, collectively, "Parties."

as agent for Pemi Renaissance Prop Inc.  6-19-06
WITNESSETH:

WHEREAS, Customer has agreed to purchase from a third party certain quantities of Gas ("Transportation Quantities") which Customer shall use during the term of this Agreement in Customer's operations at the premises to be served hereinafter designated;

WHEREAS, Customer desires that PGW receive, transport and deliver such interruptible Transportation Quantities for Customer's account from the agreed upon Receipt Point(s) at the City Gates to the agreed upon Delivery Point(s), as defined below, subject to the terms and conditions set forth below;

WHEREAS, PGW desires to receive, transport and deliver such Transportation Quantities for Customer on an interruptible basis, subject to the terms and conditions set forth below; and,

WHEREAS, PGW is authorized to render such gas transportation services pursuant to PUC Gas Service Tariff No. 2 or its successor tariff (the "Tariff").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, intending to be legally bound, the Parties agree as follows:

Section 1 - Definitions

Except in those certain instances where the text expressly states another meaning, when used in this Agreement the following terms shall mean:

1.1 Authorized Supplier Notice: A form that is approved by PGW and signed by the Supplier and a Customer, which the Supplier shall provide to PGW as evidence that the Supplier has been authorized by Customer to (a) deliver Gas to PGW at the Receipt Point(s) on Customer's behalf, and (b) receive from and provide to PGW Customer usage data.

1.2 Commencement Date: The first day of July, 2006 at 10:00 a.m. eastern clock time.

1.3 Daily Contract Quantity (DCQ): The maximum daily Transportation Quantity which PGW shall be required to deliver to Customer and which Customer shall be entitled to receive, pursuant to the provisions of this Agreement.

1.4 Day: A period of twenty-four (24) consecutive hours beginning at 10:00 a.m. eastern clock time, as set by the GISB, on any calendar day and ending at 10:00 a.m. eastern clock time on the calendar day immediately following.

1.5 Delivery Point(s): Those specified point(s) of interconnection between PGW facilities and Customer facilities.

1.6 "Dth" or Dekatherm: Ten therms or one million British Thermal Units (BTU's).

1.7 Electronic Bulletin Board or "EBB": A web/internet based software system through which the Parties will share information and other communications required to perform certain of their respective obligations under this Agreement.

1.8 Electronic Communication: A communication from a Party utilizing the EBB.

1.9 Emergency Situation: Existence of a condition where PGW experiences an insufficient supply of Gas to meet the requirements of its firm supply customer classes.

1.10 GISB: Gas Industry Standards Board or its successor.

1.11 Hourly Contract Quantity: The maximum hourly Transportation Quantity which PGW shall be required to deliver to Customer and which Customer shall be entitled to receive, pursuant to the provisions of this Agreement.

1.12 Interruptible Service: Service offered under Rate IT and as described in Section 11 herein.

1.13 Month: A period beginning at 10:00 a.m. eastern clock time, as set by the GISB, on the first day of the month and ending at 10:00 a.m. eastern clock time on the first day of the next succeeding month.

1.14 Natural Gas or Gas: Natural Gas produced from gas wells and gas produced in association with oil (casinghead gas) and/or the residue gas resulting from processing both casinghead gas and gas-well gas.

1.15 Natural Gas Supplier or Supplier: A licensed supplier, marketer, aggregator and/or transporter of Natural Gas (a) with which Customer has contracted to provide Natural Gas to Customer via delivery of gas of a suitable quality to PGW at the agreed upon Receipt Point(s), and (b) which has entered into an agreement with PGW to provide gas supply services pursuant to Rate DB. PGW shall not receive gas on Customer's behalf except from a Supplier.

1.16 Nomination Notice: Notice from Customer's Supplier to PGW, given via PGW's EBB (or if such system is not yet operational, both telephonically and via facsimile as directed by PGW), indicating Supplier's daily nomination to a transportation pipeline for delivery of Gas on Customer's behalf to specified Receipt Point(s).

1.17 PGW's On-System Transportation Operating Guidelines: PGW's operating parameters which must be followed by Customers and their Suppliers and/or agents to insure that valid nominations have been made. The guidelines include approved nominating formats and nominating protocols.

