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January 30, 2012

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

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**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 (Original)
—	Answer & New Matter (original)
—	Motion to Strike (original)
<u>X</u>	Motion for Summary Judgment (original)
—	Preliminary Objection (original)
—	Exceptions (original)
—	Reply Exceptions (original)
—	Main Brief (original)
—	Reply Brief (original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. Thank you for your time and attention on this matter.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WLS/adz
Enc.

cc: ALJ Christopher P. Pell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM
ASSOCIATION

v.

PECO ENERGY COMPANY

:
:
: DOCKET NO. C-2011-2268126
:
:

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.102(b), you are hereby notified that, if you wish to file a written response to the enclosed PECO Energy's Motion for Summary Judgment or Partial Summary Judgment, such written response must be made within 20 days from service of this notice. If you do not file, summary judgment in this matter may be entered against you. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Ward Smith, Esq.
Assistant General Counsel
Exelon Business Services Co.
2301 Market Street, S-23
Philadelphia, PA 19103

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated at Philadelphia, PA, January 30, 2012.



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RECEIVED

JAN 30 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

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

**PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT**

Pursuant to 52 Pa. Code § 5.102 *et seq.*, PECO Energy Company (“PECO”) submits this Motion for Summary Judgment or Partial Summary Judgment. In support thereof, PECO states as follows:

I. Summary and Overview

In this motion, PECO demonstrates that, for key elements of the cause of action pled by The Victory Condominium Association (“Victory”), there are material facts about which there is no genuine dispute and that, given that absence of dispute as to the designated material facts, PECO is entitled to judgment as a matter of law at this time.

PECO’s motion contains the following sections:

II. The Standard for Review of Motions for Summary Judgment

In this section, PECO briefly reviews the Commission’s summary judgment rules and establishes the standard for evaluating its arguments.

III. Documentary Basis for PECO’s Motion for Summary Judgment

In this section, PECO identifies the pleadings and discovery answers that support its Motion, and which are appended to this Motion.

IV. Timing of This Motion and Request to Accept and Evaluate This Motion

In this section, PECO demonstrates that this is its first meaningful opportunity to file a Motion for Summary Judgment, and requests that it be accepted and evaluated notwithstanding the scheduled February 9, 2012 hearing.

V. On Certain Key Issues, There Is No Genuine Issue of Material Fact And PECO Is Entitled To Judgment As A Matter Of Law On Those Issues

This section presents the substance of PECO's arguments for summary judgment, which are threefold:

A. There Is No Genuine Issue of Material Fact That Could Lead to the Conclusion That Victory Is, Or Was, Eligible For PECO's Construction Rider

In this subsection of its argument, PECO demonstrates that Victory has not established its eligibility for PECO's Construction Rider and that there is no longer any genuine issue about the material facts regarding such eligibility. PECO therefore requests partial summary judgment that, as a matter of law, Victory is not and was not eligible for PECO's Construction Rider at any time between August 7, 2008 and the present.

B. The Events About Which Victory Complains Occurred Outside Of The Commission's Three-Year Statute Of Limitation. Moreover, With Respect to the More Recent Three-Year Period, Commission Precedent Is Clear That Utilities Do Not Have An Affirmative To Monitor the Ongoing Consumption of Their Customers. These Two Factors Together Warrant Summary Judgment for PECO.

In this subsection of its argument, PECO requests complete summary judgment due to the combination of two factors. First, the events of which Victory complains occurred outside of the Commission's statute of limitation, and therefore cannot form the basis for a claim. Second, for the three-year period that is within the statute of limitation, Commission precedent is clear that utilities do not have an affirmative obligation to monitor the usage characteristics of their customers and determine the proper rate for such usage. Since Victory's claim within the three-year statute of limitations is based upon just such a claimed affirmative obligation, PECO is entitled to summary judgment as a matter of law.

C. Even If the Events Of Summer 2008 Are Considered, PECO Is Still Entitled To Summary Judgment Because Victory's Discovery Answers Make It Clear That It Has No Additional Information To Add The Allegations in the Pleadings Regarding the Events of Summer 2008 That Could Warrant Relief To It.

In this subsection of its argument, PECO demonstrates that, even taking into consideration the events of summer 2008, PECO is still entitled to summary judgment because nowhere in the pleadings does Victory aver that it requested rate assistance from PECO, and its discovery answers make it clear that Victory has no meaningful information to add to this subject beyond the information averred in the pleadings.

II. The Standard for Review of Motions for Summary Judgment

The Commission's rule regarding motions for summary judgment is found at 52 Pa. Code § 5.102. Subpart (d) of that rule sets forth the standard for evaluating motions for summary judgment: judgment will be rendered in favor of the moving party "if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law." In its entirety, 52 Pa. Code § 5.102(d) states:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(d) Decisions on motions.

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

In this Motion, PECO will demonstrate that, for key elements of the cause of action pled by Victory, there are certain material facts about which there is no genuine dispute and that, given that absence of dispute as to the designated material facts, PECO is entitled to judgment as a matter of law.

III. Documentary Basis for PECO's Motion for Summary Judgment

The Commission rule on summary judgment also establishes that a motion for summary judgment must be based on specified documents:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(c) *Motion for summary judgment.* A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.¹

PECO's Motion is based upon the following documents, each of which is attached to this Motion:

- Victory's Complaint (Re-Served October 27, 2011) (Exhibit A)
- Victory's Amended Complaint (November 21, 2011) (Exhibit B)
- PECO's Answer and New Matter to Amended Complaint (December 14, 2011) (Exhibit C)
- PECO's Discovery to Victory, Set I (December 15, 2011) (Exhibit D)
- Victory's Reply to New Matter (January 3, 2012) (Exhibit E)
- PECO's Discovery to Victory, Set II (January 4, 2012) (Exhibit F)

¹ Each of the unfiled documents relied upon by PECO for this Motion is attached to this Motion as an Exhibit. In addition, PECO notes that in its arguments in support of summary judgment it refers to the text of Victory's Complaint and Amended Complaint, PECO's Answer and New Matter to Amended Complaint, and Victory's Reply to New Matter. For convenience in evaluating this Motion, PECO therefore has also attached copies of those previously-filed documents.

- Victory's Answers to PECO's Discovery, Set I (January 13, 2012) (Exhibit G)
- Victory's Answers to PECO's Discovery, Set II (January 23, 2012) (Exhibit H)
- Victory's Supplemental Answers to PECO's Discovery, Set I (January 27, 2012) (Exhibit I)

IV. Timing of This Motion and Request to Accept and Evaluate This Motion

The Commission's rule on motions for summary judgment, 52 Pa. Code § 5.102(a), provides that motions for summary judgment may be filed "[a]fter the pleadings are closed, but within a time so that the hearing is not delayed."

In the instant proceeding, a hearing is scheduled for February 9, 2012. Since Victory has 20 days to respond to PECO's Motion for Summary Judgment or Partial Summary Judgment,² and the presiding officer will need time to evaluate the parties' respective arguments, proper consideration of PECO's Motion will require a delay in the scheduled hearing date.

Nonetheless, PECO requests that the presiding officer utilize his authority under 52 Pa. Code §5.483(a) to "regulate the course of the proceeding" and accept and evaluate this Motion.³

² 52 Pa. Code §102(b).

³ The Commission often looks to the Pennsylvania Rules of Civil Procedure for guidance on the liberal application of the Commission's rules. Pa. Rule of Civil Procedure 1035.2 states that Motions for Summary Judgment in a civil proceeding may be made "[a]fter the relevant pleadings are closed but within such time as not to unreasonably delay trial." PECO requests that the presiding officer accept and evaluate PECO's Motion, notwithstanding the scheduled hearing, on the grounds that a delay to evaluate this Motion would be reasonable.

First, PECO has acted with reasonable alacrity in this proceeding, and this is the first opportunity available to it to file this Motion. PECO served its first set of discovery one day after it filed its Answer and New Matter, a mere 21 days after Victory served its Amended Complaint. When Victory's Reply to New Matter raised additional questions to which PECO believed discovery was appropriate, it served its additional discovery the next calendar day. Moreover, Victory's Supplemental Answers to PECO's Discovery, Set I, were only served on PECO a few days ago, on January 27, 2012, and PECO is serving this Motion less than one business day later.

Second, under Commission rule PECO was not able to file a Motion for Summary Judgment until "after the pleadings are closed." The pleadings in this matter closed on January 3, 2012, when Victory filed its Reply to New Matter. Again, this Motion, filed less than a month later, represents the first opportunity to argue such a Motion and was filed without delay.

Third, PECO's Motion has the potential to narrow the issues for which a hearing is needed, or to eliminate the need for a hearing altogether. PECO respectfully submits that it is judicious to evaluate its Motion prior to proceeding to hearing.

Finally, no continuances have been previously granted in this matter. A brief continuance to evaluate the Motion for Summary Judgment thus falls within the

Commission's normal practice of allowing a party to obtain one brief continuance, in any given action, upon request.

PECO will also file a formal request for continuance in a separate filing, setting forth the items above as support for that request.

V. On Certain Key Issues, There Is No Genuine Issue of Material Fact and PECO Is Entitled To Judgment As A Matter Of Law On Those Issues

In subsection A of this argument, PECO demonstrates that, in order to be eligible for PECO's Construction Rider, a customer must be engaged in a construction or expansion project and that, despite repeated opportunities to speak on this issue, Victory has not claimed or showed that it was engaged in such a project. As a matter of law, Victory is therefore not eligible for PECO's Construction Rider, and partial summary judgment should be granted on that issue.

In subsection B of this argument, PECO requests complete summary judgment due to the combination of two factors. First, the events of which Victory complains occurred outside of the Commission's statute of limitation, and therefore cannot form the basis for a claim. Second, for the three-year period that is within the statute of limitation, Commission precedent is clear that utilities do not have an affirmative obligation to monitor the usage characteristics of their customers and determine the proper rate for such usage. Since any Victory claim within the three-year statute of limitations is based upon just such a claimed affirmative obligation, PECO is entitled to summary judgment as a matter of law.

In subsection C of this argument, PECO demonstrates that, even taking into consideration the events of summer 2008, PECO is still entitled to summary judgment because nowhere in the pleadings does Victory aver that it requested rate assistance from PECO, and its discovery answers make it clear that Victory has no meaningful information to add to the discussion in the pleadings.

A. There Is No Genuine Issue Of Material Fact That Could Lead To The Conclusion That Victory Is, Or Was, Eligible For PECO's Construction Rider

There is no genuine issue of material fact as to whether Victory is, or ever was, eligible to receive service pursuant to PECO's Construction Rider. PECO is therefore entitled to judgment as a matter of law that Victory was not, at any time relevant to this proceeding, eligible to receive service under PECO's Construction Rider.

As noted in PECO's Answer and New Matter to Amended Complaint (Exhibit C) the prior customer at this location took service pursuant to PECO's Construction Rider. Although Victory's Amended Complaint makes no reference whatsoever to the Construction Rider, PECO wished to fully understand whether Victory's claim in this proceeding involved the Construction Rider. As described more fully below, PECO therefore raised the issue of the Construction Rider in its Answer and New Matter and in its discovery. There is now a sufficient record to conclude that Victory is not, nor has it ever been, eligible for service under PECO's Construction Rider.

Background on PECO's Construction Rider⁴ will be useful to this discussion.

Generally, PECO's Construction Rider provides specified rate benefits to customers who meet either of two eligibility criteria:

1. They are receiving service provided during or immediately following a major construction or expansion period⁵, or
2. They are receiving service during a receding load period, after the expiration of the initial contract term, while a business is in the process of dissolution.⁶

One of the rate advantages of being on the Construction Rider is that, while a customer is on the Construction Rider, PECO does not apply contract minimums to the bill. Since the core of Victory's claim is that PECO applied the wrong contract minimums to its bills – *see, Amended Complaint*, ¶¶ 6-8 -- PECO wanted to make sure it

⁴ A copy of PECO's Construction Rider is appended to this Motion as Exhibit J. Filed utility tariffs have the force of law. *Brockaway Glass Co. v. PaPUC*, 437 A. 2d 1067. (Pa. Cmwlth. 1981). PECO's Tariff is also a public document on file with the Commission. PECO therefore requests that it be made a part of the record in this proceeding pursuant to 52 Pa. Code § 5.406(a)(1) as a public document on file with the Commission. Alternatively, PECO requests that the presiding officer take official or judicial notice of the contents of PECO's Tariff pursuant to 52 Pa. Code § 5.408(a).

⁵ The Construction Rider defines "major construction or expansion period" as "A major construction or expansion period is defined as a construction or expansion project undertaken by the customer which upon completion will require an upward modification of the customer's contract limits."

⁶ The events of which Victory Condominium complains occurred in the summer of 2008. (*See, Amended Complaint*, ¶6, alleging that an error has existed "since June 2008.") Since Victory still exists and is actively pursuing this litigation, PECO requests, pursuant to 52 Pa. Code § 5.408(a), that the presiding officer take official or judicial notice of the fact that The Victory Condominium Association was not "in the process of dissolution" in 2008 and has not entered the process of dissolution since that time. Pursuant to 52 Pa. Code § 5.408(c), Victory has the right to argue that this fact is "not properly noticed or that alternative facts should be noticed." PECO suggests that, if Victory wishes to challenge the requested official or judicial notice of the fact that it was not "in the process of dissolution" in 2008 and has not entered the process of dissolution since that time, it should so state in its response to this Motion, in a manner and form consistent with the guidance of 52 Pa. Code § 5.408(c). In the absence of such a showing in reply, PECO requests that the presiding officer take official or judicial notice of the specified fact re dissolution. Upon such a factual finding, PECO further requests that the presiding officer find, as a matter of law, that there is no genuine issue of material fact that The Victory Condominium Association is not, and never has been, eligible for PECO's Construction Rider under the "dissolution" prong of that Rider's statement of "Availability/Applicability."

fully understood whether Victory was claiming that it should have been on the Construction Rider during the periods at issue.

Thus, although neither the Complaint nor the Amended Complaint contains any reference whatsoever to the Construction Rider, PECO raised the Construction Rider in its Answer and New Matter to Amended Complaint (Exhibit C). In its Answer to §6 of the Amended Complaint, PECO stated in relevant part that:

This account is for service to a residential condominium building. Prior to the current account being opened, the building in question was used as a residential condominium, under the name the "Victory Building," with the property being managed by Philadelphia Management., with account number 022-06-97-0810-10-01. Under that ownership, management, and account number, service was provided under Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. In 2008, service was also provided pursuant to PECO's Night Service Rider, and its Construction Rider.

In mid-2008, PECO received notice from Philadelphia Management that both the ownership and management of the building were changing. PECO began conversations with the old property manager regarding these changes, and was informed that a new condominium association had been formed, and that the account therefore needed to be transferred into the name of the new owner, "The Victory Condominium Association." PECO was also informed that a new property manager, Wentworth Property Management, would now manage the building. A new account number 34455-61001 was opened with an effective date of August 7, 2008.

* * * *

PECO thereafter instituted service for the Victory Condominium Association on Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. The account also was placed on the Night Service Rider. Because no construction activities were underway at the time, the new account was not eligible for PECO's Construction Rider.

Similarly, in its New Matter, §§ 2 and 9, PECO again put the matter of Construction Rider eligibility squarely at issue, stating:

2. Prior to the current account being opened, the building in question was used as a residential condominium, under the name the "Victory Building," with the property being managed by Philadelphia Management., with account number 022-06-97-0810-10-01. Under that ownership, management, and account number, service was provided under Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. In 2008, service was also provided pursuant to PECO's Night Service Rider, and its Construction Rider.

9. As of August 7, 2008, Complainant was not engaged in a construction or expansion project that, when complete, would require an upward modification of Complainant's contract limits.

Victory made its Reply to New Matter on January 3, 2012. (Exhibit E.) Its responses to both ¶ 2 and ¶ 9 were identical boilerplate denials, each stating that PECO's allegations are:

Denied. After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation. Accordingly, same is denied and strict proof is demanded at trial.

PECO was skeptical that a condominium association could be wholly unaware of its own construction history, and thus served discovery focused on the precise question of Victory's construction history, asking in its Discovery Set II (Exhibit F) (emphasis added):

3. In Complainant's Reply to New Matter, ¶ 9, Complainant denied PECO's allegation that: "As of August 7, 2008, Complainant was not engaged in a construction or expansion project that, when complete, would require an upward modification of Complainant's contract limits." Complainant's stated reason for the denial is: "After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation."

a. At any time between August 7, 2008 and the present date, was Complainant engaged in a construction or expansion project at 1001-13 Chestnut? For each such construction or expansion project, please provide the inclusive dates that such project occurred, as well as a brief narrative description of the project.

b. For each construction or expansion project identified in the answer to subpart (a), please state whether the construction or expansion project was of sufficient magnitude that, upon completion of the project, Complainant required an upward modification of its contract limits for electric utility service from PECO.

On January 23, 2012, PECO received Victory's answers to its Set II discovery (Exhibit H). The responses to questions 3a. and 3b., which were verified by Stephen Subbio, Board President of The Victory Condominium Association, were identical and unequivocal (emphasis added):

Response: Complainant has no information with regard to this interrogatory.

The factual record on this issue is now complete. Victory has had four opportunities -- its Complaint, Amended Complaint, Reply to New Matter and discovery responses-- to address whether Victory engaged in a construction or expansion project that might make it eligible for PECO's Construction Rider. The factual record elicited from Victory is that, after reasonable investigation, the President of the Condominium Association has "no information" with regard to this question.

In order to be eligible for PECO's Construction Rider, a customer must, at a minimum, be engaged in a "major expansion or construction period," which requires as a predicate that the customer be engaged in a "construction or expansion project." PECO respectfully submits that, on this factual record, there is no genuine issue of material fact as to whether Victory was engaged, in August 2008 or thereafter, in a construction or expansion project -- it was not, or it would have said so by now. Since there is no genuine issue as to that material fact, there is no basis upon which Victory could claim

that it is or was eligible to take service under PECO's Construction Rider. PECO therefore respectfully submits that it is entitled, as a matter of law, to partial summary judgment that Victory was not eligible for PECO's Construction Rider at any time between August 7, 2008 and the present.

B. The Events About Which Victory Complains Occurred Outside Of The Commission's Three-Year Statute Of Limitations. Moreover, With Respect to the More Recent Three-Year Period, Commission Precedent Is Clear That Utilities Do Not Have An Affirmative To Monitor the Ongoing Consumption of Their Customers. These Two Factors Together Warrant Summary Judgment for PECO.

PECO requests complete summary judgment due to the combination of two factors. First, the events of which Victory complains occurred outside of the Commission's statute of limitation, and therefore cannot form the basis for a claim. Second, for the three-year period that is within the statute of limitation, Commission precedent is clear that utilities do not have an affirmative obligation to monitor the usage characteristics of their customers and determine the proper rate for such usage. Since any Victory claim within the three-year statute of limitations is based upon just such a claimed affirmative obligation, PECO is entitled to summary judgment as a matter of law.

The Pennsylvania Public Utility Code contains a three-year limitation period on actions brought pursuant to the Code, set forth at 66 Pa. C.S. § 3314(a), which states:

Limitation of actions and cumulation of remedies. (a) General rule. – No action for the recovery of any penalties under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought with three years from the date at which the liability therefore arose, except as otherwise provided in this part.

In this proceeding, the Complaint claims that PECO made an error, or otherwise engaged in activities that prejudiced Victory, in the summer of 2008. Specifically, the Amended Complaint (Exhibit B) claims (§ 6) that that PECO made an error with respect to contract limits beginning in June 2008; that PECO had a responsibility to review “historical data” that was available to it “at the time the contract limits were chosen” (June 2008) (Amended Complaint, § 7); and that “no one from PECO explained the different options that were available to Complainant” “[a]t the time service was initiated” – that is, in June 2008. In short, the events of which Victory complains occurred in the summer of 2008. To quote from the statute of limitation, that is “[t]he date on which the liability arose.”

The Complaint in this matter was served, then re-served, and then amended. But the earliest possible date that it could be deemed to have been “brought” for purposes of §3314 is the date that the original Complaint (Exhibit A) was signed and mailed – that is, on October 11, 2011. This is more than three years after the summer 2008 events that, according to the Amended Complaint, are the source of PECO’s liability.

There is no factual dispute on the question of when these events occurred. According to both Victory and PECO⁷, these events occurred in the summer of 2008, more than three years prior to the filing of this Complaint.

⁷ In PECO’s Answer and New Matter to Amended Complaint (Exhibit C) it avers (New Matter §4) that service was initiated on August 7, 2008. This date is also more than three years prior to the filing of the instant complaint and the statute of limitation analysis set forth in text remains valid even if this later date is found to be the actual date on which service was initiated. Any dispute on this factual issue is therefore not material to the statute of limitation analysis.

PECO submits that, because of this, Victory is time-barred from litigating the question of whether, in the summer of 2008, PECO engaged in activities that violated the Code. Section 3314 required such a complaint to be brought months earlier than it was brought.⁸

If, as PECO submits, Victory is barred by the limitation statute from litigating the events of summer 2008, then in order to sustain a viable complaint it must demonstrate a factual basis to conclude that, sometime after October 11, 2008 (three years prior to bringing this action), PECO engaged in a violation of the Public Utility Code.

The Amended Complaint, as well as Victory's Reply to New Matter, does not discuss any PECO activities or events after October 11, 2008 that are claimed to have triggered an obligation on PECO's part to advise Victory regarding rate issues.

⁸ *This argument is not hampered by 66 Pa. C.S. § 1312 (Refunds). Section 1312 states, in relevant part, that if the Commission finds that a rate received by a utility was unjust or unreasonable, the Commission is limited to ordering a refund covering four years. The limitation on refunds is not a statute of limitation on the filing of an action, but rather is a limit on the type of remedy that may be ordered by the Commission once a claim has been filed within the statute of limitation and found to be a valid claim. At a minimum, the two portions of the statute can operate in conjunction with each other on any occasion in which the customer argues that the statute of limitations has been stayed for any reason. A customer who successfully argues that the statute of limitation has been stayed may file a case more than three years after the events in question occur; the four-year look-back period for rate refunds then provides an additional limitation on the remedy that may be ordered.*

In this proceeding, there is no genuine issue regarding any "stay" arguments. PECO's Answer and New Matter to Amended Complaint (Exhibit C) has appended to it a letter from Victory Condominium, received by PECO on August 19, 2008, that demonstrates that Victory was fully aware at that time that the issue of contract demand limits was under discussion. In its Reply to New Matter (Exhibit E), Victory admits (¶ 7) that this document is "a true and correct copy of the August 19, 2008 email from The Victory Condominium to PECO." It is thus factually established, by the pleadings of both parties, that Victory sent PECO an email on August 19, 2008 in which, if nothing else, the question of contract demand limits was discussed, thus eliminating any potential arguments that the statute of limitations was stayed.

In the absence of a post-October-2008 event-triggered claim, the only potential basis for Victory's claim is that, without any triggering event, PECO nonetheless has an affirmative duty to monitor its customers' accounts on an ongoing basis for the purpose of computing the most advantageous rate. And there is robust Commission precedent that no such affirmative obligation exists.

For example, in the case of *Springfield Township v. Pennsylvania Public Utility Commission*, 676 A. 2d 304 (1996) (attached as Exhibit K), the Commonwealth Court stated (emphasis added):

[W]e agree with PUC that the imposition of an affirmative duty upon the public utility to continually monitor its customers' accounts for the purpose of computing the most advantageous rate would be unreasonable. . . . We hold, therefore, that under Section 1303 of the Code⁹, the public utility must have actual knowledge of service conditions before it is required to compute the most favorable rate for its customers.

The PECO Tariff 11.1 and 11.2¹⁰ provide the procedures for selecting rates more favorable to its customers under Section 1303 of the Code:

⁹ Section 1303 of the Code, referred to by the Commonwealth Court, states as follows:

66 Pa. C.S. §1303. Adherence to tariffs. No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or lesser rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron shall, after notice of service conditions, compute bills under the rate most advantageous to patron.

¹⁰ PECO's Tariff Rule 11 still contains materially the same language referred to by the Commonwealth Court in *Springfield Township*. A copy of PECO's Tariff Rule 11 is attached as Exhibit L. . Filed utility tariffs have the force of law. *Brockaway Glass Co. v. PaPUC*, 437 A. 2d 1067. (Pa. Cmwlth. 1981). PECO's Tariff is also a public document on file with the Commission. PECO therefore requests that it be made a part of the record in this proceeding pursuant to 52 Pa. Code §5.406(a)(1) as a public document on file with the Commission. Alternatively, PECO requests that the presiding officer take official or judicial notice of the contents of PECO's Tariff pursuant to 52 Pa. Code § 5.408(a).

11.1 CHOICE OF RATE. Where the class of service-supply or conditions of use are such that two or more rates are available, an applicant shall select the rate or rates to be applied to his service.

11.2 COMPANY ASSISTANCE. The Company upon request will, to a reasonable extent, assist an applicant in selecting the most advantageous rate or rate application.

The Commission's Order in *City of Pittsburgh v. Duquesne Light Company*, 54 PaPUC 460 (1980) (Exhibit M) is also instructive. The claim in *City of Pittsburgh* was very similar to the instant claim. In *City of Pittsburgh*, the customer's contract demand levels had been set at the time service was initiated to a City skating rink. Skating operations at the rink, however, were substantially below the contract demand level, with the result that the rink was billed for, and paid, significant additional demand charges based on its contract minimums. Ultimately, the City filed a complaint against Duquesne, arguing that, because Duquesne received information every month from its meter regarding the City's usage at the rink, Duquesne therefore had notice of the City's service conditions sufficient to trigger an obligation under §1303 to assist the City in choosing the rate that would allow it to be billed on the proper demands. The presiding officer initially agreed, stating:

What is here dominant is the fact that over a period of several years, Duquesne charged city a rate higher than the service use of its monthly and bimonthly billings warranted. Constructive notice of this higher billing was readily apparent by scrutiny of the kilowatt-hour use at the South Side rink.

The Commission disagreed. The Commission held that utilities are not required to monitor the actual usage habits of customers and use that information to choose the best rate for customers, stating that (emphasis added):

This interpretation of §1303 would place an affirmative duty on Duquesne and, therefore, all utilities continually to monitor the consumptive habits of all of its customers, and on the basis of those habits immediately apply the tariff rate most advantageous to the customer. This is impractical and unnecessarily burdensome and is not the intent of §1303. . . . [M]ost if the consumption monitoring which Judge Lewis' interpretation of §1303 requires will apply to commercial and industrial accounts. Utilities cannot be expected to know more about their customers' businesses than the customers themselves and cannot be expected to make decisions for them. A utility is not the co-manager of its customers' operations.

