

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Styer Farm Store	:	
and	:	Docket Nos. C-2008-2050863
Walter Styer	:	C-2008-2050906
	:	(Consolidated)
v.	:	
	:	
PECO Energy Company	:	

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**MOTION TO JOIN AN INDISPENSABLE PARTY**

Complainants, Styer Farm Store and Walter Styer, by and through their undersigned attorney, pursuant to Prehearing Order #3 issued by Administrative Law Judge Angela T. Jones, dated June 30, 2009, and in accordance with 1 Pa. Code § 35.48, hereby move to join Commerce Energy, Inc. as an indispensable party in the above-captioned matter, and in support thereof, aver as follows:

1. Commerce Energy, Inc. (formerly known as *electricAmerica*) (“Commerce Energy”) was randomly selected to be Complainants’ alternative Electric Generation Supplier (“EGS”) by PECO Energy Company (“PECO”) in or around January 2004, pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2807. In or around July 2004, Commerce Energy initiated service and remained the EGS for Complainants until about mid-August 2006.
2. Upon initiating service, Commerce Energy provided Complainants with its Terms and Conditions of Service for “Small Commercial - Two Year” (“T&C”), under which it provided electric generation services based on a fixed rate slightly lower than the rate Complainants had been paying other suppliers; a true and correct copy of said T&C is attached hereto as **Exhibit “A”**.
3. In or about late 2005 to early 2006, Complainants’ review of their electricity invoices revealed a sharp increase of more than 50% over previous months and years for similar consumption starting in the summer of 2005. Complainants initiated inquiries concerning the accuracy of the billing and meter readings to both Commerce Energy and PECO, in accordance with the dispute handling procedures set forth in Commerce Energy’s T&C and in PECO invoices.

4. Commerce Energy failed to respond to Complainants' inquiries. PECO responded and spent several months investigating Complainants' inquiries. As a result of PECO's investigation, Complainants learned that the increased charges were due to Commerce Energy's more than doubling its generation rate in or around July/August 2005 to reflect variable market rates instead of the previously agreed fixed rate. Since the basis for setting the EGS rate appeared on its face to be in conformity with law, PECO could not make any changes to the EGS charges in Complainants' invoices and advised Complainants to file an informal complaint with the Commission's Bureau of Consumer Services ("BCS").
5. Thereafter, Complainants filed a telephonic informal complaint with the BCS with respect to both Commerce Energy and PECO, docketed as BCS: 2238343. After several more months of investigation, the BCS notified Complainants by telephone of its decision that PECO's invoices were correct. BCS also issued a written notice advising Complainants of its decision and enclosing a formal complaint form to initiate Commission review of the decision.
6. Thereafter, Complainants filed a formal complaint against both Commerce Energy and PECO, alleging "extremely high rates[;] rate increase from June 15, 2005 to Sept. 2006" in addition to the allegation of "incorrect charges on my bill." The complaints are on file with the Commission; true and correct copies were attached collectively as Exhibit "A" to Complainants' Motion for Continuance dated June 29, 2009 and are incorporated herein by reference.
7. Complainants thus allege that Commerce Energy violated the Commission's rules at, *inter alia*, 52 Pa. Code § 54.5 (Disclosure statement for residential and small business customers), 52 Pa. Code § 54.7 (Marketing/sales activities), and 52 Pa. Code § 54.9 (Complaint handling process). In particular, Complainants allege that Commerce Energy violated several provisions of 52 Pa. Code § 54.5 when, less than a year into the two-year service contract, it drastically changed the basis of its generation rate without advance notice to Complainants. These allegations are separate and distinct from those against PECO.
8. In further support of the *prima facie* merit of Complainants' allegations against Commerce Energy, the undersigned found that the Commission's dockets include approximately 17 formal complaints of a similar nature filed against Commerce Energy since 2006; it appears that in most, if not all, of the approximately 15 closed cases, Commerce Energy provided compensatory relief to the complainants without an evidentiary hearing.
9. After the Secretary's office received the formal complaints, unbeknownst to Complainants, Commission staff hand-struck Commerce Energy, the intended primary respondent, from both complaints. On or about July 15, 2008, the Commission served PECO with the formal complaints but never served Commerce Energy.

