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October 22, 2010

**VIA FEDERAL EXPRESS**

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

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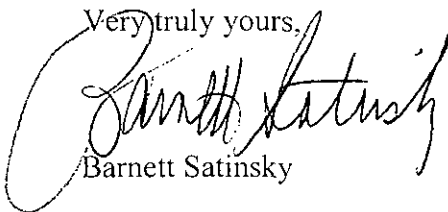
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Ellington Condominium Association v. Trigen-Philadelphia  
Energy Corporation  
Docket No. C-2009-2092612**

Dear Secretary Chiavetta:

Enclosed are an original and ten (10) copies of **Trigen-Philadelphia Energy Corporation's Main Brief to Administrative Law Judge Cynthia Williams Fordham** and Certificate of Service in the above-referenced matter. Kindly date-stamp the extra copies and return them to me in the self-addressed, stamped envelope provided. Thank you for your cooperation.

Very truly yours,



Barnett Satinsky

BS:cs

Enclosures

- cc: All parties listed on Certificate of Service (w/enclosure) (via Federal Express)  
Administrative Law Judge Cynthia Williams Fordham (w/enclosure) (via Federal Express)  
Lawrence W. Plitch, Esq. (via email, w/enclosure)  
Mr. Michael J. Smedley (via email, w/enclosure)  
Christine Soares, Esquire (via email, w/enclosure)

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

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Ellington Condominium Association,  
Complainant

v.

Trigen-Philadelphia Energy Corporation,  
Respondent  
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Docket No. C-2009-2092612

**TRIGEN-PHILADELPHIA ENERGY CORPORATION'S  
MAIN BRIEF TO  
ADMINISTRATIVE LAW JUDGE CYNTHIA WILLIAMS FORDHAM**

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October 22, 2010

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## I. STATEMENT OF THE CASE

This case consists of Ellington Condominium Association's ("Ellington") attempt to avoid responsibility for payment of two particular invoices totaling \$142,469.41<sup>1</sup> for steam service from Trigen-Philadelphia Energy Corporation ("Trigen"). The invoices pertain to steam consumption during two non-consecutive billing months dating back to the summer of 2008. Ellington's contest of those invoices is based on an unsubstantiated theory which is deficient both as a matter of fact and a matter of law.

Ellington is an upscale residential condominium in Center City Philadelphia which utilizes steam to meet its heating and cooling needs. For years, both under prior ownership and more recently, after the building was converted into condominiums, Ellington has experienced problems with its own mechanical systems, including the cooling system which operates during the summer months. Despite a series of reports from three independent sources, Ellington failed to make recommended changes to its systems, until it reluctantly implemented some recommendations after the summer of 2008. Ellington's management changed the mechanical contractors servicing its equipment three times over the course of three years, apparently dissatisfied with the performance of each of the three highly reputable contractors (none of whom it called to testify), but always unwilling to make the necessary investment in fully examining, tightening and improving its internal systems. For Ellington, a "band-aid" approach was more appealing than having to assess condominium unit owners for the cost of implementing system improvements or, even more fundamentally, providing proper instruction to its engineering staff on how to operate the existing system most efficiently.

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<sup>1</sup> The original principal sum in dispute was \$142,469.41. Since the original due dates for payment, finance charges at the rate of 2% per month on the unpaid principal balance have continued to accrue. Ellington did not dispute and paid \$58,834.34 of the principal balance in December 2009 and \$16,000 of the finance charge associated with the undisputed portion in March 2010. Trigen has acknowledged a credit due to Ellington of \$538.81. Thus, as of September 30, 2010, the amount outstanding (principal plus finance charge) is \$125,783.10.

Ultimately, when it received two unusually large invoices for consumption during the summer of 2008, Ellington found a new scapegoat - Trigen. Ellington and its expert-for-hire first declared that the problem “must be” with Trigen’s meter which measured the steam used for cooling purposes. When it became clear that Trigen read the cooling steam consumption with two separate meters, one a vortex meter and the other a differential pressure meter, using two separate measurement technologies (the totalizer method and the Telog method), Ellington’s expert decided that the root of the problem was not the meters, but rather the software which is used to take the raw data and convert it into information used for billing purposes. The sole basis for this conclusion was the expert’s experience on a single occasion, years ago with another system, where certain data was not properly input into a billing program, resulting in erroneous bills being generated.

In the case of the Ellington, its expert acknowledged on the record that he lacked any familiarity with Trigen’s specific billing program and had no actual evidence of such a mistake having been made here. Rather, he based his conclusion on the fact that he could not find anything wrong with Ellington’s mechanical systems and operations, and that since the meters were clearly operating properly, he could not think of any other reason for the high consumption.

In the face of this moving target and unsubstantiated conclusion, Trigen presented comprehensive evidence, both from its own witnesses and outside experts, demonstrating that that the meters were properly calibrated and operating effectively, the billing software was operating properly<sup>2</sup>, there were a myriad of factors on the customer’s side of the meter which were contributing to the high usage, and most importantly, that there was a direct correlation between Ellington’s use of additional mechanical equipment with the periods of high

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<sup>2</sup> Trigen self-identified one minor error with a value of \$538.81 and already has acknowledged the need to credit Ellington for that sum.

consumption. To the extent that Ellington's expert lacked relevant knowledge or based his analysis on inaccurate assumptions, Trigen's witnesses possessed that knowledge and did not base their testimony on inaccurate or incomplete assumptions.

The overwhelming evidence and expert opinion presented by Trigen demonstrated that Ellington's higher consumption was a result of factors other than defective or improper meter readings or billing software problems.

The procedural history of this case is as follows:

1. After concerns about the amount of measured steam consumption by Ellington were not resolved by discussion between the Parties, Ellington filed an informal complaint with the Commission's Bureau of Consumer Services ("BCS") on or about November 17, 2008.
2. After investigating the matter, on January 20, 2009, BCS advised the Parties that Trigen is not responsible for bills that result from faulty customer equipment and advised Ellington that it could file a formal complaint if it wanted to pursue the matter.
3. On or about February 23, 2009, Ellington filed with the Commission a formal complaint, which was served on Trigen on or about March 2, 2009.
4. On or about March 23, 2009, Trigen filed an Answer denying the allegations of the Complaint.
5. By March 31, 2009 Interim Order Setting Resolution Conference, the Parties were directed to hold a conference to attempt to resolve the case by no later than April 28, 2009, but the Parties' efforts to resolve the matter were unsuccessful.
6. On November 19, 2009, the case was assigned to ALJ Cynthia Williams Fordham.
7. The initial hearing in this case was scheduled for February 3, 2010.

8. ALJ Fordham issued a Prehearing Order on December 9, 2009, reminding the Parties, *inter alia*, that the Complainant has the burden of proving that the allegations of the complaint are true, citing to Section 332(a) of the Public Utility Code, and instructing that the Complainant must pay the undisputed portion of the bill while the proceeding is pending.
9. In response to the December 9, 2009 Prehearing Order, Ellington paid to Trigen on or about December 30, 2009 the sum of \$58,834.34, which Ellington regarded as the undisputed portion of the bills in question, leaving a principal balance on those bills of \$85,606.40, together with a 2% per month finance charge per Trigen's tariff.
10. On January 13, 2010, Trigen filed an Application for *Subpoena Ad Testificandum and Duces Tecum* for Robert Scanlan.
11. By Order #2 dated January 26, 2010, ALJ Fordham granted Trigen's Application for *Subpoena Ad Testificandum and Duces Tecum*, which subpoena was duly served on January 27, 2010, and an Affidavit of Service filed with the Commission.
12. On January 27, 2010, Ellington requested that the February 3, 2010 hearing be continued until a later date due to the pendency of certain discovery and because of the unavailability of Ellington's General Manager for the previously scheduled hearing.
13. By letter dated January 27, 2010, and in conference call with the ALJ on January 29, 2010, Trigen agreed to the request for continuance subject to the conditions that its outstanding discovery requests to Ellington be responded to at least 10 days prior to a rescheduled hearing date and so long as Ellington paid the sum of \$16,000 representing the approximate amount of the finance charge applicable to the portion of the bills [\$58,834.34] which Ellington did not dispute. Ellington, by its attorneys, agreed to those conditions, which ALJ Fordham thereupon incorporated into Prehearing Order #3 dated January 29, 2010.
14. After ALJ Fordham conferred with the Parties as to their availability, by notice dated February 1, 2010, the matter was rescheduled for hearing on March 24, 2010.
15. Notwithstanding the January 29, 2010 discussion and Prehearing Order #3, Ellington failed to pay Trigen the \$16,000 as it had been directed.

16. On March 8, 2010, Ellington filed an Application for *Subpoena Ad Testificandum* for Anthony J. Ripanti. There being no objection to the Application, by Order #5 dated March 23, 2010, ALJ Fordham authorized issuance of the *Subpoena*, which was issued and duly served.
17. On March 15, 2010, Trigen filed a Motion for Sanctions with respect to Ellington's failure to comply with Prehearing Order #3, by reason of its not having paid the \$16,000 finance charge on the undisputed portion of the bill, as had been directed by ALJ Fordham.
18. By Prehearing Order #4 dated March 16, 2010, ALJ Fordham directed, *inter alia*, that the Complainant respond to the Motion for Sanctions by March 19, 2010.
19. On March 19, 2010, Ellington filed a Response to the Motion for Sanctions, which Response was, with permission of the ALJ, supplemented on March 22, 2010, by the "Affidavit and Verification" of Ellington's General Manager, Pamela Clifton.
20. At the March 24, 2010 Initial Hearing, the Parties presented evidence on the Motion for Sanctions, following which ALJ Fordham directed, from the bench, that Ellington pay to Trigen by the close of business March 25, 2010, the sum of \$16,000 as previously directed.
21. At the March 24, 2010 Initial Hearing, Ellington presented its case in chief and rested, reserving the right to present rebuttal testimony, and Trigen began presenting its direct case.
22. On March 25, 2010, Ellington paid Trigen the sum of \$16,000 as directed.
23. By notice dated June 11, 2010 a second day of Hearing was scheduled for August 11, 2010.
24. By request dated August 3, 2010, Trigen requested that the August 11, 2010 Further Hearing commence at 9:30 AM so that Trigen would have sufficient time to present a rebuttal expert witness and so that the testimony could be concluded without need for still further hearing. With Ellington's consent, on August 6, 2010, the hearing time was changed to 9:30 AM.