Finally, the Commission's decision in *Ben Mauro v. Duquesne Light Company*, 69 PaPUC 105 (1989) (Exhibit N) should be noted. As with *City of Pittsburgh* and the instant complaint, *Mauro* involved a claim by a commercial customer that he was billed for an inappropriately high contract demand level. In *Mauro*, the customer changed its mode of operations from a "Super Market type operation" to a Sunday "flea market." He later contended that Duquesne should have monitored his usage or inspected his property and advised him of rate alternatives available to him. The Commission disagreed, quoting *City of Pittsburgh*. The Commission also found it noteworthy that Mr. Mauro had not taken the initiative to keep Duquesne informed of the state of his operations, stating (emphasis in original):

We feel that Mr. Mauro, *at that time*, had an inherent responsibility to inform Duquesne of its changed operations. It is not difficult to distinguish the difference in the operations, that being a shift from a full week operation to one day (Sunday) operation. Therefore, with a *little initiative* by the Complainants to make a call to the Respondent, the problem could have been resolved [much earlier.]

In the instant case, Victory could have taken the initiative, in the summer of 2008 or thereafter, to review its own utility bills and service. If it had done so, the problem would have been resolved.

These cases clearly demonstrate a long-standing principal of Commission law – utilities do not have an affirmative obligation to monitor the usage of their customers’ usage and advise them on rate options and choose the most advantageous rate. Moreover, it is clear from these decisions that the mere presence of historical data in the utility’s possession does not trigger an obligation to under § 1303. Instead, the utility must be on “actual notice” of the customer’s service conditions. According to the Commonwealth Court in *Springfield Township*, the mechanism for providing actual notice is set forth in PECO’s Tariff Rule 11 – the Company is to assist its customers in choosing the most advantageous rate “upon request” for such assistance.

The pleadings in this matter are closed, and Victory has not made any allegation, either in its pleadings or in its discovery responses, that it made any such request of PECO during the three-year statute of limitation period. Therefore, there is no genuine issue as to whether Victory made such a request – if it had made such a request, it would have said so by now. Consequently, PECO is entitled, as a matter of law, to summary judgment that PECO did not violate § 1303 of the Public Utility Code at any time during the three-year statutory period. Since Victory is barred by the statute of limitation from arguing that PECO violated §1303 prior to that time (in the summer of 2008), PECO is entitled to summary judgment, covering the entire period of the complaint, that it did not violate §1303.

C. Even If the Events Of Summer 2008 Are Considered, PECO Is Still Entitled To Summary Judgment Because Victory's Discovery Answers Make It Clear That It Has No Additional Information To Add The Allegations in the Pleadings Regarding the Events of Summer 2008.

In the previous subsection of this argument, PECO demonstrated that Victory's claim regarding PECO's actions in the summer of 2008 is outside of the three-year statutory period and therefore cannot be presented as the basis for a claim of unreasonable utility service under the Public Utility Code. In this subsection of its argument, PECO demonstrates that, even taking into consideration the events of summer 2008, PECO is still entitled to summary judgment because nowhere in the pleadings does Victory aver that it requested rate assistance from PECO in the summer of 2008, and its discovery answers make it clear that Victory has no meaningful information to add to the discussion in the pleadings.

PECO discussed the Commission's §1303 law in the prior subsection of this Motion. That law clearly states that utilities do not have an affirmative duty to continually monitor their customers' accounts for the purpose of computing the most advantageous rate. Instead, a § 1303 obligation is triggered only when customer requests the utility's assistance in choosing the most advantageous rate.

On its face, the Amended Complaint does not aver that Victory made any such request in the summer of 2008 (or, as discussed in the previous section, at a later time). For its part, PECO's Answer and New Matter makes clear that, when PECO inquired of Victory (through its property manager Wentworth Properties) whether it desired to retain the same contract limits, Victory replied in writing that "nothing is changing." (Exhibit

C, New Matter ¶ 6 and associated Exhibit A to PECO's Answer and New Matter.)¹¹ On the pleadings then, it is clear that the subject matter of contract limits arose in written communications between the parties in the summer of 2008 and, far from asking PECO for assistance in choosing the correct rate, Victory simply told PECO that "nothing is changing" and that the same contract limits should be used as had been used for the prior customer. PECO respectfully submits that, if only the pleadings are considered, PECO is entitled to summary judgment because, even if the events of the summer of 2008 are considered, the pleadings clearly demonstrate that Victory did not request PECO's rate assistance, as required by §1303 and Commission precedent.

As discussed next, Victory's discovery answers make it clear that no different set of facts could be elicited at hearing.

PECO's Answer and New Matter (Exhibit C, Answer ¶ 6 and New Matter ¶¶ 5-7) aver that PECO's interactions in the summer of 2008 occurred with Wentworth Property Management on behalf of Victory. Indeed, the August 19, 2008 letter discussed above contains the following caption: "The Victory Condominium Association c/o Wentworth Property Management." It is also noteworthy that Victory's Supplemental Answers to PECO Discovery, Set I (Exhibit I) supplied a copy of the contract between Victory and Wentworth that states (emphasis added) (p. 3, Section 3.03(a)), that Wentworth "shall, subject to the direction of the Association, negotiate, execute, and make payments . . . for goods and services . . . including, without limitation, contracts for water, electricity, gas, telephone," etc. It is therefore clear that, if there is any information to be had from

¹¹ In its Reply to New Matter, Victory admits (¶ 7) that this document is "a true and correct copy of the August 19, 2008 email from The Victory Condominium to PECO."

the Victory camp that sheds more light on the summer 2008 negotiations, it must come via Wentworth, which was Victory's agent in those discussions.

But Victory's Answers to PECO's Discovery, Set I (Exhibit D) and Victory's Supplemental Answers to PECO's Discovery, Set I (Exhibit I) demonstrate that Victory has virtually no meaningful information in its possession regarding Wentworth Property Management. *The areas in which Victory specifically states that it has no information include:*

- Wentworth's procedures for reviewing utility contracts (Qs 4-5);
- What procedure Wentworth used in the case of PECO and Victory (Q 6);
- Wentworth's procedures for reviewing utility bills (Qs 8-9);
- What procedure Wentworth used in reviewing Victory's utility bills (Q. 10-11)

In its Supplemental Answers, Victory explained (Response 1) that it had no information from Wentworth because it had severed its relationship with Wentworth in July 2009. It further stated that Wentworth had never advised it on energy related issues (Response 2); that Wentworth did not review any of Victory's utility contracts (Responses 4-5); nor did it review any of Victory's utility bills (Responses 8-11).

Wentworth signed the summer 2008 letter. According to Victory's discovery answers, there is absolutely no information in Victory's possession that could add any additional information regarding the summer of 2008 beyond what is contained in the pleadings. This matter is therefore ripe for evaluation based upon what is in those pleadings. And, as stated previously, the pleadings make it clear that Victory did not, as required by §1302 and Commission precedent, request PECO's assistance in choosing the

most advantageous rate. Since Victory is completely bereft of additional information regarding the actions and policies of its own agent in the summer of 2008, there is no dispute regarding these material facts, and PECO is entitled to summary judgment as a matter of law.¹²

VI. Conclusion

Based on the above arguments, PECO respectfully requests that the presiding officer issue an Initial Decision:

1. Granting PECO partial summary judgment that Victory is not, and has not been, eligible for PECO's Construction Rider at any time between August 7, 2008 and the present.
2. Granting PECO complete summary judgment that:
 - a. Victory's complaint is time-barred, by §3314, for all times before October 11, 2008; and
 - b. Victory's complaint for the period after October 11, 2008 is denied as a matter of law because, under Commission precedent, utilities do not have an affirmative duty to monitor the usage characteristics of their

¹² Victory's Answers to PECO's Discovery, Set II (Exhibit H) also provides a second, independent basis for summary judgment. Both the Amended Complaint and PECO's Answer and New Matter are predicated on the assumption that, sometime in the summer of 2008, a transfer of service occurred from the prior owner of the building to Victory. Yet when PECO inquired, in its Set II discovery: "Did Complainant request that electric utility service be provided to it at 1001-13 Chestnut Street effective on or about August 7, 2008?" Victory replied: "RESPONSE: Complainant requested only a name change on the account."

Taking this statement at face value, it means that the entire summer 2008 interaction between PECO and Victory is viewed by Victory as a complete non-event, in its mind not even rising to the level of a change of service from one customer to another. It was, according to Victory, "only a name change." This answer, by itself, demonstrates that the summer of 2008 did not contain the sort of precipitating event that would be necessary, under Victory's theory of the case, to impose on PECO an obligation under § 1303.

customers and determine the proper rate for such usage, and because Victory's claim of a duty post-October 11, 2008 is predicated upon just such a claim; and

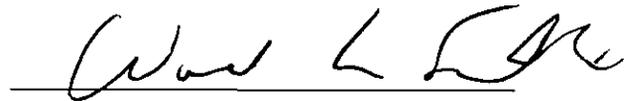
3. Granting PECO complete summary judgment that, even taking into consideration the events of summer 2008, the pleadings do not demonstrate that PECO was requested to assist Victory to choose a proper rate, and Victory's discovery answers demonstrate that it has no information to add to the information averred in the pleadings.

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Respectfully submitted,



Ward Smith

Counsel for PECO Energy

January 30, 2012



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DATE RE-SERVED: **OCTOBER 27, 2011**

C-2011-2268126

PECO ENERGY COMPANY
C/O WARD SMITH
P.O BOX 8699
PHILADELPHIA PA 19101-8699

11:17

Dear Mr. Smith:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by VICTORY CONDOMINIUM ASSOCIATION. To defend yourself against the claims stated in the complaint, you must respond within twenty (20) days of the above date served by filing with the Commission, in writing, an Answer in accordance with 52 Pa. Code Section 5.61, either personally or through your attorney. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days of the above date served.

IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN TWENTY (20) DAYS OF THE ABOVE DATE SERVED, THE CLAIMS AGAINST YOU MAY BE DEEMED ADMITTED, THE CASE MAY GO FORWARD IN YOUR ABSENCE, AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

OCTOBER 27, 2011

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

JB



HALBERSTADT CURLEY
ATTORNEYS AT LAW

October 11, 2011

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: The Victory Condominium Association v. PECO Energy Company

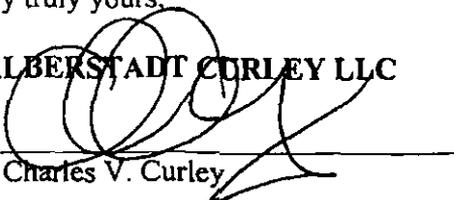
Dear Sir/Madam:

Enclosed please find an original and one copy of a Complaint 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: 

Charles V. Curley

CVC/md
Encl.

RECEIVED
2011 OCT 13 AM 10:15
PA P.U.C.
SECRETARY'S BUREAU

SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET
SUITE 425
CONSHOHOCKEN PA 19428
TEL 610.834.8819
FAX 610.834.8813
www.halcur.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<p>THE VICTORY CONDOMINIUM ASSOCIATION, Complainant</p> <p style="text-align: center;">v.</p> <p>PECO ENERGY COMPANY Respondent</p>	<p>Docket No.</p>
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RECEIVED
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SECRETARY'S OFFICE
PUBLIC UTILITY

COMPLAINT

1. Complainant is The Victory Condominium Association ("Complainant"), a not-for-profit Association organized under the laws of the Commonwealth of Pennsylvania with a registered office at 1001-1013 Chestnut Street, Philadelphia, PA 19107.
2. The name and address of Complainant's attorney is:

Charles V. Curley
HALBERSTADT CURLEY LLC
1100 E. Hector Street, Suite 425
Conshohocken, PA 19428
3. Respondent is PECO Energy Company ("PECO"), a public utility authorized to do business in the Commonwealth of Pennsylvania with a principal place of business at 2301 Market Street, Philadelphia, Pennsylvania 19103.
4. At all times relevant hereto, Complainant was a commercial customer receiving electric service from PECO at its property at office at 1001-1013 Chestnut Street, Philadelphia, PA 19107.
5. Complainant's PECO Account Number is 34455-61001.

6. Due to an error, PECO applied a contract minimum of 560 KW to all of Complainant's bill in all of the non-summer months since June 2008.

7. PECO should have applied contractual limites of 200/500 KW with an Off-Peak maximum of 600 KW.

8. PECO's billing mistake resulted in substantial overcharges from June 2008 to December 2010 totaling \$145,683.55.

9. At the time that service was initiated no one from PECO explained the different rates that were available to Complainant and PECO, without any input from Complainant, placed Complainant on Rate GS as opposed to offering a preferable and more suitable rate structure.

10. PECO has a policy and practice of discussing rate options with a customer prior to the customer initiating service. Contrary to PECO's policy and practice, and contrary to the manner in which other, similarly situated PECO commercial customers are treated, PECO failed to discuss the rate options that were available to Complainant.

11. PECO's Rate GS is analogous to PECO's "retail" electric rate as it is available for customers receiving secondary voltage under 600 volts. General Service rate customers are not required to own or maintain their own primary transformers and/or switch gear. In addition, General Service customers do not experience primary transformer losses that High Tension customers experience.

12. Pursuant to Section 1303 of the Public Utility Code any public utility having more than one rate applicable to service rendered to a patron shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.

13. Despite having express knowledge of Complainant's service conditions, PECO never advised Complainant that it should switch to Rate HT or placed Complainant on Rate HT.

14. Complainant has requested PECO for remuneration for its failure to place Complainant on the most advantageous rate, but PECO has failed to justly compensate Complainant for failing to adhere to its policy and practice of informing Complainant of its rate options and for failing to place Complainant on the most advantageous rate.

15. PECO has unjustly and unreasonably refused to credit or offer just remuneration to Complainant for the overcharges it paid for the overcharges.

16. As a result of the foregoing, Complainant was unlawfully discriminated against by PECO.

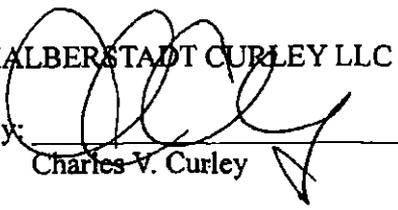
17. PECO will be unjustly enriched if it is permitted to retain the financial benefit of the excessive and unreasonable rates and charges it imposed by knowingly applying an incorrect rate when it knew or should have known that Rate HT was the most advantageous rate. At all relevant times PECO was aware or should have been aware that Rate GS was causing Complainant to pay excessive utility charges but withheld this information from Complainant. It will be unjust and unreasonable if PECO is permitted to reap the financial benefit of its unlawful discrimination and negligence.

18. For the above reasons, Complainant requests that the Commission enter an Order directing PECO to refund and/or credit Complainant the difference between the rates and charges which were imposed under Rate GS and the rates and charges which should have been imposed under Rate HT from June 2008 to the present. Complainant also seeks pre-judgment interest, costs, and such other relief as the Commission deems appropriate.

WHEREFORE, Complainant requests that respondent PECO Energy Company be required to answer the above allegations and that, upon final hearing the Commission will make such Order as may be required.

HALBERSTADT CURLEY LLC

By:

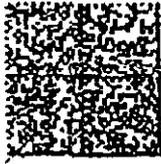


Charles V. Curley

Date: 10/11/11



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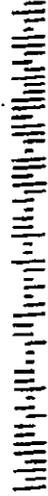


Mail

HAIBERSTADT CURLEY
ATTORNEYS AT LAW

SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET, SUITE 425
CONSHOHOCKEN PA 19428

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265



TISHEKIA WILLIAMS

NOV 28 2011

HALBERSTADT CURLEY
ATTORNEYS AT LAW

November 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**

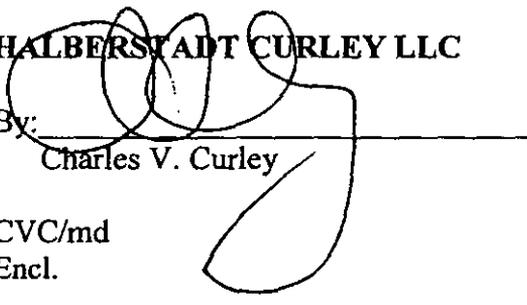
Dear Sir/Madam:

Enclosed please find an original and one copy of an Amended Complaint 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

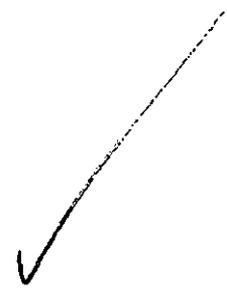
By: 
Charles V. Curley

CVC/md
Encl.

cc: Tishekia Williams, Esquire (w/ encl.)

3445561001

Amd - cmp



SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET
SUITE 425
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

AMENDED COMPLAINT

1. Complainant is The Victory Condominium Association ("Complainant"), a not-for-profit Association organized under the laws of the Commonwealth of Pennsylvania with a registered office at 1001-1013 Chestnut Street, Philadelphia, PA 19107.

2. The name and address of Complainant's attorney is:

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

3. Respondent is PECO Energy Company ("PECO"), a public utility authorized to do business in the Commonwealth of Pennsylvania with a principal place of business at 2301 Market Street, Philadelphia, Pennsylvania 19103.

4. At all times relevant hereto, Complainant was a commercial customer receiving electric service from PECO at its property at office at 1001-1013 Chestnut Street, Philadelphia, PA 19107.

5. Complainant's current PECO Account Number is 34455-61001.

6. Due to an error, PECO applied a contract minimum of 560 KW to each of Complainant's bills in all of the non-summer (October through May) months since June 2008.

7. Based on historical data available to PECO at the time the Contract Limits were chosen by PECO, PECO should have applied more reasonable Contract Limits of 200/500 KW with an Off-Peak maximum of 600 KW.

8. PECO's billing mistake resulted in substantial overcharges from June 2008 to January 2011 totaling \$145,683.55.

9. At the time that service was initiated no one from PECO explained the different options that were available to Complainant and PECO did not send a Contract for HT Service for review and signature as required by the PECO tariff. PECO also informed Complainant that their account belonged in the >100 and <500 Procurement Class while applying the Contract Minimum of 560kw.

10. Despite receiving a letter from Complainant dated Jan. 24, 2011 requesting an adjustment to this account, PECO failed to adjust this account to the lower Contract Minimum on the next PECO bill dated Feb. 10, 2011.

11. PECO has unjustly and unreasonably refused to credit or offer just remuneration to Complainant for the overcharges it paid for this oversight by PECO.

12. As a result of the foregoing, Complainant was unlawfully discriminated against by PECO.

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.

14. For the above reasons, Complainant requests that the Commission enter an Order directing PECO to refund and/or credit Complainant the difference between the charges which

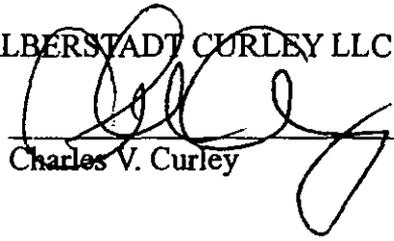
were imposed under the 560 KW Contract Minimum and the charges which should have been imposed under a 200 KW Contract Minimum from June 2008 to January 2011. Complainant also seeks pre-judgment interest, costs, and such other relief as the Commission deems appropriate.

WHEREFORE, Complainant requests that respondent PECO Energy Company be required to answer the above allegations and that, upon final hearing the Commission will make such Order as may be required.

Date: 11/21/2011

HALBERSTADT CURLEY LLC

By:


Charles V. Curley

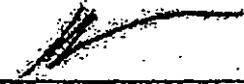
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

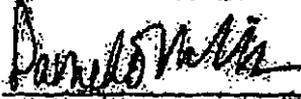
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I, Steven Sabbio, Board President of The Victory Condominium Association, as authorized agent for the Complainant, depose and say that he is authorized to and does make this affidavit for the Complainant, and that the facts set forth in the foregoing Complaint are true and correct to the best of his present knowledge, information and belief and that he expects the Complainant to be able to prove the same at any hearing hereof.



Steven Sabbio, President

Sworn to and subscribed
before me this 6th day of
October 2011.



Daniel S. Vella

COMMONWEALTH OF PENNSYLVANIA
Notary Public
Patricia A. McLaughlin, Notary Public
Notary Public - Chester County
Notary Public - Berks County
Notary Public - Lancaster County
Notary Public - Lehigh County
Notary Public - Luzerne County
Notary Public - Schuylkill County
Notary Public - York County
Notary Public - Adams County
Notary Public - Dauphin County
Notary Public - Franklin County
Notary Public - Hamilton County
Notary Public - Lebanon County
Notary Public - Lehigh County
Notary Public - Northampton County
Notary Public - Northumberland County
Notary Public - Perry County
Notary Public - Potter County
Notary Public - Schuylkill County
Notary Public - Snyder County
Notary Public - York County
Notary Public - Adams County
Notary Public - Berks County
Notary Public - Chester County
Notary Public - Lancaster County
Notary Public - Lehigh County
Notary Public - Luzerne County
Notary Public - Northampton County
Notary Public - Northumberland County
Notary Public - Perry County
Notary Public - Potter County
Notary Public - Schuylkill County
Notary Public - Snyder County
Notary Public - York County

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

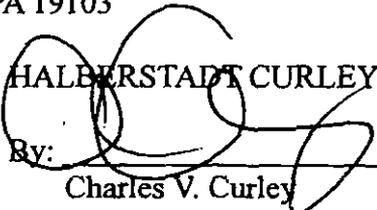
<p>THE VICTORY CONDOMINIUM ASSOCIATION, Complainant</p> <p style="text-align: center;">v.</p> <p>PECO ENERGY COMPANY Respondent.</p>	<p>Docket No. C-2011-2268126</p>
--	----------------------------------

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Complaint was sent via first class U.S. mail addressed as follows:

Tishekia Williams, Esquire
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

HALBERSTADT CURLEY LLC

By: 

Charles V. Curley
Attorneys for Complainant

Date: 11/21/11

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215.841.6863

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**

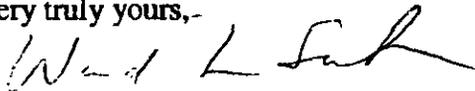
Dear Ms. Chiavetta:

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	:	
	:	
v.	:	DOCKET NO. C-2011-2268126
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed New Matter within 20 days from service of this notice, a ruling may be entered against you. Your response 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.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, December 14, 2011



Ward Smith
Counsel for PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6863
Ward.Smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER AND NEW MATTER OF RESPONDENT,
PECO ENERGY COMPANY
TO AMENDED COMPLAINT**

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.61, responds to the Amended Complaint¹ and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted in part, denied in part. Admitted that, for all non-summer bills starting

June 2008 and ending with an effective date of February 10, 2011, PECO applied a contract minimum of 560 kW to each of Complainant's monthly bills. Denied that this occurred in error. By way of further Answer, the 560 kW contract minimum was applied to this account at the written request of Complainant.

¹ The Commission served the original Complaint in this matter on PECO on October 20, 2011. The Commission then re-served the original Complaint on October 27, 2011. PECO filed an Answer, New Matter, and Preliminary Objection to the original Complaint on November 16, 2011. On November 21, 2011, Complainants filed an Amended Complaint with the Commission. PECO received first-class mail service of the Amended Complaint directly from Complainants on November 28, 2011. The Commission's website shows the Amended Complaint as having been received by the Commission on November 29, 2011. As of the filing of this Answer and New Matter the Commission has not served the Amended Complaint on PECO.

This account is for service to a residential condominium building. Prior to the current account being opened, the building in question was used as a residential condominium, under the name the "Victory Building," with the property being managed by Philadelphia Management., with account number 022-06-97-0810-10-01. Under that ownership, management, and account number, service was provided under Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. In 2008, service was also provided pursuant to PECO's Night Service Rider, and its Construction Rider.

In mid-2008, PECO received notice from Philadelphia Management that both the ownership and management of the building were changing. PECO began conversations with the old property manager regarding these changes, and was informed that a new condominium association had been formed, and that the account therefore needed to be transferred into the name of the new owner, "The Victory Condominium Association." PECO was also informed that a new property manager, Wentworth Property Management, would now manage the building. A new account number 34455-61001 was opened with an effective date of August 7, 2008.

In preparing for the transfer of service, PECO's Account Executive sent an email to Philadelphia Management Company on or about May 30, 2008 requesting new information regarding the new entities that had taken over ownership and management of the building. In that email, the PECO Account Executive specifically inquired as to the "Type of Service" requested, with the following notation thereafter: "If nothing is changing with the operation of the building, I assume the new owner will stay with the same contract limits but I need that

stated in a letter.” PECO’s Account Executive also indicated that this information would need to be provided on letterhead from the new entity.

On or about August 19, 2008, by email PECO received a letter with the letterhead “The Victory Condominium Association, c/o Wentworth Property Management,” setting forth the requested information. The letter restates PECO’s request of May 30, 2008, and then states in relevant part: “Type of Service: (If nothing is changing with the operation of the building, I assume the new owner will stay with the same contract limits but I need that stated in a letter.) *nothing is changing.*” (Italicized portion indicates text that was added by Wentworth Property Management, and which appeared in red in the original letter to PECO.) A copy of the August 19, 2008 letter is appended to this Answer as Exhibit A. Based on the above, PECO denies that retention of the contract limits of 560 kW/1400 kW were “in error.”

PECO thereafter instituted service for the Victory Condominium Association on Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. The account also was placed on the Night Service Rider. Because no construction activities were underway at the time, the new account was not eligible for PECO’s Construction Rider.

On or about January 24, 2011, PECO received a letter from The Victory Condominium Association requesting that the contract minimums for this account be reduced to 200 kW minimum, 500 kW maximum, with an off-peak maximum of 600 kW. The requested changes to the contract minimum and maximums were made effective February 9, 2011. The January 24, 2011 letter also requested that PECO provide a credit or refund of approximately \$137,000 for

the period from August 2008 through February 2011. The stated basis for this request was that the account had had incorrect contract minimums during that period. A copy of the January 24, 2011 letter from The Victory Condominium Association is attached as Exhibit B.

7. Denied. The allegation that PECO “should have applied more reasonable contract limits” is a legal conclusion to which no answer is required. Denied that PECO had historical data available to it that required it to apply contract limits other than those specified by Complainant in its email letter of August 19, 2008. To the extent that a further answer is required, PECO incorporates its answer to Paragraph 6.

8. Denied. The allegation that a “billing mistake” occurred is a legal conclusion to which no answer is required. To the extent that an answer is required, for the reasons set forth in its answer to Paragraph 6, PECO denies that a billing mistake occurred.

9. Admitted in part, denied in part. At the time service was initiated, PECO stated in writing that Complainant had the option of keeping the contract limits that had been in place with the prior customer, or changing to other contract limits. (*See Exhibit A.*) PECO therefore denies the allegation that: “At the time service was initiated no one from PECO explained the different options that were available to Complainant.”

It is denied that “PECO did not send a Contract for HT Service for review and signature as required by the PECO tariff.” PECO’s Tariff contains the following rules with respect to the provision of service contracts:

4.2 SERVICE CONTRACT. Every applicant for service may be required to sign a contract, agreement, or other form then in use by the Company, covering the special circumstances Company, covering the special circumstances of the use of service, and shall abide by these Rules and Regulations and the standard requirements of the Company.

4.3 CONTRACT DATA. The application shall contain a statement of the premises to be served, the rate under which service is desired, and such conditions or riders as are applicable to the special circumstances of the case.

