



Email: matthew.sack@davisbucco.com

August 29, 2014

VIA OVERNIGHT MAIL

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

RECEIVED

AUG 29 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Rama Construction, Inc. t/a Ramada Inn International Airport v. PECO Energy Company; Docket No: C-2008-2058320

Rama Construction, Inc. t/a Ramada Inn International Airport v. Celeron Corporation; Docket No: C-2009-209694

Dear Ms. Chiavetta:

Enclosed please find the Answer to Peco Energy Company's Preliminary Objections to Second Amended Complaint which was filed via the e-filing system.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'MS', written over a light-colored background.

Matthew I. Sack

MIS/kad

Enclosure

Cc: Administrative Law Judge Cynthia Williams Fordham (*via regular mail*)
George Miller, Trustee for Celeron Corporation (*via regular mail*)

for itself and therefore any attempt to characterize its terms is specifically denied.

7. Denied as stated. The Motion referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

8. Denied as stated. The Motion referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

9. Denied as stated. The Order referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

10. Denied as stated. The Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

11. Denied as stated. The Preliminary Objections referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

12. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

13. Denied as stated. The corresponding paragraph constitutes a conclusion of law for which no response is required.

B. Preliminary Objection to Strike Count One (§§ 33-48) for Insufficient Specificity

14. Denied as stated. The corresponding paragraph constitutes a conclusion of law for which no response is required.

15. Denied as stated. The Pennsylvania Public Utility Code referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

16. Denied as stated. The corresponding paragraph constitutes a conclusion of law for which no response is required. Without waiving the foregoing objection, by way of further answer, Rama did in fact “state with specificity the sections of PECO’s tariff, regulation, statute or order” that PECO violated. By way of further denial, Rama stated in paragraph 36 that PECO violated a duty confined in the tariff: as follows:

Article 15.1 of the Tariff provides the following with regard to the liability of PECO and Exelon:

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 service to customers receiving Competitive Energy Supply as to those receiving electric energy and capacity from the Company.

Rama further pled in paragraph 70 that pursuant to 52 Pa. Code § 62.102, PECO and Exelon are responsible for the fraudulent, deceptive and other unlawful marketing and billing acts committed by Celeren, i.e., Celeren’s failure to pay PECO and Exelon.

- a. Denied as stated. The case law referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.
- b. Denied as stated. The ALI Salapa’s Decision referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.
- c. Denied as stated. The Statute and Motion to Require the Filing of an Amended and More Specific Pleading referenced herein is a written document which speaks for itself and therefore any attempt to characterize

its terms is specifically denied.

17. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required. Without waiving the foregoing objection, by way of further answer, it is denied that the PUC lacks jurisdiction over the claims of Rama while it is true that the PUC lacks jurisdiction over issues arising solely out of the breach of a private contract, it does have jurisdiction over matters such as those raised by Rama “relating to the reasonableness of a utility's services, facilities and rates, as well as over matters concerning the utility's formation of reasonable rules and regulations governing the conditions under which service, facilities and rates shall be rendered, constructed or imposed”. DiSanto v. Dauphin Consolidated Water Supply Company, 436 A.2d 197 (Pa.Super. 1981). As such, the PUC has jurisdiction over this matter and the Preliminary Objection of PECO should be overruled.

a. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied. By way of further Answer, the remaining averments in the paragraph constitute a conclusion of law for which no response is required.

b. Denied as stated. The ALI Salapa's October 16, 2008 Decision and case law referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied. By way of further Answer, the remaining averments in the paragraph constitute a conclusion of law for which no response is required.

18. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically

denied. By way of further Answer, the corresponding paragraph constitutes a conclusion of law for which no response is required. Without waiving the foregoing objection, Rama avers it did in fact “state with specificity the sections of PECO’s tariff, regulation, statute or order” that PECO violated. By way of further denial, Rama stated in paragraph 36 that PECO violated a duty confined in the tariff: as follows:

Article 15.1 of the Tariff provides the following with regard to the liability of PECO and Exelon:

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 service to customers receiving Competitive Energy Supply as to those receiving electric energy and capacity from the Company.

- a. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.
- b. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.
- c. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.
- d. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.
- e. Denied as stated. The Second Amended Complaint referenced

herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.

- f. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore *any attempt to characterize its terms is specifically denied.*

19. Denied as stated. The second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

20. Denied as stated. The second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

21. Denied as stated. The second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied. By way of further Answer, the remaining averments in the paragraph constitute conclusions of law for which no response is required.

22. Denied as stated. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

B. Preliminary Objection to Strike the Request for Attorney's Fees in Count One (§ 48(d)) as Impertinent Material

23. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

24. Admitted.

25. Denied as stated. The case law referenced herein are written documents which

speak for itself and therefore any attempt to characterize its terms are specifically denied. By way of further Answer, the remaining averments in the paragraph constitute conclusions of law for which no response is required.

C. Preliminary Objection to Strike Count Two (¶¶49-71) Because It Is a Request for the Award of Damages, Which are Outside of the Commission's Jurisdiction

26. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

27. Denied as stated. The case law referenced herein are written documents which speak for itself and therefore any attempt to characterize its terms are specifically denied. By way of further Answer, the remaining averments in the paragraph constitute conclusions of law for which no response is required.

