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July 9, 2014

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

**RE: Crescent Hotel – Plymouth Meeting v. PECO Energy Company**  
**PUC Docket No.: C-2008-2068258**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Preliminary Objections* with regard to the matter referenced above.

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,

A handwritten signature in black ink that reads "Ward L. Smith". The signature is fluid and cursive.

Ward L. Smith  
Counsel for PECO Energy Company

cc: Cynthia Fordham, Adm. Law Judge (via First Class Mail & Email)

WS/lo

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Crescent Hotel – Plymouth Meeting, LP</b>	:	
v.	:	<b>Docket No. : C-2008-2068258</b>
	:	
<b>PECO Energy Company</b>	:	
	:	
<b>Crescent Hotel – Plymouth Meeting, LP</b>	:	<b>Docket No. : C-2008-2068267</b>
v.	:	
	:	
<b>UGI Corporation</b>	:	
	:	
<b>Crescent Hotel – Plymouth Meeting, LP</b>	:	<b>Docket No. : C-2009-2089563</b>
v.	:	
	:	
<b>Celeren Corporation</b>	:	

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**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.61 and 5.101, you are hereby notified that, if you do not file a written response denying or correcting the enclosed PRELIMINARY of PECO Energy Company within 10 days from service of this notice, a decision may be rendered 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, Ward L. Smith, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:  
Ward L. Smith, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, July 9, 2014



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Ward L. Smith, Esq.  
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Philadelphia, PA 19101-8699  
215-841-6863

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Crescent Hotel-Plymouth Meeting, LP	:	
v.	:	C-2008-2068258
PECO Energy Company	:	
Crescent Hotel-Plymouth Meeting, LP	:	
v.	:	C-2008-2068267
UGI Corporation	:	
Crescent Hotel-Plymouth Meeting, LP	:	
v.	:	C-2009-2089563
Celeren Corporation	:	
	:	

**PECO Energy Company’s Preliminary Objections to the Amended Complaint Seeking (1) to Strike Counts Three, Four, Five, and Six for Lack of Commission Jurisdiction and (2) For a More Specific Pleading As To Counts One and Six**

PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §§ 5.101 and 5.483, makes these Preliminary Objections to the Amended Complaint of Crescent Hotel-Plymouth Meeting, LP (“Crescent”).

PECO’s raises two preliminary objections. First, it requests that Counts Three, Four, Five and Six of the Amended Complaint – which are all claims for monetary damages directed primarily against Celeren– be dismissed because the Commission lacks jurisdiction to hear or decide those claims and because the entity to which they are addressed, Celeren, is not a public utility and thus a “reasonableness” inquiry is not appropriate. Second, PECO seeks a more specific pleading with respect to Counts One and Six of the Amended Complaint.

In support of its Preliminary Objections, PECO states as follows:

**A. Background<sup>1</sup>**

1. This proceeding was initiated on October 1, 2008, when Crescent Hotel Plymouth Meeting, LP (“Crescent”) filed a complaint with the Pennsylvania Public Utility Commission naming, as Respondents, PECO Energy, Exelon Corporation, and UGI Corporation. In 2009 a related docket was opened as *Crescent Hotel v. Celeren*.
2. On April 1, 2009, the Celeren bankruptcy trustee contacted Administrative Law Judge Guy M. Koster and invoked the automatic stay provisions of the United States Bankruptcy Code.
3. On April 2, 2009, Administrative Law Judge Guy M. Koster issued an Order consolidating the various proceedings associated with this complaint, and staying the proceedings until resolution of the Celeren bankruptcy.
4. Consequently, the instant consolidated proceeding has been stayed, with no further activity in the docket allowed, since April 2, 2009, pending closure of the Celeren bankruptcy proceeding.
5. On February 18, 2014, the Bankruptcy Court issued a Final Decree closing the Celeren bankruptcy proceeding.
6. On March 18, 2014, counsel for the Bankruptcy Trustee informed the Commission and the parties, by letter addressed to ALJ Fordham, of the Bankruptcy Court Final Decree.
7. On April 22, 2014, PECO Energy filed and served a Motion to Lift Stay and Re-Activate the Proceeding.

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<sup>1</sup> Additional procedural background is provided in PECO’s Motion to Lift Stay and Re-Activate the Proceeding, which was filed on April 22, 2014.