4.5 ACCEPTANCE. Before the Company affirmatively accepts an application, the Company will consider the application to be "pending". *When an application is accepted, it constitutes the contract* between the customer and the Company, subject to the Rules and Regulations. *A customer or other recipient of service also becomes contractually obliged to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service.*

(A copy of the relevant pages of PECO's Tariff is attached as Exhibit C.) In this case, Complainant applied in writing for service with PECO via a series of emails, culminating in Complainants' email of August 19, 2008. (Previously attached as Exhibit A.) Pursuant to PECO's tariff, when PECO accepted that application, the application itself became the contract between the parties. To the extent that the application did not become the contract between the parties, under the terms of PECO's tariff Complainant nonetheless became contractually obligated to PECO when service was provided to Complainant.

Admitted that, on or about January 15, 2010, PECO informed Complainant that it would be placed in Procurement Class 3 (> 100 kW, < 500 kW). (A copy of PECO's January 15, 2010 letter is attached as Exhibit D.) By way of further answer, at about that same time PECO implemented its Default Service Provider program, in which it used a mass mailing to inform effectively all of its commercial customers of their options under its Default Service Program. Each customer was informed of which Procurement Class it had been assigned to, based upon

registered demand for the account. Denied that providing this information to the Complainant obliged PECO to change the contract limits that Complainant had previously requested in writing.

10. Admitted in part; denied in part. Admitted that PECO received a letter from Complainant dated January 24, 2011 (Exhibit B) requesting that the contract limits be changed to 500 kW maximum, 200 kW minimum, 600 kW off peak, and also requesting a credit adjustment to the account. Denied that "PECO failed to adjust this account to the lower contract minimum on the next PECO bill dated Feb. 10, 2011." By way of further answer, PECO adjusted the contract minimum on this account to the requested new levels of 500 kW maximum, 200 kW minimum, 600 kW off peak, with an effective date of February 9, 2011. Admitted that PECO has not made a retroactive adjustment to the account balances for service prior to that date. By way of further answer, for the reasons set forth above, no such retroactive adjustment is warranted.

11. This paragraph is a conclusion of law to which no response is required; to the extent that a response is required, any factual allegations contained in this paragraph are denied.

12. This paragraph is a conclusion of law to which no response is required; to the extent that a response is required, any factual allegations contained in this paragraph are denied.

13. This paragraph is a conclusion of law to which no response is required; to the extent that a response is required, any factual allegations contained in this paragraph are denied

14. This paragraph is a request for relief to which no response is required; to the extent that a response is required, any factual allegations contained in this paragraph are denied.

New Matter of PECO

1. This account is for service to a residential condominium building.

2. Prior to the current account being opened, the building in question was used as a residential condominium, under the name the "Victory Building," with the property being managed by Philadelphia Management., with account number 022-06-97-0810-10-01. Under that ownership, management, and account number, service was provided under Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. In 2008, service was also provided pursuant to PECO's Night Service Rider, and its Construction Rider.

3. In mid-2008, PECO received notice from Philadelphia Management that both the ownership and management of the building were changing.

4. A new account was opened for "The Victory Condominium Association," with account number 34455-61001, with an effective date of August 7, 2008.

5. On or about May 30, 2008, PECO sent an email to Philadelphia Management Company on or about May 30, 2008 requesting new information regarding the new entities that had taken over ownership and management of the building. In that email, the PECO Account

Executive specifically inquired as to the "Type of Service" requested, with the following notation thereafter: "If nothing is changing with the operation of the building, I assume the new owner will stay with the same contract limits but I need that stated in a letter." PECO's Account Executive also indicated that this information would need to be provided on letterhead from the new entity.

6. On or about August 19, 2008, by email PECO received a letter with the letterhead "The Victory Condominium Association, c/o Wentworth Property Management," setting forth the requested information. The letter restates PECO's request of May 30, 2008, and then states in relevant part: "Type of Service: (If nothing is changing with the operation of the building, I assume the new owner will stay with the same contract limits but I need that stated in a letter.) *nothing is changing.*"

7. The document attached to this Answer and New Matter as Exhibit A is a true and correct copy of the August 19, 2008 email from The Victory Condominium Association to PECO.

8. Effective August 7, 2008, PECO instituted service for the Victory Condominium Association on Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. The account also was placed on the Night Service Rider.

9. As of August 7, 2008, Complainant was not engaged in a construction or expansion project that, when complete, would require an upward modification of Complainant's contract limits.

10. On or about January 24, 2011, PECO received a letter from The Victory Condominium Association requesting that the contract minimums for this account be reduced to 200 kW minimum, 500 kW maximum, with an off-peak maximum of 600 kW. The requested changes to the contract minimum and maximums were made effective February 9, 2011. The January 24, 2011 letter also requested that PECO provide a credit or refund of approximately \$137,000 for the period from August 2008 through February 2011. The stated basis for this request was that the account had had incorrect contract minimums during that period.

11. The document attached to this Answer and New Matter as Exhibit B is a true and correct copy of the January 24, 2011 letter from The Victory Condominium Association to PECO.

12. PECO adjusted the contract minimum on this account to the requested new levels of 500 kW maximum, 200 kW minimum, 600 kW off peak, with an effective date of February 9, 2011.

13. PECO's Tariff contains the following rules with respect to the provision of service contracts:

4.2 SERVICE CONTRACT. Every applicant for service may be required to sign a contract, agreement, or other form then in use by the Company, covering the special

circumstances Company, covering the special circumstances of the use of service, and shall abide by these Rules and Regulations and the standard requirements of the Company.

4.3 CONTRACT DATA. The application shall contain a statement of the premises to be served, the rate under which service is desired, and such conditions or riders as are applicable to the special circumstances of the case.

4.5 ACCEPTANCE. Before the Company affirmatively accepts an application, the Company will consider the application to be "pending". *When an application is accepted, it constitutes the contract between the customer and the Company, subject to the Rules and Regulations. A customer or other recipient of service also becomes contractually obliged to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service.*

14. The document attached to this Answer and New Matter is a true and correct copy of Rule 4 of PECO's Electric Service Tariff for the relevant period of this Complaint.

15. On or about January 15, 2010, PECO informed Complainant that it would be placed in Procurement Class 3 (> 100 kW, < 500 kW).

16. The document attached to this Answer and New Matter as Exhibit D is a true and correct copy of the January 15, 2010 letter.

17. In early 2010, PECO implemented its Default Service Provider program, in which it used a mass mailing to inform effectively all of its commercial customers of their options under its Default Service Program. Each customer was informed of which Procurement Class it had been assigned to, based upon registered demand for the account.

Wherefore, PECO Energy Company respectfully requests that the Pennsylvania Public Utility Commission dismiss the instant Complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ward L Smith", is written over a horizontal line.

Ward Smith
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6863
ward.smith@exeloncorp.com
Tishekia Williams
215-841-6841
tishekia.williams@exeloncorp.com
Counsel for PECO Energy Company

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Exhibit A – August 19, 2008 Letter from The Victory Condominium
Association to PECO Energy**

THE VICTORY CONDOMINIUM ASSOCIATION
C/o Wentworth Property Management
1001-13 Chestnut Street
Philadelphia, PA 19107
(800) 870-0010 (ofc)
(215) 282-1841 (fax)

Owner's/Business Name: The Victory Condominiums c/o Wentworth Property Management
Date of transfer: 6/10/08
Account Number: 34455-01302 (current acct#) will change
Service Address: 1001 Chestnut St, Philadelphia PA 19106

Mailing Address: 766-768 South 9th Street Lower Level Philadelphia, PA 19147

Phone number: 1-800-870-0010
Fax number:

Credit Reference: If new applicant is a current customer of PECO Energy, please provide an account number we could reference. Please clarify

~~Type of Service: (If nothing is changing with the operation of the building, I assume the new owner will stay with the same contract limits but I need that stated in the letter.) nothing is changing~~

Primary Point of Contact (POC) name: Monique G. Lloyd

Primary POC phone number: 1-800-870-0010

Primary POC fax number: 1-215-282-1841

Tax-ID: 23-2975354
SIC Code:

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SECRETARY'S BUREAU

**Exhibit B – January 24, 2011 Letter from The Victory Condominium
Association to PECO Energy**

The Victory Condominium Association

1001-1013 Chestnut Street
Attn: Management Office
Philadelphia, PA 19107
(215) 925-6384 Office – (215) 925-6386 Fax
E-mail: cpac@robertwisemanagement.com

January 24, 2011

Michele Lebron, Account Representative
PECO Energy Company
Business Account Services
2301 Market Street, S10-1
Philadelphia, PA 19101

RE: The Victory Condo
PECO Account #34455-61001

Dear Michele:

I have been informed that our PECO account has a contract minimum of 560 KW. This demand has been applied to our bills in all of the non-summer months since the association took over this account in June 2008. Please adjust the contract limits on this account to 200/500KW with an Off-Peak max of 600 KW effective on our next billing.

This mistake has resulted in substantial overcharges and it is my understanding that a Contract for HT service was never sent for review and thus never signed. The highest registered demand for our building was 377kw during the January to February 2010 billing period. A review of the bills prior to June 2008 does not show any contract minimum affecting our account. Your letter received in January last year stated that our account was enrolled in the 100 to 500kw rate class while we were being billed 560kw.

The Board of Directors of the Victory Condominium is currently working with a consultant to quantify the overcharges from June 2008 through December 2010. Since there is no justification for such a high contract minimum on our account, we request that these overcharges be returned either in the form of a check or a credit to our account.

Thank you for your cooperation; should you have any questions or require additional information, please contact me at 215-876-5208 at your earliest convenience.

Sincerely,



Maureen Anoba
Board President
Victory Condominium Association

MA:cp

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SECRETARY'S BUREAU

Exhibit C – PECO Electric Service Tariff Rule 4

RULES AND REGULATIONS (continued)

(including attorney's fees), whether known or unknown, present or future, that arise from such conditions. This indemnification provision shall survive the termination or expiration of said agreement and the termination of the business relationship of the parties thereto.

3.4 SERVICE ENTRANCE EQUIPMENT. All equipment beyond the point of delivery, except the meter, shall be installed by the customer. Installation shall be in conformity with the National Electrical Code and the Company's published "Electric Service Requirements", and shall include, where necessary, an approved sealable device for mounting a meter. The meter will be supplied, owned and sealed by the Company or another AMSP.

3.5 SECONDARY SERVICE CONNECTION. (a) Wiring of any premises for connection to overhead lines must be brought outside of the building wall to a location designated or approved by the Company, at which point the house wiring must extend at least 3 feet for attachment to the Company's service-supply lines. (b) Service connections to the Company's underground facilities shall terminate on the customer's premises in an approved connection box from which customer's wiring shall extend to the other service entrance equipment.

3.6 UNDERGROUND SERVICE. Customers desiring an underground service from overhead wires must bear the excess cost incident thereto. Specifications and terms for such construction will be furnished by the Company on request.

3.7 NONSTANDARD SERVICE. The customer or applicant for service shall pay the cost of any special installation necessary to meet the unusual requirements of the customer or applicant for service, including but not limited to: (1) service at other than standard voltages, (2) service for loads that will be intermittent and which, in the Company's sole judgment, would not generate sufficient revenue to recover the installation costs of the required facilities, (3) service for loads that will be continuous but that will generate minimal usage, and which, in the Company's sole judgment, would not generate sufficient revenue to recover the installation costs of the required facilities, and (4) service for loads that will require provision of closer voltage regulation than required by standard service.

The customer or applicant shall pay all costs to the Company of performing environmental assessments, including, but not limited to, the cost of consultants utilized by the Company, the cost of removal and disposal of contamination, waste or hazardous materials or dealing with other adverse environmental conditions associated with either the initial installation, modification, repair, maintenance or removal of service facilities.

3.8 RELAY PROTECTION. The customer must install at the customer's own expense a reverse-phase relay of approved type on all alternating current motors for passenger and freight elevators, hoists, and cranes, and a reverse-power relay for parallel operation.

4. APPLICATION FOR SERVICE

4.1 PLACE OF APPLICATION. Customers may apply for service at the Company's Principle Office or, in some cases, over the telephone. (C)

4.2 SERVICE CONTRACT. Every applicant for service may be required to sign a contract, agreement, or other form then in use by the Company, covering the special circumstances of the use of service, and shall abide by these Rules and Regulations and the standard requirements of the Company.

4.3 CONTRACT DATA. The application shall contain a statement of the premises to be served, the rate under which service is desired, and such conditions or riders as are applicable to the special circumstances of the case.

4.4 RIGHT TO REJECT. The Company may place limitations on the amount and character of service it will supply or may reject applications for service: not available under a standard rate; which might affect service to other customers; which is to be delivered at a location or at a standard voltage that involves excessive cost; for bad credit; for the applicant's failure to provide identifying documentation; when an applicant's self-identification cannot be verified; or for other good and sufficient reasons. Customers cannot be denied Default PLR Service or new service for failure to pay an EGS's charges.

The Company has the right to restrict service to only those locations which will not expose the Company to liability for known or suspected contamination, waste or hazardous materials or other adverse environmental conditions.

4.5 ACCEPTANCE. Before the Company affirmatively accepts an application, the Company will consider the application to be "pending". When an application is accepted, it constitutes the contract between the customer and the Company, subject to the Rules and Regulations. A customer or other recipient of service also becomes contractually obliged to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service.

4.6 SPECIAL CONTRACTS. Standard contracts shall be for terms as specified in the statement of the rate, but where large or special investment is necessary for the supply of service, or where service is to be used for an emergency or temporary replacement of another method of operation, contracts of longer term than specified in the rate, or with special guarantees of revenue, or both, may be required.

In addition, the Company may enter into long term contracts for firm service to customers or potential customers who: a) demonstrate that they are considering competitive alternatives (including self generation) to PECO Energy service; and b) who require in excess of 40,000 kW of monthly capacity supplied by PECO Energy; or in circumstances where the customer contributes to the

(C) Indicates Change

RULES AND REGULATIONS (continued)

significant economic well-being of the region, as evidenced by an award from the Commonwealth of Pennsylvania of an Opportunity Grant in the amount of \$250,000 or greater. The terms and conditions of service and charges will be mutually agreed upon between the Company and the customer and will be reflected in a signed service agreement that will not become effective until approved by the Commission. Rates will be established on a case by case basis and will be sufficient to cover all appropriate incremental costs, including the costs of labor, materials, and overhead and a contribution to fixed costs.

For contracts that do not contain provisions governing the customer's rights upon the advent of Direct Access, the Company will unbundle the customer's contract effective as of January 1, 1999 in a manner that retains the customer's discount and that reflects the amount of Transition and Stranded Costs presumptively embedded in the customer's contract. The dollar value of the customer's discount will be reflected in the CTC component of the bill and if that reflection produces a CTC less than zero, the CTC will be set at zero and the remainder of the discount will be reflected in the customer's Energy and Capacity Charge. For contracts that do contain provisions governing the customer's rights upon the advent of Direct Access, the Company will unbundle the customer's contract in accordance with its terms and conditions.

Contract expiration shall not affect the applicability of any statutory rate cap or any rate cap contained in the Joint Petition for Full Settlement then in effect.

Unless the customer's contract contains provisions concerning the customer's rights upon the advent of Direct Access, the customer may obtain Competitive Energy Supply and continue to pay the unbundled Distribution Charges and Competitive Transition Charges designed in accordance with this Rule for the duration of the term of the contract. For contracts that contain provisions governing the customer's rights upon the advent of Direct Access, the customer will be entitled to obtain Competitive Energy Supply only in accordance with the terms and conditions of the customer's contract. The dollar value of the customer's discount will be reflected as set forth above with respect to contracts that do not contain provisions governing the customer's rights upon the advent of Direct Access.

4.7 UNAUTHORIZED USE. Unauthorized connection to the Company's facilities, and/or the use of service obtained from the Company without authority, or by any false pretense, may be terminated by the Company. The use of service without notifying the Company or the AMSP and enabling them to read its meter will render the user liable for any amount due for service provided to the premises from the time of the last reading of the meter, immediately preceding the customer's occupancy, as shown by the Company's books.

4.8 WITHDRAWAL OF APPLICATION. In the event the customer (or potential customer) withdraws an application for either new or modified service, the customer will reimburse the Company for all reasonable costs incurred by the Company in anticipation of providing the new or modified service.

5. CREDIT

5.1. PAYMENT OBLIGATION. For customers for whom the Company provides Consolidated EDC Billing or Separate EDC Billing, the provision of service for any purpose, at any location, is contingent upon payment of all charges provided for in this Tariff (and, for the same class of service (residential or non-residential) under the Company's Gas Service Tariff, if the customer also receives gas service at the same premises) as applicable to the location and the character of service.

5.2 PRIOR DEBTS. Service will not be furnished to former customers until any indebtedness to the Company for previous service of the same classification has been satisfied or a payment arrangement has been made on the debt. This rule does not apply to the disputed portion of disputed bills under investigation. The Company will apply this rule to the disputed portion of disputed bills, if, and only if: (1) the Company has made diligent and reasonable efforts to investigate and resolve the dispute; (2) the result of the investigation is that the Company determines that the customer's claims are unwarranted or invalid; (3) the Commission and/or the Bureau of Consumer Services has decided a formal or informal complaint in the Company's favor and no timely appeal is filed; and (4) the customer nevertheless continues to dispute the same matter in bad faith.

5.3 GUARANTEE OF PAYMENTS. For customers for whom the Company provides Consolidated EDC Billing or Separate EDC Billing, before the Company will render service or continue to render service, the Company may require an applicant for service or a current customer that has bad credit or an applicant for service whose credit is not established, to provide a cash deposit, letter of credit, surety bond, or other guarantee, satisfactory to the Company. The Company will hold the deposit as security for the payment of final bills and compliance with the Company's Rules and Regulations. Any residential customer, having secured the return of a deposit, shall not be required to make a new deposit unless the service has been discontinued or terminated, or unless the customer has bad credit. In addition, the Company may require industrial and commercial customers for which it provides Consolidated EDC Billing or Separate EDC Billing to post a deposit at any time if the Company determines that the customer is no longer creditworthy or has bad credit.

5.4 AMOUNT OF DEPOSIT. For residential customers the deposit will be equal to one-sixth of the applicant's or customers estimated annual bill for Company charges, based on applicable rates. A deposit from a residential customer shall conform to the requirements of 66 Pa. C.S. 1404(c) and applicable Pennsylvania Public Utility Commission regulations. For industrial and commercial accounts, the amount of the deposit shall be the Company's projection of the sum of (C) Company charges in the customer's two highest monthly bills in the 12 months following the deposit. The provisions of 11 U.S.C. §366(b) of the Federal Bankruptcy Code, or any successor statute or provision, shall, if inconsistent, supersede the provisions of this rule.

(C) Indicates Change

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SECRETARY'S BUREAU

**Exhibit D – January 15, 2010 letter from PECO Energy to The Victory
Condominium Association**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIFICATION

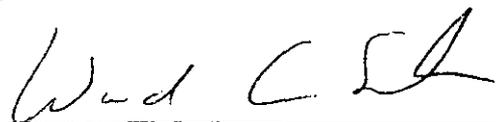
I, Ward Smith, hereby declare that I am an attorney representing PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification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

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JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Date: December 14, 2011



Ward Smith

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated at Philadelphia, Pennsylvania, December 14, 2011.



Ward-Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215-841-6863
ward.smith@exeloncorp.com

**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
2301 Market Street S23-1
Philadelphia, PA 19101-8699
215-841-6863
ward.smith@exeloncorp.com

**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.

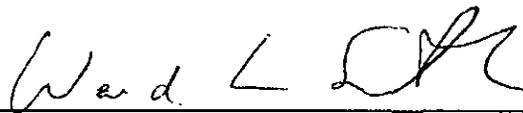
3. The Commission does not have jurisdiction to adjudicate unjust enrichment claims. *See, County of Erie v. Verizon North, Inc.* 2005 WL 6502718 (Pa.P.U.C 2005). As the Commission stated in *County of Erie*:

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,



Ward Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-6863
ward.smith@exeloncorp.com
Tishekia Williams
215-841-6841
tishekia.williams@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM ASSOCIATION	:	
Complainant	:	DOCKET NO. C-2011-2268126
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
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
215-841-6863
ward.smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT**

RECEIVED

JAN 30 2012

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

Exhibit D

PECO Discovery to Victory, Set I (December 15, 2011)

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215 841 6863

December 15, 2011

VIA E-MAIL and First Class Mail

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

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

Dear Chuck:

PECO Energy Company's Written Interrogatories and Requests for Production of Documents, Set I, are attached.

Pursuant to 52 Pa. Code §5.342(d) and §5.349(d), objections to this discovery would normally be due in 10 days time – that is, on December 25, 2011 – and answers would be due in 20 days time – that is, on January 4, 2012. Feel free to follow that time frame, but from my perspective there is no need to work on these over the holidays. If you state your objections, if any, by January 10, 2012 and provide answers by January 20, 2012, I will raise no timeliness issues.

Please let me know if you have any questions.

Sincerely,



Ward L. Smith
Assistant General Counsel

WLS/zr

Attachments

cc: Rosemary Chiavetta, Office of Secretary, PaPUC (Cover Letter Only, by U.S. Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO Energy Company's
Written Interrogatories and Requests for Production of Documents
To The Victory Condominium Association
Set I**

Pursuant to 52 Pa. Code §§ 5.321, 5.341, and 5.349, PECO Energy Company ("PECO") propounds the following written interrogatories and requests for production of documents on The Victory Condominium Association, to be answered by those officers, employees, or agents who may be cognizant of the requested facts and who are authorized to answer on behalf of The Victory Condominium Association. Telephone or other contact concerning the availability and timing of formal responses is encouraged to the extent that it supplements, amplifies and/or explains the formal written responses.

**PECO Energy Company's
Written Interrogatories and Requests for Production of Documents
To The Victory Condominium Association
Set I, p. 1**

1. How many properties are managed by Wentworth Property Management Corporation?
2. Please describe the services provided by Wentworth Property Management Corporation to The Victory Condominium Association.
3. Please provide copies of all contracts between Wentworth Property Management Corporation and The Victory Condominium Association for any of the period January 1, 2008 through the present.
4. Please provide copies of any written procedure, policy, or practice of Wentworth Property Management Corporation that relates to review of utility contracts received by or to be entered into by a Wentworth Property Management Corporation client.
5. Please describe the process normally used by Wentworth Property Management Corporation to review utility contracts prior to the initiation of utility service at one its clients' properties.
6. Was the process described in response to question #5 followed in the case of The Victory Condominium Association and PECO Energy? If not, why was the normal process not followed? If not, what steps did Wentworth Property Management Corporation take to cause its review to conform to the process described in response to question #5.
7. Please provide copies of all written contracts entered into by The Victory Condominium Association with any and all natural gas service providers, water utility service providers, sewage utility service providers, telephone service providers, and cable service providers for the period January 1, 2008 to present.
8. Please provide copies of any written procedure, policy, or practice of Wentworth Property Management Corporation that relates to review of utility bills received by a Wentworth Property Management Corporation client.
9. Please describe the process used by Wentworth Property Management Corporation to review utility bills received by its customer base in general. In particular, does Wentworth review or evaluate factors such as demand, usage, contract minimums, rates and riders pursuant to which service is being provided, or any other factors?

**PECO Energy Company's
Written Interrogatories and Requests for Production of Documents
To The Victory Condominium Association
Set I, p. 2**

10. Please describe the process used by Wentworth Property Management Corporation to review utility bills received by The Victory Condominium Association. In particular, does Wentworth Property Management Corporation review or evaluate factors such as demand, usage, contract minimums, rates and riders pursuant to which service is being provided, or any other factors?
11. If the answer to #10 is in the affirmative, please provide copies of the results of all such evaluations undertaken since January 1, 2008.
12. Does Wentworth Property Management Corporation attempt to identify areas where Wentworth Property Management Corporation clients, in general, can operate their properties in a more sustainable, energy efficient manner?
13. Has Wentworth Property Management Corporation ever attempted to identify areas where The Victory Condominium Association can operate its property in a more sustainable, energy efficient manner?
14. If the answer to #13 is in the affirmative, please provide copies of the results of all such evaluations undertaken since January 1, 2008.
15. Please provide copies of all contracts between Commercial Utility Consultants and either Wentworth Property Management Company or The Victory Condominium Association, or both, for any of the period January 1, 2008 through the present.
16. Please provide copies of all studies, reports, or recommendations prepared by Commercial Utility Consultants with respect to PECO service to The Victory Condominium Association.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THE VICTORY CONDOMINIUM :
ASSOCIATION :
 v. :
 :
PECO ENERGY COMPANY :
 :
 :

DOCKET NO. C-2011-2268126

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Written Interrogatories and Requests for Production of Documents, Set I, in the above matter upon all interested parties by email and by mailing a copy 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 15, 2011.



Ward Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215-841-6863
ward.smith@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT

Exhibit E

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JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Victory's Reply to New Matter (January 3, 2012)

HALBERSTADT CURLEY
ATTORNEYS AT LAW

Via regular mail and email

January 3, 2012

Honorable Christopher P. Pell, Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

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

Dear Judge Pell:

Enclosed please find a courtesy copy of Complainant's Reply to New Matter in the above-referenced matter. Please be advised this was electronically filed today. Thank you for Your Honor's attention to this matter.

Respectfully yours,

HALBERSTADT CURLEY LLC

By: Melissa A. Simola
Melissa A. Simola

MAS/md

Encl.

cc: Ward Smith, Esquire (w/ encl.)

SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET
SUITE 425
CONSHOHOCKEN PA 19428
TEL: 610.834.8819
FAX: 610.834.8813
www.halcur.com

9. Denied. After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation. Accordingly, same is denied and strict proof is demanded at trial.

10. Denied. The allegations of the corresponding paragraph attempt to characterize a written document. Accordingly, same are denied and strict proof is demanded at trial.

11. Admitted.

12. Admitted.

13. Denied. The allegations of the corresponding paragraph attempt to characterize a part of a Tariff that, in its entirety, speaks for itself.

14. Admitted.

15. Denied. The allegations of the corresponding paragraph attempt to characterize a written document. Accordingly, same are denied and strict proof is demanded at trial.

16. Admitted.

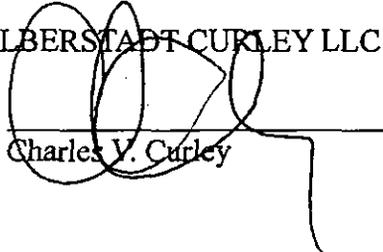
17. Denied. After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation. Accordingly, same is denied and strict proof is demanded at trial.

WHEREFORE, Complainant requests that respondent PECO Energy Company be required to answer the above allegations and that, upon final hearing the Commission will make such Order as may be required.