10. The Commission's exclusion of Commerce Energy from these proceedings prejudices Complainants' rights and deprives Complainants of due process.
11. Through recent communications, the currently named parties have expressed willingness to explore resolution without an evidentiary hearing, which would serve the public interest and conserve Commission/ Judicial resources. However, such resolution will be impossible without inclusion of Commerce Energy.
12. PECO affirmatively supports this motion.
13. Given that Complainants initially named Commerce Energy as a respondent, it should not be necessary to file a new or amended complaint; this motion is in essence requesting restoration of a named respondent.

WHEREFORE, Complainants respectfully request that an order be issued requiring the Secretary to join Commerce Energy, Inc. as a respondent in the above-captioned cases, to serve Complainants' formal complaints upon Commerce Energy, Inc. and to amend the captions of said cases to reflect the addition of Commerce Energy, Inc.

Respectfully Submitted,



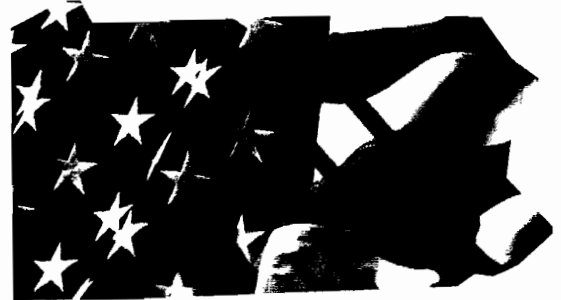
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Dated: July 30, 2009

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***electricAmerica***



**Welcomes  
You!**



**CORPORATE HEADQUARTERS**

15901 Red Hill Avenue, Suite 100  
Tustin, CA 92780  
Phone: 1-800-ELECTRIC® / 1-800-353-2874  
Fax: 1- 877-332-1067

**[www.electricAmerica.com](http://www.electricAmerica.com)**





## TERMS AND CONDITIONS OF SERVICE

### SMALL COMMERCIAL TWO YEAR

#### BACKGROUND

**electricAmerica** is licensed by the Pennsylvania Public Utility Commission (PUC) to offer and supply electric generation services in Pennsylvania. Our PUC license number is A-110117. Generation prices and charges are set by the electric generation supplier you have chosen. The PUC regulates distribution prices and services. The Federal Energy Regulatory Commission (FERC) regulates transmission prices and services.

#### BILLING

Although you, the customer, will be purchasing electricity from us, we will arrange to have your local Electric Distribution Supplier (EDC) send you a single bill for the utility's charges (transmission services and authorized regulatory fees) and for our charges (electricity component only). **electricAmerica** also reserves the right to send you a separate bill for the electricity charges only. This form of billing is called "dual billing" and you will only be charged once for the electricity you actually use during a billing cycle but may receive one bill from **electricAmerica** and one bill from your EDC for their separate charges. The meter reading, billing and collection functions for your bill will continue to be provided by your EDC. Your bill is subject to adjustment for any computation errors, meter misreads, or other errors.

#### RIGHT OF RESCISSION

You may cancel this agreement at any time before midnight of the third business day after receiving this disclosure.

#### BASIC SERVICE PLAN

You will receive a discount of five percent (5%) off the generation and transmission charges of your utility bill. This price includes gross receipts tax. This price excludes Pennsylvania sales tax if applicable.

#### LENGTH OF AGREEMENT

You will buy your electric generation service from **electricAmerica** beginning on a date set by your EDC and will continue for a period of twenty-four (24) consecutive months. After such term, pricing may be subject to change and service will continue on a monthly basis until cancelled by either party (See "Cancellation Provisions").

