

**Legal Department**

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June 16, 2010

**Via Federal Express**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

RECEIVED

JUN 16 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Digital 833 Chestnut LLC v. PECO Energy Company**  
**PUC Docket No. C-2008-2076610**

Dear Ms. Chiavetta:

Enclosed please find an original and three copies of the Prehearing Conference Memorandum on Remand 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 Herbert Smolen (Via e-Mail and U.S. Mail)  
Service List (e-mail and U.S. Mail)



issues identified in the Commission's March 26, 2010 Remand Order relate to the state of knowledge of each respondent, and of Digital 833, regarding the billing arrangement in question for service provided by each respondent to Digital 933. The factual investigation for each respondent thus will be effectively bilateral – that is, PECO and Digital 833 will have a factual record that is focused on the PECO/Digital 833 relationship; PGW and Digital 833 will have a separate factual record that is focused on the PGW/Digital 833 relationship; UGIES and Digital 833 will have yet another separate factual record that is focused on the UGIES/Digital 833 relationship.

This proceeding thus has some of the benchmarks that would suggest continued consolidation – primarily, the common legal issues involved. It also has some of the benchmarks that would suggest trifurcation – primarily, the need to develop separate factual records related to each respondent.

On balance, PECO recommends that the resources of the Commission and the parties will be most efficiently used by continuing in a consolidated proceeding, with common legal rulings, hearing dates, and schedules.

**(c) Discovery Schedule and (d) Proposed Discovery Orders**

PECO was initially served with discovery by Digital 833 on May 6, 2009. The first prehearing conference took place on June 2, 2009; at that prehearing conference Administrative Law Judge Koster indicated that he expected the respondents to file Motions to Dismiss; PECO therefore suspended work on answering the Digital 833

discovery. After the Commission remanded this matter by its Remand Order of March 26, 2010, PECO again began work to answer the Digital 833 discovery. Counsel for PECO was on extended medical leave from May 6 – June 7, 2010, but expects that PECO will provide answers to the Digital 833 discovery shortly, probably prior to the scheduled prehearing conference.

PECO anticipates that it will serve initial discovery on Digital 833 at or about the time of the prehearing conference (encompassing the Complaint and the statements required by subsection (g) of the Prehearing Conference Order on Remand). PECO anticipates that, if pre-filed written testimony is utilized in this proceeding, it will serve a second series of discovery on Digital 833 after reviewing that testimony.

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 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. At this time, the discovery served by Digital 833 does not appear to encompass materials that would need to be deemed confidential; PECO therefore does not believe that a protective order is currently needed for this proceeding.

**(e) Proposed Schedule**

PECO has not had the opportunity to compare notes with the other parties regarding schedule.<sup>1</sup> Rather than propose a schedule or counter-schedule at this time, PECO recommends that the parties discuss scheduling issues prior to the prehearing conference with the aim of presenting a joint framework/schedule at the prehearing conference. Obviously, specific dates will need to be chosen with Your Honor's calendar available.

**(f) Witnesses**

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

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<sup>1</sup> As noted earlier in this memorandum, counsel for PECO was on extended medical leave through June 7. Your Honor's Prehearing Conference Order on Remand arrived during that absence and counsel did not become aware of its existence until earlier today, when UGIES filed its Prehearing Conference Memorandum.

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.

#### **(g) Evidence and Issues**

PECO believes that the following are the primary issues and sub-issues that will be addressed in this proceeding, which it intends to address as follows:

(1) Whether PECO provided service to Digital 833 Chestnut. PECO expects to address this issue by having Ms. Ferrier or other witness present the Digital 833 Chestnut account statement, which will demonstrate that PECO provided utility service to the customer.

(2) 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 and/or documents 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.

(3) 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 and/or documents 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.

(4) 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 and/or associated documents 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.

(5) What information the parties had with respect to the billing arrangement between Digital 833, Celeren, and PECO. PECO expects to address this issue through the through the testimony of Mr. McCawley, Mr. Neumann and/or Mr. Melendez, with that testimony and/or associated documents demonstrating that Digital 833 had complete knowledge of the relationship, and that PECO had extremely limited knowledge of the nature of the relationship.

(6) When that information was available. PECO expects to address this issue through the through the testimony of Mr. McCawley, Mr. Neumann and/or Mr. Melendez, with that testimony and/or associated documents demonstrating that Digital 833 had complete knowledge of the relationship from its inception, and that PECO had extremely limited knowledge of the nature of the relationship from its inception.

(7) What knowledge the parties had concerning the billing arrangement. PECO expects to address this issue through the through the testimony of Mr. McCawley, Mr. Neumann and/or Mr. Melendez, with that testimony and/or associated documents demonstrating that Digital 833 knew, from the onset of its relationship with Celeren that it had a contractual relationship with Celeren in which Celeren agreed to undertake certain tasks on behalf of Digital 833; and that PECO knew that Celeren had been

designated by Digital 833 as the appropriate agent for receipt of billing and other customer communications.

(8) When the parties knew or should have known about any violations of the arrangement. PECO expects to address this issue through the through the testimony of Mr. McCawley, Mr. Neumann and/or Mr. Melendez, with that testimony and/or associated documents demonstrating that Digital 833 was in a position to know about any Celeren violations of the agreement between the Digital 833 and Celeren; after discovery is answered PECO may be in a position to argue further that Digital 833 in fact knew about such Celeren violations. PECO further will demonstrate that the only agreement between Digital 833 and PECO was that PECO had agreed, at Digital 833's instruction, to mail Digital 833 bills to Celeren as Digital 833's billing recipient, and that no violations of that agreement occurred or are claimed to have occurred.

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

**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,



Ward Smith  
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Exelon Corporation  
Counsel for PECO Energy  
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June 16, 2010

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Digital 833 Chestnut, LLC** :  
v. : **Docket No. C-2008-2076610**  
**PECO Energy Company** :  
**PGW, and UGIES** :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of PECO Energy Company's Prehearing Conference Memorandum on Remand in the above matter upon all interested parties by email and by mailing a copy, properly addressed and postage prepaid to:

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

Laureto A. Farinas, Esq.  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia PA 19122  
(Attorney for Philadelphia Gas Works)

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

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dated at Philadelphia, Pennsylvania, June 16, 2010.



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From: Origin ID: PSQA (215) 841-5353  
Anita Zaketa

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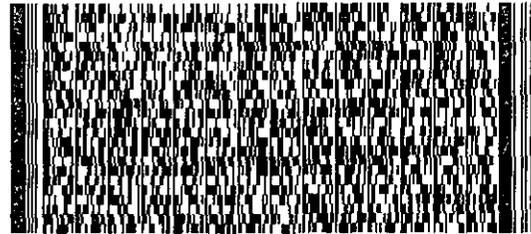
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**Rosemary Chiavetta, Secretary**  
**Public Utilities Commission**  
**400 NORTH ST FL 2**  
**COMMONWEALTH KEYSTONE BUILDING**  
**HARRISBURG, PA 17120**

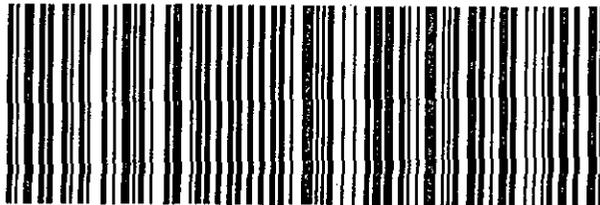


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