25. At the August 11, 2010 Further Hearing, Trigen presented its case, including Direct and Rebuttal testimony, and Ellington presented surrebuttal testimony.
26. By Order #6 dated August 18, 2010, ALJ Fordham directed that in accordance with discussions with Counsel at the close of the testimony on August 11, 2010, Main Briefs would be due by October 12, 2010, and Reply Briefs would be due by October 22, 2010.
27. By Order #7 dated October 12, 2010, in a Revised Briefing Order, ALJ Fordham directed that due to the belated receipt of the second day's transcript, Main Briefs would be due by October 25, 2010, and Reply Briefs would be due by November 5, 2010.

## II. STATEMENT OF THE QUESTIONS INVOLVED

1. Did the Complainant, Ellington, establish a *prima facie* case by showing that its steam consumption from June 12, 2008 through July 14, 2008, and from August 8, 2008 through September 9, 2008, was inconsistent with bills for earlier periods without change in (1) building occupancy, (2) mechanical equipment operation and performance and (3) normal variations in temperature and billing periods?
2. Even if the Complainant, Ellington, established its *prima facie* case, did the Complainant also prove by a preponderance of evidence, viewing the evidence presented by both Complainant and Trigen as a whole, that the amounts it was invoiced for steam consumption from June 12, 2008 through July 14, 2008, and from August 8, 2008 through September 9, 2008, were erroneous?

## III. SUMMARY OF THE TESTIMONY

### A. Ellington's Testimony

#### 1. Pamela Clifton

Pamela Clifton, Ellington's General Manager, testified about two topics. She first was called to testify about the contents of the Affidavit and Verification she had submitted in an effort to explain Ellington's non-compliance with ALJ Fordham's Order directing Ellington to pay the finance charge of \$16,000 associated with the undisputed portion of the principal amount

of the arrearage which Ellington had paid to Trigen in December, 2009, also as directed by the ALJ. She then testified as to Ellington's use of mechanical contractors, Ellington's failure to timely implement recommendations from third parties regarding the mechanical systems, Ellington's increasing building occupancy and certain aspects of the operation of Ellington's cooling system.

a. Non-Compliance with Interim Order

After Ellington had paid the undisputed portion of the arrearages, when Ellington requested a continuance of the scheduled initial hearing, Trigen requested that the December 9, 2009 Prehearing Order be clarified to require Ellington to pay the approximate \$16,000 finance charge associated with the undisputed portion of the principal payment. After conference with the Parties' counsel, and without objection, the ALJ directed by her January 29, 2010 Prehearing Order #3 that Ellington pay Trigen that \$16,000 finance charge. Ellington blithely ignored that directive, not only failing to pay Trigen the required amount but also failing to notify the ALJ of its decision not to make the required payment.

In response to Trigen's subsequent Motion for Sanctions, Ms. Clifton submitted an Affidavit and Verification alleging that the reason that Ellington did not make the required payment was because at some unspecified date in the fall of 2008, she had made an offer to Trigen to pay the undisputed portion of two invoices in question, but that Trigen had refused that offer (N.T. 12:16 to 15:14; 20:2-5)<sup>3</sup>. However, there was not one scintilla of evidence to support these allegations. What the Record does reveal is that Trigen made two separate offers to Ellington to help arrange payment terms, one of which Ellington did not accept, and the other of

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<sup>3</sup> Transcript references are denoted by Notes of Testimony page and line. For instance, N.T. 12:16 to 15:14 indicates Notes of Testimony starting at page 12, line 16 and continuing to page 15, line 14. N.T. 20:2-5 indicates Notes of Testimony, page 20, lines 2 through 5.

which Ellington initially accepted but on which it subsequently reneged. Moreover, Trigen's Anthony Ripanti, to whom Ellington's alleged offer was made, and who documented every conversation he did have with Ellington's representatives, unequivocally denied any such offer having been made by Ellington (N.T. 10:15 to 12:10; Respondent's Exhibits 10, 11 and 12).

Under cross-examination, Ms. Clifton asserted that she was unaware of the content of Prehearing Order #3 and had not received a copy of it, despite the fact that Commission records reflect it was served by the Commission not only on Ellington's counsel but also on Ms. Clifton, and despite the fact that Ellington's counsel participated in the January 27, 2010 conference with the ALJ and did not object to the required payment (N.T. 9:16 to 10:14). Finally, Ms. Clifton could not offer any explanation for Ellington's failure to advise the ALJ that it would not comply with Prehearing Order #3 (N.T. 15:6-11).

b. Operations

Ms. Clifton, who has been General Manager of Ellington since April, 2007, testified about the use of a series of mechanical contractors by Ellington, in part based on her own direct knowledge and in part based on Ellington's business records and her internal inquiries during discovery. She acknowledged that during the three-year period from 2007 to 2009, Ellington had engaged three different mechanical contractors to service Ellington's mechanical systems (J.J. White, Elliott-Lewis and Carrier) ( N.T. 46:15-25). She identified all of the maintenance and service records issued by those contractors (Respondent's Exhibit 20; N.T. 43:12-19). She acknowledged that Ellington had received three sets of recommendations to address mechanical issues associated with operation of its absorption chillers but had not implemented any of those recommendations prior to the end of 2008. *See* recommendation of Trigen, based on Herman Goldner Company analysis (Respondent's Exhibit 8; N.T. 54:12-25; 56:12 to 58:20); steam trap

survey and recommendation (Respondent's Exhibit 31; N.T. 53:18 to 54:17) and recommendation of J.J. White (Respondent's Exhibit 18; N.T. 59:10 to 61:20). The recommendations included a host of items, including but not limited to: (i) repairing steam traps; (ii) capping a steam turbine that Ellington was not running; and (iii) removing certain valves.

The steam trap survey was particularly noteworthy because of Ellington's attempt to withhold from Trigen potentially useful information about likely causes of Ellington's high consumption during the summer of 2008. The survey was performed by Herman Goldner Co., Inc.'s subcontractor, Associated Steam Specialty Company, which specializes in steam trap audits and repairs (N.T. 83:20 to 84:1; 93:13-17). Although the report estimated that Ellington could save approximately \$24,887 annually by repairing the traps which were tested and not operating properly<sup>4</sup>, Ms. Clifton gave explicit instructions to Robert Scanlan of Goldner that he not share that information with Trigen (N.T. 50:24 to 53:17). Although Ms. Clifton ostensibly wanted to withhold that information until Ellington's Board of Directors had an opportunity to review the 2008 report, she acknowledged that at no time in 2008, 2009 or 2010 did Ellington share that information with Trigen. The document which revealed Ms. Clifton's instructions, Respondent's Exhibit 29, was obtained by Trigen in response to its *Subpoena Duces Tecum* to Mr. Scanlan.

When analyzing reasons for higher energy consumption, one of the many factors which needs to be examined is building occupancy. Ms. Clifton verified that building occupancy at Ellington increased from 56 units in June, 2006 to 124 units in June, 2007 to 148 units in June,

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<sup>4</sup> Mr. Schonour, Ellington's expert, later challenged the relevancy of steam trap leaks to the high summer consumption. It should be kept in mind that the \$24,887 savings was based on testing of the equipment actually running when the testing was performed in October 2008, which did not include the traps on or directly associated with the absorption chillers, which were not operating at that time of year. See testimony of Robert Scanlan, *infra*, at 22. Thus, there is potential for significantly more savings if those traps are tested, repaired or replaced.

2008 to 154 units in June, 2009 - - more than a 250% increase just from 2006 to 2008 (N.T. 45:11 to 46:9).

Ms. Clifton also verified certain information about the operation of the two absorption chillers at Ellington. First, she confirmed that for most of the summers of 2007 and 2009, only one of the absorptions chillers was running, but that during most of the summer of 2008 both absorption chillers were running (N.T. 62:8-21). Ms. Clifton also acknowledged a series of problems with Ellington's mechanical facilities, ranging from excessive ammonia build-up in 2007 to a flood in the sub-basement in 2008 resulting in extremely hot condensate (N.T. 63:1-17).

As Ms. Clifton testified on direct examination, the only other instance in which Trigen apparently adjusted an Ellington bill previously occurred in 2006-2007, prior to Ms. Clifton's becoming employed by Ellington, when Trigen identified its inadvertent application of an inapplicable demand charge, gave Ellington a credit and notified Ellington of the correction. There was no indication of any other billing problems and no indication of any metering abnormalities (N.T. 37:20 to 39:5; Complainant's Exhibit 13).

On the subject of Ellington's reasons for not paying the bills, Ms. Clifton acknowledged representing to the Commission's Bureau of Consumer Services ("BCS") and to Trigen that she regarded the invoices, like the recommendations for repairs, as "budget busters" which Ellington could not fit into its existing budget (N.T. 7:1-6; Respondent's Exhibits 10 and 13). After initially refusing to provide information about the level of condominium unit assessments, when directed by the ALJ, Ms. Clifton ultimately testified that the condominium assessments for this upscale building range from \$500 to \$1500 per unit per month (N.T. 47:12 to 49:12). Although acknowledging that assessments are derived from Ellington's budget, she steadfastly insisted that

no revisions to the annual budget would be considered, hence no special assessments would be levied on unit owners to pay its lawful obligations. Apparently, provision to pay the bills also has not been made in any subsequent budgets.

2. Gil Schonour

Mr. Schonour, the self-employed owner of Progressive Engineering and Design, Incorporated with a local client following, testified based on his experience in steam generation and in steam heating and cooling systems, and based on his examination of Ellington's steam system and its operational records. Mr. Schonour offered Ellington an *à la carte* menu for his services: he negotiated a fee for Ellington to purchase a report he would prepare, and he testified he had already charged \$6,000 by the time he was testifying, with a promise to be paid an unspecified additional amount later (N.T. 114:18 to 115:12). *See also* Pamela Clifton's testimony (N.T. 50:5-19).

a. Schonour Report and Direct Testimony

Mr. Schonour's Report coupled with his live testimony often was confused, conflicting or uninformed. He spoke very highly of Trigen, having worked with the company many times in the past and knowing them to have good steam meters (N.T. 113:1-6; 113:18-23). In fact, after an initial review of data and bills and a site visit, he could find no explanation for the spike in demand or consumption by Ellington (N.T. 115:21 to 116:10). Although later attacking the importance of repairing steam traps, he generally agreed with most of the steam trap report prepared by Goldner and Associated Steam Specialty Company (other than the projected savings which would result if all the identified repairs were made) (N.T. 123:17 to 124:2; 124:8-12). He acknowledged that energy consumption is a function of cooling degree days, among other factors (N.T. 130:1-10).