Date: 1/3/2012

HALBERSTADT CURLEY LLC

By:


Charles V. Curley

VERIFICATION

I, Steven Subbio, Board President of The Victory Condominium Association owner and operator and authorized agent for the Complainant, deposes and says that he is authorized to make this Verification and that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of his present knowledge, information and belief and that I makes this Verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: 12/28/14



Steven Subbio, President

**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 hereby certify that a true and correct copy of the foregoing Reply to New Matter was sent via first class U.S. mail and email addressed as follows:

Ward Smith, Esquire
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Honorable Christopher P. Peil, Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

HALBERSTADT CURLEY LLC

By: _____

Charles V. Curley

Attorneys for Complainant

Date: 1/3/2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT**

Exhibit F

RECEIVED

JAN 30 2012

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

PECO Discovery to Victory, Set II (January 4, 2012)

Legal Department

2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215 841 6863

January 4, 2012

VIA E-MAIL and First Class Mail

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

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

Dear Chuck:

PECO Energy Company's Written Interrogatories and Requests for Production of Documents, Set II, Qs. 1-4, are attached.

Pursuant to 52 Pa. Code §5.342(d) and §5.349(d), objections to this discovery are due in ten days time – that is, accounting for the weekend, on January 16, 2012 – and answers are due in 20 days time – that is, on January 24, 2012. Of course, please feel free to answer these few questions prior to that time.

Please let me know if you have any questions.

Sincerely,



Ward L. Smith
Assistant General Counsel

WLS/zr

Attachments

cc: Rosemary Chiavetta, Office of Secretary, PaPUC (Cover Letter Only, by U.S. Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO Energy Company's
Written Interrogatories and Requests for Production of Documents
To The Victory Condominium Association
Set II**

Pursuant to 52 Pa. Code §§ 5.321, 5.341, and 5.349, PECO Energy Company ("PECO") propounds the following written interrogatories and requests for production of documents on The Victory Condominium Association, to be answered by those officers, employees, or agents who may be cognizant of the requested facts and who are authorized to answer on behalf of The Victory Condominium Association. Telephone or other contact concerning the availability and timing of formal responses is encouraged to the extent that it supplements, amplifies and/or explains the formal written responses.

**PECO Energy Company's
Written Interrogatories and Requests for Production of Documents
To The Victory Condominium Association
Set II**

1. In Complainant's Reply to New Matter, ¶ 2, Complainant denied PECO's allegation that, under prior management, electric utility service to 1001-13 Chestnut Street: "was provided under Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. In 2008, service was also provided pursuant to PECO's Night Service Rider, and its Construction Rider." Complainant's stated reason for the denial is: "After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation." Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss the terms and conditions of electric utility service provided by PECO to the predecessor owner/management of 1001-13 Chestnut Street.

2. In Complainant's Reply to New Matter, ¶ 8, Complainant denied PECO's allegation that: "Effective August 7, 2008, PECO instituted service for the Victory Condominium Association on Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. The account also was placed on the Night Service Rider." Complainant's stated reason for the denial is: "Denied as stated. To the extent that Defendant is attempting to assert that it instituted service at the request of Complainant, same is denied."

a. Did Complainant request that electric utility service be provided to it at 1001-13 Chestnut Street effective on or about August 7, 2008?

b. If Complainant did request that electric utility service be provided to it at 1001-13 Chestnut Street effective on or about August 7, 2008, please state the terms and conditions for such service that were requested by Complainant.

c. Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss the terms and conditions of electric utility service requested by Complainant at 1001-13 Chestnut Street on or about August 7, 2008.

3. In Complainant's Reply to New Matter, ¶ 9, Complainant denied PECO's allegation that: "As of August 7, 2008, Complainant was not engaged in a construction or expansion project that, when complete, would require an upward modification of Complainant's contract limits." Complainant's stated reason for the denial is: "After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation."

a. At any time between August 7, 2008 and the present date, was Complainant engaged in a construction or expansion project at 1001-13 Chestnut? For each such construction or expansion project, please provide the inclusive dates that such project occurred, as well as a brief narrative description of the project.

b. For each construction or expansion project identified in the answer to subpart (a), please state whether the construction or expansion project was of sufficient magnitude that, upon completion of the project, Complainant required an upward modification of its contract limits for electric utility service from PECO.

4. In ¶ 9 of the Amended Complaint, Complainant stated that: “PECO also informed Complainant that their account belonged in the >100 and < 500 Procurement Class . . . “ In PECO’s New Matter, ¶ 17, PECO asserted that: “In early 2010, PECO implemented its Default Service Provider program, in which it used a mass mailing to inform effectively all of its commercial customers of their options under its Default Service Program. Each customer was informed of which Procurement Class it had been assigned to, based upon registered demand for the account.” In Complainant’s Reply to New Matter, ¶ 17, Complainant denied this allegation, stating that: “After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation.”

a. Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss or relate to the statement, in ¶ 9 of the Amended Complaint, that: ““PECO also informed Complainant that their account belonged in the >100 and < 500 Procurement Class . . .”

b. Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss or relate to PECO’s early 2010 mass mailing to inform effectively all of its commercial customers of their options under its Default Service Program, in which each customer was informed of which Procurement Class it had been assigned to, based upon registered demand for the account.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Written Interrogatories and Requests for Production of Documents, Set II, in the above matter upon all interested parties by email and by mailing a copy 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, January 4, 2012



Ward Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215-841-6863
ward.smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT**

Exhibit G

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Victory's Answers to PECO's Discovery, Set I (January 13, 2012)

HALBERSTADT CURLEY
ATTORNEYS AT LAW

Via email and electronic mail

January 13, 2012

Ward Smith, Esquire
PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

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

Dear Mr. Ward:

Enclosed please find The Victory Condominium Association's Objections to PECO Energy Company's Written Interrogatories and Requests for Production of Documents Set I in the above-referenced matter. Thank you for your attention to this matter.

Very truly yours,

HALBERSTADT CURLEY LLC

By: Melissa A. Simola
Melissa A. Simola

MAS/md
Encl.

cc: Secretary, Pennsylvania Public Utility Commission (w/o Encl.)

SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET
SUITE 425
CONSHOHOCKEN PA 19428
TEL 610.834.8819
FAX 610.834.8813
www.halcur.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**The Victory Condominium Association's Objections to
PECO Energy Company's Written Interrogatories and
Requests for Production of Documents To The Victory Condominium Association
Set I**

Victory Condominium Association, by and through its undersigned counsel,
hereby responds to the following written interrogatories and requests for production:

1. How many properties are managed by Wentworth Property Management Corporation?

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

2. Please describe the services provided by Wentworth Property Management Corporation to The Victory Condominium Association.

RESPONSE: Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing, Complainant lacks sufficient information to respond to same.

3. Please provide copies of all contracts between Wentworth Property Management Corporation and The Victory Condominium Association for any of the period January 1, 2008 through the present.

RESPONSE: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing, Complainant has no responsive documents.

4. Please provide copies of any written procedure, policy, or practice of Wentworth Property Management Corporation that relates to review of utility contracts received by or to be entered into by a Wentworth Property Management Corporation client.

RESPONSE: Objection. This request is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this request.

5. Please describe the process normally used by Wentworth Property Management Corporation to review utility contracts prior to the initiation of utility service at one its clients' properties.

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

6. Was the process described in response to question #5 followed in the case of The Victory Condominium Association and PECO Energy? If not, why was the normal process not followed? If not, what steps did Wentworth Property Management Corporation take to cause its review to conform to the process described in response to question #5.

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

7. Please provide copies of all written contracts entered into by The Victory Condominium Association with any and all natural gas service providers, water utility service providers, sewage utility service providers, telephone service providers, and cable service providers for the period January 1, 2008 to present.

RESPONSE: Objection. This request is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

8. Please provide copies of any written procedure, policy, or practice of Wentworth Property Management Corporation that relates to review of utility bills received by a Wentworth Property Management Corporation client.

RESPONSE: Objection. This request is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this request and has no responsive documents in its possession.

9. Please describe the process used by Wentworth Property Management Corporation to review utility bills received by its customer base in general. In particular, does Wentworth review or evaluate factors such as demand, usage, contract minimums, rates and riders pursuant to which service is being provided, or any other factors?

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

10. Please describe the process used by Wentworth Property Management Corporation to review utility bills received by The Victory Condominium Association. In particular, does Wentworth Property Management Corporation review or evaluate factors such as demand, usage, contract minimums, rates and riders pursuant to which service is being provided, or any other factors?

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

11. If the answer to #10 is in the affirmative, please provide copies of the results of all such evaluations undertaken since January 1, 2008.

RESPONSE: Objection. This request is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this request and has on responsive documents.

12. Does Wentworth Property Management Corporation attempt to identify areas where Wentworth Property Management Corporation clients, in general, can operate their properties in a more sustainable, energy efficient manner?

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

13. Has Wentworth Property Management Corporation ever attempted to identify areas where The Victory Condominium Association can operate its property in a more sustainable, energy efficient manner?

RESPONSE: Objection. This interrogatory is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this interrogatory.

14. If the answer to #13 is in the affirmative, please provide copies of the results of all such evaluations undertaken since January 1, 2008.

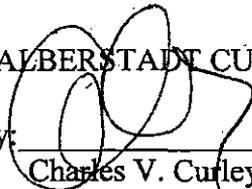
RESPONSE: Objection. This request is not directed to Complainant. Without waiver of the foregoing, Complainant is without information to respond to this request and has no responsive documents in its possession.

15. Please provide copies of all contracts between Commercial Utility Consultants and either Wentworth Property Management Company or The Victory Condominium Association, or both, for any of the period January 1, 2008 through the present.

RESPONSE: Objection. Complainant, on behalf of Commercial Utility Consultants, objects to the disclosure of its confidential and proprietary information.

16. Please provide copies of all studies, reports, or recommendations prepared by Commercial Utility Consultants with respect to PECO service to The Victory Condominium Association.

RESPONSE: Objection. Complainant, on behalf of Commercial Utility Consultants, objects to the disclosure of its confidential and proprietary information.

HALBERSTADT CURLEY, LLC
By: 
Charles V. Curley
Attorney for Complainant

Date: 1/13/2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

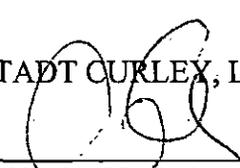
THE VICTORY CONDOMINIUM ASSOCIATION	:	
v.	:	DOCKET NO. C-2011-2268126
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objections to request Nos. 1-16 of PECO Energy Company's Written Interrogatories and Requests for Production of Documents To The Victory Condominium Association (Set I) were served via first class U.S. mail and email as follows:

Ward Smith, Esquire
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

HALBERSTADT CURLEY, LLC

By: 

Charles V. Curley
Attorney for Complainant

Date: 1/13/2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT**

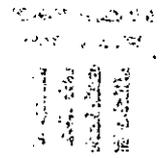
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JAN 30 2012

Exhibit H

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

Victory's Answers to PECO's Discovery, Set II (January 23, 2012)



HALBERSTADT CURLEY
ATTORNEYS AT LAW

Via email and electronic mail

January 23, 2012

Ward Smith, Esquire
PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

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

Dear Mr. Smith:

Enclosed please find The Victory Condominium Association's Answers to PECO Energy Company's Written Interrogatories and Requests for Production of Documents Set II in the above-referenced matter. Thank you for your attention to this matter.

Very truly yours,

HALBERSTADT CURLEY LLC

By: Melissa A. Simola
Melissa A. Simola

MAS/md
Encl.

cc: Secretary, Pennsylvania Public Utility Commission (via regular mail w/o encl.)

SPRING MILL CORPORATE CENTER
1100 E. HECTOR STREET
SUITE 425
CONSHOHOCKEN PA 19428
TEL 610.834.8819
FAX 610.834.8813
www.halber.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**The Victory Condominium Association's Answers to
PECO Energy Company's Written Interrogatories and
Requests for Production of Documents To The Victory Condominium Association
Set II**

Victory Condominium Association, by and through its undersigned counsel, hereby responds to the following written interrogatories and requests for production:

1. In Complainant's Reply to New Matter, ¶ 2, Complainant denied PECO's allegation that, under prior management, electric utility service to 1001-13 Chestnut Street: "was provided under Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. In 2008, service was also provided pursuant to PECO's Night Service Rider, and its Construction Rider." Complainant's stated reason for the denial is: "After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation." Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss the terms and conditions of electric utility service provided by PECO to the predecessor owner/management of 1001-13 Chestnut Street.

RESPONSE: Complainant has no responsive documents in its possession, custody or control.

2. In Complainant's Reply to New Matter, ¶ 8, Complainant denied PECO's allegation that: "Effective August 7, 2008, PECO instituted service for the Victory Condominium Association on Rate HT with a contract minimum of 560 kW and a contract maximum of 1400 kW. The account also was placed on the Night Service Rider." Complainant's stated reason for the denial is: "Denied as stated. To the extent that Defendant is attempting to assert that it instituted service at the request of Complainant, same is denied."

a. Did Complainant request that electric utility service be provided to it at 1001-13 Chestnut Street effective on or about August 7, 2008?

RESPONSE: Complainant requested only a name change on the account.

b. If Complainant did request that electric utility service be provided to it at 1001-13 Chestnut Street effective on or about August 7, 2008, please state the terms and conditions for such service that were requested by Complainant.

RESPONSE: Complainant requested only a name change on the account. By way of further answer, Complainant never received any information from PECO as to contractual rates and obligations..

c. Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss the terms and conditions of electric utility service requested by Complainant at 1001-13 Chestnut Street on or about August 7, 2008.

RESPONSE: Complainant never received any contract from PECO and accordingly has no responsive documents in its possession, custody or control.

3. In Complainant's Reply to New Matter, ¶ 9, Complainant denied PECO's allegation that: "As of August 7, 2008, Complainant was not engaged in a construction or expansion project that, when complete, would require an upward modification of Complainant's contract limits." Complainant's stated reason for the denial is: "After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation."

a. At any time between August 7, 2008 and the present date, was Complainant engaged in a construction or expansion project at 1001-13 Chestnut? For each such construction or expansion project, please provide the inclusive dates that such project occurred, as well as a brief narrative description of the project.

RESPONSE: Complainant has no information with regard to this interrogatory.

b. For each construction or expansion project identified in the answer to subpart (a), please state whether the construction or expansion project was of sufficient magnitude that, upon completion of the project, Complainant required an upward modification of its contract limits for electric utility service from PECO.

RESPONSE: Complainant has no information with regard to this interrogatory.

4. In ¶ 9 of the Amended Complaint, Complainant stated that: "PECO also informed Complainant that their account belonged in the >100 and < 500 Procurement Class . . . " In PECO's New Matter, ¶ 17, PECO asserted that: "In early 2010, PECO implemented its Default Service Provider program, in which it used a mass mailing to inform effectively all of its commercial customers of their options under its Default Service Program. Each customer was informed of which Procurement Class it had been assigned to, based upon registered demand for the account." In Complainant's Reply to New Matter, ¶ 17, Complainant denied this allegation, stating that: "After reasonable investigation Plaintiff is unable to admit or deny the corresponding allegation."

a. Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss or relate to the statement, in ¶ 9 of the Amended Complaint, that: ""PECO also informed Complainant that their account belonged in the >100 and < 500 Procurement Class . . ."

RESPONSE: See document attached.

b. Please provide copies of all documents in the possession of Complainant, Wentworth Property Management, or Commercial Utility Consultants that discuss or relate to PECO's early 2010 mass mailing to inform effectively all of its commercial customers of their options under its Default Service Program, in which each customer was informed of which Procurement Class it had been assigned to, based upon registered demand for the account.

RESPONSE: See document attached.

HALBERSTADT CURLEY, LLC

By: Charles V. Curley //mas
Charles V. Curley
Attorney for Complainant

Date: 1/23/12



0166

PECO
PO BOX 13778
Philadelphia, PA 19101

Account Number: 3445561001
January 15, 2010

785 1 AT 0.357 0785000785000785 003 01 GXPYBT 01152010
THE VICTORY CONDO
ATTN: WENTWORTH MGMT
1011 CHESTNUT ST
PHILADELPHIA PA 19107-1421
101152010

For Service to:
1001 CHESTNUT ST
PHILADELPHIA, PA 19106

As we approach the transition to market-based rates on Jan. 1, 2011, when electricity will likely cost PECO and our customers more to purchase, we want to provide you information about the choices you have for how you will receive your electricity in the future.

Through a program approved by the Pennsylvania Public Utility Commission (PUC), PECO is purchasing power for its customers in groups, or procurement classes. The procurement class for your business has been determined by your highest measured kilowatt (kW) demand during the 12-month period from June 2008 - May 2009. The procurement class for your account is: **100 to 500 kW.**

Based on your electric demand, you have choices for how you will receive your electricity in the future.

- Remain with PECO for your electric generation needs.
- Choose a competitive retail energy supplier.

PECO is purchasing electricity several different times throughout 2009 and 2010 to provide the lowest average price to customers and reduce the impact of market volatility for customers who do not choose to purchase electricity from a competitive retail supplier. We will provide the results of these purchases later this year so that you can make the best choice for your business.

We encourage you to start reviewing your options now and become educated about your choices as a PECO customer. We also encourage you to evaluate the offers of competitive retail electric suppliers, which may provide you the pricing and terms best suited for your business. Regardless of the option you choose, PECO will continue to provide your business with safe and reliable electric delivery and quality customer service.

More information about shopping for competitive retail electric suppliers, along with information on PECO's programs to help you manage your energy costs, like energy saving tips and discounts on energy saving products, can be found at www.peco.com.

Our customer service team remains committed to serving as your trusted partner for energy information. As always, please feel free to contact the number on your bill if you have any questions.



VERIFICATION

I, Stephen Subbio, Board President of Complainant, the Victory Condominium Association, hereby verify that the statements contained in the foregoing Answers to PECCO Energy Company's Written Interrogatories and Requests for Production of Documents To The Victory Condominium Association (Set II) are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 P.A.C.S. § 4904, relating to unsworn falsification to authorities.

Date:

1/16/12



Stephen Subbio

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answers to PECO Energy Company's Written Interrogatories and Requests for Production of Documents To The Victory Condominium Association (Set II) were served via first class U.S. mail and email as follows:

Ward Smith, Esquire
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

HALBERSTADT CURLEY, LLC

By Charles V. Curley //mas
Charles V. Curley
Attorney for Complainant

Date: 1/23/12

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT

Exhibit I

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Victory's Supplemental Answers to PECO's Discovery, Set I (January 27, 2012)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**The Victory Condominium Association's Supplemental Answers to
PECO Energy Company's Written Interrogatories and
Requests for Production of Documents To The Victory Condominium Association
Set I**

Victory Condominium Association, by and through its undersigned counsel,
hereby responds to the following written interrogatories and requests for production:

1. How many properties are managed by Wentworth Property Management Corporation?

RESPONSE: This interrogatory is more properly directed to Wentworth. Complainant severed its relationship with Wentworth in July 2009.

2. Please describe the services provided by Wentworth Property Management Corporation to The Victory Condominium Association.

RESPONSE: Wentworth took over as the property manager in 2008. Wentworth was only engaged in providing accounting and financial services for Victory. Wentworth did not advise Victory on any energy related issues.

3. Please provide copies of all contracts between Wentworth Property Management Corporation and The Victory Condominium Association for any of the period January 1, 2008 through the present.

RESPONSE: Victory attaches an unsigned copy of the Wentworth contract. Victory has no other responsive documents in its possession.

4. Please provide copies of any written procedure, policy, or practice of Wentworth Property Management Corporation that relates to review of utility contracts received by or to be entered into by a Wentworth Property Management Corporation client.

RESPONSE: Victory has no knowledge of Wentworth's polices, practices or procedures. Wentworth did not review any of Victory's utility contracts.

5. Please describe the process normally used by Wentworth Property Management Corporation to review utility contracts prior to the initiation of utility service at one its clients' properties.

RESPONSE: Victory has no knowledge of Wentworth's normal process for reviewing utility contracts. Wentworth did not review any of Victory's utility contracts.

6. Was the process described in response to question #5 followed in the case of The Victory Condominium Association and PECO Energy? If not, why was the normal process not followed? If not, what steps did Wentworth Property Management Corporation take to cause its review to conform to the process described in response to question #5.

RESPONSE: Victory has no knowledge of Wentworth's normal process for reviewing utility contracts. Wentworth did not review any of Victory's utility contracts.

7. Please provide copies of all written contracts entered into by The Victory Condominium Association with any and all natural gas service providers, water utility service providers, sewage utility service providers, telephone service providers, and cable service providers for the period January 1, 2008 to present.

RESPONSE: See attached UGI contract. Victory has no other documents in its possession, custody or control.

8. Please provide copies of any written procedure, policy, or practice of Wentworth Property Management Corporation that relates to review of utility bills received by a Wentworth Property Management Corporation client.

RESPONSE: Wentworth has no responsive documents.

9. Please describe the process used by Wentworth Property Management Corporation to review utility bills received by its customer base in general. In particular, does Wentworth review or evaluate factors such as demand, usage, contract minimums, rates and riders pursuant to which service is being provided, or any other factors?

RESPONSE: Victory has no knowledge of Wentworth's normal process for reviewing utility contracts. Wentworth did not review any of Victory's utility contracts.

10. Please describe the process used by Wentworth Property Management Corporation to review utility bills received by The Victory Condominium Association. In particular, does Wentworth Property Management Corporation review or evaluate

factors such as demand, usage, contract minimums, rates and riders pursuant to which service is being provided, or any other factors?

RESPONSE: Victory has no knowledge of Wentworth's process for reviewing utility contracts. Wentworth did not review any of Victory's utility contracts.

11. If the answer to #10 is in the affirmative, please provide copies of the results of all such evaluations undertaken since January 1, 2008.

RESPONSE: There are no responsive documents.

12. Does Wentworth Property Management Corporation attempt to identify areas where Wentworth Property Management Corporation clients, in general, can operate their properties in a more sustainable, energy efficient manner?

RESPONSE: Victory has no knowledge of Wentworth's process for reviewing sustainable, energy efficient alternatives for clients. Wentworth did not review provide Victory with any advice with regard to sustainable, energy efficient alternatives.

13. Has Wentworth Property Management Corporation ever attempted to identify areas where The Victory Condominium Association can operate its property in a more sustainable, energy efficient manner?

RESPONSE: No.

14. If the answer to #13 is in the affirmative, please provide copies of the results of all such evaluations undertaken since January 1, 2008.

RESPONSE: There are no responsive documents.

15. Please provide copies of all contracts between Commercial Utility Consultants and either Wentworth Property Management Company or The Victory Condominium Association, or both, for any of the period January 1, 2008 through the present.

RESPONSE: CUC documents have been provided subject to a reservation of confidentiality.

16. Please provide copies of all studies, reports, or recommendations prepared by Commercial Utility Consultants with respect to PECO service to The Victory Condominium Association.

RESPONSE: CUC documents have been provided subject to a reservation of confidentiality.

HALBERSTADT CURLEY, LLC

By:



Charles V. Curley
Attorney for Complainant

Date: 11/21/2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

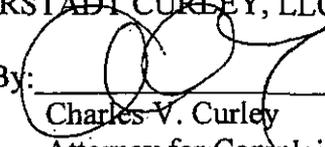
THE VICTORY CONDOMINIUM ASSOCIATION	:	
v.	:	DOCKET NO. C-2011-2268126
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objections to request Nos. 1-16 of PECO Energy Company's Written Interrogatories and Requests for Production of Documents To The Victory Condominium Association (Set I) were served via first class U.S. mail and email as follows:

Ward Smith, Esquire
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

HALBERSTADT CURLEY, LLC

By: 

Charles V. Curley
Attorney for Complainant

Date: 1/27/2017

GASMARK
MASTER NATURAL GAS SALES AGREEMENT NO. CH-370334-PGW ("CONTRACT")
DATED April 30, 2009

This Master Natural Gas Sales Agreement ("Contract") is made between UGI Energy Services, Inc. ("GASMARK") and Victory Condominium Association ("Customer") also referenced herein as "Party" or collectively as "Parties". This Contract incorporates all transaction-specific Confirmation Agreements, which shall take the form substantially set forth in Appendix "A" hereto.

1. **Nature Of Transaction:** Customer and GASMARK respectively agree to purchase and sell Firm or Firm Recall natural gas supplies (gas) pursuant to the terms of this Contract and Confirmation Agreement(s) which shall mean that, unless excused by an event of force majeure or (in the case of Firm Recall gas only) a Recall Event, Customer must purchase, and GASMARK must sell, the Contract Quantity specified in Section 3. Recall Event shall mean a period during which the primary holder of pipeline capacity used by GASMARK to deliver gas to Customer has exercised its right to use the capacity.
2. **Contract Term and Sales Period(s):** Service under this Contract shall commence on the first day of the Sales Period specified in the Confirmation Agreement(s) or such date thereafter as service is authorized by Customer's Transporter(s). Service shall continue until a Party receives written notice of termination from the other Party specifying a termination date that is no earlier than 90 days after the date of the written notice. Notwithstanding such notice, however, this Contract shall remain effective for the duration of any and all Sales Period(s) specified in the Confirmation Agreement(s).
3. **Quantity:** GASMARK shall tender for delivery to Customer, and Customer must accept for receipt from GASMARK, the Contract Quantity specified in the Confirmation Agreement(s).
4. **Contract Price:** For quantities tendered for delivery, Customer shall pay GASMARK the Contract Price specified in the Confirmation Agreement(s), which shall reimburse GASMARK for all applicable taxes for which the taxable incident takes place prior to the Point of Delivery. In addition, Customer shall bear responsibility for the payment of all taxes applicable to such gas, including but not limited to sales, use, transfer, value of property, gross receipts or energy taxes for which the taxable incident arises upon or after the point of delivery, and any and all new taxes which become applicable after the date of this Contract; if GASMARK is responsible for collection of such taxes, Customer shall reimburse GASMARK for the full amount. In the absence of agreement regarding pricing for any extension of service beyond the Sales Period specified in the most recent Confirmation Agreement, gas delivered for Customer's account shall be billed at current market prices at the Point(s) of Delivery.
5. **Quality, Pressure, and Measurement:** Gas tendered for delivery shall meet all quality and pressure specifications required by Customer's Transporter(s) and shall be measured by Customer's Transporter at the Point of Delivery.
6. **Title, Possession and Control:** Title to and risk of loss of all gas tendered for delivery shall pass to Customer upon receipt at the Point of Delivery. GASMARK warrants that it holds title to the gas, or has the right to sell the gas, at the Point of Delivery and that the gas is free from liens and adverse claims of any kind. GASMARK shall indemnify Customer against any liens and claims arising with respect to the title to, or its right to sell, such gas to Customer.
7. **Transportation Balancing and Overruns:** Any charge imposed by a Transporter due to an unexcused imbalance or failure to tender or accept the Contract Quantity for delivery shall be paid by the Party causing such imbalance or failure. A Party shall notify the other Party promptly after becoming aware that such an imbalance or failure has occurred or is likely to occur, and both parties shall use reasonable efforts to cure the problem. Customer shall promptly notify GASMARK of any known circumstances or conditions, other than variations in weather, that may cause significant or abrupt changes in gas usage at its facilities, and Customer agrees to reimburse GASMARK for any charge or penalty imposed by a Transporter which results from Customer's failure to provide such notification.
8. **Billing and Payment:** During the term of this Contract, GASMARK shall bill Customer on a monthly basis based on the prior month's delivery of natural gas. The monthly billing periods shall be approximately 30 days in duration and shall correspond to the billing periods established by Customer's Transporter(s). All amounts due hereunder shall be paid within 10 days of the date of receipt of the invoice. Customers shall pay UGI Energy Services, Inc. by wire transfer to the following Bank Account: PNC Bank, National Association, Philadelphia, PA, Account # 8606074246, ABA # 031000053, or by check to UGI Energy Services, Inc., P.O. Box 827032, Philadelphia, PA 19182-7032. Any unpaid amounts shall accrue interest from the due date at the rate that is the lesser of 1½ % per month or the maximum lawful rate. Upon 5 business days prior written notice to Customer (but no sooner than 15 days after service is past due) GASMARK may curtail deliveries if an amount due is not received from Customer when due. Deliveries may not be curtailed and interest may not be accrued where Customer provides written evidence of a good faith billing dispute and pays the undisputed amount.
9. **Creditworthiness:** If at any time during the term of this Contract GASMARK reasonably determines that Customer's creditworthiness is unsatisfactory, GASMARK may require Customer to provide credit assurance in a form and amount reasonably acceptable to GASMARK such as a letter of credit, third-party guarantee, deposit or prepayment. If Customer fails to provide such credit assurance within five (5) business days after notice from GASMARK, then GASMARK shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments and/or to terminate and liquidate the transactions under the Contract and recover its liquidation costs in the manner provided in Section 11(b) below, in addition to any and all other remedies available hereunder.
10. **Force Majeure:** Except for Customer's payment obligation, neither Party shall be liable for failure of performance due to causes beyond its reasonable control (force majeure), such as acts of God, acts of the other Party, acts of civil or military authority, fires, labor strikes and disputes, floods, freezing of wells or lines of pipe, epidemics, war or riot, curtailment of firm transportation, changes in law, terrorist acts or threats, or other like occurrence. A party claiming inability due to force majeure must provide the other Party with prompt notice stating the reason for its inability, and must make reasonable efforts to promptly resolve such inability to perform. Financial inability to perform alone shall not relieve a Party of its obligation to perform. The party claiming the force majeure shall not be required to buy Gas (if GASMARK) or

GASMARK
MASTER NATURAL GAS SALES AGREEMENT NO. CH-370334-PGW ("CONTRACT")
DATED April 30, 2009

sell Gas (if Customer) to avoid the adverse impacts of a Force Majeure event. No Force Majeure event shall extend the term of the Contract or the Sales Period under any Confirmation Agreement.

