

**RYAN, RUSSELL, OGDEN & SELTZER**  
A PROFESSIONAL CORPORATION

SUITE 101  
800 NORTH THIRD STREET  
HARRISBURG, PENNSYLVANIA 17102-2025

TELEPHONE: 717-236-7714  
FACSIMILE: 717-236-7816  
WWW.RYANRUSSELL.COM

July 30, 2010

WYOMISSING OFFICE  
SUITE 210  
1150 BERKSHIRE BOULEVARD  
WYOMISSING, PENNSYLVANIA  
19610-1208  
TELEPHONE: 610-372-4761  
FACSIMILE: 610-372-4177

Via E-File and First Class Mail

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

Re: Linda Berkery v. PECO Energy Company  
Docket Number: C-2010-2170223

RECEIVED  
2010 AUG -2 AM 10:33  
PA.P.U.C.  
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Enclosed for filing in the above referenced matters is an original and three (3) copies of Commerce Energy Inc.'s Answer to Complainant's Motion to Strike Letter of July 16, 2010 from John F. Povilaitis.

Please contact us with any questions.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER P.C.

*John F. Povilaitis / JFP*  
John F. Povilaitis

Enclosures

JFP:lds

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED

2010 AUG -2 AM 10: 34

LINDA BERKERY

:  
:  
:  
:  
:  
:

v.

**Docket No. C-2010-2170223**

PA.P.U.C.  
SECRETARY'S BUREAU

PECO ENERGY COMPANY

---

**COMMERCE ENERGY INC.'S ANSWER TO COMPLAINANT'S MOTION TO  
STRIKE LETTER OF JULY 16, 2010 FROM JOHN F. POVILAITIS**

---

AND NOW, Commerce Energy, Inc. ("Commerce"), by and through its counsel, John F. Povilaitis and Ryan, Russell, Ogden & Seltzer P.C. answers Complainant's Motion to Strike the Letter of July 16, 2010 from John F. Povilaitis, Esq. ("Motion to Strike") pursuant to Sections 5.61 and 5.103 of the Pennsylvania Public Utility Code ("PaPUC") regulations, 52 Pa. Code §§ 5.61, 5.103, as follows:

1. On July 16, 2010, counsel for Commerce filed with the Commission and served on PECO Energy Company ("PECO"), Respondent, correspondence advising that Commerce did not oppose PECO's Motion to Join Commerce as an indispensable party to this proceeding. (Letter attached). The Complainant's Motion to Strike contends that Commerce is not a party to these proceedings and has no standing to file documents in this case.<sup>1</sup> PECO has filed a Motion to Join Commerce as an indispensable party to this proceeding. PECO's Motion to Join Commerce was served on Commerce, as required by due process. Commerce does not contest PECO's Motion to Join. The letter in dispute was Commerce's notice to the Commission, Complainant and PECO that it did not contest PECO's Motion to Join, and to clarify the period of time Commerce provided

---

<sup>1</sup> Motion, paragraph 1, p. 1.

service to the Complainant. Complainant Linda Berkery has filed an opposition to the Motion to Join, but the Motion has not been ruled upon to date.

2. Complainant argues that as an entity not named in the original complaint, Commerce cannot address PECO's Motion to Join it to this proceeding. Complainant's legal proposition violates due process and fundamental fairness. Commerce is fully entitled to address the issue of it being joined to this proceeding and the Commission should grant PECO's Motion to Join. Rather, it is Complainant Berkery who is in violation of due process standards by not serving upon Commerce her written opposition to PECO's Motion to Join Commerce.

3. The dates of service in Commerce's correspondence of July 16, 2010 are not part of the evidentiary record. Complainant's request to strike the information from the evidentiary record is therefore moot. To move this proceeding forward, Commerce respectfully requests that the Commission, *nunc pro tunc*, consider its correspondence of July 16, 2010 as an Answer to the Motion to Join and grant PECO's Motion to Join in order to clarify Commerce's party status in this proceeding.

5. Complainant contends that by serving Commerce its Motion to Join, respondent PECO engaged in an *ex parte* communication. Respondent PECO has not violated the *ex parte* rules of the Public Utility Code.<sup>2</sup> Commerce is not a member of the Commission, an administrative law judge or employee of the Commission to whom off-the-record communications on the merits of a contested proceeding are prohibited.

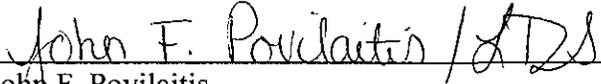
WHEREFORE, Commerce Energy, Inc. hereby requests that Complainant's Motion to Strike be denied, and that PECO's Motion to Join Commerce as a party be granted.

