

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

April 27, 2011

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

RE: Heather Douglass v. PECO Energy Company
Docket No. C-2011-2235066

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Motion to Join Commerce Energy as an Indispensable Party in the above-referenced matter. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE


Michael A. Gruin

Encl.

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER DOUGLASS
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:
:
:
:

Docket No. C-2011-2235066

NOTICE TO PLEAD

To: Heather Douglass

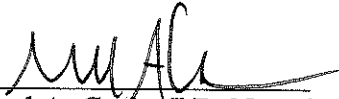
Pursuant to 52 Pa. Code §and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Michael A. Gruin, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

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

With a copy to:
Michael A. Gruin
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101

Dated: April 27, 2011


Michael A. Gruin (I.D. No. 78625)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com
Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER DOUGLASS	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2235066
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

MOTION TO JOIN INDISPENSABLE PARTY

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.103, respectfully requests that your Honorable Commission join Commerce Energy, Inc. ("Commerce") as an Indispensable Party in the above-captioned matter, and in support thereof, avers as follows:

1. On March 24, 2011, Complainant filed a Formal Complaint against PECO, contesting certain "Third-Party charges from Commerce Energy". The Complaint seeks an explanation of the basis for the charges and questions the authenticity of the charges.

2. PECO avers that the Complainant's current outstanding balance on her PECO account is \$2,395.82, a portion of which pertains to unpaid electricity supplier charges, including charges from Commerce. The Complainant was enrolled with the Electric America for electric generation supply starting on May 16, 2003. On May 18, 2004, the Complainant became enrolled with Commerce for electric generation supply. Complainant's enrollment with Commerce ended on October 15, 2007, pursuant to her request, at which time the Complainant switched back to PECO for electric supply. The supplier charges on the Complainant's account are comprised of unpaid supplier charges from Electric America and Commerce for the period from May 16, 2003 through October 15, 2007. When the Complainant received electricity supply from Electric America and Commerce Energy, PECO acted as a billing agent for the

suppliers, and the Complainant did not receive bills for electric supply charges directly from the suppliers.

3. Complainant is disputing charges billed by Commerce. Therefore, any possible refunds of rates or finding of improper rates relates to Commerce and not PECO.

4. Commerce is an Electric Generation Supplier licensed by the Commission to operate at all times relevant to this proceeding under License No. A-110117 and is subject to the jurisdiction of this Commission.

5. In 1996, the Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act (Act), 66 Pa.C.S §§2801-15. The Act allows Pennsylvanians to buy electric supply from licensed alternative suppliers.

6. Beginning on May 16, 2003, the Complaint was enrolled with Electric America for electric supply pursuant to PECO's Market Share Threshold Bidding/Assignment Process, which was approved by the Pennsylvania Public Utility Commission on February 6, 2003.

7. PECO's records reflect that the Complainant received electric supply from Electric America from May 16, 2003 until May 18, 2004, at which time Complainant was enrolled with Commerce Energy for electric supply.

8. PECO's records reflect that the Complainant was enrolled with Commerce until October 15, 2007, at which time Complainant switched back to PECO for electric supply, pursuant to her request which was submitted to PECO on September 26, 2007.

9. PECO avers that all charges by Electric America and Commerce appeared as a separate, distinct line item on Complainant's bills, and that her bills included the name of her electric supplier.

10. In Pennsylvania, an indispensable party is one whose rights are so directly connected with and affected by the litigation that he must be a party of record to protect such rights, and his absence renders any order or court decree null and void for want of jurisdiction. *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 346 A.2d 788 (1975). 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. *CRY, Inc. v. Mill Service, Inc.* 536 A.2d 462, 640 A.2d 372 (1994). In order to make the analysis of whether a party is indispensable, one must refer to the nature of the claim and the relief sought. Id.

11. The Supreme Court's test for determining indispensability involves "at least" the following considerations:

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

12. First, Commerce clearly has a right or interest related to the Complainant's claim. The Complaint specifically references – and questions- charges from Commerce on the Complainant's bills. The Complainant specifically complains about Commerce's inability to explain the supplier charges on the Complainant's bills.

13. With respect to the second consideration of the indispensability test, the nature of Commerce's interest in this proceeding is Commerce's rights related to the Complainant's unpaid balance due for services provided by Commerce. Commerce's interests include confirmation that payment is owed by the Complainant for services provided by Commerce, a possible obligation to refund payments received from Complainant, and/or the ability to

compromise charges in dispute. Furthermore, Complaint could give rise to Commission enforcement action against Commerce.

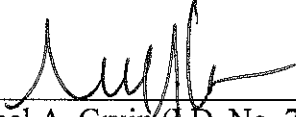
14. With respect to the third consideration of the test for indispensability, Commerce's rights and interests are essential to the merits of the issue. It is clear that the Complaint in this case relates to charges for electric supply services provided by Commerce. PECO is merely a billing agent for Commerce and cannot answer for Commerce with respect to periods when Commerce was Complainant's electric supplier. The relief sought by Complainant necessarily involves Commerce, and therefore Commerce's interests are essential to the merits of the case.

15. Fourth, Commerce's due process rights would clearly be violated if it was not joined as a party to the proceeding. As set forth above, Commerce has a clear interest in the relief being sought by the Complainant, and Commerce has acknowledged that it consents to being a party to the case in order to protect its rights. In order to afford Commerce due process, Commerce must be joined as a party to allow Commerce to provide evidence and testimony regarding the services supplied and the Complainant's responsibility for the charges for such services. A full examination of the Complaint and the Complainant's responsibility for the disputed charges cannot be conducted unless Commerce Energy, as the supplier of the electric supply services, is made a party to the proceeding. Other considerations weigh in favor of joining Commerce as an indispensable party to this litigation. Commerce is the party in the best position to supply information and documentation regarding the electric supply provided to the Complainant. Joining Commerce as a party will aid discovery in this matter, and generally expedite the ultimate resolution of this matter.

WHEREFORE, PECO Energy Company respectfully requests that your

Honorable Commission join Commerce Energy, Inc. as an indispensable party in this proceeding.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
Dana Pirone Carosella (I.D. No. 57221)
17 N. 2nd St., 16th Fl.
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
mag@stevenslee.com
dpc@stevenslee.com

COUNSEL FOR PECO

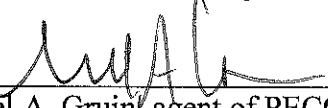
Dated: April 27, 2011

Commonwealth of Pennsylvania :
County of Dauphin :

SS

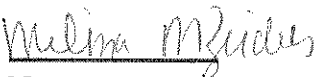
AFFIDAVIT

I, Michael A. Gruin, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects to be able to prove the same at any hearing hereof.



Michael A. Gruin, agent of PECO Energy Company

Sworn and subscribed before me this
27th day of April, 2011



Notary

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MELISSA M. ZEIDERS, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires February 24, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER DOUGLASS	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2235066
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

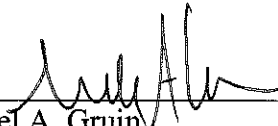
CERTIFICATE OF SERVICE

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

VIA First Class U.S. Mail

Heather Douglass
830 North Lansdowne Ave.
Drexel Hill, PA 19026

Commerce Energy, Inc.
John Povilitis, Esq.
Buchanan, Ingersoll & Rooney
17 N. 2nd St., 15th Fl.
Harrisburg, PA 17101



Michael A. Gruin

DATED: April 27, 2011