1.18 PUC: Pennsylvania Public Utility Commission.

1.19 Receipt Point(s): Those specified point(s) of interconnection between PGW facilities and the interstate pipeline transporter(s).

1.20 Transportation Quantity: Number of Dth units of Natural Gas that Customer shall receive whenever gas is passing through its meter equipment.

Section 2 - Specific Terms and Provisions

This Agreement shall be controlled by the following specific terms and provisions:

2.1 Premises to be Served: Customer's facility(ies) are located at 841 Chestnut Street, Philadelphia, PA.

2.2 Receipt Point(s): Any operating PGW Gate Station except Penrose and Harkness Point.

2.3 Delivery Point(s): Meter #: 1987500
 Address: 841 Chestnut Street

2.4 Applicable Rate Schedule Level: Rate IT-3

2.5 Maximum Delivery Obligation:

2.5.1 Hourly Contract Quantity: Not more than 18 Dth of Transportation Quantity.

2.5.2 Daily Contract Quantity: Not more than 432 Dth of Transportation Quantity.

2.5.3 Customer agrees that the contract quantities set forth in Sections 2.5.1 and 2.5.2 above represent the maximum amount of Transportation Quantity that PGW shall be obligated to deliver to Customer or to accept for Customer's account (not including line loss and unaccounted for Gas).

2.6 Minimum Demand Levels: Customer's annual Transportation Quantity shall be no less than 5,000 Dth; provided, however, that Customer's annual Transportation Quantity shall be reduced by an quantity equivalent to customer's verified alternate fuel usage (adjusted for BTU equivalence) occurring during any interruption or curtailment required by PGW during the Initial Term.

2.7 Gas Burning Equipment: 3 boilers

2.8 Alternative Fuel Equipment: #2 oil

2.9 Minimum Gas Delivery Pressure: PGW shall provide Gas at Customer's Delivery Point(s) at a minimum pressure of 4.5" w.c., except under emergency operating conditions occurring in the PGW distribution system which do not permit this.

Section 3 - Obligation to Provide Gas Transportation Service

3.1 From and after the Commencement Date, and upon proper notification from Customer's Supplier, as set forth in Section 9, and confirmation from the pipeline transporter(s) that Gas is being delivered to PGW at a Receipt Point, PGW shall receive, transport, and deliver such Transportation Quantities from the Receipt Point(s) to the Delivery Point. However, it is understood and agreed that service under Rate IT is interruptible, as described in Section 11 below.

3.2 Customer shall cause its Supplier to deliver gas of a suitable quality per the delivering pipeline to PGW at the agreed upon Receipt Point(s). Customer shall have and provide to PGW, or shall cause its Supplier to have and provide to PGW, upon request, all necessary documentation to support ownership of the Gas and authorization of all regulatory bodies with jurisdiction.

Section 4 - Obligation to Pay; Payment and Billing

4.1 Customer agrees to pay all charges set forth herein, and agrees to make payment for same when due.

4.2 Monthly bills shall be rendered to Customer by PGW for services provided by PGW hereunder. Payments shall be made within twenty (20) calendar days of the date of the bill.

4.3 Any payments not made when due shall be subject to a finance charge as set forth in the Tariff (currently, 1.25% per month for balances less than \$300 and 1.5% per month for balances \$300 or more). Any such finance charge shall be applied from the date the bill becomes past due.

4.4 All billings will be based upon Customer's usage as measured at the meter. Notwithstanding the foregoing, on any Day that PGW is unable to acquire such meter usage data from Customer, that Day's usage shall be estimated by PGW in its reasonable discretion based upon available data and Customer's recent and historical usage and equipment profile.

4.5 PGW will endeavor to provide Customer with its daily usage data by giving Customer access to the EBB. Customer's access to and use of the EBB will be governed by PGW's EBB system terms of use and the following:

4.5.1 Each Party, at its own expense, shall be responsible for, and/or provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Electronic Communications through the EBB.

4.5.2 Each Party shall properly use those security procedures, as approved by PGW, which are reasonably sufficient to: (a) ensure that all Electronic Communications are authorized and (b) protect the Party's business records and data from improper access. Customer shall be responsible for the use of all passwords established for its account and shall notify PGW immediately upon separation of a user from Customer's employ or for any other reason that would necessitate deactivation of such user's access to the EBB.