8. On April 24, 2014 PECO filed a Motion to Require the Filing of an Amended and More Specific Complaint.

9. On June 5, 2014, ALJ Fordham issued ORDER #3: Order Granting PECO Energy Company's Motion to Lift Stay and Re-Activate this Proceeding. In that Order (Ordering ¶ 1), the ALJ ordered that answers to PECO's Energy Company's Motion to Require the Filing of an Amended and More Specific Complaint must be filed by June 20, 2014.

10. Crescent did not file an answer to PECO's Motion to Require the Filing of an Amended and More Specific Complaint. Instead, on or about June 20, 2014, Crescent filed an Amended Complaint.

11. These preliminary objections are addressed to the Amended Complaint.

**B. Preliminary Objection to Strike Counts Three, Four, Five and Six (¶¶ 60-100) for Lack of Commission Jurisdiction**

12. In PECO's Motion to Require the Filing of an Amended and More Specific Pleading (¶ 9), it suggested that Crescent should clarify its intentions with respect to Celeren. PECO stated:

**Status of Claims Against Celeren Corporation:** After five years in the bankruptcy courts, the Celeren bankruptcy is complete. Celeren's assets have been disposed of and its debts discharged – and it is no longer in business. On April 2, 2009, in his Stay Order, ALJ Koster ruled that Celeren is an indispensable party to this proceeding. The two claims of the Complaint that allege causes of action against PECO -- Count 1, ¶¶ 23-38, and Count 6, ¶¶66-79 – are also specifically styled as claims against Celeren. Moreover, the Complaint is replete with references to Celeren; of the 79 numbered paragraphs in the Complaint, fully 67 paragraphs specifically or by incorporation discuss Celeren. (¶¶4, 9-14, 16, 17, 19, and 23-79). The course of this proceeding will be much clearer if the Administrative Law Judge requires Complainant to file an amended complaint that, at a minimum, clarifies whether and how Complainants intend to proceed against Celeren in this docket.

13. As PECO requested in ¶19 of its Motion, the Amended Complaint does add additional information regarding Celeren. Specifically, new ¶¶ 13-16, 27-30, and 73-85, each of which discusses Celeren directly or by implication, were incorporated into the Amended Complaint.<sup>2</sup> With the addition of this new information, Crescent has thus clarified how it intends to proceed against Celeren.

14. A preliminary objection may be filed for “lack of Commission jurisdiction.” 52 Pa. Code §5.101(a)(1).

15. The Commission does not have jurisdiction to award damages. *Terminato v. Pa. National Insurance Co.*, 645 A. 2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A. 2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A. 2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A. 2d409 (Pa. Super. 1991); *Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A. 2d 744 (Pa. Cmwlth. 1995). *See also Rama Construction, Inc. v. Hess Corporation*, C-2008-2058200 (October 16, 2008 Initial Decision Sustaining Preliminary Objections and Dismissing Complaint, pp. 8-9 (in which ALJ David A. Salapa relied upon the above-cited cases to dismiss damage claims in the parallel Ramada proceeding against Hess Corporation).

16. Count Three of the Amended Complaint, ¶¶ 60-62, is directed solely against Celeren and is a claim for damages due to Celeren’s alleged breach of contract. (See ¶ 61: “Celeren materially breached the Agreement [with Crescent]”; ¶ 62: “As a direct and proximate result of Celeren’s breach of contract, Crescent has suffered damages”; Wherefore clause: “WHEREFORE, Plaintiff Crescent Hotel Plymouth Meeting L.P. demands judgment . . . against Celeren . . . in an amount in excess of \$50,000 . . . .”)

17. Count Four of the Amended Complaint, ¶¶ 63-67, is directed solely against Celeren and is a claim for damages due to Celeren’s alleged conversion of Crescent’s money. (See ¶ 66: “Celeren is

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<sup>2</sup> Several of the new paragraphs discuss payments made by or on behalf of “the University.” *See, for example*, ¶¶ 15, 73, and 75. In general, one’s overall impression is that the new paragraphs were “cut-and-pasted” from a civil complaint involving “the University.”

liable to Crescent for the conversion of Crescent’s money”; Wherefore clause: “WHEREFORE, Plaintiff Crescent Hotel Plymouth Meeting, LP demands judgment . . . against Celeren . . . . in an amount in excess of \$50,000 . . . .”)