Starting with his own report, Mr. Schonour's conclusions drifted as he became increasingly aware that many of his stated assumptions or "understandings" were incorrect. In his report, despite the lack of any direct evidence of any failure on Trigen's part, Mr. Schonour deduced that the meter defects were the cause of the reported spike in Ellington's consumption. *See* Conclusion 3 on page 5 of 5 of Complainant's Exhibit 8, to the effect that the meter readings were incorrect either because of the "[l]ocation and service of the meters" or the "[l]ocation of the temperature sensor for meter #1 . . ."

Notwithstanding the contents of his report, after learning that Trigen has two meters, which are read by two different methods (totalizer and Telog) and which operate on two different principals (vortex and pressure differential), and each of which had been properly calibrated, he reached a different conclusion. In his live testimony, Mr. Schonour testified:

I don't believe the meters are reading inaccurately. I think they are calibrating properly; I think they are good meters; I think the meters are reading accurately. I think the problem is in the data management.

(N.T. 132:19-22). *See also* N.T. 132:15 to 133:1; 142:21-23; 211:19-25. Based on a single experience he had in Delaware years back when a problem arose because incorrect data was being fed into a computer (N.T. 113:18 to 114:17; 127:14-18), he concluded that the explanation for Ellington's high bills must be the software that converts the meter readings into information used for billing. But even Mr. Schonour admitted - - on direct examination, no less - - that this is merely supposition (N.T. 150:6-8) and he "[doesn't] know their system well enough to evaluate it, okay?" (N.T. 155:17-24).

Mr. Schonour's testimony was replete with instances in which he seemed confused or uninformed. *See* N.T. 116:11 to 117:2; 119:12-15; 119:22-24; 120:10-14; 129:6-8; 133:20-22;

137:7-16; 147:7 to 148:6. Were these the only problems with Mr. Schonour's testimony, they hardly would be worth mentioning. But they are symptomatic of an avowed "expert" whose command of the facts, and his largely unsupportable conclusions, cast his expertise into serious doubt.

Mr. Schonour leveled a host of substantive claims which were thoroughly proven wrong during his own cross-examination, during the testimony of other fact witnesses and through the testimony of Trigen's expert, Christopher Hastings. Chief among these was Mr. Schonour's repeated contention, which he expressed both in his written report and during his own direct examination, that Ellington's facilities could not have been the source of its increased consumption.

Mr. Schonour stated without equivocation that there is no way that having two chillers operating could double Ellington's bill (N.T. 133:23 to 134:8; 142:13-14). Still further, he testified that he knows of no way Ellington could have consumed that amount of steam and that there was nothing to suggest Ellington's chillers were not operating properly. To emphasize the point, he testified that there was nothing to suggest that Ellington's chillers "could have eaten in any fashion 2,000 lbs of steam in a month. I don't know how that could have happen. *If somebody could educate me with regard to that, I would be up to listening to them but there is nothing I know.*" (*italics inserted*) (N.T. 141:22 to 142:6). To buttress his conclusion, Mr. Schonour testified that he had reviewed Ellington's maintenance records and believed the machines are well maintained (N.T. 142:8-10).

The weakness of Mr. Schonour's testimony became apparent as soon as his cross-examination began.

b. Cross Examination

Having just testified (and as earlier stated at page 2 of 5 of his report, Complainant's Exhibit 8) that Ellington's machines are well maintained, Mr. Schonour was compelled to acknowledge that Ellington's failure to follow the recommendations of mechanical contractors and other third parties was not indicative of a customer with a history of attempting to save money by minimizing steam consumption (N.T. 145:20 to 147:6).

When preparing his report and testifying on direct examination, Mr. Schonour incorrectly assumed that steam used for cooling purposes at Ellington was being measured by only one meter, Meter #3 (N.T. 125:3-13; 150:10-19). However, as Trigen's witnesses later testified, during the summer months when no steam is being used for heating purposes, both Meter #1 and Meter #3 were reading the consumption of steam used for cooling.

One of the two principal conclusions reached by Mr. Schonour in his report was premised on the fact that the "[l]ocation of the temperature sensor for meter #1 (downstream from trap #1) is suspect." Complainant's Exhibit 8, page 5 of 5. However, during cross-examination Mr. Schonour acknowledged that his assumption, which had been based on his personal observation of the Ellington system, was incorrect; and the pressure of the steam supply from Trigen is not derived from the steam temperature (N.T. 145:5-19). Yet despite his claim that he knew of this error based on discussions with Mr. Ripanti (which occurred after a settlement conference with Trigen in the spring of 2009, N.T. 117:5-9), he never bothered to correct his report or to identify that error when referring to it on direct examination (N.T. 119:16-17; 154:4-15).

Mr. Schonour's contention that there was nothing to suggest that there were problems with Ellington's system was undermined by: his lack of awareness about a condensate pump at Ellington having melted down in July of 2008 due to excessive heat (N.T. 143:4-11;

Respondent's Exhibits 9 and 20 (7/24/08)<sup>5</sup>); his uncorroborated assumption as to the frequency of Lithium Bromide testing on Ellington's chillers (N.T. 143:23 to 144:14; *Cf.* Respondent's Exhibit 20); his lack of knowledge as to the significance of excess ammonia in Ellington's absorption chillers which had to be purged (N.T. 144:15 to 145:4); and his inability to explain the nexus between a cooling tower problem and greater steam consumption (N.T. 156:18-22).

Mr. Schonour's misinformation or lack of information in other respects was equally telling. Although his report and direct testimony were premised on Ellington having run both of its chillers prior to 2008, based on Ms. Clifton's testimony – which he stated was more reliable – Ellington ran only one chiller during 2007 (N.T. 147:12-20).

Finally, as regards Trigen's software, which he ultimately tried to imply might be the cause of the spike in Ellington's consumption, Mr. Schonour made this statement: “. . . I don't know their system well enough to evaluate it, okay?” (N.T. 155:21-25).

Stripped of his errors, the only conclusion which can properly be drawn from Mr. Schonour's testimony is that he could not attribute Ellington's higher consumption to Trigen's meters, meter reading or billing/software processes. When Ellington rested its direct case following the completion of his testimony, it had not provided any evidence to establish its *prima facie* case. Specifically, Ellington failed to prove that (1) the number of occupants had not changed; (2) the potential for energy use was low; and (3) the prior billing history showed no abnormalities. Even assuming, *arguendo*, that Ellington established its *prima facie* case, it nevertheless failed to prove by a preponderance of the evidence that Trigen incorrectly billed it.

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<sup>5</sup> Work Orders include an Issue Date and intended Respond Date, both at the top of the right-hand side, and the Response Information Date, in the bottom third of the Work Order, stating when the work actually was performed.

Ellington's evidence consisted of mostly unsupported assertions, unfounded personal opinions and erroneous perceptions, none of which constitutes evidence.

B. Trigen's Testimony

1. Anthony Ripanti

Anthony Ripanti, a Project Engineer for Trigen since April 2007, provided an overview of Trigen's operations, the history of relations between Trigen and Ellington since April 2007, a summary of analyses and recommendations for system improvements given by Trigen to Ellington, an explanation of the metering system used by Trigen at Ellington and the several attempts by Trigen to provide Ellington with adequate time to meet its financial obligations.

As testified by Mr. Ripanti, Trigen is a district steam facility serving 280 different customers or buildings, providing heating, hot water and steam for cooling purposes (N.T. 160:6-24). Ellington uses steam not only for heating but also for absorption cooling (N.T. 161:7-12).

Mr. Ripanti explained that Trigen uses two different types of steam flow meters to measure steam at Ellington: Meter #1, which is a vortex meter, and Meter #3, which is a differential pressure meter (N.T. 162:7-23; 163:25 to 164:5). The differential pressure meter is not temperature compensated (N.T. 163:9-21).

Both Meter #1 and Meter #3 can be read in either of two ways. The "totalizer" method captures the accumulated usage since the meter began operating; by subtracting the current reading from the prior reading, one can calculate the usage since the prior reading, in much the same way as a car odometer is used to calculate mileage. The second method, referred to by Trigen as the "Telog" method<sup>6</sup>, records demand (consumption), pressure and temperature data in five minute intervals and stores that data for a period of months, allowing analysis not only of

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<sup>6</sup> "Telog" is the brand name of the product used for remote monitoring. See [www.telog.com](http://www.telog.com).

total consumption, but also how the usage correlated to other factors, such as outside temperature, building usage and equipment operation (N.T. 164:6 to 167:15; Respondent's Exhibit 21).

Ellington's consumption is measured for billing purposes by reading both meters every month (N.T. 172:5-25). Under Trigen's tariff, the rate charged for steam used for cooling is lower than the rate charged for steam used for heating (N.T. 172:13-15; 173:1-8). The amount of steam consumed for cooling purposes at the Ellington is measured by Trigen by the readings taken on Meter #3 and subtracting those readings from the readings taken on Meter #1 (N.T. 172:13-25; 199:20 to 200:11). When the steam being consumed by the Ellington is only being used for cooling purposes, comparison of the readings from Meter #3 with those from Meter #1 provide corroboration of the amount of steam measured on Meter #3 (N.T. 199:17 to 200:11). Ellington did not use steam for heating purposes between June 12, 2008 and September 9, 2008 (N.T. 176:21 to 177:2).

Mr. Ripanti recounted that at the request of Ellington, Trigen, with assistance of Herman Goldner Co., Inc., audited Ellington's steam driven equipment and issued a report to Ellington dated January 23, 2008, with a series of recommendations (N.T. 169:8-13; Respondent's Exhibit 8). Among the recommendations in that report was one pertaining to the turbine generator at Ellington.