11. **Failure to Deliver/Accept - Exclusive Remedy:** If for an unexcused reason either Party fails to perform its obligation hereunder to tender for delivery (in the case of GASMARK) or accept gas tender for delivery (in the case of Customer), the other Party's exclusive remedy shall be a) in the case of GASMARK's failure, the positive difference, if any, between the price Customer paid for replacement supplies and the Contract Price, multiplied by the quantity of gas GASMARK failed to deliver; or b) in the case of Customer's failure, the positive difference, if any, between the Contract Price and the price GASMARK obtained from a replacement market, multiplied by the quantity of gas not accepted by Customer. A Party shall act reasonably to minimize its damages, which shall include but not be limited to reasonable efforts to obtain replacement supplies or a replacement market, where applicable. In the event that such reasonable efforts are unsuccessful or only partly successful, the Party failing to perform shall be responsible for an amount calculated by multiplying the Contract Price times the quantity of gas for which the other Party failed to obtain a replacement supply or replacement market, whichever applicable, in addition to any amounts calculated with respect to replacement supplies or replacement market(s).

LIMITATION OF DAMAGES: IN NO INSTANCE AND FOR NO PURPOSE SHALL GASMARK BE LIABLE TO CUSTOMER FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER A CLAIM IS MADE OR REMEDY IS SOUGHT IN CONTRACT, TORT, OR OTHERWISE.

12. **Notices:** Notice(s) required hereunder shall be deemed properly made if telecopied, delivered personally or sent by regular or certified mail to the following addresses or facsimile.

Customer Representative:
Margaret Plomchok
Victory Condominium Association
1011 Chestnut Street
Philadelphia, PA 19107

Telephone: 215-925-6384

Facsimile: 215-925-6384

GASMARK Representative:

UGI Energy Services, Inc.
One Meridian Blvd., Suite 2C01
Wyomissing, PA 19610

Telephone: 610/373-7999

800/427-8545

Facsimile: 610/374-4288

13. **Bankruptcy:** The parties specifically agree that this Contract and all transactions pursuant hereto are "Forward Contracts" as such term is defined in the United States Bankruptcy Code, 11 U.S.C., Section 101(25). If either party becomes subject to Bankruptcy Code proceedings, it is understood and agreed that the other party shall be entitled to exercise its right to liquidate this Contract as a "Forward Contract Merchant" under Section 556 of the U.S. Bankruptcy Code.
14. **Miscellaneous:** This Contract shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to provisions governing choice of law. The parties hereby consent to the exclusive jurisdiction of the Court of Common Pleas of Berks County, Pennsylvania and/or the United States District Court for the Eastern District of Pennsylvania for the resolution of all matters pertaining to the Contract. Customer agrees to reimburse GASMARK for all reasonable cost that GASMARK incurs, including attorneys' fees, in any attempt to collect past due amounts from Customer. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, however, that GASMARK may, without the consent of Customer, (i) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Contract to an affiliate of GASMARK, which affiliate's creditworthiness is comparable to or higher than that of such party, or (iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of GASMARK.

AGREED AND ACCEPTED

CUSTOMER: Victory Condominium Association

BY: _____

TITLE: _____

DATE: _____

AGREED AND ACCEPTED

GASMARK

BY: _____

TITLE: Robert N. Meder
Vice President, Supply

DATE: April 30, 2009

GASMARK
MASTER NATURAL GAS SALES AGREEMENT NO. CH-370334-PGW ("CONTRACT")
DATED April 30, 2009

APPENDIX "A"
Confirmation Agreement No. 1

This Confirmation Agreement is between UGI Energy Services, Inc. ("GASMARK") and Victory Condominium Association ("Customer") (together, the "Parties"), and is subject of the terms and conditions of a certain Master Natural Gas Sales Agreement (MNGSA) between the Parties dated April 30, 2009 (Contract No. CH-370334-PGW). If a conflict exists between the provisions of said MNGSA and this Confirmation Agreement, the provisions of this Confirmation Agreement shall govern.

NATURE OF SERVICE: GASMARK's obligation to deliver and sell, and Customer's obligation to accept and purchase the Contract Quantity at the Point(s) of Delivery is firm.

SALES PERIOD: May 2009

CONTRACT QUANTITY (at point of delivery):

Volume will be supplied as needed at pricing specified below.

Account #s: 897551208

CONTRACT PRICE (at the point of delivery):

Base Quantities:

Customer's actual metered usage shall be priced at the prevailing market rate at the Point(s) of Delivery based on GASMARK's purchases during the month.

POINTS OF DELIVERY: PGW City Gate

NOMINATION/SCHEDULING: GASMARK shall schedule and deliver the DCQ, as required by LDC.

OTHER CONDITIONS:

1. In the event that Transporter (Local Utility) implements a mandatory service for suppliers or adopts any other changes in its requirements during the term of this Contract that results in any direct increase in cost to GASMARK in providing service to Customer, GASMARK shall flow such increased costs through to Customer and Customer agrees to pay such increased costs.
2. During the Sales Period, GASMARK shall be Customer's sole supplier of natural gas. Customer authorizes GASMARK to act as its agent for handling all gas scheduling matters with the operator of the receipt point at the Point of Delivery.
3. If service under this Contract for any designated account is terminated early for any reason, GASMARK will be authorized to sell any gas purchased for customer's account. Any loss on such sale will be charged to Customer, and any gain on such sale will be credited to Customer.
4. Customer and GASMARK agree to keep all terms of this agreement proprietary and confidential.

Please sign and return one copy of the Confirmation to GASMARK within two (2) Business Days of receipt to the fax number set forth above. ABSENT AN OBVIOUS ERROR, THIS CONFIRMATION WILL BE DEEMED CONCLUSIVE, AND WILL BIND CUSTOMER AND GASMARK, IF NOT OBJECTED TO BY THE END OF THE SECOND BUSINESS DAY FOLLOWING CUSTOMER'S RECEIPT OF THE CONFIRMATION.

CUSTOMER: Victory Condominium Association

GASMARK

BY: _____

BY: _____

TITLE: _____

TITLE: Robert N. Meder
Vice President, Supply

DATE: _____

DATE: April 30, 2009

May 05, 2009

Ms. Margaret Plomchok
Victory Condominium Association
1011 Chestnut Street
Philadelphia, PA 19107

Dear Ms. Plomchok:

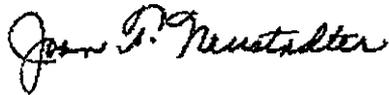
Enclosed please find two partially executed originals of the Master Natural Gas Sale Agreement No. CH-370334-PGW and two copies of Appendix "A" Confirmation Agreement(s) 1. Please execute, **keep one copy and return one copy** of each for our files within ten (10) business days.

If you have any questions regarding the terms of your contract, please do not hesitate to contact your sales representative, Chuck Hurchalla at (610) 585-2949. .

Thank you for choosing GASMARK to fulfill your energy needs.

Sincerely,

UGI Energy Services, Inc.
d/b/a GASMARK



Joan T. Neustadter
Sr. Contract Analyst

Enclosure(s)

JTN\kw

WENTWORTH PROPERTY MANAGEMENT Community Association Management Agreement

THIS Agreement, made as of June 10, 2008, by and between **VICTORY CONDOMINIUM ASSOCIATION**, (hereinafter the "Association") and **WENTWORTH GROUP, INC.**, (hereinafter "Agent")

WITNESSETH:

In consideration of the mutual promises, terms and conditions as specifically set forth below, the parties agree as follows:

1. APPOINTMENT

1.01

Association hereby appoints Agent as managing agent for the community known as Victory Condominium Association and situated in Philadelphia County, in the Commonwealth of Pennsylvania, (hereinafter the "Property") subject to the terms and conditions hereinafter set forth.

1.02

Agent agrees to provide management services to and for the Association for the term of this Agreement, subject to the terms and conditions hereinafter set forth.

2. TERM

2.01

The term of this Agreement shall be for a period of One year(s), beginning June 10, 2008 and ending June 30, 2009, subject to the renewal and termination provisions hereinafter set forth.

3. SCOPE OF SERVICES

3.01

The Association specifically empowers the Agent, and the Agent agrees to perform all of the services set forth in this Paragraph (3).

3.02 FISCAL MANAGEMENT

Agent shall assist the Association in matters relating to its fiscal management, including, without limitation, the following:

- (a) RECEIPTS. Agent shall collect and, as appropriate, account for all assessments and other charges due to the Association from its members or otherwise from Association operations including all rental or other income from concessionaires, if any. All such payments shall be received by Association's lock box at the financial institution selected from time to time by Agent, with the Board's consent. All funds received shall

be immediately deposited in one or more Bank accounts titled exclusively to the Association.

- (b) **COLLECTIONS.** Agent shall take such action as is reasonable and necessary to collect any delinquent receivables due to Association, provided that any such action is in accordance with law and Association policy and practices, as provided for by the Declaration, Bylaws or Rules and Regulations of the Association (hereinafter the "Governing Documents") or by the resolution of the governing body of the Association (hereinafter the "Board"). Collection activity shall include late notices and imposition of late fee charges, notice of delinquency, and referral to and coordination with legal counsel. Agent shall assist Association to review and revise collection policies and practices where appropriate.
- (c) **DELINQUENT ACCOUNTS.** Agent is authorized to take reasonable steps for collection of delinquent accounts. The Agent is authorized to assess each delinquent account a late charge and a delinquent administrative charge, along with other charges for collection and lien fees, reflective of the costs of collection, accounting, payment plan monitoring and legal proceedings. Agent shall be paid a delinquency administrative charge of \$125.00 for the coordination of any account turned over to the Association's attorney for collection. This fee includes, but is not limited to processing, ongoing monitoring, oversight and initial court appearance. The fee is to be paid by the Association and will be billed back to the delinquent homeowner's account.
- (d) **DEPOSITORY ACCOUNTS.** All funds of the Association in the control of Agent shall be held in one or more depository accounts or investment instruments in the name of the Association segregated from any other funds of Agent or otherwise. At the Association's specific direction, the Agent may, from time to time, deposit monies in investment accounts in a bank or institution chosen by the Association. These may include money market accounts, certificates of deposit and other interest bearing earning accounts. The Agent shall have no liability or responsibility for the rate of interest earned, if any, on such funds. The Association will provide, in writing, direction as to how and when such funds should be deposited. The Agent shall be under no liability or responsibility for any loss resulting from the insolvency of such depository.
- (e) **DISBURSEMENTS.** From the available funds of the Association, Agent shall disburse funds for operations, capital and other budgeted, approved or emergency expenditures (including Agent's compensation) subject to the terms and conditions herein set forth.
- (f) **FINANCIAL RECORDS.** Agent shall maintain the financial books and records of the Association, including all contracts, purchase orders, vouchers and receipted bills and such other information as may be reasonable or necessary in order to administer and account for the financial affairs of the Association.
- (g) **REPORTS.** Agent shall submit to the designated representative(s) of the Board monthly financial reports, which may include (at the discretion of Association) (1) Cash Receipts and Disbursements Statement, (2) Profit and Loss Statement with Variance to Budget, (3) Balance Sheet, (4) Schedule of Aged Receivables, (5) Schedule of Open Payables, (6) Bank reconciliation, and (7) such other information as the Association may reasonably require (the "Financial Report"). Each reconciled Financial Report shall be completed and submitted to the designated representative(s) no later than the 25th day of the succeeding month. Receivable and Payable Reports are available upon request after the 5th day of each month.

- (h) **PRIOR PERIOD ACCOUNTS.** For the purpose of accounting continuity, Agent shall input such financial information as is available to it respecting operations prior to Agent's tenure and otherwise use reasonable efforts to establish accurate opening period balances. Agent does not warrant the accuracy of any financial information that was not developed by Agent.
- (i) **BUDGET DEVELOPMENT.** Except where the Association has adopted a contrary procedure, ninety (90) days prior to the end of the Association's fiscal year Agent shall submit to Association a recommended "draft" operating budget for the next year (the draft "Budget") The draft Budget shall be presented with such support and documentation as necessary to test the credibility and assumptions utilized by Agent in the development of the draft Budget. The Association acknowledges that any proposed budget or Approved Budget represents Agent's good faith estimate of the performance of the Association for the Fiscal Year in question, and Agent makes no assurances that the performance of the Association will correspond to such estimates. Agent shall use all reasonable efforts to operate the Association within the Approved Budget.
- (j) **RESERVE FUNDING.** Agent shall maintain Reserve funds as required by Association and shall undertake to advise the Association respecting investment alternatives and reserve estimate updates.
- (k) **ACCOUNTANT COOPERATION.** Agent shall cooperate with the Association's accountant(s) or auditor(s) in connection with the preparation of an independent financial statement or audit and in connection with the preparation and filing of any tax returns required to be filed by the Association.

3.03 CONTRACTS

- (a) Agent shall, subject to the direction of the Association, negotiate, execute, and make payments pursuant to the approved terms of all contracts for goods or services required by the Association, including, without limitation, contracts for water, electricity, gas, telephone, maintenance contracts, HVAC systems, fuel oil, landscaping, professional services, and contracts pertaining to such other goods and services required by the Association.
- (b) To the extent reasonably feasible, except as permitted or directed by the Association, contracts for all amounts in excess of \$1,000.00 in the aggregate in any one year with any one third party shall be solicited in a competitive bidding process, with the Agent making a recommendation to the Association based on price and competence.
- (c) Agent shall oversee the initiation and performance of all contracts and shall require vendor compliance with the terms and conditions thereof, including without limitation (1) provision of insurance certificates, (2) review of work quality, and (3) enforcement of warranties.
- (d) Agent shall maintain uniform purchasing systems and procedures in order to conform to the policies established by Association, the terms and conditions hereof, and generally accepted accounting principles.

3.04 EMPLOYEES

- (a) On the basis of the Budget, job standards, and wage rates approved by the Association, Agent shall hire, pay, negotiate collective bargaining agreements with, supervise, and discharge managers, clerks, engineers, janitors, security, and other personnel as may be required to maintain and operate the Property.

- (b) Agent shall provide on-site personnel who will carry out Association business as follows: Agent will provide staff to perform the services outlined in this agreement.
- (i) Community Manager available Twenty (20) hours per week at an office provided by the Association. All expenses associated with the operations of the site office (shall be paid for by the Association.
 - (ii) The Association will provide the Agent with suitable office space on the community property, including furniture, equipment, filing cabinets, telephone, facsimile, copy machine, computer, printer, internet access and supplies. The cost of any lease or rental charges for the office space and cost of equipment maintenance and replacement as well as supplies shall be borne by the Association.
 - (iii) The Association and Agent acknowledge that from time to time the office may be closed for vacation, holidays, sick days, inclement weather, as well as training and educational programs. The Agent will provide coverage of the office for extended sick days or vacation in excess of 5 consecutive days
- (c) All such personnel, except for the Community Manager who shall at all times be an employee of the Agent, shall be, at the option of Agent, employees of the Agent or employees of the Association; however, under either circumstance, except as set forth in Section 3.09, the cost associated with such personnel shall be the Association's sole responsibility.
- (d) Agent shall execute and file all tax returns and other instruments and do and perform all acts required as an employer under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, Subtitle C of the Internal Revenue Code of 1954 and any applicable State tax act with respect to wages paid by the Agent, all at the expense of the Association.
- (e) Association recognizes the importance and value of Agent's employees to their business and agrees to refrain from hiring, directly or indirectly, any person(s) who is or was employed by the Agent during the term of this Agreement and for two years following the termination of this Agreement without first obtaining written consent of Agent.
- (f) All of Agent's employees are subject to periodic training, education and certification programs, designed to provide such personnel with information respecting new procedures and developments and to reinforce their skills and ability. Association shall cooperate with Agent and periodically excuse Agent's employees from responsibilities at the Property so that employees can attend such programs. Programs are scheduled so as to provide for minimum interference and continuity at work. Agent estimates that each employee shall be required to attend 40 hours of in-service programs each year. Agent's corporate and regional offices are closed for its annual meeting.

3.05 INSURANCE

- (a) Agent shall assist the Association in procuring appropriate property and liability insurance, and such other coverage as may be necessary or desirable. The Association assumes all risks in connection with the adequacy of any insurance or self-insurance program authorized by it or by the Governing Documents and waives any claim against the Agent for all liabilities, costs or expenses arising out of any partially or totally uninsured claim (including any deductible or self-insured retention amounts), of any nature whatsoever, except where the Agent has failed to place and maintain insurance

in accordance with the provisions hereof. Agent shall notify Board promptly and in writing if inadequate funds may result in a non-payment lapse in coverage or inability to purchase insurance. Agent is not otherwise liable for any gap in or lack of insurance coverage which may result from such a condition.

- (b) Agent shall maintain records of all insurance coverage carried by the Association and assist the Association in reporting and investigating any accidents or claims for damage relating to the ownership, operation, or maintenance of the common elements of the Association, including any damage or destruction thereto.
- (c) Agent shall assist the Association in responding to and taking such action to correct any noted deficiencies or violations contained in any report, citation, or other communication from any insurance underwriter, association of Fire Underwriters, federal, state or local agency.

3.06 COMMON ELEMENTS

- (a) Agent shall use its best efforts to maintain the Property, including all common elements and limited common elements of the buildings, appurtenances, and grounds, in accordance with appropriate standards of safety and maintenance consistent with the character and budget limitations of the Association.
- (b) Agent will use its best efforts to establish and maintain such preventative maintenance regimes and inventory records as necessary in order to properly maintain the Property and personalty owned by the Association and situated therein.
- (c) Agent shall conduct regular inspections of the Property in order to determine the condition of the Property, the adequacy of the care and maintenance thereof, and compliance with all Association's rules and regulations.

3.07 RULES AND REGULATIONS

- (a) Agent shall assist the Board to adopt, maintain and enforce proper rules and regulations including architectural control issues.
- (b) Agent will recommend action in the administration and enforcement of fines, legal action, etc., with regard to infractions of the rules and regulations and in accordance with Association's policies and procedures.
- (c) Agent shall advise the Association respecting the laws and court decisions impacting on the enforcement of rules and regulations and shall proceed to enforce such rules and regulations in accordance with Association policies.
- (d) Agent will receive, log and communicate all written complaints regarding violations of any covenant of the Association.

3.08 CAPITAL IMPROVEMENTS

- (a) Agent shall make such periodic recommendations as are necessary or appropriate to the Association with respect to capital improvements and reserves for capital improvements.

3.09 PROPERTY MANAGEMENT TEAM

- (a) Agent shall designate one of its employees as the Community Manager for the Association. The Community Manager shall be the person primarily responsible for Agent's performance hereunder and shall be the primary contact and liaison between Agent and Association.

- (b) The Community Manager shall be assisted and supported by Wentworth personnel including, without limitation, the Executive Director to whom the Community Manager reports, Senior Management Team, Regional Vice President, the Executive Vice President for Operations, the Vice President - Finance, staff accountants, bookkeepers and other accounting personnel, Wentworth's legal, construction and insurance specialists.
- (c) In the event that the Community Manager is unavailable to perform required duties, Wentworth's senior management team shall intervene to insure continuity of services and resources.

3.10 ASSOCIATION COMMUNICATIONS

- (a) Agent shall assist the Association in maintaining necessary and appropriate communications with its members, including, without limitation, the provision of all notices required by the Governing Documents, information respecting the Association to new members, and response to all inquiries or complaints.
- (b) Agent shall systematically log written inquiries, correspondence, and other matters reported to it by members and shall maintain appropriate copies and records thereof.
- (c) Agent shall maintain provisions for 24-hour access to the Agent for emergency services.

3.11 NON-FINANCIAL REPORTING

- (a) Agent shall communicate to the Association on a regular basis information respecting or pertaining to legislation, court decisions, tax rulings, financial practices, litigation, insurance matters, correspondence, title transfers, work in progress, rules and regulation infractions, site conditions, maintenance issues, and any other matter or material relating to the affairs or operations of the Association.
- (b) In the event of an emergency condition, Agent shall report such condition to any officer of the Association as soon as possible.

3.12 MEETINGS

- (a) Subject to the terms hereof, except in the event of matter beyond Agent's control, the Community Manager shall attend all regular meetings of the Association and emergency meetings, when required, but not to exceed Twelve (12) per annum.
- (b) Agent shall assist the Association in the annual election meeting of the Association, including the preparation of all election material including proxies, ballots and notices.
- (c) Agent shall distribute to the Association Board in advance of each meeting an agenda as established by Association, along with materials, which will support the facilitation of the meeting.
- (d) Time in excess of two (2) hours per meeting or fraction thereof that lasts after 9:00 pm shall be charged at a rate in accordance with Section 8.02 of this Agreement. Agent will attend meetings scheduled Monday through Thursday, except holidays. Meetings held on days other than those identified herein, and that the Agent agrees to attend will be charged in accordance with Section 8.02 of this Agreement.

3.13 RECORD KEEPING

- (a) Agent shall retain a complete set of files and records where available respecting the Association including the following:
 - a. Current Owner Listing
 - b. Association Documents
 - c. Amendments to the Declaration
 - d. Rules and Regulations
 - e. Policies and Resolutions
 - f. Current Contracts
 - g. Insurance Policies and Quotes
 - h. Financial Statements
 - i. Plot plans
 - j. Specifications and Guidelines for Architectural Requests
 - k. Minute Book
 - l. Corporate seal
 - m. Agendas
 - n. Property/Equipment Inventory
 - o. List of contractors
 - p. Inspection reports
 - q. Individual owner files
- (b) The parties acknowledge that all such records and files shall be retained by Agent during the term of this Agreement, provided that files that are more than two years old may be transferred to a storage facility and retained there at a charge to the Association.
- (c) Agent shall use its best efforts to maintain all records and files of the Association in a safe and secure environment. The parties acknowledge, however, that Agent will not utilize fire resistant cabinets or facilities and files may be subject to loss or damage for which Agent is not responsible.
- (d) Agent shall keep and maintain the Association's records and files available for examination in accordance with the applicable provisions of the Governing Documents.

3.14 WENTWORTHCONNECT™

- (a) Agent provides its comprehensive management system including communication tools, community database, work order/violation management, Resident Alert, Vtrax and Association Website. Charges for Vtrax letters and ResidentAlert calls are detailed in Section 8.02 - Other Compensation.

4. LIMITATIONS ON AGENT'S RESPONSIBILITY AND AUTHORITY

4.01 EXPENSE LIMIT

- (a) In discharging its responsibilities pursuant to Paragraph 3 hereof, Agent shall not make any expenditure nor incur any non-recurring contractual obligation unless such

expenditure is provided for in the Association's approved Budget or is specifically approved by Association, unless such expenditure is less than \$1,000.00.

- (b) Notwithstanding the provisions above, Agent may exceed the \$1,000.00 limitation, without consent of the Association in the event of an emergency, defined as a condition that involves a danger to person or property or may threaten the safety of any Association member(s) and/or community occupant(s), or may threaten the suspension of any necessary services to the Association or its facilities, including utilities.

4.02 MAINTENANCE & REPAIRS

- (a) Agent shall have no authority or obligation with respect to the maintenance or repair of any individual dwelling unit within the Property with the exception of emergency services or by mutual agreement.
- (b) Agent shall have no authority to make any structural changes in or to the Association Property or to make any other major alterations or additions in any building or equipment herein except such emergency repairs as may be required because of danger of life or property or which are immediately necessary for the preservation and safety of the Association or its members or occupants.
- (c) Agent is not responsible for compliance by the Association with requirements of any ordinance, law, rules or regulations (including those relating to the use, maintenance and disposal of solid, liquid and gaseous waste) of any County, State or Federal Government, or any agency or authority thereof, except to notify the Association promptly or forward to the Association promptly, any complaints, warnings, notices or summons received by it relating to such matters.
- (d) Agent may advise and consult with Association respecting its mechanical systems; however Agent shall not be an operator of or otherwise in control of or charged with the maintenance of any system which utilizes fuels, substances or materials that, if handled improperly, could create an environmental impact. If necessary, Association shall hire or retain independent professionals to operate or maintain such systems.