18. Count Five of the Amended Complaint, ¶¶ 68-86, is directed solely against Celeren and is a claim for damages due to Celeren’s alleged fraud. (See ¶ 73: “Celeren committed fraud and made fraudulent representations to Crescent”; ¶ 84: “Celeren has committed and carried out a systematic and widespread course of fraudulent and deceptive conduct from 2005 to approximately 2008”; Wherefore clause: “WHEREFORE, Plaintiff Crescent Hotel Plymouth Meeting LP demands judgment . . . against Celeren . . . . in an amount in excess of \$50,000 . . . .”)

19. Count Six of the Amended Complaint, ¶¶ 87-100, is directed against Celeren and PECO and is a claim for damages due to the facts alleged therein. (See Wherefore clause: “Plaintiff Crescent Hotel Plymouth Meeting LP demands judgment . . . against Defendants PECO Energy and Exelon Corporation . . . in an amount in excess of \$50,000 . . . .”)

20. PECO therefore requests, pursuant to 52 Pa. Code §5.101(a)(1), that Crescent’s damage claims in Counts Three, Four, Five, and Six be declared to be beyond the Commission’s jurisdiction and that they be stricken.

21. When a damage claim is made against a regulated public utility, the Commission will sometimes strike the damage claim but allow the narrative aspects of the complaint to remain in place so that the complainant can attempt to demonstrate that the public utility provided unreasonable utility service. That approach is not appropriate for Counts Three, Four and Five of the Amended Complaint because those claims are directed solely against Celeren,<sup>3</sup> which is not a regulated public utility. This conclusion

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<sup>3</sup> PECO is not mentioned in Count Three or Count Four. PECO is mentioned twice in the factual recitations of Count Five. ¶ 69 alleges that Celeren accepted payments from Crescent “without

– that Celeren is not a regulated public utility -- is a valid legal conclusion whether or not Celeren is deemed to be an Electric Generation Supplier, or EGS.<sup>4</sup> If Celeren is deemed to be an EGS, then pursuant to the Public Utility Code, it is not a public utility. See, 66 Pa. C.S. § 102, definition of “public utility.” (“The term [public utility] does not include . . . (vi) electric generation supplier companies, except for the limited purposes described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation.”)<sup>5</sup> If Celeren is deemed not to be an EGS, then there is no aspect of the definition of “public utility” that applies to Celeren’s operations. See generally, *Rama Construction, Inc. v. Hess Corporation*, C-2008-2058200 (October 16, 2008 Initial Decision Sustaining Preliminary Objections and Dismissing Complaint, pp. 9-11 (in which ALJ David A. Salapa concludes that Hess Corporation is not a public utility and thus the non-damage claims against it should be dismissed). Consequently, there is no jurisdictional claim that is made or could be made in Counts Three, Four, and Five, and PECO requests that they be stricken in their entirety, including the text of §§ 60-86 of the Amended Complaint.

22. As to Count Six, which alleges that PECO’s behavior was inappropriate, PECO requests that the narrative of that claim (¶¶ 87-100) also be stricken. The narrative goes to Crescent’s damage claim, not to a matter within the Commission’s jurisdiction. Moreover, in its second preliminary objection, PECO argues that Crescent should be required to re-plead, with specificity, which tariff, rule, statute, or order it alleges that PECO violated. To the extent that Crescent wishes to pursue the factual allegations

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remitting payment to PECO.” ¶ 82 alleges that certain third parties who are not involved in this proceeding were damaged “due to Celeren’s fraudulent non-payment of PECO.” These allegations, even if accepted as true, do not set forth a claim against PECO.

<sup>4</sup> In the Amended Complaint, Crescent does not take a position on whether Celeren was an EGS, choosing instead to present alternative arguments regarding Celeren’s EGS status. Compare ¶ 36 (“If Celeren qualified as an EGS . . . .”) with ¶ 37 (“In the alternative, if Celeren was not an EGS . . . .”).

<sup>5</sup> Crescent has made no claim that Celeren violated §2809 or §2810.



contained within ¶87-100, then for the reasons set forth in PECO's second preliminary objection Crescent should be required to re-plead those facts in an amended complaint that identifies, with specificity, the tariff, regulation, rule, or order that Crescent claims that PECO violated.