---

<sup>2</sup> 66 Pa. C.S. § 334(c).

Respectfully submitted,

Dated: July 30, 2010

  
\_\_\_\_\_  
John F. Povilaitis  
RYAN, RUSSELL, OGDEN & SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Attorneys for Commerce Energy, Inc.

RYAN, RUSSELL, OGDEN & SELTZER  
A PROFESSIONAL CORPORATION

SUITE 101  
800 NORTH THIRD STREET  
HARRISBURG, PENNSYLVANIA 17102-2025  
TELEPHONE: 717-236-7714  
FACSIMILE: 717-236-7816  
WWW.RYANRUSSELL.COM

WYOMISSING OFFICE  
SUITE 210  
1150 BERKSHIRE BOULEVARD  
WYOMISSING, PENNSYLVANIA  
19610-1208  
TELEPHONE: 610-372-4761  
FACSIMILE: 610-372-4177

July 16, 2010

VIA E-FILE AND FIRST CLASS MAIL

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

Re: Linda Berkery v. PECO Energy Company,  
Docket No. C-2010-2170223

Dear Secretary Chiavetta:

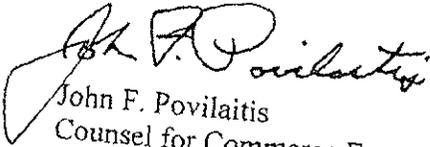
We are counsel for Commerce Energy ("Commerce") in the above-captioned matter. On May 13, 2010, PECO Energy Company filed a Motion to Join Commerce as an indispensable party. Commerce did not contest the Motion, and does not contest being joined as a party to this complaint proceeding.

It appears that in a filing dated May 19, 2010, the Complainant, Linda Berkery opposed Commerce being joined as a party to this case. This opposition pleading was not served on Commerce according to the Certificate of Service.

This correspondence is intended to clarify that Commerce does not oppose being joined to this complaint proceeding. In addition, Commerce wishes to clarify that Ms. Berkery commenced service with ACN Energy ("ACN") which Commerce acquired in February, 2005. Therefore Ms. Berkery was billed as a customer of ACN/Commerce for natural gas service from September 18, 2003 to July 18, 2008; and she was billed as a customer of ACN/Commerce for electric generation service from September 18, 2003 to November 17, 2004. Copies of this correspondence are being served on PECO Energy Company and the Complainant per the attached certificate of service.

Thank you for your attention to this matter.

Very truly yours,

  
John F. Povilaitis  
Counsel for Commerce Energy

JFP:ck  
c. Certificate of Service  
Office of Administrative Law Judge

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LINDA BERKERY

v.

PECO ENERGY COMPANY

Docket No. C-2010-2170223

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the relevant document(s) upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, addressed as follows:

Tishekia Williams, Esquire  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, Pennsylvania 19103

Linda Berkery  
2115 Fairwold Lane  
Fort Washington, Pennsylvania 19034

Inger Goodman  
Commerce Energy, Inc.  
600 Anton Boulevard  
Suite 2000  
Costa Mesa, CA 92626

RECEIVED  
2010 AUG -2 AM 10:34  
PA.P.U.C.  
SECRETARY'S BUREAU

Dated: July 16, 2010

  
John F. Povilaitis  
RYAN, RUSSELL, OGDEN & SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Counsel for Commerce Energy, Inc.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LINDA BERKERY

v.

PECO ENERGY COMPANY

:  
:  
:  
:  
:

Docket No. C-2010-2170223

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the relevant document(s) upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, addressed as follows:

Tishekia Williams, Esquire  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, Pennsylvania 19103

Linda Berkery  
2115 Fairwold Lane  
Fort Washington, Pennsylvania 19034

Inger Goodman  
Commerce Energy, Inc.  
600 Anton Boulevard  
Suite 2000  
Costa Mesa, CA 92626

RECEIVED  
2010 AUG - 2 AM 10:34  
PA. P.U.C.  
SECRETARY'S BUREAU

Dated: July 30, 2010

  
\_\_\_\_\_  
John F. Povilaitis  
RYAN, RUSSELL, OGDEN & SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Counsel for Commerce Energy, Inc.

**RYAN, RUSSELL, OGDEN, & SELTZER P.C.**  
1150 BERKSHIRE BOULEVARD, SUITE 210  
WYOMISSING, PA 19610-1208



**First Class Mail**  

---

**First Class Mail**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