Ellington has a turbine generator intended to use steam to generate electricity, allowing Ellington to reduce its electric consumption, but Ellington has elected not to operate the turbine generator since at least 2007 (N.T. 170:16 to 171:12). Trigen recommended in its January 23, 2008 Report that Ellington either operate the turbine generator in order to get the benefit of that

equipment, or cap it, to prevent potential steam leakage and loss of radiant heat (N.T. 171:13 to 172:4).

Ellington was issued bills for service for the period June 12, 2008 to July 14, 2008, for the period July 14, 2008 to August 8, 2008, and for the period August 8, 2008 to September 9, 2008 (N.T. 177:7-12 and Complainant's Exhibit 1). Ellington paid and did not dispute the bill for the period July 14, 2008 to August 8, 2008 (N.T. 177:14-16).

Trigen can read its meters either electronically or manually. As Mr. Ripanti testified, Trigen lost the ability to transmit its meter readings by telephone (*i.e.*, electronically) for a period of time in July, 2008, but it did not affect the accuracy of the readings which ultimately were manually taken on July 21, 2008 for the billing period ended July 14, 2008 (N.T. 177:17 to 180:19; 234:25 to 235:13). When Ellington's meters were read on July 21, 2008, the data was entered into the system as though the manual readings had been taken on July 14 (N.T. 179:9-18), rather than on July 21, 2008, as he later explained. *See p.19, infra.*

After the metering department takes its readings, but before an invoice is sent to a customer, Trigen reviews the draft invoice at three levels: the metering supervisor, the accounting department and the account manager/project engineer in the customer service department (N.T. 179:18 to 180:2; 247:7-14). Before Ellington's bill for the period June 12 to July 14 was issued, Trigen's accounting department flagged it for high registration and asked that a work order be issued to have the meter checked for proper operation. The meters were checked and found to be operating properly (N.T. 179:25 to 180:13; 193:10-13; Respondent's Exhibits 7, 9, 19). Moreover, once the communications link was restored, the manual readings were verified by use of the Telog method (N.T. 195:12-13). The meters reading Ellington's consumption were

the same meters used in 2007, 2008, 2009 and 2010 (N.T. 220:14 to 221:18). There was no change to the software used to collect the data used to generate bills (N.T. 221:19-21).

During follow up analysis (Respondent's Exhibit 19 - Work Order performed 10/2/08), Trigen finally identified that the draft invoice needed to be corrected to properly align the measured consumption with the proper billing period date, resulting in consumption for the week of July 14 to July 21, 2008, being included in the July 14 to August 8 bill, rather than in the June 12 to July 14, 2008 bill (N.T. 181:4-15; 194:14-15). Because the July 14 to July 21, 2008 consumption had been reported in the wrong billing period, and was billed at the higher fuel rate in effect during the billing period that ended July 14, Ellington was due a credit of \$538.81, which Trigen has acknowledged is to be credited to Ellington's account (N.T. 180:22 to 181:15; Respondent's Exhibit 14). The fuel cost is a pass through item to customers, with no permissible mark-up by Trigen, so Trigen simply needs to insure that the fuel costs are aligned with the correct consumption period (N.T. 195:22 to 196:7; 210:17 to 213:7; Respondent's Exhibit 24).

Mr. Ripanti acknowledged that the account records show a single other instance in 2006-2007 when Trigen identified an error which resulted in it notifying Ellington it was due a credit. That instance resulted from an inapplicable demand charge inadvertently having been applied (N.T. 243:17-20; Complainant's Exhibit 13).

Mr. Ripanti identified Respondent's Exhibit 2, the complete account history for Ellington from January 2008 until immediately prior to the first hearing in this case in March, 2010 (N.T. 198:8 to 199:9).

*Using graphs he had prepared for purposes of analysis, Mr. Ripanti interpreted the demand data collected on Ellington for a variety of time periods (N.T. 213:22 to 215:25; Respondent's Exhibits 33 and 34). He also showed how consumption varied based on weather*

(cooling degree days) and length of billing period (N.T. 213:18-21; Respondent's Exhibits 22 and 23; Respondent's Exhibit 35 with corrected column headings, clarified at N.T. 208:15 to 209:15). He noted that building occupancy is an additional factor in consumption, but like the other factors, it cannot be viewed in isolation (N.T. 246:24 to 247:6; 251:2-10).

Most significantly, Mr. Ripanti explained how he determined from a combination of Ellington's own logbook, from Ellington's own employees and from Trigen's analysis of metering data from several time periods, separate meters and distinct methods of meter reading, how Ellington's consumption spiked in direct correlation to its simultaneous use of two chillers (N.T. 200:12-13; 203:11-17; 204:4 to 206:10; 208:11 to 210:16; 216:11-23; 219:6 to 220:8; 221:22 to 222:1; 251:23 to 252:6; Respondent's Exhibits 25, 35, 38).

Mr. Ripanti further stated that whereas if Ellington was drawing approximately 3,100 or 3,150 pounds per hour of steam running one chiller, when two chillers were operating, the number regularly spiked to well over 5,000 pounds per hour, even without regard to factors other than the number of chillers being operated (N.T. 217:2-12; 220:1-8).

Mr. Ripanti also noted that the records reveal problems with Ellington's internal mechanical systems, under prior building ownership, as far back as 2000 (N.T. 222:19 to 223:13, Respondent's Exhibit 37).

Mr. Ripanti concluded from all the analyses performed as of the date of his testimony (including the Ellington's most recent spike in July, 2010), that Ellington's high consumption corresponded to its periodic use of two chillers and two chilled water pumps (N.T. 222:4-15; 223:13-23).

## 2. Robert Scanlan

Robert Scanlan, a Senior Sales Engineer at Herman Goldner Co., Inc. ("Goldner"), testified pursuant to subpoena. His independence and objectivity can not be seriously

challenged. As he recounted during cross-examination by Ellington's counsel, the only fee he received for testifying was the \$18 witness fee, and his "preparation" consisted of talking with Goldner's own counsel and then talking by phone with Trigen's counsel for the grand sum of 10 minutes to find out what the hearing was about, what to expect at the hearing and questions he likely would be asked about his background and education (N.T. 86:12 to 87:15). Despite questions insinuating that his testimony might be biased because Goldner receives considerable business from Trigen, Mr. Scanlan testified that Goldner actually receives relatively little referral business from Trigen (N.T. 86:2-11).

Mr. Scanlan explained his background in mechanical engineering and power plant technology as well as hands-on training and experience in plumbing and heating (N.T. 78:3-19). He described his employment with Trigen from 1990 to 1998 (first as an Auxiliary Operator, then Control Room Operator, Customer Service Representative, Customer Service Manager and, finally, as Marketing Manager) (N.T. 78:17 to 79:7). He then joined Trimacol Company as a Facilities Manager in its Property Management Group, which in turn provided services to the University of Pennsylvania ("Penn"). In that role, he was in charge of the athletic complex, the School of Engineering and the Law School with respect to the day to day facility management and the maintenance for the campus and Penn's HVAC, steam, chilled water and domestic water systems (N.T. 79:8-23). When Trimacol lost its contract at Penn, Mr. Scanlan was recruited back to Trigen in 1999, where he worked as a Customer Service Manager and then was promoted to Marketing Manager (N.T. 79:16 to 80:5). Mr. Scanlan left Trigen in approximately 2004 and went to Phoenix Mechanical, where he served as Director of Marketing and Sales (N.T. 79:24 to 80:11).

Mr. Scanlan then described his work for Herman Goldner Co., Inc., a mechanical contracting firm, where he has worked nearly five years as Senior Sales Engineer. He provided a short summary of the commercial buildings in Philadelphia served by Goldner, ranging from hospitals to hotels, high rise residential properties and office buildings (N.T. 81:14 to 82:1). His job focuses on bringing in new sales in areas ranging from mechanical contracting services, HVAC, boilers, chillers and maintenance contracts (N.T. 80:12-22).

Regarding Trigen's January 23, 2008 recommendations to Ellington for repairs to its mechanical systems (which report was prepared with the assistance of Goldner and Spirax Sarco, a manufacturer of steam and other heating auxiliary equipment), Mr. Scanlan testified that during 2008 Goldner was not authorized to perform any of the repair work which was recommended (N.T. 83:1-16 and Respondent's Exhibit 8). However, after the summer 2008 cooling season had ended, Goldner was asked by Ellington to perform a steam trap survey. Goldner, in turn, engaged Associated Steam Specialty Company to test the active traps in October 2008 (N.T. 83:17 to 84:1).

Mr. Scanlan explained how steam traps function/malfunction and are tested, and his personal observations of Ellington's steam traps passing and blowing steam (N.T. 89:18 to 102:2; 105:24 to 106:11). He also testified that when the testing was performed in October, 2008, the absorption chillers were not functioning; thus those traps were not even considered in the preparation of the steam trap report and estimate of potential savings (N.T. 99:8-11; 101:1-23; 107:2-4)<sup>7</sup>.

When Associated Steam Specialty prepared its preliminary report (Respondent's Exhibit 28), Mr. Scanlan shared the information contained in the report with Ms. Clifton (N.T. 84:2-7).

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<sup>7</sup> Mr. Ripanti and Mr. Batterman each similarly noted that the steam trap survey authorized by Ellington after the 2008 cooling season had ended, did not include the traps on the absorption chillers, which are located beyond Meter #3 (N.T. 232:8-15; 321:9-11).

Mr. Scanlan verified that no sooner had he sent her the information than she instructed him not to share the findings with Trigen, and that he honored that instruction (N.T. 84:8-24, Respondent's Exhibit 29).

### 3. Stefan Batterman

Mr. Batterman has a long history of working with Trigen and its related companies. A mechanical engineer by training, he has served as: an Associate Engineer, when he authored Trigen's distribution mechanic training manual and provided full training for all new mechanics and an annual refresher course for current mechanics; a Project Engineer, concentrating on distribution system work; a Metering Manager and Metering Engineer with responsibility which included the design and installation of metering and telemetering system systems, the implementation of the Vortex meter technology for Trigen and the design of a customized telemetering system; the Manager of Distribution & Metering, during which time he designed an integrated metering/billing/customer information system; and more recently as IT Manager and IT Director for Trigen's sister company, ThermalSource and Trigen's parent company, Veolia Energy North America (N.T. 307:8 to 308:13; Respondent's Exhibit 6). What Mr. Schonour lacked in terms of knowledge of billing software, Mr. Batterman was fully qualified to address.