4.5.3 Each Party shall utilize an electronic identification approved by PGW consisting of symbol(s) or code(s) which are affixed to or contained in each Electronic Communication transmitted by such Party ("Signatures"). Each Party agrees that any Signature of such Party affixed to or contained in any transmitted Document shall be sufficient to verify such Party originated such Document. Neither Party shall disclose to any unauthorized person the Signatures of the other Party.

4.5.4 The Parties shall use reasonable efforts to ensure that Electronic Communications are free of, but not limited to, the following: computer viruses, back door, time bomb, Trojan Horse, worm, drop dead device or other computer software code or routine designed to disable, damage, impair or electronically repossess or erase programs or data files which can cause damage to a Party's computer systems and/or operations. Either Party will promptly notify the other if such destructive logic is detected in and/or transmitted from any computer system involving Electronic Communications.

Section 5 - Applicable Rate

5.1 Applicable Rate. The Applicable Rate for transportation service(s) rendered hereunder shall be pursuant to the Tariff, including all of its terms, as approved and authorized by the PUC. Service provided and charges assessed hereunder shall be in accordance with the Tariff, as it may be amended or superseded from time to time.

5.2 Monthly Charges. The monthly bill for services rendered hereunder shall be the sum of the following charges:

5.2.1 Monthly Customer Charge: \$150 per meter.

5.2.2 Transportation Delivery Charge as follows:

5.2.2.1 Customer shall pay to PGW a charge of \$1.66/Dth for each Dth of Gas delivered by PGW hereunder to Customer.

5.2.2.2 Customer's minimum Transportation Delivery Charge for each year of the Term shall be the annual Transportation Quantity (set forth in Section 2.6) multiplied by the Transportation Delivery Charge per Dth (set forth in Section 5.2.2.1).

5.2.3 Any additional specific charge(s) and/or credit(s) otherwise provided for in the Tariff and/or in this Agreement.

5.3 Installation Charge. \$252.18.

Section 6 - Term

6.1 Initial Term. The term of this Agreement shall begin on the Commencement Date and shall continue for a term ("the Initial Term") of one (1) year ending on the first anniversary of the Commencement Date; provided said Initial Term is not earlier terminated in accordance with the terms hereof or the rules, orders or directives of the PUC.

6.2 Renewals. Unless earlier terminated in accordance with the terms hereof, at the end of the Initial Term this Agreement shall automatically renew on a month-to-month basis until terminated by the Customer or PGW upon not less than sixty (60) days written notice (the Initial Term and any such additional terms, the "Term"). Such termination shall be effective no earlier than the last day of the Month occurring sixty (60) days after receipt of such notice.

Section 7 - Supplier Selection

7.1 Not later than 12:00 p.m. eastern clock time on the fifth business day prior to the Commencement Date, Customer shall cause its Supplier to provide PGW with an Authorized Supplier Notice authorizing the Supplier to deliver Gas at the Receipt Point(s) on Customer's behalf. PGW may terminate this Agreement if Customer shall have failed to cause its Supplier to provide PGW with the Authorized Supplier Notice as described in this section.

7.2 During the Term, Customer may not replace its Supplier with a different Supplier ("new Supplier") unless, not later than 12:00 p.m. on the fifth (5) business day prior to the start of the Month during which the new Supplier would provide gas supply, Customer has first caused its new Supplier to provide PGW with an Authorized Supplier Notice authorizing the new Supplier to deliver Gas at the Receipt Point(s) on Customer's behalf. Provided that PGW has received the Authorized Supplier Notice as aforesaid, Customer's switch to the new Supplier shall be effective on the first full Day of said Month. Mid-month changes shall not be permitted. Customer shall be responsible to give timely notice of termination to its existing Supplier in the event Customer desires to switch.

7.3 Customer acknowledges and represents that it has undertaken its own independent investigation of whether and how best to price and procure gas supply and has made its own independent decisions on all aspects of its energy usage profile, including, without limitation, with regard to Supplier selection and pricing.