#### LIMITATION ON LIABILITY

If **electricAmerica** does not comply with these Terms and Conditions of Service, **electricAmerica** will be responsible for any direct damages up to the price of the electric generation service that **electricAmerica** has supplied, limited to a thirty (30) day period. **electricAmerica** will not be responsible for any consequential damages that may result from such failure to comply under contract or tort law, including **electricAmerica**'s negligence or failure to perform.

**electricAmerica** assumes no liability or responsibility for items or services associated with your EDC; operations and maintenance of their system, interruption of service, termination of service, or deterioration of their service. We are not liable for damages caused if the supply of electric generation service fails, is interrupted, or becomes defective.

#### PENALTIES, FEES AND EXCEPTIONS

**If you fail to pay your bill on time we will charge you a late payment interest fee of one and a half percent (1.5%) per month on outstanding balances until paid in full. A return check fee of twenty-five U.S. dollars (\$25) will be charged on all returned checks.**

#### CANCELLATION PROVISIONS

We may cancel this Agreement for electric generation service if you do not pay your bill on time. We will provide you ten (10) days written notice of cancellation for nonpayment of your bill. If your service is cancelled by us for lack of payment, you will be liable for the entire amount owing on your bill, plus any interest charges, plus reasonable collection charges not to exceed two hundred U.S. dollars (\$200), and your account will be returned to the EDC.

#### AGREEMENT EXPIRATION/CHANGE IN TERMS

If we propose to change our terms of service, we will send you written notice in a separate mailing fifty-two (52) days prior to the effective date of the changes. We will explain your options in this advanced notice.

#### DISPUTE PROCEDURES

**electricAmerica** will make every attempt to ensure that you are a fully satisfied customer. Our Customer Service Department will be happy to take any calls relating to your service and do our best to find a solution to any problem you may have. They are available from 8:00 a.m. until 9:00 p.m. Eastern Standard Time, Monday through Friday at 1-800-556-8457. Contact us with any questions concerning our Terms and Conditions of Service. If we are unable to satisfy you, you may call the Pennsylvania Public Utility Commission (PUC) at 1-800-782-1110.

#### ENTIRE AGREEMENT

These Terms and Conditions of Service constitute the entire agreement between us. They take the place of any and all prior agreements and understandings, oral or written, about **electricAmerica** supplying you with electric generation service.

**TO REPORT AN EMERGENCY OR DOWNED POWER  
LINE, PLEASE CALL YOUR EDC AT: 1-800-494-4000**

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## YOUR RIGHTS AS A CUSTOMER

1. You have the right to be told, both in advertising and in contracts, the price per kWh or per therm over the term of the contract, projected savings (excluding state-mandated discounts) and the period of time for which the price is valid.
2. If your supplier does not offer a fixed price, you have the right to receive price comparisons between the supplier's price and the shopping credit/basic generation charge.
3. Your contract must include a complete list of fees, including contract termination penalties, late fees and interest charges, including the amount and circumstances for which they can be imposed.
4. Your contract must explicitly show prices for services other than electric and gas supply and must identify those prices separately.
5. You may not be charged a fee to switch to or from a new supplier.
6. You cannot be denied electric or gas service because of your race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference or geographic location within the service territory of an electric or gas distribution company.
7. You have the right to be told the environmental characteristics of the electricity you are being offered, including pollutants, the generator's effort to conserve energy, and the types of fuel used to generate electricity. The type of fuel usually determines the amount and type of pollution the generator emits.
8. If a deposit is required, the money must be held in escrow and you must receive a receipt.
9. You have the right to choose a new supplier, at any time, subject to your contract terms. Business customers who return to basic generation service may be subject to additional charges or fees from your EDC.
10. Your Electric Distribution Company (EDC) or Gas Distribution Company (GDC) must confirm, in writing, your decision to choose a new supplier.
11. You cannot have your supplier changed without your express, written consent as slamming is prohibited by law.
12. If you are slammed, you must pay only what you would have paid the supplier you authorized to provide your electric or gas service.
13. You have the right to call upon the Pennsylvania Public Utility Commission (PUC) to investigate your complaints or inquiries. Your service may not be terminated for non-payment of disputed charges during a PUC investigation.
14. You must receive written notice at least 30 days in advance that a supplier intends to terminate your service and be told, as part of your contract, the circumstances under which your service can be terminated.
15. If you are receiving gas and electric supply from a single supplier, failure to make payment for one cannot result in termination of the other, unless your contract explicitly permits it.
16. You have the right to terminate your contract within 48 hours notice to your supplier if you move to the territory of a different EDC or GDC.
17. You have the right to have your personal or business records kept confidential by the supplier and by your EDC or GDC, unless you give written consent to have them disclosed.