Mr. Batterman explained the various levels of redundancy and fall-back protections built into the design of Trigen's metering program, how meters are tested as well as how they are secured to protect against tampering (N.T. 308:14 to 310:15; 317:15-21). He explained that the concept of meter "testing" at Trigen refers to looking for gross errors, such as incorrect valves, settings or density, whereas meter "calibrating" entails the even more detailed "fine tuning," analogous to a car engine tune-up (N.T. 316:1-18). As regards protections against meter tampering, he explained that rather than using a physical seal, which would need to be "broken"

and resoldered to obtain readings, the current methodology is to utilize an electronically coded lockout feature (N.T. 316:19 to 317:8). As Mr. Batterman explained, for someone to have tampered with Ellington's meters, he/she would have needed the pass code to not one, but two, meters, and would have needed the expertise to have synchronized readings on two different types of meters, using two different technologies, and to have kept them in lockstep (N.T. 317:9-14). There was no evidence of any meter tampering. The same meters were reading Ellington's consumption before, during and after the summer of 2008. The same software was converting those readings into invoices before, during and after the summer of 2008.

Mr. Batterman was directly involved in addressing the delayed billing issue that affected Ellington in July, 2008 (N.T. 310:20 to 311:10; Complainant's Exhibit 12). He explained that the issue had nothing whatsoever to do with the meters or meter readings. Rather, it was the simple interruption in the phone link by which the metering information is transmitted to Trigen's offices remotely, so that a metering technician does not physically need to be present to read each meter. However, the same information could be obtained by manual reading (which was performed the following week), and once the phone link was operational again, the electronic data stored using the Telog method provided all the information which was necessary to properly prepare Ellington's invoice (N.T. 313:15 to 314:1; 314:10-16).

Finally, Mr. Batterman testified as to his own analysis of Ellington's consumption. Referencing Respondent's Exhibit 36, he explained that based on Ellington's reports of its chilled water usage, the measured consumption "jumped" when Ellington had two chillers operating (N.T. 315:20-25).

4. John Torres

John Torres, a former Navy machinist, has been responsible for managing and supervising all of Trigen's steam and chilled water metering for over two decades. He has an unblemished record of integrity; not once in his 22 years with Trigen had there been so much as a complaint filed with the Commission challenging Trigen's meter readings until the Complaint filed in this case by Ellington (N.T. 326:13 to 327:10).

Mr. Torres identified all of the work orders pertaining to Ellington during the period March, 2005 to December, 2008 and attested to their accuracy (N.T. 327:10-20; Respondent's Exhibit 19). As summarized on those work orders, all necessary calibrations were performed and all minor repairs which were necessary from time to time were made, both to Meter #1 (Account #10-0115-5) and to Meter #3 (Account #10-0115-8). In fact, Meter #1 was calibrated on both 7/26/2005 and 9/6/2007; and Meter #3 was calibrated on both 1/20/2006 and 11/22/2006, in each case well-within the maximum 3-year period prescribed by Commission regulation. 52 Pa. Code § 61.20(b)(2). Other general testing on Ellington's meters occurred even more frequently.

When Ellington's counsel suggested that based on Mr. Batterman's testimony, someone with the sophistication of a Trigen meter reader would have had the special knowledge required to have tampered with the meters and raised the consumption, Mr. Torres pointed out that no Trigen metering personnel visited the Ellington from April 2, 2008 until October 2, 2008, other than the August 4, 2008 investigation into the high reading for what turned out to be the week of July 14 to July 21 (N.T. 327:21 to 328:18). Thus, Ellington's counsel's suggestion that Trigen was tampering with its own meters was shown to be entirely baseless.

5. Christopher Hastings

Christopher Hastings, a Principal with Vanderweil Engineers, LLP, with over 20 years

experience in utilities engineering, testified as a rebuttal witness for Trigen. A professional engineer with experience the world over, he has worked on over 50 projects with systems comparable to Ellington's, including pharmaceutical and medical facilities, high-rise residential facilities and condominiums. He developed corporate technical training on absorption cooling for the worldwide corporate Engineering Group of Hoffman-La Roche, in New Jersey and Switzerland. (N.T. 252:23-24; 253:19 to 254:19; 255:3 to 259:6; Respondent's Exhibit 39).

Following *voir dire*, Mr. Hastings was accepted by Ellington as an expert in steam generation and in steam heating and cooling systems<sup>8</sup> (N.T. 259:9-10). Based on his review of Mr. Schonour's earlier testimony and report, other marked or admitted exhibits and the prior testimony of other witnesses, Mr. Hastings proceeded to expose a host of misstatements and clearly erroneous conclusions drawn by Mr. Schonour.

Responding to Mr. Schonour's remark that he knew of no way that the Ellington could have consumed the amount of steam for which it was billed, and that there was nothing to suggest that the chillers were not operating properly (N.T. 141:22-24), Mr. Hastings noted several facts overlooked or ignored by Mr. Schonour which were indicative of a system beset with mechanical problems (N.T. 261:8 to 263:5).

In response to Mr. Schonour's conclusion that the load could not be attributable to the leaky steam traps (N.T. 142:11-12), Mr. Hastings observed that steam consumption could be

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<sup>8</sup> Ellington's subsequent challenge to his credentials, on the theory that he was not qualified to testify because he is licensed as a professional engineer in New Hampshire, or because many of the projects he has worked on are not located in the Greater Philadelphia area, was entirely misplaced. The ALJ properly accepted Mr. Hastings as an expert and properly observed that Ellington had waived any objection to his treatment as an expert witness, having previously agreed to accept him as such (N.T. 284:18 to 285:10).

affected by leaky traps, especially if the steam traps to the absorbers are leaking (N.T. 264:23 to 265:3)<sup>9</sup>

Responding to Mr. Schonour's conclusion that the usage could not be attributable to both absorbers running (N.T. 142:13-14), Mr. Hastings stated that based upon his own experience *with similar systems and the manufacturer's ratings for these two 250-ton absorption chillers*, they not only were capable of consuming the reported steam volumes, but as much as 25% more (N.T. 260:11 to 261:3; 263:6 to 264:14).

Mr. Schonour had testified that the flood in the sub-basement of the Ellington in July 2008 had nothing to do with the higher consumption (N.T. 142:15-17). Although quite obviously the flood occurred the week following the July reading, Mr. Hastings noted that the condensation pump failure was indicative of a festering problem, and that an improperly *functioning condensation pump would be related to absorbers running at a very high load level*, so thermal energy was being lost in the condensate system, and literally going down the building drain pipes (N.T. 265:24 to 266:6; 266:25 to 267:12).

Whereas Mr. Schonour was dismissive of any relationship between the high ammonia levels in the chillers and higher consumption, Mr. Hastings explained that higher ammonia levels are indicative of corrosion and the consistently high level of non-condensables, which interfere with the efficiency of the chillers (N.T. 142:18-20; 262:6-23).

Mr. Hastings disputed Mr. Schonour's conclusions that the limited Lithium Bromide testing revealed no cause for concern (N.T. 144:8-14). Mr. Hastings explained based on Ellington's records that no Lithium Bromide testing was performed after 2007, and that the level

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<sup>9</sup> As testified by Mr. Scanlan, the chillers were not operating when the partial trap survey was performed; thus, the traps on the absorbers were not tested (N.T. 99:8-11; 101:1-23; 107:2-4).

of non-condensables in the chillers, and the need to have one of the chillers chemically cleaned rather than merely brush cleaned, reflected that they were very, very dirty and would have been running inefficiently (N.T. 291:13-22; 294:13-16; 295:5-11).

Mr. Hastings also noted that by incorrectly fixing temperature (“set points”) beyond a system’s capability, the effect is to run the equipment harder and to cause more steam to be consumed without improving the comfort level (N.T. 267:23 to 268:20).

In contrast to Mr. Schonour’s refusal to acknowledge how a cooling tower problem could affect steam consumption, Mr. Hastings explained how an inefficient and dirty cooling tower could detrimentally affect system efficiency (N.T. 285:19 to 287:4).

Most critically, relying on information and data provided and/or recorded by both Ellington and Trigen, Mr. Hastings concluded that one of the largest causes of increased steam consumption at Ellington was the intermittent concurrent use of two chillers and two chilled water pumps. As he testified:

That’s true but as I stated earlier, I believe that one of the largest causes of the increase in steam consumption is the way the building is operated. When two chillers are running and that second chilled [sic]<sup>10</sup> water pump is started, you are doubling the amount of water that you are circulating throughout the building. That doubling of water circulating throughout the building allows all of those end devices, air-handlers, all of those devices in the building to work more effectively. So while there is, I believe, an efficiency component related to non-condensables [sic], related to cooling tower water, related to concentrations, set point controls, I think that the operation of the building and the operation of two chillers which is doubling essentially the amount of water circulating throughout the building, which will allow all the building components to absorb more heat, which will then cause the chillers to consume more steam in order to meet that load [sic].

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<sup>10</sup> Terms followed by [sic] reflect the corrected testimony as clarified in Trigen’s October 18, 2010 Request to Correct Transcript.

So the inefficiency is one of the components of the overall steam increase consumption that we are seeing. I think that the operation of two chillers and two chilled [sic] water pumps is the most significant component because in running that second pump, you are flowing twice as much water to the building, which is allowing all of the end devices and air handlers to operate and consume, you know, draw more heat in [sic], raising the load in the building, which in turn the chillers have to consume more steam to reject that heat. So what is happening when you are running two chillers and two pumps is, you are actually changing the load profile in the building that the chilled [sic] water plant use.

(N.T. 297:9-20; 298:24 to 299:7).

Having thoroughly refuted Mr. Schonour's innumerable incorrect assumptions and ill-founded theories, Mr. Hastings honed in on the principal cause for Ellington's consumption spikes based on the available evidence. From the data collected over a period of years, including the summer of 2008, Mr. Hastings concluded that while there were many factors contributing to Ellington's generally high consumption, the more acute spikes in consumption corresponded to Ellington's use of two chillers during some seasons and during some other discrete time periods (N.T. 265:4-23; 268:21 to 269:17; 297:9 to 299:7; Respondent's Exhibit 37).