Section 8 - Warranty of Title

8.1 For all Gas Customer purchases from third-party suppliers, Customer warrants, and will provide satisfactory documentation, upon request, that it or its Supplier has good and merchantable title to such Gas, free and clear of all liens, encumbrances and claims whatsoever.

8.2 Customer will indemnify and hold the Philadelphia Gas Works, the Philadelphia Facilities Management Corporation and the City of Philadelphia, and their respective officers, directors, employees, contractors and agents, from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of the adverse claims of any and all persons to said Gas and/or to royalties, taxes, license fees or charges thereon, including pipeline transportation and service charges, which are applicable to such Gas and/or the delivery of such Gas to PGW.

Section 9 - Notification of Daily And Monthly Nominations

9.1 To coordinate delivery arrangements, Customer hereby agrees to cause its Supplier to deliver a Nomination Notice at or before 12:00 p.m. eastern clock time on the day preceding the Day of actual Gas delivery. (The actual time of notification may

change in accordance with pipeline nominating requirements and/or PGW's On-System Transportation Guidelines). Additionally, monthly and mid-monthly nominations may be required in accordance with pipeline operating practices. Any untimely nomination must be transmitted in a format and manner consistent with PGW's On-System Transportation Guidelines. All such untimely nominations are subject to approval and/or pro-ration by PGW's Gas Control Department and the delivering pipeline.

9.2 Customer's Supplier may modify its first nomination during a Day, provided such modification is in accordance with the nomination procedure of the delivering pipeline and/or PGW's On-System Transportation Guidelines. PGW may decline a subsequently modified nomination for operating reasons if accepting such nomination would threaten the reliability of firm supply.

9.3 Customer's Supplier may provide such nominations on a weekly basis by specifying the nomination for each day during the upcoming week. Any subsequent revisions to the weekly notification procedure may be made by Customer's Supplier consistent with the notification requirements for daily nominations set forth above.

9.4 At such time as a Nomination Notice is given by Customer's Supplier, and thereafter as may be required by PGW, PGW will inform Customer's Supplier of capacity or operating constraints on the system, or of other service conditions such as interruption of service.

9.5 Pursuant to the Tariff, the Customer acknowledges that overrun of the Hourly or Daily Contract Quantities may, in addition to all applicable charges, be considered grounds for additional charges or termination of service under this Agreement. PGW shall provide Customer with written notification in such case.

9.6 Notwithstanding any of the above, PGW reserves the right to interrupt transportation service in accordance with the other provisions for interruption of service in this Agreement, and consistent with the provisions of the Tariff – Rate IT.

Section 10 - Alternate Fuel Equipment

10.1 To the extent required by the Tariff, during the term of this Agreement, Customer affirms that (a) it shall have installed and maintained in operating condition alternate fuel equipment capable of satisfying its requirements during any period when Gas service under this Agreement is interrupted, or (b) demonstrate to PGW's satisfaction the Customer's ability to manage its business without the use of Gas during periods of curtailment or interruption.

Section 11 - Interruptions

11.1 PGW may interrupt transportation service to Customer under this Agreement at any time, so long as such interruption is consistent with the provisions of

the Tariff – Rate IT. PGW shall not be liable, under any circumstances or in any respect, to Customer, or to any other person or entity for damages arising either directly or indirectly from curtailment, interruption or termination of service consistent with the Tariff, the applicable sections of the Public Utility Code, the regulations of the PUC, and/or the terms of this Agreement.

11.2 Interruptible transportation services under this Agreement shall be subordinate to all firm retail sales services and firm transportation services provided by PGW. PGW assumes no liability for interruptions caused by failure of supply sources or by third parties, such as pipeline transporters, and shall not be obligated to deliver Gas under this Agreement on any day that Gas is not received at its gate station for Customer's account, except as specified under provisions for Standby Service, if any, contained herein.

11.3 Any interruption of Interruptible Transportation Service permitted for any reason whatsoever under this Agreement, in whole or in part, shall not be the basis for any claim for damages of any kind or nature alleged to have been sustained by Customer or any other entity or person(s).

Section 12 - Unauthorized Usage

12.1 Customer acknowledges that this Agreement is a transportation agreement only and PGW has no obligation to supply PGW gas to Customer under any circumstances.