4.03 EXCLUDED SERVICES

Agent is devoted to provide Association with such advice, administration and assistance as it may require with respect to the operation of the Association's Property and business. Certain requested activities may however require extraordinary time commitments outside the scope of the parties' reasonable intentions. Such services include, but are not limited to the following:

- (a) Litigation support (including court appearances and preparation therefore)
- (b) Insurance claim administration on cases involving property damage and personal injury items covered under the Association's policy. Administrative charges by the Agent under this provision are charges incurred after the initial claim filing and shall accordingly be submitted with the claim.
 - i. In the event of an insurance claim, Association agrees to pay Agent a fee equal to 10% of the insurance proceeds for any claim in excess of \$10,000 to a maximum claim of \$300,00 for assistance in the administration and adjustment of the claim and reconstruction. The parties agree to negotiate Agent's fee for all claims in excess of \$300,001.
- (c) Any capital projects in excess of \$30,000 such as roofing, siding, painting, seal coating, etc. that would require the complete attention of the manager or management staff.

Should Association and Agent agree to provide construction coordination services, unless otherwise agreed, Agent shall receive a fee equal to 10% of the total project cost.

- (d) Wholesale revisions of Association document.
- (e) Processing, supervision and negotiation respecting warranty claims resulting from work performed prior to the inception of a management relationship with Agent.
- (f) Consulting and administering requirements of the FHA, Fannie Mae and other approvals needed for financing.
- (g) Publication of Association's Newsletter. (Providing articles or suggested material would be considered part of the manager's regular duties; this paragraph refers to desktop publishing and production).
- (h) Should Association request and Agent agree to provide additional or expanded services beyond the services outlined in the Agreement, unless otherwise agreed by the parties, the fee for such shall be charged at an hourly rate of not less than \$45 and not more than \$200 depending on the nature of services required. Should Association utilize an affiliate of Agent to provide any construction or maintenance services, the charges shall be as negotiated by the parties or otherwise as set forth in Section 8.02. Agent shall not charge any supervision fee as set forth in Paragraph (c) above.

5. ASSOCIATION INDEMNIFICATION

5.01 AGENCY

Association acknowledges that Agent is acting solely as an agent for the Association and, accordingly, any expenses or liabilities incurred by Agent hereunder, whether in its name or that of the Association, shall be the obligation of Association and not that of Agent.

5.02 INDEMNIFICATION / LIABILITY

The Association hereby expressly agrees and understands that the Agent shall not be liable to the Association, its members or to Unit owners, their guests and invitees for any injury, loss or damage to person or property, unless caused solely by the Agent's own gross negligence or willful misconduct, or arising solely out of a material breach by Agent of this Agreement. To the fullest extent of the law, the Association and its members will, and do hereby agree to indemnify, save, defend and forever hold harmless the Agent, its affiliated or related entities, partners, officers, directors, agents, servants and employees from any liabilities, damages, costs, penalties, fines, fees, losses, suits, demands, causes of action, judgments, obligations, claims and expenses, including but not limited to reasonable attorneys' fees and associated costs (whether pre-trial, at trial, mediation or at arbitration and/or in connection with any appeals) incurred, sustained, arising out of or connected with any injury to person or property however caused, or from any matter whatsoever arising from or in connection with the Agent's performance of services hereunder, including without limitation any and all losses arising out of the Agent's own or sole negligent acts or omissions, unless such liability shall result solely from the Agent's own gross negligence or willful misconduct or solely from a material breach of this Agreement by Agent.

All personal property placed or moved into or onto the Association property or a residential unit will be at the risk of the Association or the owner of the personal property. The Agent will not be liable to the Association or others for any damage or injury to person or property, real or personal, arising from theft, vandalism, HVAC malfunction, the bursting or leaking of water pipes, the presence of mold, mildew or any pollutant, and any act or omission of any Unit owner or occupant of the Association or of any other person. However, the foregoing will not relieve Agent of liability for damage or injury resulting solely from Agent's gross negligence or willful

misconduct. To the extent that such liability results solely from the Agent's gross negligence or willful misconduct, Agent shall indemnify and hold harmless the Association. In no event will Agent be liable for consequential damages to the Association, a Unit owner or any third-party.

The provisions set forth in this Paragraph 5.02 shall survive the expiration or earlier termination of this Agreement.

The Association shall procure contractual liability insurance covering its obligations arising out of this paragraph; however this indemnification shall not be limited to damages, compensation or benefits payable under insurance policies. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Agreement, such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

6. WAIVER OF SUBROGATION

The Association expressly waives all rights of subrogation against the Agent for damages caused by perils, regardless of whether or not covered by any insurance obtained by the Association or required to be obtained by the Association pursuant to this Agreement. The policies of insurance required to be carried by the Association pursuant to this Agreement shall include an express waiver of subrogation either by endorsement or policy language. The waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity has an insurable interest in the property damaged.

7. ASSOCIATION INSURANCE

The insurance requirements set out in the following sub-paragraphs are independent from all other obligations of the parties to this Agreement and apply whether or not required by any other provision of the Agreement, and regardless of the enforceability of any other provisions of this Agreement.

The Association hereby agrees to maintain at all times and to provide evidence of the following insurance coverages:

- (a) Commercial General Liability Insurance extended to include: 1) \$1,000,000.00 limit each occurrence for bodily injury and property damage, \$2,000,000.00 general aggregate limit, \$1,000,000.00 products and completed operations limit; 2) contractual liability coverage, 3) \$1,000,000.00 limit for non-owned and hired automobile liability, 4) coverage for any claims alleging bodily injury or property damage due to mold, mildew, indoor air quality or similar claims, 5) "your real estate managing agent" included within the definition of "Insured" in the policy language, and 6) "Wentworth Group, Inc." and any and all of its affiliated or related entities, directors, officers, employees, servants and agents" to be specifically designated as "additional insured" using ISO Additional Insured Endorsement CG 20 26 11 85 or an endorsement providing equivalent or broader coverage to the additional insureds. Coverage for additional insureds shall apply as primary and non-contributing insurance before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insureds.

- (b) Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000.00 per claim and aggregate, providing a retroactive date back to the inception date of the Association, and naming Wentworth Group, Inc." and any and all of its affiliated or related entities, directors, officers, employees, servants and agents" to be specifically designated as "additional insureds".
- (c) Workers' Compensation Insurance according to State statutory limits covering all employees, subcontractors, or volunteers of the Association, with employer's liability limits of not less than \$500,000.00 each accident for bodily injury, \$500,000.00 each employee for bodily injury caused by disease, and \$500,000.00 policy limit for bodily injury caused by disease. Said policy shall be endorsed to include a waiver of subrogation in favor of the Agent.
- (d) Umbrella or Excess Liability Insurance: 1) with limits of not less than \$3,000,000.00 each occurrence and aggregate, 2) providing follow-form coverage over the General Liability, Directors' and Officers' Liability and Employer's Liability policies, 3) coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy, and 4) coverage for such additional insureds shall apply as primary before any other insurance of self-insurance, including any deductible, maintained by or provided to the additional insured other than the Commercial General Liability, Directors' and Officers' Liability and Employer's Liability coverages maintained by the Association.
- (e) Fidelity Bond with limits of not less than \$500,000.00 or such other minimum amount as may be required by applicable law including the Agent as a named insured.
- (f) The insurance carriers providing the coverages outlined above must be financially sound, be rated A VII or better by A.M. Best Company, and must be licensed to do business in the State/Commonwealth of Pennsylvania.
- (g) Prior to the commencement of work under this Agreement, the Association shall provide a current and original certificate of insurance providing evidence of the aforementioned insurance requirements. Said certificate shall show "Wentworth Group, Inc." and any and all of its affiliated or related entities, directors, officers, employees, servants and agents" as "additional insureds" on the Commercial General Liability, Directors' and Officers' Liability, Umbrella and Excess Liability policies, and not merely a certificate holder. A copy of the additional insured endorsement to the Commercial General Liability policy indicated in Paragraph 7.0 (a) shall be appended to the certificate of insurance. In the "Cancellation" provision of the certificate it shall read as follows: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to certificate holder named in the certificate". It is agreed by all parties that no work shall commence under the terms of this Agreement until the original Certificate of Insurance is received and approved by the Agent. No later than the renewal date of any insurance policies required by this Agreement, the Association will supply the Agent with a new, original Certificate of Insurance in compliance with the terms of this Agreement.

8. COMPENSATION

8.01 BASE COMPENSATION

- (a) Association shall pay Agent as compensation for its services hereunder the monthly sum of \$5,250.00, (\$63,000.00 per year based on 110 units), payable on the first of each month during the term of this Agreement (hereinafter "Base Compensation").

- (b) Base Compensation shall increase each year during the term of the Agreement and any renewal term by a minimum of five (5) percent.
- (c) Any base fees and costs due the Agent will be paid promptly each month on the first of each month. Association hereby authorizes Agent to directly debit Associations' bank account on the first of each month for Agent's fee and for other costs and expenses owed to Agent, when and if they become due. Any monies due and billed and not paid to Agent by the 15th of each month will carry a five percent (5%) per month late fee which will be added to the balance due and will be subject to further late charges until paid.

8.02 OTHER COMPENSATION

- (a) In addition to the Base Compensation, should the Association require Agent to perform services in addition to those set forth herein, Association's shall pay agent in accordance with the provision set forth in Paragraph 4.03 hereof.
- (b) Association shall promptly reimburse Agent for (1) all costs associated with any approved Payroll pursuant to paragraph 3.04 directly allocable to the Association, including payroll taxes, workers compensation insurance and like obligations, (2) all direct postage, dedicated fax and long distance charges, stationary and check stock, and other charges set forth in Section 8.02 (c) hereof, and (3) any advances made by Agent for the benefit of the Association. Association hereby authorizes Agent to directly debit Association's bank account for Agent's fee and for other costs and reimbursed expenses owed to Agent, when and if they become due.
- (c) Reimbursable Expenses -In addition to the management fee provided in Paragraph 6.01 of the Agreement, Association agrees to reimburse Agent for expenses incurred as follows:

i. Fiscal Management:

- a. Coupon Books and/or Direct Debit Services: not less than \$4.00 per unit per year OR Maintenance Fee Statements: \$0.65 per statement, not including postage and inserts if applicable.
- b. Bank charges including lockbox fee: Direct Expense
- c. Processing Returned Checks: \$25 per check plus bank charges (paid by Association and billed back to homeowner)
- d. Human Resources and Payroll Administration Servicing Fee: ~~7%~~ of gross payroll. ~~Hard costs included in this fee:~~

- i. Employer Liability - EPLI insurance
- ii. ADP processing costs
- iii. HR Servicing
 - benefit administration (health insurance, long term disability, life insurance)
 - data processing
 - administration of workers compensation claims
 - 401K administration
 - orientation programs and training (e.g., employment laws, harassment avoidance)
- iv. W-2 statements

e. 1099 Processing: \$20 per 1099 form

ii. WentworthConnect™ :

a. Violation Letters generated from WentworthConnect, color with photo: \$.75 per letter (includes postage)

b. ResidentAlert Calls: \$0.03/minute, per call delivered

iii. General Administrative - incurred for services performed from a corporate or regional office (outside the community's on-site office, if applicable):

Computer Labels, Envelopes, Computer Checks, Postage and Copies: **Direct Expense** per month with the exception of mass mailings which may be done at a third party provider at Direct Expense. The costs itemized in this paragraph are based upon the following fees:

i. Computer labels: Not less than \$30.00 per mailing;

ii. Envelopes - Direct expense not less than \$.15 each;

iii. Computer Checks - \$.25 per check;

iv. Postage - Direct expense,

v. Copies - Black & White/Laser Prints: \$.25 each Letter Size, Legal Size, Ledger Size; Color Copies/Laser Prints: \$1.00 each Letter Size, \$1.50 each Legal Size, \$2.00 each Ledger Size.

iv. Other Administrative:

a. IT Services (if applicable) for on-site office computer equipment and software maintenance: Direct Expense

b. File Storage: Non-permanent Association files that are two (2) or more years old shall be retained by Agent or Association, at Association's option. A fee for storing these archived files may be charged by Agent at the following rate:

i.. 1 to 10 File boxes: \$ 25 per month

ii.. 11 to 50 File boxes: \$ 40 per month

iii.. Over 50 boxes: \$ 75 per month

(c) Financial Set-Up Fee: Before and during the initial service phase of the Agreement, Agent experiences costs in excess of the normal costs for routine management services. Agent has defined expense, independent of the regular management fee, for the initial setup and shall be compensated 0.00 as a one time financial setup fee, by the Association, upon execution of this Agreement. Included in this fee are the costs for the review of recent Association financial information, initial creation of computer accounts, conversion to Agent's chart of accounts, preparation of general ledger balances, input of initial ownership information, assessment account records, assessment fee and charges, and resulting computer runs. Additionally, Agent must review relevant files, records, documents, contracts, minutes and other material to prepare the management program. Agent shall incorporate those files and information into its system, follow up with existing major service contractors, arrange for financial

audit, prepare introductory letter and mailing, evaluate insurance coverage, review budget and investment information and arrange for answering service and emergency contact listing. All related office material cost for this set-up activity is an Association expense.

- (d) **New Construction Settlement Fee:** In addition to the compensation outlined above, the Agent shall receive an initial processing fee of twenty-five (\$35.00) dollars for each new settlement in new construction communities.
- (e) The Agent will charge for services performed on behalf of the Association outside the normal course of operations or outside the parameters of this Agreement. Agent will advise Association of any unusual event which may result in the above fees being charged to Association.
 - a. Principals - \$200 per hour
 - b. Regional Executive/Director - \$175 per hour
 - c. Community Management - \$75 per hour
 - d. Clerical personnel - \$45 per hour
- (f) Association acknowledges that affiliates of Agent may receive compensation from the Association for services rendered to the Association provided that the Association approves such services. Affiliates include Worthmore Maintenance & Construction Co., Worthington Insurance and FirstService Financial, Inc. (FFI). FFI aggregates the purchasing resources of more than 2,200 community associations (containing more than 400,000 homes) located throughout the United States. FFI will provide lockbox services to the Association, and may make available insurance and other financial services and products, including access to its national preferred vendor program. FFI services are provided at no cost to Agent or the Association, however, FFI receives fees from the vendors it utilizes to cover its administrative expenses. (See Exhibit A)
- (g) Association acknowledges that it is Agent's practice to charge a handling fee directly to homeowners for researching, completing and providing resale and refinance surveys, financing questionnaires and certifications. In order to properly respond to such requests, Agent processes such requests through a separate department whose trained personnel respond with timely and accurate information.

9. AGENT'S INSURANCE

The Agent hereby agrees to maintain at all times and to provide evidence of the following insurance coverages:

- (a) **Commercial General Liability Insurance** extended to include: 1) \$1,000,000.00 limit each occurrence for bodily injury and property damage, \$1,000,000.00 general aggregate limit, \$1,000,000.00 limit for personal and advertising injury, and \$1,000,000.00 products and completed operations limit; 2) contractual liability coverage.
- (b) **Commercial Auto Liability** with a combined single limit of \$1,000,000.00 and \$1,000,000.00 limit for non-owned and hired automobile liability.
- (c) **Workers' Compensation Insurance** according to State statutory limits covering all employees or subcontractors of the Agent, with employer's liability limits of not less than \$500,000.00 each accident for bodily injury, \$500,000.00 each employee for

bodily injury caused by disease, and \$500,000.00 policy limit for bodily injury caused by disease.

- (d) Umbrella or Excess Liability Insurance with limits of not less than \$5,000,000.00 each occurrence and aggregate providing follow-form coverage over the General Liability and Employers' Liability policies.
- (e) Prior to the commencement of work under this Agreement, the Agent shall provide a current and original Certificate of Insurance showing the coverages outlined above. On the renewal date of any insurance policies required by this Agreement, the Agent will supply the Association with a new, original Certificate of Insurance in compliance with all terms of this Agreement.
- (f) Prior to the commencement of work under this Agreement, the Agent shall provide a current and original certificate of insurance to the Association providing evidence of the aforementioned insurance requirements. Said certificate shall show "Victory Condominium Association" and any and all of its directors, officers and members" as "additional insureds" on the Commercial General Liability, Directors' and Officers' Liability, Umbrella and Excess Liability policies, and not merely a certificate holder.

10. TERMINATION AND RENEWAL

10.01 TERMINATION

- (a) This Agreement shall be for the term as set forth in paragraph two (2) provided that the term shall be deemed to have renewed for an additional one year period and successive one year periods thereafter, unless either party provides the other with written notice of its intention to cancel at least ninety (90) days prior to the termination date.
- (b) This Agreement may be terminated by the Association in the event Agent is found to be in default of this Agreement and Agent fails to cure the default as provided herein. In the event of a default, the Association, through its Board, shall notify Agent in writing of the default, and Agent shall have sixty (60) days to cure the default. In the event Agent fails to cure the default, and the default is of such a nature that the cure is within the control of the Agent, the Association may terminate this Agreement, and the termination shall be effective immediately upon receipt of such notice by Agent.
- (c) Upon notice of termination, the Agent shall prepare for an orderly transition of responsibilities and records in accordance with the instructions of the Association. Within 15 days from the date of notice of termination, Agent shall make available to the Association for inspection all books and records of the Association in Agent's possession, which material shall be available for turnover to the Association as of the Termination Date. The Association shall bear the cost associated with photocopying material required to be retained by Agent.
- (d) As of the date of termination, all sums due to Agent and all contractors, vendors, or other service agents procured by Agent on behalf of the Association shall be paid in full. In the event that there are insufficient funds to fully discharge all such liabilities, the Termination Date may, at the option of Agent, be extended until such funds are available. In the event that the Association disputes any such bills or charges, sufficient funds of the Association shall be deposited in an Escrow Account established in the joint control of the Association and Agent, pending resolution of the dispute. The Association agrees to bear full responsibility to the Provider of such goods or services and shall bear full responsibility for the cost of litigation resulting therefrom, if any.

- (e) From and after the notice of termination, Agent shall not incur any expenses or obligations on behalf of Association unless in accordance with the specific written directive of the Association, except payments or reimbursements for previously approved bills.
- (f) Agent shall, at no cost to the Association, prepare a final detailed accounting as of the Termination Date, which accounting shall be provided to the Association, together with any unclaimed books and records of the Association, as soon as practical but in any case no later than 45 days after the Termination Date, and thereafter the Agent agrees to cooperate with the Association's auditors regarding their financial and tax audits.
- (g) Association acknowledges the value of Agent's employees and agrees to refrain from hiring or contracting with any of Agent's employees, affiliates or principals for a period of two years from the Termination Date.
- (h) The provisions of paragraph 5 hereof shall survive termination.

11. MISCELLANEOUS PROVISIONS

11.01 SIGNS

Agent reserves the right to affix an (8" x 20") "Professionally Managed by" sign to the existing Association's sign(s). Said signs shall conform to the Association's architectural standards and colors.

11.02 ASSOCIATION'S AUTHORITY

- (a) Agent shall take its direction from the Board, Council or other governing body of the Association, acting pursuant to the authority conferred upon it by the Master Deed, Declaration or other documents respecting the governance of the Association.
- (b) The Association shall designate, from time to time, one officer of its governing body to act as liaison to Agent (the "Management Liaison"). Agent may rely upon any instructions, statements or approvals communicated to Agent verbally or in writing by Management Liaison, as if the same had been affected by a resolution of the Association's governing body. In the absence of any other designation by the Association, the "President" of the Board shall have this authority.

11.03 BINDING EFFECT

- (a) This Agreement shall inure to the benefit of and constitute a binding obligation upon the parties hereto, their successors and assigns.
- (b) This Agreement shall constitute the entire Agreement among the contracting parties and no variance or modification thereof shall be valid and enforceable except in writing. Any subsequent change in this Agreement, which might alter the Agent's responsibilities or rights, as defined in this Agreement, shall require prior approval by Agent. Should any part, term or provision of this Agreement be declared or decided by any court to be invalid or in conflict with the law, the validity of the remaining portion, terms or provisions, shall not be affected thereby, and the remainder of the Agreement shall continue in full force and effect.

11.04 GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania .

11.05 NOTICES

All notices required hereunder shall be effective if delivered by certified or register mail, delivered as follows:

(a) If to Agent:

Michael A. Mendillo, President & CEO
Wentworth Group
100 Highway 36, Suite 1A, W. Long Branch, NJ 07764

and

Arthur L. Bartikosky, President
Wentworth Property Management
100 Highway 36, Suite 1A, W. Long Branch, NJ 07764

(b) If to Association:

Victory Condominium Association
Attn.: President and Secretary

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

For: VICTORY CONDOMINIUM ASSOCIATION

Board President

Print Name

ATTEST

By: WENTWORTH GROUP, INC.

Michael A. Mendillo, President

ATTEST

Or

Arthur L. Bartikofsky, President

ATTEST

EXHIBIT A

Affiliate Business Disclosure Statement

This Disclosure is to provide the Board with notice that the following companies are affiliated with The Wentworth Group. Through these affiliations Wentworth can offer quality services tailored to our clients' needs at very competitive prices.

- American Pool Enterprises
- Certa-Pro Painters
- Consolidated Edison Solutions, Inc.
- Consumer Powerline (CPLN)
- Echo Star
- FirstService Financial
- Firstrust Bank
- Homesite Group, Inc.
- JGS Insurance Agency, Inc.
- Kerfeld & Associates, Inc.
- NIA Group, LLC
- North Fork Bank
- Nu-Place Realty
- Onyx Waste Services
- Planned Building Services, Inc.
- Planned Security Services, Inc.
- Premium Finance LLC
- Republic Waste Removal (Subsidiaries include AAA Recycling & Trash Removal Services, Coggins Waste Management, Marpal, Midco, McCusker-Ogborne, Raritan Valley, York Waste)
- Ross Insurance Brokerage Group, LLC
- Tru-Green Land Care
- Valley Crest Landscape Maintenance
- Worthington Insurance Brokers
- Worthmore Construction and Maintenance

The Association is not required to use the services of these companies as a result of its contracted relationship with Wentworth Property Management Company. There are other service providers with similar services and Management encourages the Board to solicit competitive proposals to determine the best services and rates available.

CONSTRUCTION RIDER

AVAILABILITY/APPLICABILITY. To service provided during or immediately following a major construction or expansion period or during a receding load period, after the expiration of the initial contract term, while a business is in process of dissolution. A major construction or expansion period is defined as a construction or expansion project undertaken by the customer which upon completion will require an upward modification of the customer's contract limits.

RATE IMPACT. During the expanding load period preceding the operation within the load limits provided in the contract or the receding load period subsequent to the fulfillment of the initial contract term, PECO Energy will not apply the following guarantees of revenue: power factor adjustment, minimum billing demand, and contract minimum. If the customer receives Default PLR Service, the terms of this rider shall also apply to the Energy and Capacity Charge.

RIDER TERM. The total term of application of this rider during the preliminary or construction period shall be 6 months subject to the option of the Company to grant not more than three successive renewals of the rider term on major construction projects. Its application during a receding load period subsequent to the completion of an initial contract term shall be for not more than one year.

TERM OF CONTRACT. The initial contract term for service to expanding locations to which this rider is applied shall be extended for a period corresponding to the total number of months this rider is applied to the customer's bill during construction or expansion of the customer's facility.

OTHER RIDERS. This rider, when applied to service to temporary installations to which the Temporary Service Rider is also applied, shall not operate as a waiver of the requirement that monthly minimum charges be paid for a period of not less than 6 months.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT

Exhibit K

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Springfield Township v. PaPUC
676 A. 2d 304 (1996)

**SPRINGFIELD TOWNSHIP, Petitioner v. PENNSYLVANIA PUBLIC UTILITY,
Respondent**

No. 1121 C.D. 1995

COMMONWEALTH COURT OF PENNSYLVANIA

676 A.2d 304; 1996 Pa. Commw. LEXIS 200

February 5, 1996, Argued

May 17, 1996, Decided

May 17, 1996, FILED

PRIOR HISTORY:

[**1] APPEALED From No. C-00935310. State Agency Pennsylvania Public Utility Commission.

DISPOSITION:

The order of PUC is affirmed.

COUNSEL:

Joseph B. Siedlarz, for Petitioner.

Vilna Waldron Gaston, for Intervenor, PECO Energy Company.

Susan T. Povilaitis, for Respondent.

JUDGES:

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge, HONORABLE JIM FLAHERTY, Judge, HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge.

OPINIONBY:

CHARLES P. MIRARCHI, JR.

OPINION:

[*305] OPINION BY

SENIOR JUDGE MIRARCHI

FILED: May 17, 1996

Springfield Township (Township) appeals from an order of the Pennsylvania Public Utility Commission (PUC)

which dismissed the Township's complaint against the PECO Energy Company (PECO), formerly the Philadelphia Electric Company, and denied the Township's request for a refund of portion of electric bills paid from July 4, 1986 to July 6, 1993.

The relevant facts found by the Administrative Law Judge (ALJ) and PUC are as follows. In 1970, the Department of Transportation (DOT) installed seventy photoelectrically-controlled sodium vapor street lighting fixtures (DOT-installed street lights) along Sproul Road, Springfield Township, Delaware County, when it reconstructed the intersection at [**2] State Road and Sproul Road. Since at least November 1983, electric charges for the DOT-installed street lights were billed under the GS (General Service) rate to two accounts which were in the Township's name. The GS account is a standard metered account for nonresidential customers served at secondary voltage. DOT [*306] shared the costs of maintaining those street lights with the Township by reimbursing the Township 50% of the electric charges.

PECO never owned or maintained the DOT-installed street lights. PECO owned, however, all other street lights (PECO-owned street lights) in the Township. The PECO-owned street lights were billed to its customers, including the Township, under the SL-S (Street Lighting-Suburban) rate.

In July 1986, PECO established the SL-E (Street Lighting-Energy) rate applicable to street lights. The PECO's Tariff provided as follows as to the availability of the SL-E rate:

**RATE SL-E STREET LIGHTING CUSTOMER-OWNED FACILITIES
AVAILABILITY**

To any governmental agency outside of the City of Philadelphia for outdoor lighting of streets, highways, bridges, parks or similar places, including directional highway signs at locations where other outdoor lighting [**3] service is established hereunder for the safety and convenience of the public where all of the utilization facilities, as defined in Terms and Conditions in this rate schedule, are installed, owned and maintained by a governmental agency. (Emphasis added.)

In 1987, John Nahill, PECO's former energy account representative contacted the Township manager, Michael Lefevre, and advised him that the Township would save in its electric bills for the PECO-owned street lights by purchasing and maintaining them and paying the bills under the SL-E rate, rather than the SL-S rate. Thereafter, the Township and PECO negotiated the Township's purchase of the PECO-owned street lights. While conducting an audit of the street lights existing in the Township, Robert Artese, the Township's employee in its Traffic and Street Light Department, noticed that the map provided by PECO did not include the DOT-installed street lights. n1 In October 1987, the Township purchased all PECO-owned street lights, and the rate for those street lights were changed from the SL-S to SL-E rate. The DOT-installed street lights were not part of that transaction.

n1 Upon Artese's request, Nahill later provided Artese with a map prepared by DOT, which included the DOT-installed street lights.

[**4]

In January 1993, David Anderson, an energy consultant, was hired by the Township to perform a utility rate and cost reduction analysis. On March 16, 1993, Anderson contacted James Kelly, PECO's senior energy account representative, and questioned why the DOT-installed street lights were billed at the GS rate, rather than the SL-E rate. Anderson orally requested a rate change from the GS to the SL-E rate on March 25, 1993 and followed up his oral request with a written request on April 16, 1993.