#### 6. Rebuttal Testimony of Gil Schonour

Following the testimony of Trigen's witnesses, Mr. Schonour was recalled by Ellington to provide rebuttal testimony. Rather than rebutting anything, however, Mr. Schonour buttressed Trigen's position. For example, he stated his agreement with Mr. Hastings' position, given Mr. Schonour's own prior testimony (N.T. 331:15 to 332:1). After acknowledging Mr. Hastings' specific assertion that a 10 degree rise in condenser water supply temperatures would result in a 10 or 11% decrease in efficiency, Mr. Schonour further stated his agreement "with [Mr. Hastings] that there can be a combinations of circumstances such as non-condensables in the chillers that would again affect operating conditions." (N.T. 333:5-9).

Mr. Schonour's reason for not having acknowledged these other factors in his own testimony was based on his assumption that there was no affirmative evidence of anything other than normal operating conditions (N.T. 333:9-12). However, his assumption was shown to be erroneous by the testimony and exhibits sponsored by other witnesses. Moreover, the lack of evidence about a problem with the metering software did not prevent Mr. Schonour from concluding that metering software must be the source of Ellington's higher measured consumption.

#### **IV. CALCULATING THE CURRENT ARREARAGE**

To avoid any dispute over the amount of Ellington's current arrearage, this section summarizes the amount of principal and finance charges outstanding on the two invoices in question as of September 30, 2010. The principal amounts of the invoices for June 12, 2008 to July 14, 2008 and for August 8, 2008 to September 9, 2008, were \$83,678.02 and \$58,791.39, respectively (Complainant's Exhibit 1). Pursuant to Trigen's Tariff, a 2% per month finance charge is applied to overdue balances (N.T. 199:12-16; Respondent's Exhibit 3). As the Parties agree, Ellington made payments on December 30, 2009 of \$58,834.34 against the principal, and on March 25, 2010, of \$16,000 against the finance charge. The \$58,834.34 and \$16,000 each were apportioned by Trigen to the respective arrearages *pro rata*. Trigen has acknowledged needing to implement the adjustment of \$538.81 for fuel charges attributable to the week of July 14 to July 21, 2008, plus the finance charges which otherwise would be due on that amount. Thus, as of September 30, 2010, the balance may be summarized as follows<sup>11</sup> (N.T. 180:22 to 181:15; Respondent's Exhibit 14):

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<sup>11</sup> Respondent's Exhibit 2 reflects a running history of Ellington's entire account from January, 2008 until immediately prior to the commencement of hearings in this case in March, 2010. For the convenience of the ALJ,

Billing Period	Usage	Finance Charge	Credit	Balance
June 12, 2008 to July 14, 2008	\$52,912.31	\$24,939.46	\$538.81 (usage) + \$258.63 (finance)	\$77,054.33
August 8, 2008 to September 2, 2008	\$32,694.09	\$16,034.68	- - -	\$48,728.77
TOTAL	\$85,606.40	\$40,974.14	\$797.44	\$125,783.10

The finance charges will continue to accrue at the simple rate of 2% per month until the principal amounts have been paid.

#### V. THE APPLICABLE LEGAL STANDARDS

Under 66 Pa. C.S.A. § 332(a) and the corresponding case law, Ellington bears the burden of proving by a preponderance of the evidence that the amounts it was invoiced for steam consumption from June 12, 2008 through July 14, 2008 and from August 8, 2008 through September 9, 2008, were erroneous. 66 Pa. C.S.A. § 332(a) (2010); *see also Burtleson v. Pa. P.U.C.*, 461 A.2d 1234, 1235 (Pa. 1983) (noting the legislature has placed the burden of proof on the complainant). Section 332(a) provides, in pertinent part, “the proponent of a rule or order has the burden of proof.” 66 Pa. C.S.A. § 332(a); *see also Teltron, Inc. v. Pa. P.U.C.*, 477 A.2d 599 (Pa. Commw. Ct. 1984) (holding under Section 332(a) the Commission properly placed the burden of proof on the customer claiming that the public utility had failed to supply adequate electric service).

The controlling case for high bill complaints is *Waldron v. Philadelphia Electric Co.*, 54 Pa. P.U.C. 98 (1980), where the Commission held that to establish a *prima facie* case, the complainant must show that during the time in question: (1) the number of occupants had not changed; (2) the potential for energy use was low; and (3) the prior billing history showed no

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the monthly calculations associated with only the disputed bills through September, 2010 are attached at Appendix A.

abnormalities. *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (1980); *see also Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Commw. Ct. 2001); *Owzar v. UGI Utils.*, C-2010-2156070, 2010 Pa. PUC LEXIS 205, at \*6 (Initial Decision by ALJ David A. Salapa, July 13, 2010), *aff'd by Commission* (Sept. 17, 2010). Although the burden of going forward shifts to the public utility after the complainant has made out its *prima facie* case, “the ultimate burden of persuasion remains with the complainant.” *Milkie*, 768 A.2d at 1220; *see also Owzar*, 2010 Pa. PUC LEXIS 205, at \*7 (“[T]he ‘burden of proof’ never shifts. It always remains with the Complainant.”). Nevertheless, “simply because the ratepayer has presented a *prima facie* case does not obligate the Commission to credit this evidence or to give it any special weight.” *Milkie*, 768 A.2d at 1220.

Where the public utility presents evidence of “co-equal (or greater) weight . . . the complainant will not have met his burden of proof.” *Id.* (holding in favor of public utility where complainant’s “general and conclusory testimony” was outweighed by evidence that the meters had been checked and were accurate and the potential for energy use was high). Further, unsupported assertions, personal opinions or perceptions cannot form the basis of a holding because they do not constitute evidence. *Owzar*, 210 Pa. PUC LEXIS 205, at \*18 (*citing Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

For example, the Pennsylvania Supreme Court in *Burleson* held that although the complainants established their *prima facie* case, they failed to meet their burden of proof. 461 A.2d at 1236. The complainants filed a complaint with the Commission claiming their utility company had overcharged them for electric service from January 1978 through June 1979. *Id.* at 1235. The complainants asserted “voltage fluctuation” was a factor in causing the disputed increase. *Id.* at 1236. Although the complainants’ expert witness testified their usage had not

significantly changed, he admitted on cross-examination that “ground fault” or “theft” might have caused the increase. *Id.* at 1235-36. To the contrary, the public utility presented evidence and expert testimony that the meters had been checked and were accurate, that complainants’ neighbors were unaffected by the difficulties complainants alleged, and that “voltage fluctuation” did not affect meter readings. *Id.* at 1236-37. The court held the public utility had presented “more than mere proof that its meter accurately measured appellant’s [sic] power usage”, while the complainants had done “little more than attempt to establish a prima facie case.” *Id.* at 1237.

Here, Ellington failed to make a *prima facie* case by meeting the three (3)-pronged test required by *Waldron*. Relying merely on the evidence which Ellington does not dispute, building occupancy changed markedly, Ellington was operating more steam driven mechanical equipment in 2008 than in 2007 and there were variations in cooling degree days from year to year and during particular billing periods. However, even if Ellington made a *prima facie* showing, it accomplished “little more.” There is overwhelming evidence that the higher consumption in 2008 was a result of greater building occupancy, variations in cooling degree days, the operation of more steam driven mechanical equipment and Ellington’s ongoing problems with its own mechanical systems. Further, there is no evidence that Trigen’s meters or meter reading software did not properly measure Ellington’s usage. Finally, Trigen’s expert witnesses offered several plausible explanations for how the increased usage could have been caused by having two chillers running at once.

## **VI. PROPOSED FINDINGS OF FACT**

1. Trigen Philadelphia Energy Corporation is a public utility which provides steam service to customers in portions of Philadelphia, Pennsylvania (N.T. 160:11-24).

2. Ellington Condominium Association, located at 1500 Chestnut Street, Philadelphia, Pennsylvania is a customer of Trigen (N.T. 8:18-19; Complainant's Exhibit 1).
3. Ellington uses steam both for heating and cooling purposes (N.T. 177:3-6; 199:20-22; 308:18-21).
4. Ellington's mechanical systems include two 250-ton absorption chillers (N.T. 260:11 to 261:3; 263:6 to 264:14; Complainant's Exhibit 8).
5. Ellington's steam consumption is measured using two meters: Meter #1 which measures all steam consumption and Meter #3 which measures only the steam used to run the absorption chillers (N.T. 172:13 to 174:16).
6. Meter #1 is a Vortex meter and Meter #3 is a differential meter (N.T. 164:2-5).
7. Steam used to run the absorption chillers flows through, and is measured by, Meter #1 before it flows through, and is measured by, Meter #3 (N.T. 174:1-16).
8. During the summer months, when Ellington has no need for heat, the only steam consumed by it is used to run the absorption chillers.
9. Both Meter #1 and Meter #3 are flow meters (N.T. 308:18 to 309:1; 310:10-15).
10. Both Meter #1 and Meter #3 can be read either remotely, by electronically transmitted data, or manually (N.T. 309:2-16).
11. Both Meter #1 and Meter #3 can be read by the Telog method or by the totalizer method (N.T. 164:8 to 168:6; 309:2-16).
12. The Telog method records demand (consumption), pressure and temperature data in five minute intervals and stores that data for a period of months, allowing analysis not only of total consumption, but also how the usage correlated to other factors, such as outside temperature, building usage and equipment operation (N.T. 164:6 to 167:15; Respondent's Exhibit 21).
13. The totalizer method captures the accumulated usage since the meter began operating; by subtracting the current reading from the prior reading, one can calculate the usage since the prior reading (N.T. 164:6 to 167:15, Respondent's Exhibit 21).
14. The amount of steam consumed for cooling purposes at Ellington is measured by Trigen by the readings taken on Meter #3 and subtracting those readings from the readings taken on Meter #1 (N.T. 172:13-25).

