

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Direct Dial: 215.841.6841

May 14, 2010

Rosemary Chiavetta, 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 Ms. Chiavetta:

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. Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. Thank you for your time and attention on this matter.

Very truly yours,



Tishekia 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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:
:
:

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, May 14, 2010.



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, Inc. 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 a Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding before the Commission. See New Matter, ¶ 4 (citing 52 Pa. Code §1.8).

5. On April 5, 2010, PECO filed an amended Answer and New Matter which included a Notice to Plead.

6. 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.

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

8. To date, no attorney has entered an appearance on behalf of Complainant.

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

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

10. Complainant has admitted through its non-response to PECO Energy's New Matter that as a commercial customer, it is not entitled to a payment agreement from the PUC. See New Matter, ¶¶ 1-2.

11. 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

12. 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.

13. 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).

14. Complainant has admitted through its non-response to PECO Energy's New Matter that it must be represented by legal counsel in this adversarial proceeding.

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

16. 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,



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

**BEFORE THE
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COLOR TILE PLUS

v.

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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: May 14, 2010



Tishekia Williams

**BEFORE THE
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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, May 14, 2010.



Tishekia Williams
Counsel for PECO Energy Company
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