



Email: matthew.sack@davisbucco.com

August 29, 2014

**VIA OVERNIGHT MAIL**

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

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AUG 29 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Crescent Hotel-Plymouth Meeting, LP v. PECO Energy Company; Docket No: C-2008-2068258**

**Crescent Hotel-Plymouth Meeting, LP v. UGI Energy Solutions, Inc.; Docket No: C-2008-2068267**

**Crescent Hotel-Plymouth Meeting, LP v. Celeren Corporation; Docket No: C-2009-2089563**

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 black ink, appearing to read 'MS', is written over the typed name.

Matthew I. Sack

MIS/kad

Enclosure

cc: Administrative Law Judge Cynthia Williams Fordham (*via regular mail*)  
George Miller, Trustee for Celeren Corporation (*via regular mail*)  
Ward L. Smith, Esquire (*via regular mail*)  
Celeren Corporation (*via regular mail*)  
Frank H. Markle, Esquire (*via regular mail*)  
David B. Macgregor, Esquire (*via regular mail*)  
Christopher T. Wright, Esquire (*via regular mail*)  
Crescent Hotel Plymouth Meeting, LP (*via regular mail*)

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AUG 29 2014

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**DAVIS BUCCO**

By: Paul A. Bucco, Esquire/ Matthew I. Sack, Esquire  
Attorney ID Nos. 52561/204600  
10 E. 6<sup>th</sup> Avenue, Suite 100  
Conshohocken, PA 19428  
(610) 238-0880

Attorneys for Complainant

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRESCENT HOTEL PLYMOUTH MEETING, LP :	:	
	:	
Complainant	:	C-2008-2068258
	:	
v.	:	C-2008-2068267
	:	
PECO ENERGY,	:	C-2009-2089563
EXELON CORPORATION	:	
CELEREN CORPORATION and	:	
UGI ENERGY SERVICES, INC.	:	
Defendants	:	

**ANSWER TO PECO ENERGY COMPANY'S  
PRELIMINARY OBJECTIONS TO SECOND AMENDED COMPLAINT**

Crescent Hotel Plymouth Meeting, LP ("Crescent") hereby answers the Preliminary Objections asserted by Defendant PECO Energy as follows:

**A. Background**

1. Denied. The Complaint was filed on or about August 8, 2008.
2. Admitted.
3. 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.
4. Admitted.
5. Denied as stated. The Final Decree referenced herein is a written document which speaks for itself and therefore any attempt to characterize its terms is specifically denied.
6. Denied as stated. The letter referenced herein is a written document which speaks

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) and Count Four 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, Crescent did in fact “state with specificity the sections of PECO’s tariff, regulation, statute or order” that PECO violated. By way of further denial, Crescent 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.

Crescent 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 Crescent 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 Crescent “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, Crescent 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, Crescent 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. Count four 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 remaining averments in the paragraph constitute conclusions of law for which no response is required.

23. 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 (§ 46(d)) as Impertinent Material**

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

25. Admitted.

26. 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 Counts Three (§§60-81) and Four (§§82-95) Because They Are Requests for the Award of Damages, Which are Outside of the Commission's Jurisdiction**

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

28. 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.

29. Denied as stated. Count III 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.

30. Denied as stated. Count IV 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.

31. Denied. The corresponding paragraph constitutes a conclusion of law for which no

response is required.

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

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

33. Denied as stated. Count III 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.

34. Denied as stated. The Ramada Hotel 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.

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

**E. Preliminary Objection to Strike Count Three 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 is Not True**

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

37. Denied as stated. Count III 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, PECO is subject to the rules and regulations of the PUC as an authorized supplier of natural gas. The regulations of the PUC are implicated by the*

issues raised by Crescent 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.

Crescent’s Complaint alleges that it disputes its liability for PECO’s bills because PECO failed to notify Crescent of the alleged delinquency in payment of said bills. Complaint, ¶¶, 63-65.

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.

Crescent’s Complaint alleges that PECO/EXELON required payment of \$150,000 to avoid shut off ¶94. Because the Complaint alleges that PECO never notified Crescent 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). Crescent is the “customer” and, as alleged in the Complaint, PECO made no attempt to contact Crescent 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.

Crescent’s Complaint alleges that Celeren committed fraud by concealing the fact that it had not paid Crescent’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.

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

39. Denied. The corresponding paragraph constitutes a conclusion of law for which no

response is required.

40. Denied as stated. Count III 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.

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

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

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. (misnumbered paragraph 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.

48. (misnumbered paragraph 47) Denied. 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.

49. (misnumbered paragraph 48) Denied the corresponding paragraph constitutes a conclusion of law for which no response is required.

50. (misnumbered paragraph 49) Denied the corresponding paragraph constitutes a conclusion of law for which no response is required.

**WHEREFORE**, Crescent Hotel Plymouth Meeting, LP respectfully requests this Honorable Court enter an Order in its favor and deny PECO's Preliminary Objections, or in the alternative, grant Crescent leave to amend.

**RESPECTFULLY SUBMITTED**

Date: 8/29/14

By:   
**PAUL A. BUCCO**  
**MATTHEW I. SACK**

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AUG 29 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**DAVIS BUCCO**

By: Paul A. Bucco, Esquire/ Matthew I. Sack, Esquire  
Attorney ID Nos. 52561/204600  
10 E. 6<sup>th</sup> Avenue, Suite 100  
Conshohocken, PA 19428  
(610) 238-0880

Attorneys for Complainant

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRESCENT HOTEL PLYMOUTH MEETING, LP :

Complainant

v.

PECO ENERGY,  
EXELON CORPORATION  
CELEREN CORPORATION and  
UGI ENERGY SERVICES, INC.  
Defendants

C-2008-2068258

C-2008-2068267

C-2009-2089563

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Answer to Preliminary Objections were served upon the following persons via first class mail, postage prepaid at the following address on **August 29, 2014**:

**VIA E-FILING**

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

**VIA FIRST CLASS MAIL**

George Miller, Trustee for Celeron Corporation  
c/o Linda Richenderfer, Esq.  
Klehr Harrison  
919 Market Street  
Wilmington, DE 19801-3062

Celeron Corporation  
Two Bala Plaza, Suite 300  
Bala Cynwyd, PA 19004

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Cynthia Fordham, Administrative Law Judge  
Pa. Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107

Ward L. Smith, Esq.  
2301 Market Street S-23  
Philadelphia, PA 19101-8699

Frank H. Markle, Esq.  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19004



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PAUL A. BUCCO, ESQUIRE  
MATTHEW I. SACK, ESQUIRE

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