

### Legal Department

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March 9, 2010

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**Re: Color Tile Plus v. PECO Energy Company  
PUC Docket No. C-2010-2153376**

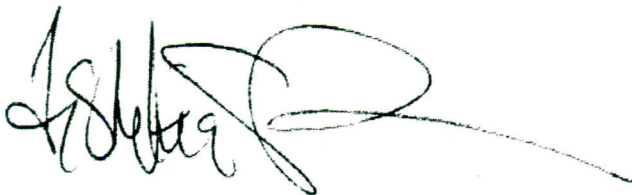
Dear Mr. McNulty:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

___	Answer (E-filed and 1 original)
___	Motion for Continuance (e-filed and 1 original)
<u> X </u>	Motion for Judgment on the Pleadings (E-filed and 1 original)
___	Preliminary Objection (E-filed and 1 original)
___	Exceptions (E-filed and 1 original)
___	Reply Exceptions (E-filed and 1 original)
___	Brief (E-filed and 1 original)
___	Reply Brief (E-filed and 1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Tishkia Williams  
Counsel for PECO Energy Company

TW/adz  
Enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COLOR TILE PLUS

v.

PECO ENERGY COMPANY

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:  
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DOCKET NO. C-2010-2153376

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.102(a) you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of PECO Energy Company, within 20 days from service of this notice, the Commission may make a ruling not in your favor and your Complaint may be dismissed. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Tishekia E. Williams, and where applicable, the Administrative Law Judge presiding over the issue.

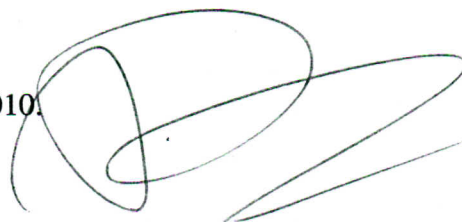
File with:

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

With a copy to:

Tishekia E. Williams, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, March 9, 2010.



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Tishekia E. Williams  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19101-8699  
215-841-6841  
Tishekia.Williams@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COLOR TILE PLUS	:	
	:	
v.	:	DOCKET NO. C-2010-2153376
	:	
PECO ENERGY COMPANY	:	

**PECO ENERGY COMPANY’S MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.103, respectfully petitions this Honorable Commission to dismiss the instant Complaint because Complainant, a commercial customer, has failed to state a claim upon which relief can be granted in requesting a payment agreement. In the alternative, if the Honorable Commission denies this motion PECO Energy requests that the Commission orders legal counsel for Complainant to file an entry of appearance by April 12, 2010.

**Background**

1. Complainant is a commercial customer operating a business known as Color Tile Plus located at 6919 Bristol Pike, Levittown, PA 19057, account number 4879200902. See Pennsylvania Department of State corporate filing attached hereto as Exhibit A.
2. Complainant filed a Pennsylvania Public Utility Commission formal Complaint on January 11, 2010 requesting a payment agreement.
3. PECO Energy was served the above-mentioned formal Complaint on January 20, 2010.
4. Pursuant to 52 Pa. Code § 5.101(b), PECO timely filed an Answer and New Matter to the Complaint on February 4, 2010 denying all material allegations.

- a. In its New Matter, PECO Energy averred that Complainant is not entitled to a Commission-ordered payment agreement because it is a commercial customer. See New Matter, ¶ 2 (citing 66 Pa. C.S. § 1405).
- b. PECO Energy also averred that Complaint, Color Tile Plus operates a business at the disputed location, 6919 Bristol Pike, Levittown, PA 19057.

5. According to 52 Pa. Code § 5.63, Complainant had twenty days from the filing date of PECO's New Matter to respond. More than a month has passed. To date, Complainant has failed to respond to the New Matter.

6. By not responding to the New Matter, the facts averred in the New Matter are deemed admitted.

**Complainant, a commercial customer, is not entitled to a PUC payment agreement**

7. The Commission's Rules for Formal Proceedings, Title 52 of the Pennsylvania Code, Chapter 5, Section 5.102, permit the filing of a Motion for Judgment on the Pleadings. 52 Pa. Code § 5.102.