23. PECO also reiterates its argument, first made in its Motion to Require the Filing of an Amended and More Specific Pleading, that the Administrative Law Judge should exercise her authority under 52 Pa. Code §5.483 to regulate the course of this proceeding and exclude irrelevant or immaterial evidence. For the reasons set forth above, allegations that Celeren or PECO owe damages to Crescent are not jurisdictional, and any evidence adduced in support of such claims would thus be irrelevant or immaterial to this proceeding. This proceeding will be more focused if all allegations relating to such damage claims are stricken. *See also*, 52 Pa. Code §5.101(a)(2), allowing preliminary objections against the inclusion of impertinent matter.<sup>6</sup>

24. In a typical proceeding, arguments regarding Commission jurisdiction over Celeren claims would be made by counsel for Celeren, not by PECO. In this proceeding, however, it does not appear that Celeren or its counsel will actively participate, and thus will not be making those arguments. That creates a difficult situation -- allowing this docket to proceed with numerous active non-jurisdictional claims would prejudice PECO because allowing those claims to remain in place potentially would result in a more expansive proceeding, with the additional resources that may be required to attend to the more expansive proceeding. PECO therefore believes that it is appropriate for it to make this preliminary objection. However, to the extent that it is deemed inappropriate for PECO to make a preliminary objection to claims made against another party, PECO believes that the Administrative Law

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<sup>6</sup> One meaning of "impertinent" is "irrelevant." This section of the Code thus allows a preliminary objection seeking the exclusion of irrelevant material from the Complaint. Pursuant to 52 Pa. Code §5.102(a)(2), PECO thus also seeks to have Counts Three, Four, Five and Six stricken on the basis that they consist exclusively of irrelevant, or impertinent, material.

Judge may and should address the issue *sua sponte* as a manner of regulating the course of the proceeding pursuant to 52 Pa. Code §5.483. Moreover, because the Commission has only the powers conferred on it by the General Assembly,<sup>7</sup> jurisdictional constraints cannot be waived and must be addressed in one way or the other, either in response to this preliminary objection or *sua sponte* by the Administrative Law Judge. PECO therefore respectfully requests that Counts Three, Four, Five, and Six of the Amended Complaint be stricken in their entirety because they are damage claims that are outside of the jurisdiction of the Commission, because Celeren is not a public utility against which a “reasonableness” inquiry can be pursued at the Commission, and because allowing those counts to remain will require additional resources from PECO and the Commission and thus will be prejudicial to PECO.

**C. Preliminary Objection to Counts One and Six for Insufficient Specificity and Legal Insufficiency**

25. In PECO’s Motion to Require the Filing of an Amended and More Specific Pleading (¶11), it suggested at length that Crescent should be required to state, with specificity, which portions of its tariff, the Public Utility Code, the Commission’s regulations, or Commission Order it claims that PECO has violated.

26. The Amended Complaint does not introduce any new arguments, information, or language to provide the requested specificity. Put differently, for the requested specificity, the original Complaint and the Amended Complaint are effectively identical.

27. A preliminary objection may be filed for “insufficient specificity of a pleading,” 52 Pa. Code §5.101(a) (3,) and for “legal insufficiency of a pleading.” 52 Pa. Code § 5.101(a) (4).

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<sup>7</sup> See the cases cited in ¶15 for support of the proposition that the Commission has only the powers conferred on it by the General Assembly.

28. Commission precedent in closely comparable cases and the Commission's rules support the conclusion that Crescent should be required to state with specificity in its complaint the tariff, regulation, statute, or order that it claims PECO has violated.

a. In *Guntram Weissenberger, et al. v. PECO Energy Company*, C-2010-2182281 (July 8, 2011 Initial Decision), ALJ Dennis J. Buckley granted PECO's Preliminary Objection for a more specific pleading because the complaint did not specify the tariff, rule, statute, or order that the Complainant claimed that PECO had violated. The case is on all fours with the instant proceeding and is very persuasive guidance for the instant proceeding. In *Weissenberger*, as in the instant proceeding, a billing agent (ConServe in the *Weissenberger* case) had failed to forward payments to PECO after those payments were made to the billing agent by the customer; in both cases the customer claimed that, having paid their billing agent that their utility payment obligations had been met; in both cases the complaint was based on an extensive civil complaint of approximately 70+ paragraphs; in neither case had the complainant specified the tariff, regulation, statute or order that it alleged PECO had violated. ALJ Buckley granted PECO's Preliminary Objection and ordered the Complainant to file a more specific pleading, stating that:

Having reviewed the Amended Complaint, I find that it is, essentially, a stylistic modification of the Complaint originally filed before the Delaware County Court of Common Pleas and is so "summary" in form as to be of little to no use to PECO in preparing a meaningful defense in this proceeding.<sup>8</sup> The Amended Complaint is, in essence, a series of factual averments which, while informative to PECO, falls short of requirements of 66 Pa. C.S. § 701 and 52 Pa. Code § 5.22(a)(4). The Amended Complaint is lacking in specificity in that it does not identify which tariff or rates PECO should have applied to the Complainants, nor does it provide any relevant information or discussion regarding the periodicity of PECO billing, and, most importantly, it does not specify how PECO's billing and notifications violated a specific tariff, rule or rate. PECO's Second

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<sup>8</sup> PECO notes that, in the instant proceeding, the Complaint similarly appears to have been drafted as a civil complaint, rather than as a complaint focused on a PUC regulatory proceeding.

Preliminary Objection is sustained, and the Complainants' will be directed to file a Second Amended Complaint, consistent with this Order, within thirty (30) days from the date of issuance of this Order.<sup>9</sup>

b. In the parallel ongoing proceeding involving Ramada, *Ramada Construction v. PECO Energy*, C-2008-2058320, ALJ Salapa's Initial Decision dismissing the complaint against Hess Corporation also supports the conclusion that requiring a more specific pleading will help to focus and control the flow of this proceeding. Although Hess's Preliminary Objection dealt primarily with jurisdictional issues, Ramada's response to that Preliminary Objection discussed specific portions of the Commission's regulations that Ramada alleged Hess had violated. ALJ Salapa's Initial Decision discussed those claims and length and, in the case of Hess, dismissed the claims. While PECO is not suggesting that the a more specific pleading will necessarily result in the dismissal of Crescent's as-yet-unspecified claims against PECO, it does note that, in the Hess portion of the *Ramada* proceeding, when specificity was achieved that allowed ALJ Salapa to make a final determination as to certain claims without the necessity of an evidentiary hearing.

c. 52 Pa. Code ¶15.483 gives the Administrative Law Judge broad authority to "regulate the course of the proceeding." PECO reiterates its argument, initially made in its Motion to Require the Filing of an Amended and More Specific Pleading (¶ 11), that the ALJ should exercise that authority to require a more specific pleading:

PECO respectfully submits that the course of this proceeding will be much clearer if the Administrative Law Judge exercises her authority, pursuant to 52 Pa. Code § 5.483, to "regulate the course of the proceeding." Because this proceeding is still at the pleading stage, this can most effectively be done by adopting the procedure used by ALJ Buckley in the *Weissenberger* case: require the Complainants to file an amended complaint that, at a minimum, specifies the source of each duty that it claims PECO violated, by

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<sup>9</sup> Ultimately, ALJ Buckley dismissed the *Weissenberger* Complaint with prejudice because the Complainants never complied with his Order to file an Amended Complaint to specify the tariff, Code, regulation, or Order that it claimed PECO was violating.

specific reference to the tariff provision, or to the provision of the Code, Commission rule or regulation, or Commission Order which Complainant claims gives rise to the duty being discussed.

29. In the instant proceeding, it is especially critical that Complainant be required to specify the tariff, rule, statute or order that it claims that PECO violated because the Amended Complaint is clearly based, in material part, upon a breach of contract theory – and the Commission does not have jurisdiction over breach of contract claims.

a. Count One of the Amended Complaint is replete with references to alleged breaches of contract. In ¶¶ 9 and 37, the Amended Complaint refers to an alleged agreement between PECO and Celeren. In ¶¶ 10, 11, 12, 13, 14, 15, 16, 17, 18, and 38, the Amended Complaint discusses a written agreement between Crescent and Celeren, ultimately claiming (¶ 38) that PECO had duties that arose from the Crescent/Celeren agreement.<sup>10</sup>

b. It has been black letter law for decades that the Commission does not have authority to award relief for breach of contract. ALJ Salapa's October 16, 2008 Initial Decision<sup>11</sup> dismissing Hess from the *Ramada* proceeding provides a summary of historic Commission law on this issue:

The Public Utility Code simply does not give the Commission the authority to entertain an action for breach of contract or to award damages or any other form of relief in an action for breach of contract. There is no question that the Commission lacks authority to award damages or any other form of relief in an action for breach of contract. *Terminato v. Pa. National Insurance Company*, 645 A. 2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A. 2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.* 383 A. 2d 791 (Pa. 1977); *Ostrov v. I.F.T. Inc.*, 586 A. 2d 409 (Pa. Super 1991); *Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A. 2d 744 (Pa. Cmwlth. 1995). As the Commission lacks authority to entertain an action for breach of contract or to award damages or any other form of relief, the complaint should be dismissed with prejudice.