After receiving Anderson's written request, Kelly requested information from the Township concerning the wattage and the location of the street lights. He also arranged a meeting with Anderson, Artese and a PECO's technician at the site of the street lights. The purpose of the meeting was to determine what should be done to

change the accounts from the metered GS accounts to unmetered SL-E accounts. Kelly did not believe that the requested rate change could be done by a simple book entry. He was also concerned about the presence of the unusual 440-volt transformer and the effect of removal of meters on the traffic lights at the busy intersection.

After the May 4, 1993 meeting, Kelly sent [**5] a letter to the Township, requesting its acknowledgment that when the accounts are changed to unmetered SL-E accounts, PECO's responsibilities end at the transformer connections, and that the Township is responsible for maintaining the lights and all underground wiring and secondary feeds at the light locations. The Township executed the acknowledgment on June 11, 1993. Kelly thereafter met with Artese and PECO's personnel at the site to make sure that the removal of the meters would not cause any problems. PECO changed the rate for the DOT-installed street lights from the GS to the SL-E rate, effective July 6, 1993.

[*307] On November 12, 1993, the Township filed a formal complaint against PECO, alleging that the Township owned the DOT-installed street lights and that PECO was therefore required to compute the electric bills under the SL-E rate from July 4, 1986, when such rate was established, pursuant to Section 1303 of the Public Utility Code (Code), 66 Pa. C.S. § 1303, which provides:

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any [**6] service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron. (Emphasis added.)

The Township requested that PUC order PECO to refund the difference between the GS and the SL-E rates from July 4, 1986 to July 6, 1993, the effective date of the rate change, plus interest, or in the alternative, the difference of the rates from March 25, 1993, the date of its oral request for the rate change, to July 6, 1993, plus interest.

In its answer and new matter, PECO alleged that under Section 1303 of the Code, it had no duty to change the rate until the Township requested the rate change in writing and that PECO changed the rate within a reasonable time after the Township's request. n2

n2 PECO also alleged that portion of the Township's claim for the refund was barred by the statute of limitations and/or laches. The Township concedes that pursuant to Section 1312 of the Code, 66 Pa. C.S. § 1312, it can only seek a refund of its payments made "within four years prior to the date of the filing of the complaint" on November 12, 1993.

[**7]

To support the alleged ownership of the DOT-installed street lights, the Township presented the testimony of its manager that it was his understanding that the Township acquired the ownership of those street lights from DOT by either a gift or a purchase before the SL-E rate was established in 1986. However, he could not find any documents supporting such gift or purchase, or any arrangement made between the Township and DOT regarding the electric bills. He further testified that the Township had maintained the DOT-installed street lights since it purchased the PECO-owned street lights in October 1987.

ALJ found that the Township failed to establish that it ever notified PECO of its eligibility for the SL-E rate, i.e., its ownership and maintenance of the DOT-installed street lights; the Township did not request the rate change for those street lights until March 25, 1993; and PECO changed the rate in a reasonable time following the Township's request. ALJ denied the Township's request for a refund and dismissed the complaint, concluding that under Section 1303 of the Code, a public utility must have actual notice of service conditions before it is required to compute bills under [**8] a more advantageous rate and that the Township failed to prove PECO's actual knowledge of the Township's ownership and maintenance of the DOT-installed street lights. PUC subsequently denied the Township's exceptions and adopted ALJ's initial decision. The Township's appeal to this Court followed. n3

n3 This Court's scope of review of an adjudication by PUC is limited to determining whether PUC violated constitutional rights or committed an error of law, or whether its findings are supported by substantial evidence. *Pocono Water Co. v. Pennsylvania Public Utility Commission*, 158 Pa. Commw. 41, 630 A.2d 971 (Pa. Cmwlth. 1993).

Section 1312 of the Code, 66 Pa. C.S. § 1312, authorizes PUC to order a public utility to refund the rates which were (1) unlawful, (2) unjust or

unreasonable, or (3) in excess of the rates contained in the public utility's tariff. *National Fuel Gas Distribution Corp. v. Pennsylvania Public Utility Commission*, 76 Pa. Commw. 102, 464 A.2d 546 (Pa. Cmwlth. 1983). The Township contends that PECO violated Section 1303 [**9] of the Code in failing to compute the bills for the DOT-installed street lights under the more advantageous SL-E rate and therefore must refund [**308] the difference of the GS and SL-E rates. The Township, as a complainant, has the burden of establishing all of the elements of PECO's alleged violation of Section 1303. Section 332(a) of the Code, 66 Pa. C.S. § 332(a).

Under Section 1303 of the Code, the public utility has an obligation to compute the bills under the rate most advantageous to its customers "after notice of service conditions." Consequently, to establish PECO's violation of Section 1303, the Township must establish not only the applicability of the SL-E rate to the DOT-installed street lights, but also PECO's notice of service conditions of those street lights during the period in question.

Under the terms of the PECO's Tariff, the SL-E rate is applicable to street lights installed, owned and maintained by a governmental agency. In denying the request for the refund, ALJ stated that at the time of the Township's purchase of the PECO-owned street lights in 1987, the Township was not maintaining the DOT-installed street lights, and that it was questionable whether the Township [**10] in fact owned the DOT-installed street lights at that time. The ALJ's Decision, P. 25. However, ALJ and PUC did not make a specific finding as to the Township's ownership and maintenance of the DOT-installed street lights prior to the Township's March 25, 1993 oral request for the rate change. PUC's decision was based upon the Township's failure to establish PECO's actual knowledge of the Township's ownership and maintenance of those street lights before the oral request, not upon the applicability of the SL-E rate to those street lights.

Previously, in *City of Pittsburgh v. Duquesne Light Co.*, 54 Pa. PUC 460 (1980), PUC determined that to establish a public utility's obligation to compute the most advantageous rate under Section 1303 of the Code, the complainant must establish the public utility's actual, not constructive, notice of service conditions. PUC reasoned: "Utilities cannot be expected to know more about their customers' businesses than the customers themselves and cannot be expected to make their decisions for them. A utility is not the co-manager of its customers' operations." *Id.* at 462. See also *Mauro v. Duquesne Light Co.*, 69 Pa. PUC 105 (1989). [**11]

Under the Code, PUC is responsible for regulating utility rates and evaluating proposed tariffs, and as such,

it has the particular expertise over such matters. *Optimum Image, Inc. v. Philadelphia Electric Co.*, 410 Pa. Super. 475, 600 A.2d 553 (1991). Therefore, this Court must defer to PUC's interpretation of the governing statute, regulatory pronouncements and the terms of the tariff in reviewing a PUC's decision. *W.C. McQuaide, Inc. v. Pennsylvania Public Utility Commission*, 137 Pa. Commw. 282, 585 A.2d 1151 (Pa. Cmwlth. 1991); *Equitable Gas Co. v. Pennsylvania Public Utility Commission*, 106 Pa. Commw. 240, 526 A.2d 823 (Pa. Cmwlth. 1987), appeal denied, 516 Pa. 644, 533 A.2d 714 (1987).

In this matter, we agree with PUC that the imposition of an affirmative duty upon the public utility to continually monitor its customers' accounts for the purpose of computing the most advantageous rate would be unreasonable. The unreasonableness of placing such duty on the public utility is demonstrated in this matter by the testimony of William Sundermeir, PECO's supervisor in charge of electric rates. Sundermeir testified that whether a GS account is for street lighting cannot be determined by merely examining [**12] the account itself or by visually examining the electric pole and transformer because other loads could be served by the same pole and transformer. We hold, therefore, that under Section 1303 of the Code, the public utility must have actual knowledge of service conditions before it is required to compute the most favorable rate for its customers.

The PECO's Tariff 11.1 and 11.2 provide the procedures for selecting rates more favorable to its customers under Section 1303 of the Code:

11.1 CHOICE OF RATE. Where the class of service-supply or conditions of use are such that two or more rates are available, an applicant shall select the rate or rates to be applied to his service.

11.2 COMPANY ASSISTANCE. The Company upon request will, to a reasonable [*309] extent, assist an applicant in selecting the most advantageous rate or rate application.

A public utility's tariff, containing schedules of rates, contracts involving rates, and all rules, regulations and practices, has the force of law and therefore is binding on both the public utility and its customers. *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 63 Pa. Commw. 238, 437 A.2d 1067 (Pa. Cmwlth. 1981). n4 Pursuant [**13] to the procedures provided in the PECO's Tariff 11.1 and 11.2, the Township was required to select the favorable rate before invoking PECO's obligation to compute the bills under the SL-E rate.

n4 The PECO's Tariff 11.1 and 11.2 only implement PUC's interpretation of Section 1303 that the "actual" notice of the public utility is required. Therefore, we reject the Township's argument that they are in direct conflict with Section 1303.

In the matter sub judice, the record fails to demonstrate that before its March 25, 1993 oral request for the rate change, the Township ever notified PECO of its ownership and maintenance of the DOT-installed street lights, or requested the rate change or PECO's assistance in selecting the more favorable rate. At the hearing, the Township manager admitted that he never discussed the DOT-installed street lights with PECO's account representative, when negotiating the Township's purchase of the PECO-owned street lights. Consequently, the Township failed to establish that PECO was [**14] obligated before March 25, 1993 to compute the bills under the SL-E rate pursuant to Section 1303 of the Code.

The Township also challenges PUC's conclusion that the Township failed to prove an unreasonable delay by PECO in changing the rate pursuant to the Township's March 25, 1993 oral request. However, that issue was not raised by the Township in its exceptions to ALJ's initial decision and was not considered by PUC. Therefore, the issue was waived and may not be considered on appeal. Pa. R.A.P. 1551(a); *Pennsylvania Power Co. v. Pennsylvania Public Utility Commission*, 127 Pa. Commw. 97, 561 A.2d 43 (Pa. Cmwlth. 1989), aff'd, 526 Pa. 453, 587 A.2d 312 (1991), cert. denied, 502 U.S. 821, 116 L. Ed. 2d 53, 112 S. Ct. 80 (1991). n5

n5 Even assuming that the issue was properly preserved for our review, the undisputed activities in the record subsequent to the Township's request for the rate change amply support the conclusion that PECO did not unreasonably delay in processing the Township's request.

Finally, the Township contends that ALJ improperly [**15] accepted and considered PECO's "initial" brief filed in violation of the briefing order, which stated that "the Initial Brief of the Complainant shall be filed and served no later than June 9, 1994" and that "the Responding Brief of the Respondent shall be filed and served no later than June 29, 1994." n6

n6 PUC regulation at 52 Pa. Code § 5.502(b) provides in pertinent part that "by direction of the presiding officer, the first or initial brief shall be filed by the participants upon whom rests the burden of proof and the other participants may then respond."

We conclude that ALJ did not abuse her discretion in accepting and considering PECO's initial brief. Before ALJ's initial decision, the Township did not move to strike PECO's initial brief nor file a reply brief to respond to PECO's brief. Moreover, PUC regulations permit PUC or ALJ to disregard any procedural error or defect at any stage of a proceeding. 52 Pa. Code § 1.2(b). Since PUC's decision is amply supported by the

evidence in the record, ALJ's [**16] acceptance and consideration of PECO's initial brief did not affect the Township's substantive rights asserted in the complaint.

Accordingly, the order of PUC is affirmed.

CHARLES P. MIRARCHI, JR., Senior Judge

ORDER

AND NOW, this 17th day of May, 1996, the order of the Pennsylvania Public Utility Commission in the above-captioned matter is affirmed.

CHARLES P. MIRARCHI, JR., Senior Judge

RULES AND REGULATIONS (continued)

10.8 RELOCATION OF COMPANY FACILITIES REQUESTED BY NON-RESIDENTIAL PROPERTY OWNERS. Except as otherwise provided by law (e.g., 66 Pa.C.S. Section 2704, et seq.), a non-residential property owner, such as a builder, developer or contractor (Owner), shall pay to the Company the costs of relocation of Company facilities or equipment, made for the accommodation of the Owner or in fulfillment of the Owner's obligation to any public authority. A request for relocation of Company facilities shall be in writing. The relocation cost shall include labor (including overhead), materials, storeroom expense and transportation, less the depreciated value of any equipment replaced.

Where the relocation is done in conjunction with construction of a supply line to a development, the Company shall include in the relocation cost only those costs caused by the Owner's request.

The Company will notify the Owner in writing of the relocation cost. Advance payment of relocation costs will be required before the Company will commence the work, except, at the sole discretion of the Company, under special circumstances.

Where the relocation relates to a development that will generate additional revenue for the Company, the Company will give the Owner an initial credit against the relocation costs in an amount not to exceed 5% of the estimated annual revenue recovered through the Company's tarified Variable Distribution Service Charges from the portion of the development under construction at the time of the relocation request. The Company will give the Owner an additional credit against relocation costs not to exceed 5% of the estimated additional revenue recovered through the Company's tarified Variable Distribution Service Charges realized from new load on the PECO Energy system due to buildings not under construction at the time of the initial relocation but that are under roof within a five (5) year period from the date of completion of the relocation work. Credits will be held by the Company and distributed to the owner, on a pro-rated basis, as additional loads from the development are connected to PECO Energy's distribution system. No credits will be given for loads connected after the five year period from the date of completion of the relocation work. When the relocation is done in conjunction with extension of a line in accordance with §7.2 of the Tariff, the Company will include in the credit calculation only such estimated annual revenue that exceeds the minimum revenue guarantee required by §7.2. The cost and expense of project changes which require a second relocation of the same Company facilities shall be borne solely by the party requesting the change without offset or credit.

10.9 AERIAL LINE CLEARANCE. In accordance with the requirements set forth in the National Electric Safety Code, the Company shall have the right to trim, remove, or separate trees, vegetation or any structures therein which, in the opinion of the Company, interfere with its aerial conductors, such that they may pose a threat to public safety or to system reliability.

10.10 ADVANCED METER SERVICES PERFORMED BY AMSPs. The provisions of this Rule 10 are subject to the terms of the Electric Generation Supplier Coordination Tariff.

10.11 RECOVERY FOR PROPERTY DAMAGE. If Company equipment is damaged through the negligence or intentional act(s) of any individual(s) or entity(s), the one(s) responsible for causing the damage shall reimburse the Company for all aspects of the resulting damages. The reimbursement shall include costs related to: labor, material, transportation and tools. "Labor" shall include benefit and administrative overheads based on the Company's current standard schedule, including third party contract repairs or modifications. Additionally, "Labor" may be calculated using a "blended" or average pay rate consistent with the above referenced standards. "Materials" may include an added stores expense calculated using the above referenced standards. (C)

11. TARIFF AND CONTRACT OPTIONS

11.1 CHOICE OF RATE. When the class of service-supply or conditions of use are such that two or more Base Rates are available, a customer shall select the Base Rate on which the customer will be billed.

11.2 COMPANY ASSISTANCE. The Company upon request will, to a reasonable extent, assist customers in selecting the most advantageous Base Rate or rate application (i.e., Base rate together with applicable riders).

11.3 RATE CHANGES. A customer may not change Base Rates during the "initial contract term" as defined in the "Definition of Terms and Explanation of Abbreviations" section above unless the Company agrees to permit the change. At any other time, a customer may change to a firm rate for which the customer qualifies upon 30 days notice to the Company. Customer ownership and obligation to maintain customer owned transformation facilities and equipment, as well as the point of delivery, will be unaffected by any Base Rate change initiated by the customer.

A customer may request that the Company modify the terms of its contract, other than the customer's Base Rate, but the Company will only allow such modification when, in the Company's sole judgment, the modification does not conflict with the Company's Tariff and is not detrimental to the Company.

The Company will not make any Base Rate change retroactive, unless, in the Company's sole judgment, the Company failed to adequately respond to a customer's request for assistance or modification at the time of such request.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

THE VICTORY CONDOMINIUM ASSOCIATION
v.
PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2011-2268126

PECO ENERGY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
OR
PARTIAL SUMMARY JUDGMENT

RECEIVED

JAN 30 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Exhibit M

City of Pittsburgh v. Duquesne Light Company
54 PaPUC 460 (1980)

City of Pittsburgh
v
Duquesne Light Company

Docket No. C-79071267

July 17, 1980

COMPLAINT *alleging that a utility had constructive notice of a customer's load characteristics and should have provided service under a rate schedule more advantageous to the ratepayer; order finding no liability on the part of the utility which did not have actual notice.*

Rates, § 255 — Most advantageous schedule — Utility duty.

Section 1303 of the Public Utility Code, which requires that a utility having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron does not place an affirmative duty on the utility to monitor its patron's consumption; the responsibility to bill under a cheaper rate schedule is conditioned on actual, and not constructive, notice.

Before Shanaman, chairman, and Johnson, Cawley, and Taliaferro, commissioners.

Order

By the COMMISSION: This matter is before us by virtue of a complaint filed July 26, 1979, by the city of Pittsburgh (city) against Duquesne Light Company (Duquesne) for the refund of alleged overcharges of \$11,001.94 between October 14, 1974, and July 24, 1978. The city claims that the overcharge resulted from the application, by Duquesne, of an incorrect rate classification to the city's South Side Ice Skating Rink (rink) which opened for the first time in October, 1974. Administrative Law Judge Lewis' initial decision, filed on January 22, 1980, sustained the

city's complaint and directed payment of the refund without interest. The city and Duquesne filed exceptions to the initial decision and both parties appealed Judge Lewis' ruling on the exceptions. We do not accept Judge Lewis' initial decision or his ruling on the exceptions, and hereby render our own decision, in this matter finding that no refund is due.

In a companion case, with the same caption as this case but at Docket No. C-79071268, we adopted Judge Lewis' initial decision directing Duquesne to make refund to the city of Pittsburgh for service rendered to its Saline pump station because Duquesne had actual notice of service conditions such that the provisions of §1303 of the Public Utility Code, 66 Pa CS § 1303, were applicable. However, in this case there was no actual notice and the "constructive notice" cited by Judge Lewis is not sufficient to bring into play the provisions of § 1303.

Findings of Fact

1. Beginning in the summer of 1973, Duquesne and the city engaged in negotiations concerning electric service to the

South Side Ice Skating Rink.

2. The rink was to be used for recreational purposes other than ice skating during the spring and summer months.

3. Duquesne's representative, after consulting the city's consulting engineer, estimated that the demand for electricity during the winter and summer months was approximately 300 kilowatts.

4. Representative of the city agreed that the use of Rate GL was appropriate for the rink.

5. Duquesne and the city entered into a contract for electric service to be billed under Rate GL (Exh B.)

6. The city began using the rink on or about October 1, 1974.

7. Thereafter, the rink was used during the summer months.

8. The city did not perform all of the functions required to be performed when the rink was used.

9. The city did not pay for that its original estimates were inappropriate.

10. Duquesne billed the rink under Rate GL when Duquesne billed the telephone from the rink under Rate GL.

11. Duquesne, upon request, determined that a more favorable rate should be changed the rate.

12. The city was less than Duquesne than Rate GL had been, 14, 1974, to

13. The use of Rate GL was substantially the period from 1973 to 1978.

South Side Ice Skating Rink. (T. 19.)

2. The rink was to be a multiple function recreational complex offering activities other than ice skating during the spring and summer months. (T. 20.)

3. Duquesne's representative, aided by the city's consulting engineer, made an estimate of demand during both the winter and summer months and concluded that the estimated demand would exceed 300 kilowatts.

4. Representatives of Duquesne and the city agreed that Duquesne's Rate GL was appropriate. (T. 24-29.)

5. Duquesne and the city executed a contract for electric service to the rink to be billed under Rate GL (Duquesne's Exh B.)

6. The city began operation of the rink on or about October 14, 1974.

7. Thereafter, the estimated loads during the summer months were not realized.

8. The city did not utilize the rink for all of the functions which were contemplated when the rink was built. (T. 45-47.)

9. The city did not notify Duquesne that its original summer demand estimates were inappropriate. (T. 44.)

10. Duquesne continued to serve the rink under Rate GL until July of 1978 when Duquesne received a request by telephone from the city that the rink be billed under Rate GM. (T. 7, 8.)

11. Duquesne investigated the city's request, determined that Rate GM would be more favorable for the city, and promptly changed the rate. (T. 8.)

12. The city would have paid \$11,001.94 less to Duquesne if Rate GM rather than Rate GL had been used from October, 14, 1974, to July 24, 1978. (T. 7.)

13. The use of electricity at the rink was substantially the same throughout the period from October, 1974, to July, 1978.

14. Throughout the period October, 1974, to July, 1978, the city did not request a change in its rate classification. (T. 30, 43.)

Discussion

The city's claim for refund rests on the interpretation to be given § 1303 of the Public Utility Code, which provides as follows:

"Section 1303. Adherence to tariffs

"No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, *after notice of service conditions*, compute bills under the rate most advantageous to the patron." (Emphasis added.)

The city asserts that from October 14, 1974, until September 30, 1976, the rink qualified for either Rate GM or Rate GL and that Duquesne should have applied the lesser Rate GM. This argument is based upon the fact that Rate GL applied when demand was 300 kilowatts or more and Rate GM applied when demand was over five kilowatts but under 300 kilowatts, plus the fact that the monthly peak demand at the rink was over 300 kilowatts during most of the year, including the winter months, and under 300 kilowatts during the rest of the year. Had Rate GM been applied during this period, the city argues, it would have paid less than it paid under

Rate GL and therefore Duquesne did not adhere to the Public Utility Code when billing the rink for service at the higher Rate GL. However, prior to October 1, 1976, the city was not entitled to Rate GM since its winter demands were over 300 kilowatts. Hence, this assertion by the city is without merit.

The city also claims that service at the rink after October 1, 1976, was at the wrong rate because, effective that date, Duquesne had changed Rate GM to include demand peaks above and below 300 kilowatts while Rate GL continued to be restricted to users whose demand was 300 kilowatts and over. However, the city was not disqualified from the use of Rate GL merely because the demand was under 300 kilowatts during the summer months. A Rate GM customer could occasionally exceed 300 kilowatts and still qualify for Rate GM and, similarly, a Rate GL customer could occasionally have a monthly demand under 300 kilowatts and still qualify for Rate GL. Normally, a customer would elect Rate GM because it is less costly. But this does not preclude a customer from choosing Rate GL, even though it is not the most advantageous rate at the time, if the customer anticipates that increased demand in the future will result in Rate GL ultimately being the most favorable rate. For this reason, the city and Duquesne agreed upon Rate GL. Service at the rink was at the correct rate.

Finally, the city asserts that the rink should have received Rate GM at the inception of service and that Rate GL should have been applied only when and if the city attached the additional load. However, the record shows that, again, the city's assertion is without merit. Rate GL was selected as a result of a meeting between the representatives of the

city and Duquesne during which the city provided information from which Duquesne, with the city's consent, determined that, under the circumstances, GL was the best rate.

The crucial issue in this matter is whether § 1303 should be construed to require a retroactive adjustment to the most advantageous rate where Duquesne had at best constructive, not actual, notice. Duquesne argues that only written — i.e., actual — notice satisfies the requirements of § 1303. The city has not addressed this issue. In his initial decision, Administrative Law Judge Lewis stated:

"What is here dominant is the fact that over a period of several years, Duquesne charged city a rate higher than the service use of its monthly and bimonthly billings warranted. Constructive notice of this higher billing was readily apparent by scrutiny of the kilowatt-hour use registered at the South Side rink."

This interpretation of § 1303 would place an affirmative duty upon Duquesne and, therefore, all utilities continually to monitor the consumptive habits of all its customers, and on the basis of those habits immediately to apply the tariff rate most advantageous to the customer. This is impractical and unnecessarily burdensome and is not the intent of § 1303. Residential customer consumption may not fluctuate enough to qualify this class of customers for a different rate; therefore, most of the consumption monitoring which Judge Lewis' interpretation of § 1303 requires will apply to commercial and industrial accounts. Utilities cannot be expected to know more about their customers' businesses than the customers themselves and cannot be expected to make their decisions for them. A utility is not the co-manager of its customers' operations. Commercial and

industrial customer make a profit and that their energy enough to cause them fully their energy costs.

The more correct interpretation is, not constructive notice, but actual notice before a utility is to and apply the most. We adopt this interpretation. "actual notice" in is affirmatively provided to a party directly, as a party is present personally because edge were sufficient party the duty to i or condition in que: express actual notice — and oral notice — and actual notice.

The rink was closed to a customer from the summer, 1974. The problem was not placed upon Duquesne to constantly inquire and continued to be the rink simply because Duquesne chose Rate GL to expand the utility during nonwinter months. On this question, only the rink plans to expand the rink succeeding or, if the rink is still viable. There is no problem when the city orders to Rate GM, Duquesne notice, implied that the city had abandoned the summer load. Duquesne immediately upon the service contract therefore, no refund

which the industrial customers are in business to make a profit and it must be assumed that their energy costs are significant enough to cause them to monitor carefully their energy consumption and costs.

The more correct, sensible, and practical interpretation of § 1303 is that actual, not constructive, notice is required before a utility is required to determine and apply the most advantageous rate. We adopt this interpretation. The term "actual notice" includes such notice as is affirmatively proved to have been given to a party directly, and also such notice as a party is presumed to have received personally because facts within its knowledge were sufficient to place upon the party the duty to inquire about the fact or condition in question. The former is to express actual notice — e.g., written or oral notice — and the latter is implied actual notice.

The rink was classified as a Rate GL customer from the day it opened in October, 1974. The provisions of § 1303 did not place upon Duquesne the duty to constantly inquire whether Rate GL continued to be the most advantageous rate simply because Duquesne knew that the city chose Rate GL pursuant to its plan to expand the use of the rink to the nonwinter months. During the period in question, only the city knew whether its plans to expand the use of the rink were succeeding or, if not succeeding, were still viable. Therefore, until July of 1978, when the city orally requested a switch to Rate GM, Duquesne had no actual notice, implied or expressed, that the city had abandoned its attempts to add summer load. Duquesne changed the rate immediately upon receiving actual notice of the service conditions at the rink and, therefore, no refund is due in this pro-

ceeding. We shall dismiss the city's complaint.

This case is distinguishable from our decision in the companion case concerning the city's Saline pump station (Saline). Saline was a long-term customer of Duquesne and had always used Rate GL, or its equivalent, to operate its water pumps. Duquesne's customers in the area of the pumping station were experiencing service difficulties due to the operation of the water pumps. Representatives of Duquesne and the city met, to discuss ways to eliminate the problem. One of the alternatives discussed at the meeting, use of the pumps during off-peak hours, was selected by the city. After the switch to off-peak operations, the city checked with Duquesne and was told that the service problem previously experienced by Duquesne's customers had ceased.

Given its knowledge of the situation, Duquesne, after the service problem was alleviated, had the duty to inquire whether electric demand at Saline had changed such that it qualified for a more advantageous rate. Since Saline was a long time consumer, this could have been accomplished easily: by reviewing Saline's consumption shortly before and after the service problem ceased. Duquesne had knowledge of facts sufficient for § 1303 to place upon it the duty to inquire whether the city qualified for Rate GM at Saline. In other words, Duquesne had implied actual notice of the service conditions at Saline which qualified the city for a more advantageous rate and, therefore, the city was entitled to the refund.