28. Denied as stated. Count II of the Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

29. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

D. Preliminary Objection to Strike Count Two for Legal Insufficiency Because the Theory Pled in Count Two Has Been Rejected by the Commission

30. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

31. Denied as stated. Count II of the Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

32. Denied as stated. The October 16, 2008 Initial Decision referenced herein is a

written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied. By way of further Answer, the remaining averments in the paragraph constitute conclusions of law for which no response is required.

33. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

E. Preliminary Objection to Strike Count Two For Legal Insufficiency Because the Theory Pled in Count Two is Predicated On the Assumption That PECO and Exelon are Natural Gas Suppliers (NGS's) Under the Law, and the Commission May Take Judicial of Official Notice That This Not True

34. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

35. Denied as stated. Count II of the Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

By way of further Answer, the regulations of the PUC are implicated by the issues raised by Rama in the Complaint. The applicable regulations are set forth in Title 52 of the Pennsylvania Code and include, without limitation, the following:

a. PECO is a public utility as defined in **52 Pa. Code §59.1**:

Public utility—Persons or corporations owning or operating in this Commonwealth equipment or facilities for producing, generating, transmitting, distributing, or furnishing gas for the production of light, heat, or power to or for the public for compensation. The term does not include a producer or manufacturer of gas not engaged in distributing the gas directly to the public for compensation.

b. **52 Pa. Code §59.23** states:

In the event of a dispute between a customer and a public utility respecting a bill, the utility

shall immediately make the investigation required by the particular case and report the result of the investigation to the customer.

Rama's Complaint alleges that it disputes its liability for PECO's bills because PECO failed to notify Rama of the alleged delinquency in payment of said bills. Complaint, ¶ 29.

c. **52 Pa. Code §59.24(b)** states:

Notice of discontinuance. No public utility shall discontinue service to a customer for violation of its rules and regulations or for nonpayment of bills without a diligent attempt to induce the customer to comply with the rules and regulations, or to pay the bills when due.

Rama's Complaint alleges that PECO required payment to avoid shut off ¶31. Because the Complaint alleges that PECO never notified Rama of the alleged delinquency in paying the subject bills, PECO failed to make the "diligent attempt to induce the customer to comply with the rules and regulations, or to pay the bills when due" in violation of 52 Pa. Code §59.24(b). Rama is the "customer" and, as alleged in the Complaint, PECO made no attempt to contact Rama about the alleged delinquency.

d. **52 Pa. Code 62.102(d) and (e)** state:

(d) A nontraditional marketer is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. (relating to the Public Utility Code), and applicable regulations of this title, orders and directives committed by the nontraditional marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the nontraditional marketer.

(e) A marketing services consultant is not required to obtain a license. The licensed NGS

shall be responsible for violations of 66 Pa.C.S. and applicable regulations of this title, orders and directives committed by the marketing services consultant and fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant.

Rama's Complaint alleges that Celeren committed fraud by concealing the fact that it had not paid Rama's utility bills. To the extent that Celeren is found to be a nontraditional marketer or a marketing services consultant within the meaning of the above-referenced regulations, the Complaint further implicates the regulations of the PUC and vests jurisdiction herein.

36. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

37. *Denied as stated. The corresponding paragraph references is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.*

38. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

39. Denied as stated. Count II of the Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

40. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

F. Preliminary Objection to Strike Count Two Because It Is Time-Barred Under the Public Utility Code

41. Denied as stated. The Public Utility Code referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

42. Denied as stated. The Complaint referenced herein is a written document which

speaks for itself and therefore any attempt to characterize its terms are specifically denied.

43. Denied as stated. The Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

44. Denied as stated. The Second Amended Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

45. Denied as stated. The Second Complaint referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms are specifically denied.

46. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required. By way of further Answer, but without waiving its objection, Complainant was not aware of the fraud claim in 2008.

47. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required. By way of further Answer, but without waiving its objection, Complainant was not aware of the fraud claim in 2008.

48. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

49. Denied. The corresponding paragraph constitutes a conclusion of law for which no response is required.

WHEREFORE, Rama Construction, Inc. t/a Ramada International Airport (“Rama”) respectfully requests this Honorable Court enter an Order in its favor and deny PECO’s Preliminary Objections, or in the alternative, grant Rama leave to amend.

RESPECTFULLY SUBMITTED

Date: 8/29/14

By: 

PAUL A. BUCCO
MATTHEW I. SACK

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Cynthia Fordham, Administrative Law Judge
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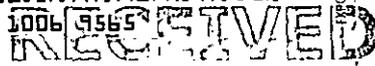
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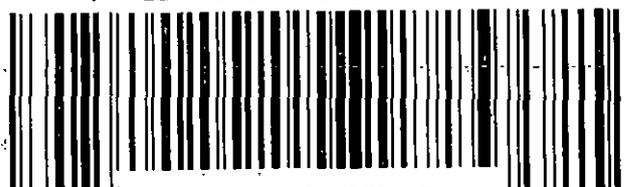
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