15. When the steam being consumed by Ellington is only being used for cooling purposes, comparison of the readings from Meter #3 with those from Meter # 1 provide corroboration of the amount of steam measured on Meter #3 (N.T. 308:18 to 309:16).
16. Under Trigen's tariff, the rate charged for steam used for cooling is lower than the rate charged for steam used for heating (N.T. 172:13-15; 173:1-8).
17. For the time period June 12, 2008 through September 9, 2008, Trigen prepared three invoices for Ellington's steam usage: June 12 to July 14, July 14 to August 8 and August 8 to September 9 (N.T. 176:17 to 177:16; Complainant's Exhibit 1).
18. Before Trigen releases an invoice to a customer, the draft invoice is reviewed by the metering supervisor, the accounting department and the account manager in the customer service department (N.T. 179:18 to 180:2).
19. When Trigen analyzed the draft invoice for Ellington for the period June 12 to July 14, it observed what appeared to be unusually high usage, so the invoice was not finalized but the metering department was assigned to examine the meters at Ellington to try to determine the cause for that usage (N.T. 179:25 to 180:13, Respondent's Exhibits 7, 9, 19).
20. When the Trigen metering staff investigated the reason for the high usage, it determined that the meters were operating properly, that the readings were accurate, but that due to a temporary interruption to the electronic method for transmitting the metering data, the reading reflected usage from June 12 to July 21, rather than from June 12 to July 14 (N.T. 180:22 to 181:15, Respondent's Exhibit 19).
21. The meter reading taken on July 21, 2008, was performed manually (N.T. 179:2-11).
22. The unavailability of the electronic system for transmitting data for a period of approximately one week did not affect the integrity of the reading which was taken on July 21, 2008 (N.T. 177:25 to 178:9; 179:25 to 180:21; 193:10-13; Respondent's Exhibits 7, 9 and 19).
23. The reading taken on July 21, 2008, was confirmed by review of the Telog records for Ellington's consumption (N.T. 195:12-13; 313:15 to 314:1; 314:10-16).
24. Pursuant to the Steam Cost Rate ("SCR") provisions of Trigen's Tariff, the fuel charge associated with steam consumption changes on a monthly basis (N.T. 175:3-25).

25. Trigen's SCR rate for the period June 12 to July 14 (the "July SCR") was higher than Trigen's SCR rate for the period July 14 to August 8 (the "August SCR") (N.T. 175:5-11; 181:4-15).
26. Applying Trigen's July SCR rather than Trigen's August SCR to the consumption for the period from July 14 to July 21 resulted in an overcharge in the amount of \$538.81, which Trigen has acknowledged is to be credited to Ellington (N.T. 180:22 to 181:15, Respondent's Exhibit 14).
27. Ellington paid the invoice for the period July 14 to August 8, but objected to the invoices for June 12 to July 14 and August 8 to September 9 (N.T. 177:14-16).
28. Trigen re-inspected its meters on October 2, 2008, and again found them to be operating properly (Respondent's Exhibit 19).
29. Trigen representatives met with Ellington representatives on several occasions, including, during the pendency of this Complaint proceeding, in an attempt to demonstrate that Trigen's meters were operating properly and Trigen's invoices were properly computed.
30. Trigen offered to extend the normal payment periods, and to give Ellington until December 31, 2008, to pay the disputed invoices (N.T. 10:15 to 11:4; Respondent's Exhibit 10).
31. Ellington accepted Trigen's offer for an extended payment period until December 31, 2008, but then failed to make those payments (N.T. 11:5-11; Respondent's Exhibit 10).
32. On October 28, 2008, Trigen made yet another offer to assist Ellington by allowing Ellington to pay the outstanding invoices over a period of 14 months, which Ellington rejected (N.T. 11:12 to 12:10; Respondent's Exhibits 11 and 12).
33. At no time did Ellington voluntarily offer to pay any portion of the disputed bills pending resolution of this Complaint by the Commission (N.T. 20:2-4).
34. By Order dated December 9, 2009, Ellington was directed to pay to Trigen the undisputed portion of the disputed invoices.
35. On or about December 30, 2009, pursuant to the December 9, 2009 Order, Ellington paid to Trigen the sum of \$58,834.34.
36. Seven days before the scheduled Initial Hearing in this matter, Ellington requested a continuance.

37. *Trigen did not object to Ellington's request for continuance, provided that Ellington timely respond to outstanding discovery requests and provided that Ellington pay the finance charge applicable to the \$58,834.34 in undisputed usage, which finance charge was calculated to be approximately \$16,000 pursuant to the terms of Trigen's tariff.*
38. *Ellington's counsel did not object to either condition requested by Trigen and the ALJ entered an Order on January 29, 2010, which incorporated these conditions.*
39. *Ellington did not comply with its agreement or the ALJ's January 29, 2010 Order, resulting in Trigen's filing a Motion for Sanctions seeking to compel compliance with the ALJ's directive.*
40. *Ellington's General Manager, Pamela Clifton, testified that she was unaware of the January 29, 2010 Order, notwithstanding her counsel's participation in the conference call which led to issuance of the Order and notwithstanding the Secretary Bureau's service of the ALJ's January 29, 2010 Order, not only on Ellington's counsel but also on Ms. Clifton (N.T. 9:16 to 10:2).*
41. *When Trigen filed its Motion for Sanctions, the ALJ directed by Prehearing Order #4 that Ellington's response be filed by March 19, 2010.*
42. *In Ellington's response, and a subsequent affidavit the ALJ permitted Ellington to file on March 22, 2010, Ms. Clifton asserted that the reason Ellington did not comply with the January 29, 2010 Order was because Ellington did not believe it was required to comply because it had offered in the fall of 2008 to pay the undisputed portion of the invoices and Trigen had rejected that offer.*
43. *Ms. Clifton's non-specific assertions were not corroborated by any documentary evidence, were inconsistent with documentary evidence introduced by Trigen and were flatly, and very credibly, denied by the Trigen representative to whom Ms. Clifton attributes Trigen's rejection of her offer, Anthony Ripanti.*
44. *The Ellington's cooling system has been beset with numerous equipment problems since 2006, as well as under prior building ownership, including but not limited to steam leaks, lack of synchronization between lead and lag absorbers, faulty pump seals, salt buildup, presence of non-condensables, overheating, clogged nozzles, problems with the cooling tower, excess ammonia buildup, overheating of the domestic pump, and a steam leak on turbine generator that had not been capped when taken out of service (N.T. 143:4-11; 144:15 to 145:4; 156:18-22; Respondent's Exhibits 20 and 37).*

45. Between 2006 and January 2008, Ellington had received recommendations for repairs and maintenance of Ellington's mechanical systems from two reputable mechanical contractors, J.J. White Incorporated and Herman Goldner Co., Inc., and from Trigen, all of which Ellington failed to implement prior to the summer of 2008 (N.T. 53:18 to 54:25; 56:12 to 58:20; 59:10 to 61:20; Respondent's Exhibits 8, 18 and 31).
46. Ellington had annual service contracts with three different mechanical contractors from 2007 through 2009: J.J. White, Elliott-Lewis and Carrier (N.T. 46:15-25).
47. Ellington operated only one of its absorption chillers during the summer of 2007 (N.T. 62:8-21).
48. Except for short periods when they were inoperable, Ellington operated both its absorption chillers during the summer of 2008 (N.T. 62:8-21).
49. Ellington ran only one of its absorption chillers during the summer of 2009, except for a period of approximately four days from September 11 to September 14, for testing purposes (N.T. 216:11-23).
50. Factors which may affect energy consumption include temperature, building use and occupancy, length of billing period and how the mechanical systems are operated (N.T. 175:3 to 176:16).
51. The amounts billed to a customer are affected by not only the customer's consumption but also by the applicable fuel rate in effect for the applicable billing period (N.T. 175:3-17).
52. Building occupancy at the Ellington increased from 56 units in June, 2006 to 124 units in June, 2007 to 148 units in June, 2008 to 154 units in June, 2009 (N.T. 45:11 to 46:9).
53. When Ellington ran two absorption chillers, it ran two chilled water pumps (N.T. 222:4-15).
54. When a customer operates two absorption chillers rather than one, and two chilled water pumps rather than one, it is likely to increase energy consumption (N.T. 222:4-15; 297:9 to 299:7).
55. The absorption chillers installed at the Ellington are capable of consuming the amount of steam recorded on Trigen's meters for the summer of 2008 (N.T. 260:11 to 261:3; 263:6 to 264:14).
56. Consumption data collected by Telog and by totalizer measurement consistently reflect that during the time periods when Ellington ran two absorption chillers, its consumption of steam increased significantly (N.T. 222:4-15; 223:13-23; 297:9 to 299:7; 315:20-25).

57. Trigen calibrated Meter #1 on June 26, 2005 and September 6, 2007 and Meter #3 on January 20, 2006 and November 22, 2006 (Respondent's Exhibit 19).
58. Trigen did not need to perform any repairs to or alter Meter #3 at any time in 2008 (Respondent's Exhibit 19).
59. Trigen did not need to perform any repairs to or alter in 2008 the software which is used to gather metering data and convert it to an invoice (Respondent's Exhibit 19).
60. No affirmative evidence was introduced to substantiate Mr. Schonour's initial supposition that Trigen's meters were not operating properly.
61. No affirmative evidence was introduced to substantiate Mr. Schonour's ultimate supposition that Trigen's software was not operating properly.
62. Other than a single instance more than 3 years ago when Trigen self-identified its inadvertent application of an inapplicable demand charge in the calculation of a bill to Ellington and gave Ellington a corresponding credit, there has not been any history of ongoing billing errors, and no indication of metering abnormalities (N.T. 37:20 to 39:5; Complainant's Exhibit 13).
63. Although the telephone link used to transmit metering data from the customer site to Trigen's offices was not operating for approximately one week in July, 2008, the interruption in telephone service did not affect the accuracy of the meter readings which were taken corresponding to the period from June 12, 2008 to July 14, 2008 (N.T. 179:25 to 180:13; 193:10-13; 313:15 to 314:1; 314:10-16; Respondent's Exhibits 7, 9 and 19).
64. The testimony of Gil Schonour was based on numerous erroneous assumptions, unfounded assumptions and speculation.
65. The testimony of Pamela Clifton was not credible in many material respects.
66. The testimony of Anthony Ripanti, Stefan Batterman and John Torres was thoroughly credible and consistent with documentary evidence.
67. The testimony of independent mechanical contractor Robert Scanlan from Herman Goldner Co., Inc., was unbiased, credible and supported by documentary evidence.
68. The expert testimony of Christopher Hastings reflected his world-wide experience in steam generation and in steam heating and cooling systems, was objective, was consistent with the documentary evidence and

testimony introduced by other witnesses and demonstrated that the consumption problems experienced by Ellington during the summer of 2008 were due to deficiencies in their own mechanical equipment and the operation of that equipment by Ellington.

