

**Legal Department**

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October 18, 2010

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

**Re: William R. Edward v. PECO Energy Company  
PUC Docket No. C-2010-2200634**

Dear Ms. Chiavetta:

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

<input type="checkbox"/>	Answer (1 original)
<input checked="" type="checkbox"/>	Motion to Join An Indispensible Party (1 original)
<input type="checkbox"/>	Motion for Judgment on the Pleadings (1 original)
<input type="checkbox"/>	Preliminary Objection (1 original)
<input type="checkbox"/>	Exceptions (1 original)
<input type="checkbox"/>	Reply Exceptions (1 original)
<input type="checkbox"/>	Brief (1 original)
<input type="checkbox"/>	Reply Brief (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,



Tishekia Williams  
Counsel for PECO Energy Company

TW/adz  
Enc.

Scheduling recommendation: CALL OF THE DOCKET:  NON-CALL OF THE DOCKET:

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>WILLIAM R. EDWARDS</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2010-2200634</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

**PECO ENERGY COMPANY'S  
MOTION TO JOIN AN INDESPENSIBLE PARTY**

Respondent, PECO Energy Company ("PECO"), pursuant to 52 Pa. Code § 5.103 respectfully petitions this Honorable Commission to join Commerce Energy, Inc. as an indispensable party in the above-captioned matter, and in support thereof, aver as follows:

1. On or about September 20, 2010, Complainant filed a formal complaint against PECO alleging that he Commerce Energy improperly raised his rates, failed to respond to his request for information, and that Commerce Energy and PECO Energy employed deceitful business practices "to sneak in charges."
2. PECO is simultaneously filing an Answer, New Matter, and Notice to Plead in conjunction with this Motion to Join.
3. PECO avers that the disputed rates are charged and established by Commerce Energy, Inc., not PECO Energy. Therefore, any possible refund of rates or finding of improper rates relates to Commerce Energy and not PECO Energy. Similarly, PECO can not answer for Commerce Energy customer service practices.
4. Commerce Energy is an Electric Generation Supplier ("EGS") licensed by the Commission to operate at all time relevant to this proceeding under License No. A-110117 (and A-1148524) and is thus subject to the jurisdiction of this Commission.

5. The Electricity Generation Customer Choice and Competition Act (“Act”), 66 Pa.C.S. §2801-15, was enacted in 1996. The Act provided Pennsylvanians the opportunity to purchase electricity from alternative electric suppliers.<sup>1</sup>

6. Pursuant to the Act and subsequent Pennsylvania Utility Commission (“PUC”) orders, PECO Energy filed an Application for Approval of its Restructuring Plan. PECO Energy and other interested parties reached a joint settlement agreement approved by the PUC (“Restructuring Settlement”) setting forth the Company’s course of action to comply with the Act and related PUC orders.<sup>2</sup>

7. Under the Restructuring Settlement, PECO was required to satisfy the Market Share Threshold (“MST”). The MST stipulated that a fixed percentage of customers within the relevant service territory would transition to purchasing electricity from alternative EGS. Failure to meet the MST required PECO Energy to notify randomly selected customers that they would begin purchasing electricity from an EGS unless they affirmatively “opted out.”<sup>3</sup>

8. PECO Energy mailed such a notice in 2003 to Complainant stating that Electric America, the predecessor to Commerce, would be the Complainant’s EGS unless

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<sup>1</sup> See 66 Pa. C.S. §§ 2801-12 (Act); see also Pennsylvania Utility Commission, *What Is Electric Choice?* (available at <http://www.puc.state.pa.us/utilitychoice/whatis.aspx?ut=ec>).

<sup>2</sup> See *Petition for Approval of PECO Energy Company's Market Share Threshold Bidding/Assignment Process; Petition for Approval of "The Better Choice" Plan to Meet PECO Energy Company's Market Share Threshold Requirements*, 2003 Pa. PUC LEXIS 7; 222 P.U.R.4th 361, dockets P-00021984; P-00021992 (Order adopted by the Commission on February 6, 2003).

<sup>3</sup> See *id.* at \*3-4.

he opted out. He did not opt out.<sup>4</sup> PECO Energy accordingly switched Complainant's EGS to Electric America effective May 1, 2003.

9. Complainant received electric supply from Commerce Energy, formerly Electric America, from July 14, 2003 until May 12, 2010, when Complainant was switched back to PECO Energy at his request. PECO Energy avers that prior to this period; Complainant received notice of his supplier's name and charges through his monthly PECO bills. Accordingly, Complainant knew, or should have known that his bill included charges from Commerce Energy since August 2003.