12.2 If PGW determines that Customer is using or has used a quantity of gas in excess of the quantity authorized by a notice of curtailment or interruption, PGW shall have the right to impose the following penalties: (a) to take measures to physically restrict the flow of gas into the Customer's premises, or, if flow restriction is not practical, to terminate service, (b) for each Dth taken in excess of the quantity authorized in the notice, to charge Customer for PGW's cost of the gas used and (i) impose a penalty equal to the greater of any actual cost incurred or penalty imposed upon PGW as a result of the violation by Customer, or (ii) charge Customer \$25.00/Dth.

Section 13 - Line Loss and Unaccounted-for Gas

13.1 Customer should be aware that because PGW will retain Transportation Quantities for line loss and unaccounted-for gas from Transportation Quantities delivered for Customer's account, such retention may be reflected in charges to Customer from its Supplier. The percentage of gas to be retained by PGW shall be equivalent to the percentage for total system line loss and unaccounted-for gas utilized by PGW's in its then effective Gas Cost Rate calculation.

Section 14 - Emergency Situation

14.1 Emergency Gas Diversion. In the event PGW declares an Emergency Situation, PGW, at its discretion, may divert Customer's Gas for such purposes as PGW deems appropriate, and Customer will be compensated for such Gas at the highest of the following:

- 14.1.1 the cost at which Customer acquired the Gas,
- 14.1.2 Customer's cost of alternate fuel utilized, or
- 14.1.3 PGW's avoided cost of gas during the Month.

Any such compensation shall be in the form of a credit to Customer's PGW account. In the event Sections, 14.1.1 or 14.1.2 are applicable, Customer shall demonstrate its cost of natural gas or replacement fuel by making a copy of its purchase contract available to PGW upon request.

Section 15 - Deposit/Letter of Credit

15.1 In the event that Customer fails to make timely payments as provided under this Agreement more than two (2) times in any calendar year, PGW may require Customer to provide a security deposit ("Security Deposit") for services under this Agreement in the form of a certified or cashier's check, in an amount not to exceed Twenty One Thousand Eight Hundred Ninety Four Dollars (\$21,894.00).

15.2 PGW shall have the right, upon fifteen (15) days prior written notice, to draw against the Security Deposit in an amount equal to the unpaid portion of the Customer's account if Customer fails to make timely payments as provided in this Agreement or if Customer is otherwise in material breach of this Agreement, or if the Customer account has not been fully paid at the expiration date of this Agreement.

15.3 In lieu of a Security Deposit, upon the furnishing by Customer of an irrevocable letter of credit ("Letter of Credit") in favor of PGW in the amount of the required Security Deposit, in form satisfactory to PGW, PGW shall refund to Customer the full amount of the Security Deposit. Said Letter of Credit shall be renewed annually in an amount equal to the uncredited portion of the Customer's account as reasonably determined by PGW.

Section 16 - Ingress and Egress; Telemetering

16.1 Customer hereby warrants that it has the right to grant, and does hereby grant to PGW, its employees and agents, the right and privilege of ingress and egress over, through and into the Customer's Premises to be Served at all times, including, without limitation, during the period of any curtailment or interruption, for the purpose(s) of constructing, inspecting, maintaining, improving and removing PGW's equipment and facilities.

16.2 Customer acknowledges that service under Rate Schedule IT requires the electronic transmission of metering data from the Customer's meter location to PGW on a daily basis. Customer shall provide and pay for a 110-volt-AC electric power and a dedicated analog telephone line that shall at no time be used for any other purpose than to transmit metering data to PGW. Customer shall be responsible for ongoing maintenance of the electric power supply and dedicated telephone line, and shall reimburse PGW for expenses incurred to obtain daily metered usage during periods when the electric power and/or the telephone line is unavailable. Failure to provide such lines may result in termination of this Agreement by PGW as a breach of Customer.