## VII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. 66 Pa. C.S. § 701 *et seq.*
2. The Complainant has the burden of proving its case by a preponderance of the evidence. 66 Pa. C.S. § 332(a). *Burleson v. Pa. P.U.C.*, 461 A.2d 1234, 1235 (Pa. 1983).
3. To establish a *prima facie* case, the Complainant must show that during the time in question: (1) the number of occupants had not changed; (2) the potential for energy use was low; and (3) the prior billing history showed no abnormalities. *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (1980); *see also Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Commw. Ct. 2010); *Owzar v. UGI Utils.*, 2010 Pa. PUC LEXIS 205, at \*6 (Initial Decision by ALJ David A. Salapa, July 13, 2010), *aff'd by Commission* (Sept. 17, 2010).
4. Ellington has not established a *prima facie* case.
5. Ellington has not met its burden of proving that it is entitled to relief. 66 Pa. C.S. § 332(a).
6. Trigen presented overwhelming evidence to support its position that its meters gave accurate readings in the summer of 2008.
7. Trigen presented more than mere proof that its meters accurately measured Ellington's steam consumption. It also established, among other factors, that Ellington's cooling system had numerous, unaddressed equipment problems, and that Ellington operated both its absorption chillers and, accordingly, two chilled water condensing pumps during the summer of 2008.
8. Trigen presented overwhelming evidence to support its position that taking into account the acknowledged adjustment of \$538.81 and associated finance charge of \$258.63 which are to be applied to Ellington's account, the invoices to Ellington for steam service from June 12, 2008 to July 14, 2008, and from August 8, 2008 to September 9, 2008, were accurate.
9. Ellington failed to prove by a preponderance of evidence, viewing the evidence presented by Ellington and Trigen as a whole, that the amounts it

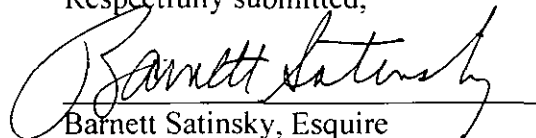
was invoiced for steam consumption from June 12, 2008 through July 14, 2008, and from August 8, 2008 through September 9, 2008, were erroneous.

10. Ellington is required to pay Trigen the sum of \$125,783.10 (\$85,067.59 principal plus \$40,715.51 finance charge) calculated as of September 30, 2010, plus such additional finance charge of 2% per month on the outstanding principal amounts due until it is paid in full.
11. Ellington's Complaint against Trigen cannot be sustained, and must be dismissed.

### VIII. PROPOSED ORDERING PARAGRAPHS

1. The Complaint of Ellington Condominium Association is denied.
2. Ellington is responsible for additional payments to Trigen on account of its June 12 to July 14, 2008 and August 8 to September 9, 2008 invoices as follows:
  - a. The remaining balance of \$52,373.50 for steam service from June 12, 2008 to July 14, 2008;
  - b. The remaining balance of \$32,694.09 for steam service from August 8, 2008 to September 9, 2008;
  - c. \$48,715.51 for accumulated finance charges as of September 30, 2010; and
  - d. Such additional finance charges computed in accordance with Section 15.3 of Trigen's Tariff Heating and Cooling P.A.P.U.C. No. 4 until payment in full has been made by Ellington.
3. This matter shall be marked closed.

Respectfully submitted,



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# APPENDIX A

**RECEIVED**

OCT 22 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Trigen Philadelphia Energy Corporation

Ellington Condominiums  
Summary Invoice #1

Date		6/12-7/14/2008 Usage	Finance Charges
9/18/2008	Invoice 790918	83,678.02	
10/14/2008	Finance Charges		1,673.56
11/17/2008	Finance Charges		1,673.56
12/22/2008	Finance Charges		1,673.56
1/15/2009	Finance Charges		1,673.56
2/12/2009	Finance Charges		1,673.56
3/18/2009	Finance Charges		1,673.56
4/22/2009	Finance Charges		1,673.56
6/11/2009	Finance Charges		1,673.56
6/24/2009	Finance Charges		1,673.56
7/21/2009	Finance Charges		1,673.56
8/11/2009	Finance Charges		1,673.56
9/17/2009	Finance Charges		1,673.56
10/26/2009	Finance Charges		1,673.56
12/9/2009	Finance Charges		1,673.56
12/18/2009	Finance Charges		1,673.56
12/30/2009	Payment	(30,765.71)	
1/18/2010	Finance Charges		1,058.25
2/22/2010	Finance Charges		1,058.25
3/16/2010	Finance Charges		1,058.25
4/7/2010	Payment		(9,688.16)
4/26/2010	Finance Charges		1,058.25
5/19/2010	Finance Charges		1,058.25
6/16/2010	Finance Charges		1,058.25
7/19/2010	Finance Charges		1,058.25
8/13/2010	Finance Charges		1,058.25
9/17/2010	Finance Charges		1,058.25
		52,912.31	24,939.46
	Accrued Credit for adjustment due to timing of meter reading	(538.81)	(258.63)
	Balance	52,373.50	24,680.84

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Trigen Philadelphia Energy Corporation

Ellington Condominiums  
Summary Invoice #2

Date		8/8-9/9/2008 Usage	Finance Charges
10/6/2008	Invoice 791063	58,791.39	
11/17/2008	Finance Charges		1,175.83
12/22/2008	Finance Charges		1,175.83
1/15/2009	Finance Charges		1,175.83
2/12/2009	Finance Charges		1,175.83
3/18/2009	Finance Charges		1,175.83
4/22/2009	Finance Charges		1,175.83
6/11/2009	Finance Charges		1,175.83
6/24/2009	Finance Charges		1,175.83
7/21/2009	Finance Charges		1,175.83
8/11/2009	Finance Charges		1,175.83
9/17/2009	Finance Charges		1,175.83
10/26/2009	Finance Charges		1,175.83
12/9/2009	Finance Charges		1,175.83
12/18/2009	Finance Charges		1,175.83
12/30/2009	Payment	(26,097.30)	
1/18/2010	Finance Charges		653.88
2/22/2010	Finance Charges		653.88
3/16/2010	Finance Charges		653.88
4/7/2010	Payment		(6,311.84)
4/23/2010	Finance Charges		653.88
5/19/2010	Finance Charges		653.88
6/16/2010	Finance Charges		653.88
7/19/2010	Finance Charges		653.88
8/13/2010	Finance Charges		653.88
9/17/2010	Finance Charges		653.88
		32,694.09	16,034.68

Trigen Philadelphia Energy Corporation

Ellington Condominiums  
 Summary Adjustment to Invoice #1

Date		Adjustment to 6/12-7/14/2008 invoice	Finance Charges
9/18/2008	Invoice 790918 cr	538.81	
10/14/2008	Finance Charges		10.78
11/17/2008	Finance Charges		10.78
12/22/2008	Finance Charges		10.78
1/15/2009	Finance Charges		10.78
2/12/2009	Finance Charges		10.78
3/18/2009	Finance Charges		10.78
4/22/2009	Finance Charges		10.78
6/11/2009	Finance Charges		10.78
6/24/2009	Finance Charges		10.78
7/21/2009	Finance Charges		10.78
8/11/2009	Finance Charges		10.78
9/17/2009	Finance Charges		10.78
10/26/2009	Finance Charges		10.78
12/9/2009	Finance Charges		10.78
12/18/2009	Finance Charges		10.78
1/18/2010	Finance Charges		10.78
2/22/2010	Finance Charges		10.78
3/16/2010	Finance Charges		10.78
4/26/2010	Finance Charges		10.78
5/19/2010	Finance Charges		10.78
6/16/2010	Finance Charges		10.78
7/19/2010	Finance Charges		10.78
8/13/2010	Finance Charges		10.78
9/17/2010	Finance Charges		10.78
		538.81	258.63

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ellington Condominium Association :  
:  
v. :  
:  
Trigen-Philadelphia Energy :  
Corporation :

Docket No: C-2009-2092612

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OCT 22 2010

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

I hereby certify that I have on this day served a true copy of **Trigen-Philadelphia Energy Corporation's Main Brief to Administrative Law Judge Cynthia Williams Fordham** upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54 via Federal Express:

Cynthia Williams Fordham Administrative Law Judge Pennsylvania Public Utility Commission 801 Market Street, Suite 4063 Philadelphia, PA 19107	Richard Rochlin, Esquire Scott P. Sigman, Esquire Sigman & Rochlin, LLC 1515 Market Street, Suite 1360 Philadelphia, PA 19102
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Barnett Satinsky, Esquire

Dated: October 22, 2010

From: Origin ID: REDA (215) 299-2000  
Barnett Satinsky  
FoxRothschild  
2000 Market Street  
  
Philadelphia, PA 19103



Ship Date: 22OCT10  
ActWgt: 3.0 LB  
CAD: 5193122/WBUS0200

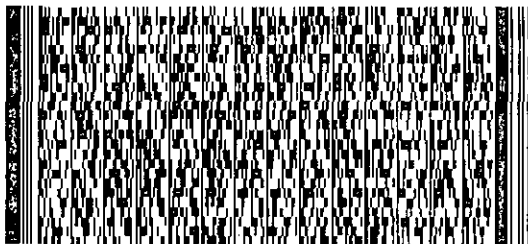
Delivery Address Bar Code



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**Rosemary Chiavetta, Secretary**  
**PA Public Utility Commission**  
400 North St  
Commonwealth Keystone Bldg  
Harrisburg, PA 17120

RELEASE#: 3785346

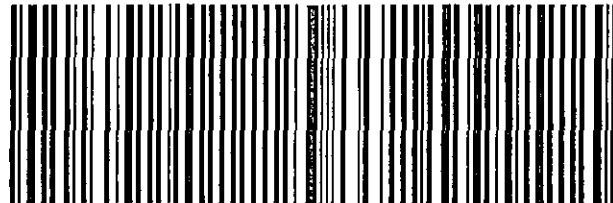


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MON - 25 OCT A1  
PRIORITY OVERNIGHT

17120  
PA-US  
MDT

**SH MDTA**



FOLD on this line and place in shipping pouch with bar code and delivery address visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.