Notice of service conditions gained solely by a utility's monitoring of the consumptive habits of its customers is, at best, constructive notice and does not activate the provisions of § 1303. Section

1303 requires actual notice of service conditions, either express or implied, before a utility is required to switch its customer to a more advantageous rate. We find that Duquesne had no actual notice of service conditions which would have required

Duquesne to switch the rick to the more advantageous Rate GM; therefore,

It is ordered: that the complaint of the city of Pittsburgh against Duquesne Light Company, docketed at C-79071267, is hereby dismissed.

Robert C. McClellan

v

Pennsylvania Electric Company

Z-19862137
July 17, 1980

COMPLAINT *alleging improper denial of service based on outstanding bills; order modifying ratepayer's liability and determining that a payment schedule negotiated between the parties was proper.*

Service, § 489 — Complaint proceedings — Burden of proof.

A complainant alleging that he was improperly billed for service must come forward with a "preponderance of the evidence." [1] p. 466.

Payment, § 9 — Liability for payment — Notice of termination.

The customer is liable for payment of service at a vacated premises unless he gives at least seven days notice to the utility and any nonratepayer occupant, specifying the date on which it is desired that service be discontinued. [2] p. 466.

Payment, § 45 — Service — Settlement agreements.

In spite of the fact that a ratepayer was under the misperception that he had to sign a particular settlement agreement in order to receive service, the commission determined that the utility had not violated any provision of the commission's regulations where a statement explaining the ratepayers' rights was printed in large type on the face of the agreement and the commission determined that the company negotiated with the ratepayer in good faith and at arm's length. [3] p. 467.

Payment, § 9 — Liability for payment — Customer requests.

Statement that while the utility did not violate any commission rules by accepting a change in account by telephone, the commission was of the opinion that to change customer accounts without verification from the customer himself is highly irregular and several utilities, which had utilized a similar practice in the past, had changed that policy. p. 466.

Before Shanaman, chairman, and Johnson, Cawley, and Taliaferro, commissioners.

APPEARANCES: Gary A. Caldwell for Robert C. McClellan; Frederick L. Reigel for Pennsylvania Electric Company.

Order

By the **COMMISSION:** By complaint docketed December 18, 1979, Robert C. McClellan

lan (McClellan or inter alia, that in denied electric service by Pennsylvania Electric Company (Penelec or respondent) for a \$303.83 balance of electricity consumed. Complainant alleges to negotiate under Pa Code § 56.97(b) for the amount at 2A Stewart Street, August 16, 1978, and the amount 960 Cameron Avenue, March, 1979, the Complainant received a payment on October 30, 1979.

On January 9, 1980, its supervisor of electric service in its answer denying to properly negotiate. Penelec further failed to satisfy his obligation to the payment of service to inform respondent of the factual circumstances surrounding the renegotiation of service.

On March 13, 1980, a hearing was held, and a decision was rendered by Donald V. Hochstetler.

By initial decision of December 18, 1979, the ALJ concluded that for failure of compliance with the code he was improperly located. The ALJ ordered the complainant to pay for the month while employment was suspended and exceptions were granted.

Under the provisions of 62 Pa. Code § 56.97(h) we require

Several areas of the code which affect themselves:

PENNSYLVANIA PUBLIC UTILITY COMMISSION — 69 PA PUC

Ben Mauro
v.
Duquesne Light Company

C-871571

Pennsylvania Public Utility Commission
December 22, 1988; entered January 6, 1989

ORDER finding that electric utility customer was not eligible for refunds due to utility's alleged failure to notify of availability of lower-cost commercial tariff.

RATES, § 243 — Schedules, formalities and procedure — Notification — Lower-cost tariff — Burden of proof.

[PA.] It was found that a commercial electric customer did not meet the burden of proof of establishing that the electric utility did not provide information concerning availability of a lower cost Rider 5 service in August of 1984, and, therefore, the customer did not meet the burden of proving that the customer's business was overcharged for electric service from May 23, 1985 until January 7, 1987; although the customer was not entitled to reimbursement for that period, the customer was entitled to receive reimbursement for the 3.46-month delay period beginning on January 27, 1987, when Rider 5 service was scheduled to be installed, and ending on June 11, 1987, when service actually was installed.

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice-Chairman
Joseph Rhodes, Jr.
Frank Fischl

By the COMMISSION:

OPINION AND ORDER

Before us for consideration are the Exceptions of Ben Mauro ("Complainant"), filed on September 16, 1988, to the Initial Decision of Administrative Law Judge ("ALJ") Michael A. Nemecek, issued on September 2, 1988, wherein the ALJ dismissed the Complainant's request for a refund for a difference in billings between their existing service and the Rider 5 Provision, retroactively to May 28, 1985. Respondent filed Replies to the Complainant's Exceptions on September 27, 1988.

For the reasons enumerated below, we shall deny the Exceptions of Ben Mauro ("Complainant"), and adopt the Initial Decision of ALJ Michael A. Nemecek as our final action.

BRIEF HISTORY OF THE PROCEEDINGS

By Complaint docketed October 29, 1987, Ben Mauro ("Complainant") alleges that Duquesne Light Company ("Respondent") failed to notify him of the availability of "Rider 5" service for his commercial property and thus overcharged him for service. Complainant seeks an equitable refund for the period he was overcharged from May 28, 1985 to June 11, 1987.

By Answer received November 20, 1987, Respondent avers that "Rider 5" information was provided to the Complainant. However, Respondent continues that no requests or inquiries were received from the Complainant until January 1987. Therefore, Respondent concludes that the Complainant was properly billed according to the Tariff based actual demand, and is not entitled to any refund for periods prior to his request in January 1987.

An initial hearing was held on February 3, 1988, and, following a review of the record, a subsequent hearing was held on May 13, 1988 to allow for the admission of an additional exhibit by the Respondent. The Complainant appeared and testified on his own behalf. Counsel and four witnesses were present for Respondent, submitting twelve exhibits. The transcript is 89 pages long. No briefs were filed.

Before addressing the Exceptions and Reply Exceptions in this matter, we find it

PENNSYLVANIA PUBLIC UTILITY COMMISSION — 69 PA PUC

appropriate to set forth, exactly, the relief which the Complainant is requesting in this proceeding.

We shall quote directly from the filed Formal Complaint as follows:

3. WHAT IS YOUR COMPLAINT (DESCRIBE PROBLEM).

FROM MAY 28, 1985 THROUGH JUNE 11, 1987 IT IS MY UNDERSTANDING THE "DEMAND" PORTION OF OUR DUQUESNE LIGHT COMPANY BILLING

1987 JUNE THRU SEPT.	4 MO'S AVERAGED KW	12.6 WITH RYDER [sic] 5
1987 JAN " MAY 5 "	" "	32.6 WITHOUT RYDER [sic] 5
1986 JAN " DEC. 12 "	" "	26.2

WE HAVE LEARNED THAT RYDER [sic] 5 METERING SYSTEM WAS AVAILABLE FOR THE PAST TWO AND ONE HALF YEARS. WE WERE UNAWARE OF ITS AVAILABILITY UNTIL JANUARY 5, 1987, WHEN A REQUEST WAS MADE TO SURVEY OUR HIGH BILLINGS.

4. WHAT DO YOU WANT US TO DO?

A REFUND OR CREDIT SHOULD BE RECEIVED FROM MAY 28, 1985 TO JUNE 11, 1987 BILLING FOR THE ELECTRIC "DEMAND" PORTION PAID OR BILLED BY USING THE HIGHEST DEMAND READING OF RYDER [sic] 5 BILLING.

COMPLAINANT'S EXCEPTIONS

The Complainant's pleading is set forth below in its entirety:

1. The Administrative Law Judge erred in finding that notice of Rider [sic] 5 Notice was received by the Complainant.
2. The Administrative Law Judge erred in not finding that the Respondents lack of diligence in forwarding notices of the availability of Rider 5 service was a principle cause of the Complainant's failure to utilize the Rider

WE WERE OVER-CHARGED OR BILLED FOR ELECTRIC ENERGY THAT WE DID NOT USE. ON JUNE 11, 1987 DUQUESNE LIGHT COMPANY INSTALLED A "RYDER [sic] 5 METER", AT OUR REQUEST ON JANUARY 7, 1987 AND IS NOW IN USE. THE "RYDER [sic] 5 METER" READING SHOWS A SIGNIFICANT DROP IN OUR ELECTRIC "DEMAND" USE.

THE FOLLOWING IS THE COMPARATIVE AVERAGE "DEMAND" READINGS

5 service as of the date claimed by Respondent.

3. The Administrative Law Judge erred in holding that the mailing of the Rider 5 was sufficient notice to the customer due to the heavy burden that would be placed on the utility to assure notice.

4. The Administrative Law Judge erred in holding that the Respondent did not receive notice of change in utilization on the premises as the electric bills of the Complainant initially decreased to one-tenth of the prior usage and with the start of the new business quadrupled placing the utility on constructive notice of change in activity and usage since the Respondent utilized kilowatt demand usage as a parameter in determining notice of Rider 5 availability.

Supporting Reasons to Exceptions

1. The evidence produced by the Respondent at the hearing showed that Respondent mailed 2,500 mailers in July of 1982 and August of 1984 of which approximately 2,200 and 2,400 respectively were Rider 5 mailers (Tr. 64-65, Respondent's Exhibit No. 12). No evidence was introduced by Duquesne Light that Complainant demands usage during July, 1982 and August, 1984

PEI

was in exc... received th... to trigger t... rather than... to the part... demand (... None of th... Duquesne... the Rider... Complaina... computer... Complain... not receiv... on the util... Public Ut... charge the... is their l... prove by... that the... Complain

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3. The... the R... would

PENNSYLVANIA PUBLIC UTILITY COMMISSION — 69 PA PUC

was in excess of 5 kilowatts or that his bill received the "tic" which were both necessary to trigger the insertion of the Rider 5 mailer rather than the general mailer that was mailed to the parties using less than a 5 kilowatt demand (Respondent's Exhibit No. 12). None of the parties who testified on behalf of Duquesne Light had direct knowledge that the Rider 5 pamphlet was inserted into the Complainant's envelope only that the new computer program probably inserted it. The Complainant testified definitely that he did not receive the Rider 5 insert. The burden is on the utility pursuant to Section 1303 of the Public Utility Code, 66 Pa. C.S.A. 1303, to charge the lowest rate to the customer, and it is their burden not the Complainant's to prove by a preponderance of the evidence that the notice was received by the Complainant. This they failed to do.

2. The Respondent is endeavoring to use its own lack of diligence in alerting customers of the availability of a reduced rate structure to forestall the rightful claim of a user. The Respondent by its own admission only mailed notice of the Rider 5 availability two times from July of 1982 through January of 1987, a period of four and one-half years. Had the Respondent mailed notice to the Claimant in as little as two years after the August, 1984 mailing the Respondent could have made his request for Rider 5 service six (6) months prior to the date found by the Administrative Law Judge to be the effective date of the claimant's right to refund. By their own calculation the Respondent showed that the Complainant would receive a \$1,950.00 per year reduction in the cost of electrical service by utilizing Rider 5 service. By waiting more than two years between giving notice of the availability of a reduced rate, the Respondent was unjustly enriched by more than \$3,900.00 from the Complainant alone and should be required to return to the Complainant said overcharges.

3. The Court erred in finding that requiring the Respondent to show proof of notice would place an onerous burden on the utility.

The Respondent's engineering study on the Complainant's premises showed that the Complainant would realize a \$1,950.00 per year savings by utilizing the Rider 5 service. Over the four and one-half period in question, the Respondent overcharged the Complainant \$8,775.00. Had the Respondent mailed the 4,600 Rider 5 notices by certified mail to prove receipt, it would have cost the utility an additional 75 Cents per letter for a total of \$3,450.00. The amount overbilled the Complainant alone would have provided certified notice to all the customers in the Complainant's mailing and still entitled the Complainant to more than a \$5,000.00 refund. The finding that proving receipt of the Rider 5 notice would place an onerous burden on the utility is clearly erroneous and the repayment on the amounts overcharged should relate back to date requested by Complainant.

4. The Respondent admitted at the time of the hearing that it utilized demand usage parameters as a guide to the issuance of the Rider 5 notices. Had the respondent acted timely in providing customers with notice of the availability of Rider 5, it should have noticed the increase in Complainant's service from a demand average of 9 to 35 kilowatt hours [sic] per month and that the amount billed the Complainant more than trebled during the period. Had the Complainant's usage varied within a range, it would be incumbent on a user, after notice of availability, to seek a determination of whether a different rate structure would be of benefit. However, with the massive increase in usage by the Complainant and the Respondent's utilization of usage to determine notice to these customers of alternate rate structures, the Respondent received more than "constructive" notice of the change in usage and the likelihood that the Complainant would benefit from the Rider 5 service.

DISCUSSION

We shall quote selectively from the Initial

Decision as follows (pp. 10-13):

[Emphasis added.]

As required in these decisions, the record in this proceeding must be reviewed to determine whether the Complainant has satisfied the burden of proof. If the review indicates that this burden has been satisfied, it must then be determined whether the Respondent has submitted evidence of "co-equal" value or weight to refute Complainant's evidence. If this has occurred, the burden of proof cannot be deemed to have been satisfied, unless additional evidence has been presented by Complainant in opposition to Respondent's evidence. *Morissey v. Pennsylvania Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pennsylvania Pub. Utility Commission*, 66 Pa.Cmwlth. 282, 443 A.2d 1373 (1982) *aff'd.*, 501 Pa. 443, 461 A.2d 1234.

In this proceeding, Complainant contends that from May 28, 1985, until June 11, 1987, he was overcharged for electric service due to Respondent's failure to notify him of the availability of Rider 5 service for his commercial account and therefore he is entitled to receive a refund for the amount of the overpayment.

Section 1303 of the Public Utility Code, 66 Pa. C.S.A. §1303 provides:

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. *Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.*

The Commission has consistently interpreted Section 1303 as placing an affirmative duty upon a complainant to notify a utility of its service conditions before a new rate may be applied to an account. However, in my opinion, this imposed duty to notify arises after a customer is made aware of the availability of new and existing rates. I would thus place an implied duty on the utility to inform its customers of the availability of new rates.

In the present case, Respondent submitted information from a log sheet concerning the mailing of Rider 5 pamphlets to its customers (Respondent's Exhibit No. 12). According to the exhibit, Rider 5 pamphlets were mailed to selective commercial customers whose demand exceeded 5 kwh per month during the month of July, 1982, and again in August, 1984, when the availability requirements for the Rider 5 service were revised. During the August, 1984, mailing, Complainant qualified for Rider 5 service and, as such was mailed an information pamphlet. Although Complainant does not dispute the existence of the pamphlet or Respondent's mailing techniques, he contends that he never received the information. While, concededly, the mailing of the information does not guarantee that the information will be received by the customer, the existing duty of the utility is merely to mail the pamphlets. To further require Respondent to assure delivery to each of its customers would be impractical and place a heavy burden on the utility. Therefore, in mailing the Rider 5 information, Respondent fulfilled its duty and the burden to notify now rests with Complainant.

In the instant case, Complainant's general desire for a lower rate is common to all customers and should be viewed only as "constructive notice" not giving rise to the duty under Section 1303. Actual notice may not reasonably be said to have been received any earlier than Complainant's letter

requesting Rider 1987. Although Respondent's property and n. service, it was monitor his ene to notify Respc increase. As s *City of Pitts*. expected to customers' bu themselves an their decisions co-manager of Pa. P.U.C. at requests for R Complainant u meter was not Complainant v to Respondent demand sched

Therefore, in l Complainant showing that l service from l 1987, and reimbursemen Complainant reimbursemen period beginn the Rider 5 installed, and the service w: in original]

We find th rationale of Al review of the rec and support upo:

First, we b: Rider 5 is appr: transcript at 24:

JUDGE NEN for you. Wha [sic] 5 and ho

THE WITNE service.

PENNSYLVANIA PUBLIC UTILITY COMMISSION — 69 PA PUC

requesting Rider 5 service on January 7, 1987. Although Complainant contends that Respondent should have inspected the property and made him aware of his electric service, it was Complainant's own duty to monitor his energy consumption and cost and to notify Respondent when his bills began to increase. As stated by the Commission in *City of Pittsburgh*, "Utilities cannot be expected to know more about their customers' businesses than the customers themselves and cannot be expected to make their decisions for them. A utility is not the co-manager of its customers' operations." 54 Pa. P.U.C. at 463. *Since no inquiries or requests for Rider 5 service were made by Complainant until January 7, 1987, a Rider 5 meter was not installed prior to this time and Complainant was therefore billed according to Respondent's tariff based on an actual demand schedule.*

Therefore, in light of the evidence presented, Complainant has not met his burden of showing that he was overcharged for electric service from May 23, 1985 until January 7, 1987, and is not entitled to receive reimbursement for this period. However, Complainant is entitled to receive reimbursement for the 3.46 month delay period beginning on January 27, 1987, when the Rider 5 service was scheduled to be installed, and ending on June 11, 1987 when the service was actually installed. [Emphasis in original]

We find that we strongly agree with the rationale of ALJ Nemeč, but feel that our review of the record sheds some additional light and support upon our final disposition.

First, we believe that a brief description of Rider 5 is appropriate. We shall quote from the transcript at 24:

JUDGE NEMEC: Okay. I have one question for you. What's your understanding of Ryder [sic] 5 and how it works?

THE WITNESS: Ryder [sic] 5 is on off-peak service.

MS. SPHAR: Your Honor, we were prepared to have Mr. Cartier testify as to the provisions.

JUDGE NEMEC: Fine. I'd still like to hear Mr. Schroll's understanding.

THE WITNESS: Ryder [sic] 5 is an off-peak discount we give people that have an operation that operates on weekends, or Sundays, or — Well, off-peak service would be from nine p.m. Friday evening until eight a.m. Sunday — or, Monday morning, with the exception of Fridays, which we now have in there at five p.m. Friday until Monday morning.

JUDGE NEMEC: That has to do with recording the demand?

THE WITNESS: Right. It is only based on the demand at peak hours and off-peak hours.

Secondly, we believe that the fact that Complainant's business composition and operation changed drastically in 1980 should be explained. We shall quote from the transcript at 12-13:

Q. Did you change the name of your company within the last ten years?

A. Well, we operated under different names. We operated under — It was always a sole proprietorship. I had a Warehouse Foods for awhile.

Q. When you switched from Ben Mauro Warehouse Foods to Ben Mauro Company, did you notify the company, Duquesne Light Company, that you would have different hours of operation, different conditions of operation?

Q. And in 19 — approximately 1981, 1982, you switched . . .

A. It would be October — about October the

20th or 15th, the Warehouse Foods shut down, went out of business.

Q. Did you talk to anyone at Duquesne Light at that time?

A. No. I don't believe so.

We know from the record that in approximately 1980, Ben Mauro, changed his business from a "Super Market type operation" to a Sunday "Flea Market".

We feel that Mr. Mauro, at that time, had an inherent responsibility to inform Duquesne of its changed operations. It is not difficult to distinguish the differences in the operations, that being a shift from a full week operation to one day (Sunday) operation. Therefore, with a little initiative by the Complainant to make a call to the Respondent, the problem could have been resolved in the early 1980's.

The third item discovered in the record is the fact that the Complainant stated the following at the evidentiary hearing at T. 50:

But the crux of this case, in my opinion, is the fact that we have stated here, and unconfirmed, that there were staffers, or pamphlets, made up to notify customers of the Ryder [sic] 5 availability as it would apply to some customers. I have inquired among many people who have demand meters that are in the commercial end of the business, which is the only place that demand meters are used — are shown. They're not shown on household goods, but — and no one, as I have been making repeated inquiry since I learned that they — they told me that people — the general public was notified. [Emphasis added.]

We find that this statement is "hearsay". We note here, that, if there was a large number of commercial accounts in the same situation as Mr. Ben Mauro, they should have filed a consolidated complaint or sent letters of support for Mr. Mauro, or appeared as supporting witnesses at the hearing before the ALJ. None of these situations materialized, so that we must assume that the circumstance is unique to the

Complainant and that the Complainant did in fact receive the notification pamphlet for Rider 5 in August of 1984.

CONCLUSION

We have reviewed the record before us, including the transcript, Exhibits, Initial Decision and Exceptions. Complainant has raised no consideration which would prompt us to modify the decision of the ALJ. Simply put, we are convinced that the Complainant did not meet his burden of proof of establishing that he did not receive information concerning Rider 5 Service in August of 1984.

Therefore, in light of the evidence presented, the Complainant has not met his burden of proof of showing that he was overcharged for electric service from May 23, 1985 until January 7, 1987, and is not entitled to receive reimbursement for this period. However, the Complainant is entitled to receive reimbursement for the 3.46 month delay period beginning on January 27, 1987, when Rider 5 service was scheduled to be installed, and ending on June 11, 1987, when service was actually installed.

Therefore, we must determine a reasonable amount of electric service to be attributed to Complainant's account for the 3.46 month period. According to Respondent's Exhibit 3, Complainant was billed under an actual demand schedule from January 27, 1987 until June 11, 1987, resulting in a 32.3 Kw demand for a total of \$2,146.16. If the Rider 5 meter had been installed as scheduled on January 27, 1987, Complainant would have used only 14.4 Kw demand over the 3.46 month period for a total of \$1,385.85.

The difference between these two billings as calculated by the Respondent, results in a \$760.78 adjustment to be credited toward the Complainant's account. Accordingly, the Complainant's balance of \$3,340.40 should be reduced by \$760.78 to produce an adjusted final balance of \$2,579.62. Complainant should be permitted to liquidate this amount over a period of six months; THEREFORE,

IT IS ORDERED:

1. That the Exceptions filed by Ben Mauro

be, and hereby are, denied

2. That the Initial Decision of the ALJ, Nemeo issued herein on August 1, 1987, and hereby is, adopted.

3. That the complaint of the Complainant and hereby is, sustained

4. That Duquesne adjust the Complainant's account to reflect a \$760.40 credit.

5. That the Complainant's account remaining outstanding over a period not to exceed six months.

6. That in all other respects the account of Ben Mauro be, and hereby is, closed.

Robert Gene Fa

Pennsylvania I

C-1

Pennsylvania Public Utility Commission
December 22, 1988:

ORDER authorizing to a 30-foot width fr of a 46 kilovolt trans:

ELECTRICITY, § 1
Clearing of trees —

[PA.] Where a 46 kilovolt (kV) right-of-way, but that transmission line the utility practice of from each outside corner so the landowners' agreement to maintain 30-foot clearance mission declared authorized the utility

PENNSYLVANIA PUBLIC UTILITY COMMISSION — 69 PA PUC

be, and hereby are, denied.

2. That the Initial Decision of Michael A. Nemeo issued herein on September 2, 1988, be, and hereby is, adopted.

3. That the complaint of Ben Mauro be, and hereby is, sustained in part.

4. That Duquesne Light Company shall adjust the Complainant's account balance to reflect a \$760.40 credit.

5. That the Complainant shall pay the remaining outstanding balance of \$2,579.62, over a period not to exceed six months.

6. That in all other respects, the Complaint of Ben Mauro be, and hereby is, dismissed.

area; the purpose of clearing to a width of 30 feet from each outside conductor is to avoid having trees blown onto the lines which could cause power interruptions or to avoid other safety problems.

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice Chairman
Joseph Rhodes, Jr.
Frank Fischl

By the COMMISSION:

OPINION AND ORDER

Before us for disposition are the Exceptions, filed on October 4, 1988, of Robert Gene Kearns, Sr. and Family ("Complainants" or "Kearns") to the Initial Decision of Administrative Law ("ALJ") Judge Louis G. Cocheres, reissued to the parties on September 20, 1988.

The procedural posture of this case was adequately summarized by the ALJ as follows:

On August 29, 1988, the Commission issued a Secretarial letter which advised all parties of record that an extension of time to file exceptions requested by Robert Gene Kearns, Sr. and Family (hereinafter referred to as "Kearns" or "Complainants") had been granted. The parties were further advised that the parties could file a Motion to Correct Transcript, containing all such corrections, which would be ruled upon by the undersigned. The Secretarial letter also indicated that a new period in which to file Exceptions and Reply Exceptions would be established at the time of service of this Order. The August 29, 1988 letter is attached and incorporated by reference herein.

By letter dated September 3, 1988, (received by the Secretary on September 7, 1988) the Kearns advised the Secretary: (1) that on June 8, 1988, they had filed a letter, in Lieu of Exceptions which requested a postponement of the Exception filing date to resolve a

**Robert Gene Kearns, Sr. and
Family
v.
Pennsylvania Electric Company**

C-871590

Pennsylvania Public Utility Commission
December 22, 1988; entered January 5, 1989

ORDER authorizing electric utility to clear up to a 30-foot width from the outside conductors of a 46 kilovolt transmission line.

ELECTRICITY, § 6 — Transmission lines —
Clearing of trees — Safety considerations.

[PA.] Where an electric utility had placed a 46 kilovolt (kV) transmission line across a right-of-way, but the owners of the land where that transmission line was located objected to the utility practice of clearing to a 30-foot width from each outside conductor of 46 kV lines, and so the landowners and the utility entered into an agreement to maintain the line with less than a 30-foot clearance to avoid litigation, the commission declared that agreement void, and authorized the utility to clear up to a 30-foot

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Motion for Summary Judgment or Partial Summary Judgment in the above matter upon all interested parties by email and by mailing a copy properly addressed and postage prepaid to:

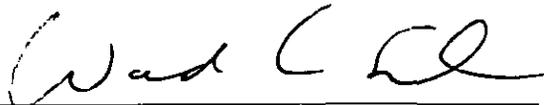
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Halberstadt Curley LLC
1100 E. Hector Street, Suite 425
Conshohocken, PA 19428

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SECRETARY'S BUREAU

Dated at Philadelphia, Pennsylvania, January 30, 2012.



Ward Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
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215-841-6863
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Anita Zaketa

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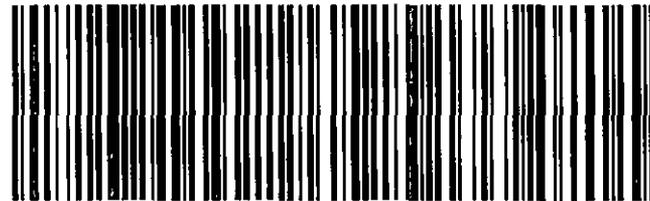
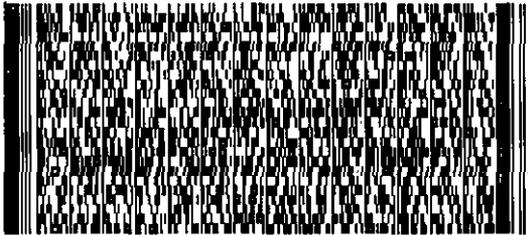
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