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<sup>10</sup> Counts Three, Four, Five, which PECO has requested be stricken, contain additional references to breach of contract claims. Count Three is explicitly a breach of contract claim.

<sup>11</sup> This Initial Decision was adopted by the Commission on February 9, 2009.

ALJ Koster reached the same conclusion in *Philadelphia HGI v. Hess*, C-2008-2069141 (Page 7 of Initial Decision issued February 9, 2009 and adopted by the Commission on August 28, 2009).

30. In at least six distinct places in Count One, Crescent alleges that PECO had a duty or breached a duty, but without specifying where in the tariff, rules, statutes, or orders the alleged duty arises:

a. Paragraph 35 of the Amended Complaint alleges that “PECO and Exelon owed a duty to Crescent to investigate whether Celeren qualified as an EGS under the Tariff,” but does not specify where in the tariff, rules, statutes, or orders such an investigative duty arises.

b. Paragraph 36 of the Amended Complaint alleges that “If Celeren qualified as an EGS, PECO and Exelon owed a duty to Crescent to treat Crescent as an end user with all of the rights and protections [of] any customer who received electricity directly from PECO and Exelon,” but does not specify where in the tariff, rules, statutes, or orders such a duty arises.

c. Paragraph 37 of the Amended Complaint alleges that, if Celeren is deemed not to be an EGS, “PECO and Exelon owed a duty to so inform Crescent and to provide it with notice that Celeren was not fulfilling the terms of its agreement with PECO and Exelon,” but does not specify where in the tariff, rules, statutes, or orders such a duty to notify arises.<sup>12</sup>

d. Paragraph 38 states that “Pursuant to the Tariff, the PUC regulations and the applicable statutes, Title 66 of the Pennsylvania Consolidated Statutes, PECO and Exelon owed a duty to Crescent to inform it of the alleged delinquencies so that Crescent could take appropriate action

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<sup>12</sup> On its face, ¶ 37 – which is at the core of Count One against PECO -- appears to claim that an alleged private contract between PECO and Celeren created a PECO duty to Crescent. If that is the claim that is being made here, then the claim is a breach of contract claim that falls outside of the Commission’s jurisdiction. It is thus especially important that Crescent be required to specify the tariff, rule, statute or order that gives rise to this alleged duty, so that the Commission does not foray into the extra-jurisdictional territory of breach of contract.

to enforce its [contract] rights against Celeren,” but does not specify where in the tariff, rules, statutes or orders such a duty to inform arises.<sup>13</sup>

e. Paragraph 39 states that “PECO and Exelon breached their duty by failing to conduct proper due diligence as whether Celeren was a proper EGS and by failing to notify Crescent of the alleged delinquency,” but does not specify where in the tariff, rules, statutes or orders such duties arise.

f. Paragraph 40 states that “Because PECO and Exelon breached their duties to Crescent, PECO and Exelon allowed charges of approximately \$125,000 to accrue while allowing Crescent to continue paying Celeren unaware that Celeren was not remitting the payment to PECO and Exelon,” but does not specify where in the tariff, rules, statutes or orders such duties arise.

31. Count One of the Amended Complaint contains two citations to specific aspects of a tariff, rule, statute or order. In ¶ 33, the Amended Complaint recites the definition of “EGS” or “Electric Generation Supplier” from PECO’s Electric Generation Supplier Tariff. In ¶ 34, the Amended Complaint recites the following language from Rule 15.1 of PECO’s Electric Generation Supplier Tariff:

The Company shall have no duty or liability with respect to electric energy before it is delivered by an EGS to a point of delivery on the Company’s distribution system. After its receipt of electric energy and capacity at the point of delivery, the Company shall have the same duty and liability for distribution services to customers receiving Competitive Energy Supply as to those receiving electric energy and capacity from the Company.

