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May 17, 2011

VIA HAND DELIVERY

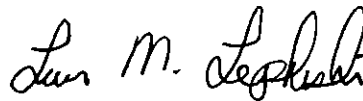
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Heather Doulgass v. PECO Energy Company
Docket No. C-2011-2235066

Dear Secretary Chiavetta:

On behalf of Commerce Energy, I have enclosed for filing the original and three (3) copies of the Answer of Commerce Energy Inc. to PECO Energy Company's Motion to Join Commerce Energy, Inc. as an Indispensible Party in the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Lauren M. Lepkoski

LML/kra
Enclosure
cc: Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER DOUGLASS

v.

PECO ENERGY COMPANY

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Docket No. C-2011-2235066

**ANSWER OF COMMERCE ENERGY INC.
TO PECO ENERGY COMPANY'S
MOTION TO JOIN COMMERCE ENERGY INC.
AS AN INDISPENSIBLE PARTY**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Commerce Energy Inc. ("Commerce") by and through its counsel, Lauren M. Lepkoski, John F. Povilaitis and Buchanan Ingersoll & Rooney PC, answers the above Motion pursuant to Section 5.61 of this Commission's regulations, 52 Pa. Code § 5.61, as follows:

1. On April 27, 2011, PECO Energy Company ("PECO") filed a Motion to Join Commerce Energy as an Indispensible Party to the above-captioned proceeding.
2. 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.

3. 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?

4. On or about March 24, 2011, Heather Douglass (the "Complainant") filed a Formal Complaint with the Commission disputing her current outstanding balance with PECO. According to PECO's Motion, the Complainant has an outstanding balance of \$2,395.82 and a portion of that balance pertains to unpaid electricity supplier charges. (Motion ¶ 2)

5. Commerce does not oppose being joined to the above-docketed complainant proceeding. However, Commerce requests that its participation be ordered as limited. Specifically, Commerce can address how the Complainant became a customer of Commerce (formally known as Electric America), the time periods in which Commerce supplied electric generation to the Complainant, and the type of rate the Complainant was placed on, *i.e.*, fixed or variable. Commerce does not object to being made a party for the purpose of these limited issues.

6. However, any issues that the Complainant raises in this proceeding regarding the amount that is owed to Commerce and the charges that appeared on her bill may be directed to PECO, but cannot be addressed by Commerce. PECO was the billing and collecting agent for Commerce during the time period Commerce supplied electric generation to the Complainant.


Therefore, PECO is the party that can address the customers usage, the rate charged, taxes, the payments received, the total amount owed to Commerce, and the total amount owed to PECO.

7. If the Administrative law Judge or the Commission determines that Commerce is an Indispensible Party, Commerce requests that it have an opportunity to file an Answer to the Formal Complainant and an Answer to the New Matter raised by PECO.

WHEREFORE, Commerce Energy Inc. hereby requests that it's role in the above-captioned proceeding be limited to showing that Heather Douglass was a customer of Commerce Energy, the time periods in which Commerce supplied electric generation to the Complainant, and the type of rate Ms. Douglass had, *i.e.*, fixed or variable. Ms. Douglas's remaining concerns should be addressed by PECO since PECO was the billing agent for Commerce Energy.

Respectfully submitted,

Dated: May 17, 2011



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Attorneys for
Commerce Energy Inc.

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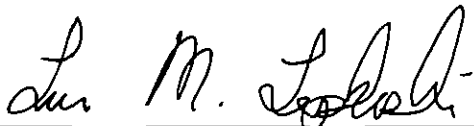
CERTIFICATE OF SERVICE

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

Via First-Class U.S. Mail

Heather Douglass
830 North Lansdowne Avenue
Drexel Hill, PA 19026

Dated this 17th day of May, 2011.



Lauren Lepkoski, Esq.

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MAY 17 2011

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