

Legal Department

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December 14, 2011

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

**Re: The Victory Condominium Association v. PECO Energy Company
PUC Docket No. C-2011-2268126**

Dear Ms. Chiavetta:

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

—	Answer (1 original)
<u>X</u>	Answer & New Matter to Amended Complaint (1 original)
—	Motion to Consolidate (1 original)
—	Motion for Judgment on the Pleadings (1 original)
<u>X</u>	Preliminary Objection (1 original)
—	Exceptions (1 original)
—	Reply Exceptions (1 original)
—	Brief (1 original)
—	Reply Brief (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WLS/zyr

Enc.

cc: ALJ Christopher P. Pell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM ASSOCIATION	:	
Complainant	:	DOCKET NO. C-2011-2268126
v.	:	
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that you must file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, and if you do not so file an Order against you may be entered in this matter. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Ward Smith, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Ward Smith, Esq.
Tishekia Williams, Esq.
Exelon Corporation
2301 Market Street, S23-1
Philadelphia, PA 19103

Dated at Philadelphia, PA, December 14, 2011



Ward Smith
Counsel for PECO Energy Company
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM ASSOCIATION	:	
Complainant	:	DOCKET NO. C-2011-2268126
v.	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF PECO ENERGY COMPANY
TO STRIKE NON-JURISDICTIONAL CLAIM**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(1), respectfully submits this preliminary objection and requests that the Commission strike Complainant’s non-jurisdictional claim regarding “unjust enrichment.” In support thereof, PECO states as follows:

1. The Commission’s rules and regulations, 52 Pa. Code § 5.101(a)(1), provide that a party may file a preliminary objection alleging lack of Commission jurisdiction.

2. Among other claims, the Amended Complaint contains the following request (Paragraph 13):

13. *PECO will be unjustly enriched* if it is permitted to retain the financial benefit of the excessive and unreasonable rates and charges it imposed by knowingly applying an incorrect Contract Minimum. It will be unjust and unreasonable if PECO is permitted to reap the financial benefit of its unlawful discrimination and negligence.

3. The Commission does not have jurisdiction to adjudicate unjust enrichment claims. *See, County of Erie v. Verizon North, Inc.* 2005 WL 6502718 (Pa.P.U.C 2005). As the Commission stated in *County of Erie*:

Furthermore, the Commission has no jurisdiction to adjudicate claims styled as common law tort causes of action or as a request for an accounting arising out of equity. This means that *the Commission has no jurisdiction to hear the claims* set forth in the complaint the County filed with the Commission, namely, the request for an accounting and an injunction and the claims *based on* breach of fiduciary duty, *unjust enrichment* and conversion

4. PECO therefore respectfully requests that Paragraph 13 of the Amended Complaint be stricken for stating a non-jurisdictional claim, and that the Commission issue an order stating that Complainants may not pursue a claim before the Commission based upon the legal theory of “unjust enrichment.”

WHEREFORE, PECO Energy Company respectfully requests that this Honorable Commission issue an Order striking Paragraph 13 of the Amended Complaint and stating that Complainants may not pursue a claim before the Commission based upon the legal theory of “unjust enrichment.”

Respectfully Submitted,



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**BEFORE THE
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THE VICTORY CONDOMINIUM ASSOCIATION	:	
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v.	:	
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Ward Smith, hereby declare that I am an attorney representing PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Ward Smith

Date: December 14, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM ASSOCIATION	:	
Complainant	:	DOCKET NO. C-2011-2268126
v.	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objection in the above matter upon all interested parties by email and first class mail, properly addressed and postage prepaid to:

Charles V. Curley
Halberstadt Curley LLC
1100 E. Hector Street, Suite 425
Conshohocken, PA 19428

Dated at Philadelphia, Pennsylvania, December 14, 2011.



Ward L. Smith
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