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<sup>13</sup> On its face, ¶ 38 appears to claim that a private contract between Crescent and Celeren created a PECO duty to Crescent. If that is the claim that is being made here, then the claim is a breach of contract claim that falls outside of the Commission’s jurisdiction. As with ¶ 37, it is thus especially important that Crescent be required to specify the tariff, rule, statute or order that gives rise to this alleged duty, so that the Commission does not foray into the extra-jurisdictional territory of breach of contract.

32. The ¶ 33 recitation of the tariff definition of an EGS does not provide any specific information regarding Crescent’s claims against PECO. Crescent makes no claim, here or elsewhere in the Amended Complaint, that PECO violated this provision of its tariff. Indeed, it does not even take a position on whether Celeren is an EGS, instead positing in ¶¶ 36 and 37 that Celeren may be an EGS (¶ 36), but then again that it may not be an EGS (¶37). Regardless, simply reciting the definition of “EGS” gives no meaningful information as to which tariff, rule, statute or order Crescent claims that PECO violated.

33. The ¶34 recitation of EGS Tariff Rule 15.1 likewise does not provide any meaningful information as to which tariff, rule, statute or order Crescent claims that PECO violated. The Amended Complaint merely recites the language of Rule 15.1 and does not contain argument or explanation regarding how PECO is alleged to have violated it. With that said, it appears that Crescent may be arguing some sort of discrimination claim<sup>14</sup> – that is, Crescent may be arguing that PECO owes to Crescent the same duties that it owes to customers who do not take service from an EGS, and that PECO somehow failed to meet those duties when interacting with Crescent. But nowhere in the Amended Complaint does Crescent discuss the rules that apply to customers who do not take service from an EGS, and nowhere in the Amended Complaint does Crescent claim that PECO failed to apply one of those rules to it. It does not even make the broad claim that the two types of customers must be treated the same – that has to be inferred from the citation to EGS Tariff Rule 15.1. And the Amended Complaint certainly does not allege that PECO treated Crescent any differently than PECO treated its other customers. The reference to EGS Tariff Rule 15.1 thus does not provide any specific claim that PECO violated a tariff, rule, statute or order.

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<sup>14</sup> PECO notes that EGS Tariff Rule 15 establishes the Liability rules for EGS interactions and thus has no apparent application to the fact pattern that is pled in the Amended Complaint. It is thus especially important that Crescent articulate, in a more specific pleading, whether it is alleging that PECO violated this tariff provision and, if so, how it violated it.



34. Count Six of the Amended Complaint makes no mention whatsoever of PECO's tariff, or of the Commission's regulations, the Public Utility Code, or Commission orders. Rather, it appears to be a civil equity claim for unjust enrichment or some similar theory of damage recovery. (See ¶ 99: "Under the circumstances, it was unjust for PECO/Exelon to require Crescent to pay;" ¶ 100: "PECO/Exelon should be required to reimburse and the return the \$125,000 to Crescent.")

PECO therefore respectfully requests the issuance of an Order stating that:

1. Counts Three, Four, Five, and Six of the Amended Complaint are dismissed because they make claims for damages that are not within the Commission's jurisdiction. ¶¶ 60-100 of the Amended Complaint are stricken for the same reason.

2. Within 20 days of the date of this Order, the Complainant shall file an Amended Complaint that identifies specific provisions of PECO's tariff, the Commission's regulations, the Public Utility Code, or a Commission order that Complainant alleges that PECO has violated.

Respectfully submitted,



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Counsel for PECO Energy Company and Exelon Corporation

July 9, 2014

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Crescent Hotel – Plymouth Meeting, LP</b>	:	
<b>v.</b>	:	<b>Docket No. : C-2008-2068258</b>
	:	
<b>PECO Energy Company</b>	:	
	:	
<b>Crescent Hotel – Plymouth Meeting, LP</b>	:	<b>Docket No. : C-2008-2068267</b>
<b>v.</b>	:	
	:	
<b>UGI Corporation</b>	:	
	:	
<b>Crescent Hotel – Plymouth Meeting, LP</b>	:	<b>Docket No. : C-2009-2089563</b>
<b>v.</b>	:	
	:	
<b>Celaren Corporation</b>	:	

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of *PECO Energy Company's Preliminary Objections* on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA E-FILING**

Rosemary Chiavetta, Secretary  
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Date: July 9, 2014

  
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