Section 17 - Liability; Indemnification; Force Majeure

17.1 PGW shall not be liable for curtailment of service under this Rate Schedule or loss of Gas of the Customer as a result of any steps taken to comply with any law, regulation or order of any governmental agency with jurisdiction to regulate, allocate or control gas supplies or the rendering of service hereunder, and regardless of any defect in such law, regulation or order. PGW reserves the right to commingle transport Gas with its other supplies but Gas is and remains the property of the Customer or its Supplier while being transported and delivered by PGW. The Customer shall be responsible for maintaining all insurance it deems necessary to protect its property interest in such Gas before, during and after receipt by PGW. PGW shall not be liable for any loss to the Customer or any other entity or person(s) arising from or out of service under this Rate Schedule, including loss of Gas in the possession of PGW or any other cause.

17.2 Customer agrees to indemnify and hold harmless the Philadelphia Gas Works, the Philadelphia Facilities Management Corporation and the City of Philadelphia, and their respective officers, directors, employees, contractors and agents (the "Indemnified Parties"), and will pay to PGW the amount of any costs incurred by or claims made against the Indemnified Parties (including costs of any cleanup, containment, or other remediation required under any applicable environmental protection law, or regulation) arising directly or indirectly, from, or in connection with Customer's service hereunder.

17.3 Neither party shall be liable to the other for any failure to comply with any provision of this Agreement, to the extent that such failure is wholly or partially due to any act, omission or circumstance occasioned by or in consequence of any acts of God, acts of the public enemy, wars, blockades, insurrections, riots, strikes, floods, washouts, arrests and restraints of rules and peoples, civic disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding Order of any court or governmental authority which has been resisted in good faith by all legal means, and any other causes whether of the kind herein enumerated or otherwise, which are not reasonably within said party's control, and which said party, by the exercise of reasonable efforts is unable to prevent or overcome; provided, that said party has

notified the other party immediately of a force majeure situation and followed up same in writing within seventy-two (72) hours of its occurrence.

Section 18 - Events of Default

18.1 Either Party shall be deemed to be in default hereof upon written notice by the other Party of the occurrence of any of the following events (an "Event of Default"):

18.1.1 Failure to pay when due any charge for any service(s) provided under this Agreement; and/or

18.1.2 Failure to comply with or perform any other material term, covenant or condition of this Agreement.

Section 19 - Remedies upon Default

19.1 Upon the occurrence of an Event of Default which the defaulting party fails to remedy within fifteen (15) days after written notice to the non-defaulting party, the non-defaulting party shall have the right, without any further demand or notice, to terminate this Agreement and/or take whatever action at law or in equity deemed necessary to collect payment or to enforce performance.

Section 20 - Notice

20.1 Except as set forth herein, written notices, requests, statements, and bills under this Agreement shall be given to the parties as set forth below, unless changed by either party upon written notice, with confirmation, to the other.

TO PGW:

Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Attn: Joseph Smith
Phone: (215) 684-6757

TO CUSTOMER:

Celeren Corporation
c/o Celeren Department A
PO Box 527
Bala Cynwyd, PA 19004
Attn: Michael Kelly
Phone: 610-784-8990, x8153
Fax: 610-784-8992

20.2 Customer is responsible for providing to PGW updated mailing and electronic addresses, as well as fax and voice telephone numbers, for communication on a 24-hour per day, 7-day per week basis.

20.3 Interruption notices shall be considered received by Customer upon transmission by PGW to the electronic address and/or telephone number provided by Customer.

Section 21 - Modifications to Tariff

21.1 This Agreement is subject to, and shall be deemed amended to comport with, the terms of the then current Tariff and any later amendments thereto.

21.2 To the extent that a conflict develops between the Tariff and this Agreement, PGW and Customer shall negotiate in good faith to amend this Agreement to preserve as nearly as possible the economic benefits to PGW and Customer as originally stated herein, while maintaining compliance with the requirements of the Tariff.

Section 22 - Miscellaneous

22.1 The subject headings of this Agreement are for reference only and are not intended to be part of this Agreement or to be considered in any interpretation of same.

22.2 This Agreement and all disputes arising under this Agreement shall be governed, construed, decided and/or enforced in accordance with the laws of the Commonwealth of Pennsylvania.

