



HALBERSTADT CURLEY
ATTORNEYS AT LAW

Via FedEx

December 21, 2011

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

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

Dear Sir/Madam:

Enclosed please find an original and one copy of Complainant's Response to Preliminary Objection of PECO Energy Company in the above-referenced matter. Please file the original of record and return a time stamped copy to the undersigned in the self-addressed stamped envelope provided.

Thank you for your assistance. If you should have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

HALBERSTADT CURLEY LLC

By: Melissa A. Simola
Melissa A. Simola

MAS/md
Encl.

cc: Ward Smith, Esquire (via regular mail and email w/ encl.)

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DEC 21 2011
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET
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CONSHOHOCKEN PA 19428
TEL 610.834.8819
FAX 610.834.8813
www.halcur.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM ASSOCIATION, Complainant v. PECO ENERGY COMPANY Respondent.	Docket No. C-2011-2268126
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ORDER

AND NOW, this ____ day of _____, 20__, upon consideration of Respondent PECO Energy Company's Preliminary Objection and Complainant The Victory Condominium Association's Response thereto, it is hereby ORDERED that the Preliminary Objection is OVERRULED.

J.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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THE VICTORY CONDOMINIUM
ASSOCIATION,
Complainant
v.
PECO ENERGY COMPANY
Respondent.

DEC 21 2011
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
Docket No. C-2011-2268126

RESPONSE TO PRELIMINARY OBJECTION OF PECO ENERGY COMPANY

Complainant The Victory Condominium Association (“Victory”), through its undersigned counsel, hereby responds to Respondent PECO Energy Company’s (“PECO’s”) Preliminary Objection, and in support thereof avers the following:

1. Denied. The corresponding averment is a conclusion of law to which no response is required.
2. Denied. The Amended Complaint is a written document of record which speaks for itself.
3. Denied. The corresponding averment is a conclusion of law to which no response is required. Without waiver of the foregoing, pursuant to County of Erie v. Verizon North, Inc., 879 A.2d 357 (Pa. Cmwlth. 2005), the Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over Victory’s claims, including the averments contained in Paragraph 13 of the Amended Complaint. In that case, the County of Erie (“Erie”) claimed that Verizon had incorrectly billed, collected, and remitted 911 contributions as to all lines providing “local telephone service.” Erie sought both legal and equitable relief via claims for an accounting, injunction, breach of fiduciary duty, **unjust enrichment**, and conversion. The Commonwealth Court determined that Erie’s claims should be decided pursuant to the doctrine of primary

jurisdiction, whereby the parties preliminarily resort to the agency that administers the scheme for the resolution of disputes. The Commonwealth Court further decided that the proper course was for trial court to transfer the matter to the Pennsylvania Public Utility Commission due to its special experience and expertise in complex areas and its authority to order appropriate remedies. Id. at 363-364.

In reaching its decision Commonwealth Court explained that “[i]n determining whether the doctrine of primary jurisdiction applies, courts must look beyond the form of action to the *essence* of the underlying claims. Id. at 364 (citing T.W. Phillips Gas & Oil Co. v. Peoples Natural Gas Co., 492 A.2d 776, 779 (Pa. Cmwlth. 1985). The Court further discussed the case of Morrow v. Bell Telephone, 479 A.2d 548 (1984), stating:

[T]he Superior Court, after carefully scrutinizing the nature of the claims, found that the action, which was couched in terms of equity, was actually a challenge to rates and services and, accordingly, determined that jurisdiction was vested in the PUC. Id. at 551. There, a customer brought an action in equity seeking class action certification and challenging Bell's rate and service practices, and another action seeking individual damages for tortious and/or contractual wrongs. The Court stated that ‘when a utility's failure to maintain reasonable and adequate service is alleged, regardless of the form of the pleading in which the allegations are couched, it is for the PUC, initially, to determine whether the service provided by the utility has fallen short of the statutory standard required of it.’ Id. at 550-551 (quoting DiSanto v. Dauphin Consol. Water Supply Co., 291 Pa. Super. 440, 436 A.2d 197, 199 (Pa. Super. 1981)). The Morrow Court found that the equity action was a challenge to Bell's rate and service practices, which is an area peculiarly and exclusively within the jurisdiction and expertise of the PUC. Id. at 551.

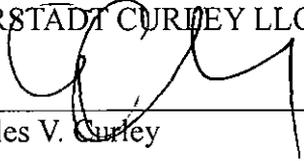
Similarly, Victory's claims, including the averments of Paragraph 13 of the Amended Complaint, directly challenge PECO's rate and service practices. In light of the Commission's extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, *see* Pa.C.S. § 1501 (2011), its expertise to analyze PECO's practices and billings, as well as its authority to order appropriate remedies, the

Commission has primary jurisdiction over Victory's claims, including the averments of Paragraph 13.

4. The Victory Condominium Association respectfully requests that the Commission overrule PECO's Preliminary Objection.

WHEREFORE, Complainant The Victory Condominium Association respectfully requests that the Commission overrule PECO's Preliminary Objection and grant such other relief as the Commission may deem appropriate.

HALBERSTADT CURLEY LLC

By: 
Charles V. Curley

Date: 12/70/2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM
ASSOCIATION,

Complainant

v.

PECO ENERGY COMPANY

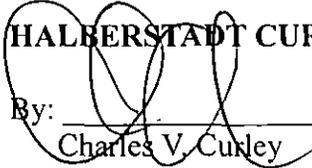
Respondent.

Docket No. C-2011-2268126

CERTIFICATE OF SERVICE

I, Charles V. Curley, hereby certify that a true and correct copy of the foregoing Response to PECO'S Preliminary Objection was served via email and first-class U.S. Mail upon the following:

Ward L. Smith, Esquire
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103

HALBERSTADT CURLEY LLC
By: 
Charles V. Curley

Date: 12/20/2011

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

From: (610) 834-8819
 Melissa A. Simola
 Halberstadt Curley LLC
 1100 E. Hector Street, Suite 425

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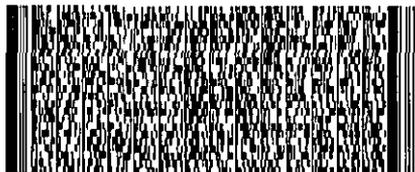
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