### CONTACT INFORMATION

#### ***electricAmerica***

**Eastern Office**  
535 Route 38, Suite 350  
Cherry Hill, NJ 08002  
1-800-962-4655

#### **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

P.O. Box 3265  
Harrisburg, PA 17705-3265  
1-800-782-1110

#### **ELECTRIC DISTRIBUTION COMPANY PECO ENERGY (Provider of Last Resort)**

2301 Market Street  
Philadelphia, PA 19101  
1-800-494-4000

#### **ELECTRIC COMPETITION HOTLINE**

1-888-782-3228

#### **PECO ENERGY CUSTOMER ASSISTANCE PROGRAM**

1-800-494-4000



Welcome aboard, and thanks for choosing **electricAmerica** – where you always enjoy “The Power of Savings.”

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This handy refrigerator magnet is our way of saying thank you.  
(Do not place it on your computer!)

## Welcome to **The Power of Savings**

With **electricAmerica** as your new Electric Generation Supplier (EGS), you'll notice a few differences between our company and your utility. Your business will now spend less for power while receiving a superior level of customer service. These are differences we're sure you'll enjoy.

As an **electricAmerica** customer, you will experience no interruption to your service, your electricity will continue to be delivered in the same manner, and you will still receive only one electric bill from PECO, which will display both **electricAmerica** and PECO charges. As before, PECO will provide repair and continue to read your meter.

“**The Power of Savings**” represents more than reducing the amount your business pays for electricity. Unlike a typical utility, **electricAmerica** encourages energy conservation, which “saves” power and further reduces your energy costs. We encourage you to visit our website at [www.electricAmerica.com](http://www.electricAmerica.com) where you'll discover all sorts of helpful money-saving and energy-saving information. You'll also find tips on energy safety, energy efficiency, and the latest news and developments within the energy industry.

At **electricAmerica**, we work hard to lower your electric rates and elevate your customer service experience. If you have any questions, our friendly Customer Service Representatives are ready to assist you by phone at 1-800-ELECTRIC® (1-800-353-2874) or you can contact us by e-mail via our website at [www.electricAmerica.com](http://www.electricAmerica.com). We look forward to serving you and thank you for choosing **electricAmerica**, where you always enjoy **The Power of Savings**.

Sincerely,

**electricAmerica**

Commonwealth Energy Corporation, doing business as “electricAmerica”, is licensed by the Federal Energy Regulatory Commission as a Power Marketer, and by the Pennsylvania Public Utility Commission (Electric Generation Supplier #A-110117)

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**VERIFICATION**

I, Heather C. Winett, verify that I am counsel for Complainants, Styer Farm Store and Walter Syer, that I am authorized to make this verification on behalf of said Complainants, and that the statements contained in the foregoing motion are true and correct to the best of my knowledge, information and belief. I understand that the foregoing statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



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Heather C. Winett

Dated: July 30, 2009

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 9, as amended (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Respondent:

Tishekia E. Willllams  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699  
tishekia.williams@exeloncorp.com

For Presiding Officer:

Administrative Law Judge Angela T. Jones  
1302 Philadelphia State Office Building  
Pennsylvania Public Utility Commission  
1400 Spring Garden Street  
Philadelphia, PA 19130



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Counsel for Complainants

Dated: July 30, 2009