22.3 This Agreement may not be changed, amended, augmented, rescinded, or discharged (other than by performance), in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing, no waiver of any provision of this Agreement shall be deemed: (a) to be a waiver of any other provision in this Agreement; or (b) to be a waiver of any breach of the obligations under this Agreement. Any forbearance by a party in seeking a remedy for any noncompliance or breach by the other party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

22.4 This Agreement contains all the terms and conditions agreed upon by the Parties, and no other contract, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in this Agreement. Customer's Service Agreement with PGW pertaining to the meter identified in Section 2.3 will be deemed terminated as of the Commencement Date; provided, however, notwithstanding the termination of such Service Agreement, Customer shall remain obligated to make payment to PGW for any services rendered during the term of such Agreement.

22.5 The Parties do not intend to create, and nothing contained in this Agreement shall be construed as creating, a joint venture arrangement or partnership between PGW and Customer.

22.6 Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the Parties, any rights, remedies, or other benefits under or by reason of this Agreement.

22.7 This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

22.8 The provisions of this Agreement shall be severable. If any provision of this Agreement or the application thereof for any reason or circumstances shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to persons or entities other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22.9 Any and all provisions set forth in this Agreement which, by its or their nature, would reasonably be expected to be performed after the termination of this Agreement shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Agreement shall survive the termination or expiration of this Agreement.

22.10 In the event of a conflict or inconsistency between the terms of this Agreement and the terms of any exhibit, the terms of this Agreement shall control.

22.11 Customer hereby waives trial by jury in any legal proceeding involving, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Agreement or the relationship created or evidenced hereby. This provision is a material inducement for PGW to enter into this Agreement.

22.12 Customer shall not assign this Agreement without the prior written consent of PGW, which consent shall not be unreasonably withheld or delayed.

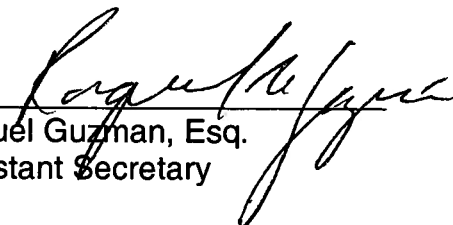
22.13 It is understood and agreed that in entering into this Agreement, Philadelphia Facilities Management Corporation ("PFMC") does so solely in its capacity as operator and manager of the municipally owned Philadelphia Gas Works, under and pursuant to the Agreement with the City of Philadelphia dated December 29, 1972, as amended from time to time, and not otherwise; and further, that any payments required to be made by PFMC as a result of or arising out of its entering into this Agreement shall be made solely from the revenues of Philadelphia Gas Works.

22.14 This Agreement is made subject to all of the terms and conditions of the aforesaid Agreement between PFMC and the City of Philadelphia and the requirements of lawfully constituted authority and shall inure to and be binding upon the Parties and their respective successors and assigns.

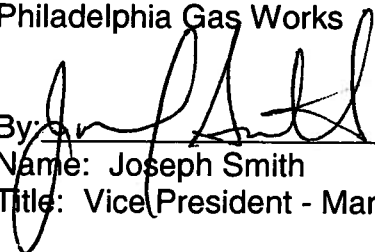
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Attest:

PHILADELPHIA FACILITIES
MANAGEMENT CORPORATION, in its
capacity as operator and manager of
Philadelphia Gas Works



Raquel Guzman, Esq.
Assistant Secretary


By: 

Name: Joseph Smith
Title: Vice President - Marketing *MS*

Attest/Witness:

CELEREN CORPORATION *as*
agent for Pami Renaissance Prop Inc.

By: _____
Name:
Title:

By: 

as agent for Pami Renaissance Prop Inc.
Name: Michael Kelly
Title: Agent

(SEAL)

VERIFICATION

I, Laureto Farinas, hereby declare that I am counsel for the Philadelphia Gas Works. I am authorized to make this verification on its behalf. The facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information and belief. I expect to be able to prove these facts at a hearing held in this matter. This verification is made subject to the penalties of 18 Pa. C.S. §4904, concerning false statements to authorities.

June 12, 2009



Laureto Farinas, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

Charis Mincavage, Esq.
Barry A. Naum, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108 – 1166

Frank Markle, Esq.
Senior Counsel
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406

PECO Energy Company
c/o Ward L. Smith, Assistant General Counsel
2301 Market Street, S23 – 1
Philadelphia, PA 19101 – 8699

June 12, 2009



Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982