10. In Pennsylvania, "an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction." *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (Pa. 1975); *City of Philadelphia, et al v. Commonwealth of Pennsylvania, et al*, 575 Pa. 542 (Pa. 2003); *Barren v. Dubas*, 295 Pa. Super. 443, 445 (Pa. Super Ct. 1982). Failure to join an indispensable party goes absolutely to the court's jurisdiction and, if not raised by the parties, should be raised *sua sponte*. *Posel v. Redevelopment Authority of Philadelphia*, 72 Pa. Commw. 115, 121 (Pa. Commw. Ct. 1983).

11. The Pennsylvania Supreme Court has established that "the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party . . . . In order to make the analysis, however, one must refer to the nature of the claim and the relief sought." *Cry, Inc. v. Mill Service, Inc.*, 536 Pa. 462, 486-69 (Pa. 1994). Adopting the criteria articulated in *Mechanicsburg Area School*

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<sup>4</sup> See Exhibit 3, BCS Report no. 2433986 ("according to [Commerce] records, [Complainant] never opted out.").

*District v. Kline*, 494 Pa. 476, 481 (Pa. 1981) the court’s test for determining indispensability involved “at least” the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

12. In regards to the first factor, Commerce Energy has a right or interest to the claim. All of Complainant’s allegations of overcharging relate to Commerce Energy charges. Complainant alleges his rates increased after his supplier was switched from PECO Energy to Commerce Energy, and that he was overcharged for three months in 2010, months when Commerce Energy was his service provider.<sup>5</sup> Complainant also claims that Commerce Energy failed to bill him for three months.

13. With respect to the second consideration of the test, Commerce Energy has at stake the possible obligation to refund payments received and/or to compromise charges in dispute. Also, Complainant’s allegations of violations of Commission rules may subject Commerce Energy to enforcement action against which it would be entitled to defend itself and/or avail itself of the opportunity to settle.

14. With respect to the third consideration of the test, Commerce Energy’s interest is essential to the merits of the case because much of the Complaint focuses on Commerce’s supplier charges prior in March and April 2010, which PECO Energy cannot answer as it was not at that time Complainant’s EGS.<sup>6</sup> PECO Energy cannot answer for Commerce, a separate and distinct company. The relief sought by Complainant

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<sup>5</sup> Complaint paras. 4.6 and 4.17.

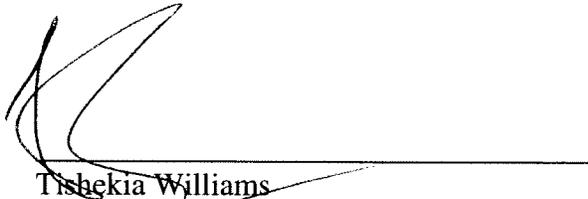
<sup>6</sup> *E.g.*, Complaint paras. 4.3 (comparing 2007 and 2008 bills); 4.6 (bill was “more than double” in 2008).

necessarily involves Commerce Energy. As mere billing agent, PECO Energy has no authority to adjust Commerce Energy's rates.

15. In regards to the fourth consideration, not joining Commerce Energy, when its actions and policies are so central to the Complaint, would violate its due process rights. Commerce Energy was the supplier of energy to Complainant during the time period in question, and it is Commerce Energy's rates that the Complainant has issue with. Complainant's allegations go directly to Commerce Energy's rates and supply practices, and any adjudication concerning business practices of Commerce Energy without its presence would violate its due process rights.

WHEREFORE, PECO request that the Honorable Commission Join Commerce Energy, Inc. as an Indispensible Party in this proceeding.

Respectfully Submitted,



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**WILLIAM R. EDWARDS** :  
 :  
v. : **DOCKET NO. C-2010-2200634**  
 :  
**PECO ENERGY COMPANY** :

**CERTIFICATE OF SERVICE**

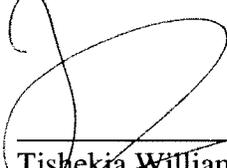
I, Tishekia Williams, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by U.S. mail and electronic mail to:

William R. Edwards  
7 South York Road  
Hatboro, PA 19040

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

Dated at Philadelphia, Pennsylvania, October 18, 2010

Respectfully Submitted,



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Tishekia Williams  
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