8. PECO Energy hereby moves for judgment on the pleadings in the instant matter as Complainant is not entitled to the relief requested.

9. A Motion for Judgment on the Pleadings may be granted when there is no genuine issue as to a material fact and the moving party is entitled to a judgment as a matter of law. 52 Pa. Code. §5.102(d)(2).

10. Complainant has admitted through its non-response to PECO Energy's New Matter that it is a commercial customer operating a business at the disputed location. See New Matter, ¶¶ 1-2.

11. Accordingly, it is not disputed that Complainant is a commercial customer or that the disputed address is a business location.

12. Commercial customers are not entitled to the payment agreement provisions codified under 66 Pa.C.S § 1405 and 52 Pa. Code. Chapter 56.

13. Accordingly, judgment based upon the pleadings should be granted to PECO Energy because Complainant cannot obtain the relief it seeks.

**Complainant is a commercial customer and is not represented by counsel**

14. Should this Honorable Commission deny PECO Energy's motion for judgment on the pleadings, PECO Energy respectfully requests that the Commission orders legal counsel for Complainant to file an entry of appearance by April 12, 2010.

15. Under well-established Commission precedent, a Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. See *New Matter*, ¶¶ 3-4; 52 Pa. Code §1.8; 1.21-§ 1.23; *In Re: Checker Cab*, 49 Pa. PUC 159, 160 (1975), *Moore v. I. Berman and Cross, Inc.*, Pa. PUC 427, 428 (1975).

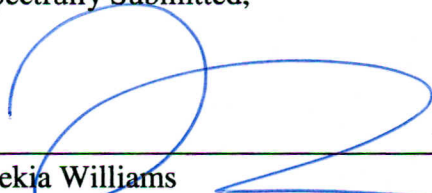
16. Complainant has admitted through its non-response to PECO Energy's *New Matter* that it is a commercial business.

17. To date, no counsel for Complainant has filed an entry of appearance with the Commission.

18. Accordingly, PECO Energy respectfully requests that the Commission orders legal counsel for Complainant to file an entry of appearance by April 12, 2010.

**WHEREFORE**, PECO Energy Company respectfully requests that your  
Honorable Commission dismisses the instant Complaint.

Respectfully Submitted,



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Tishekia Williams  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Tishekia.Williams@exeloncorp.com



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#### Business Entity Filing History

**Date:** 3/9/2010 (Select the link above to view the Business Entity's Filing History)

#### Business Name History

Name	Name Type
COLOR TILE PLUS, INC.	Current Name

#### Business Corporation - Domestic - Information

**Entity Number:** 3169965  
**Status:** Active  
**Entity Creation Date:** 9/23/2003 10:01:59 AM  
**Registered Office Address:** 6913 BRISTOL PIKE  
 LEVITTOWN PA 19056-  
 Bucks  
**Mailing Address:** No Address



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 Commonwealth of PA Privacy Statement

*Recs exhibit A*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COLOR TILE PLUS

v.

PECO ENERGY COMPANY


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DOCKET NO. C-2010-2153376

**VERIFICATION**

I, Tishekia Williams, hereby declare that I am an attorney representing PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: March 9, 2010

  
\_\_\_\_\_  
Tishekia Williams

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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v.

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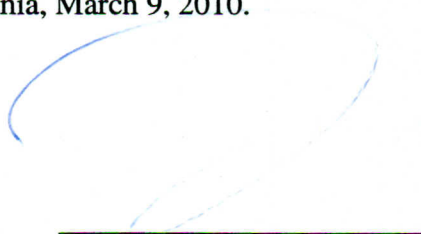
DOCKET NO. C-2010-2153376

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of PECO Energy Company's for Judgment on the Pleadings in the above matter upon all interested parties by mailing a copy thereof, properly addressed and postage prepaid to:

Color Tile Plus  
6919 Bristol Pike  
Levittown, PA 19057

Dated at Philadelphia, Pennsylvania, March 9, 2010.

  
\_\_\_\_\_  
Tishekia Williams  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Tishekia.Williams@exeloncorp.com