



An Exelon Company

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

Direct Dial: 215-841-6863

October 5, 2015

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

**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.
Celeren Company
Docket No. C-2009-2089694**

Dear Ms. Chiavetta:

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Ward L. Smith".

Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	C-2008-2058320
	:	
v.	:	
	:	
PECO Energy Company	:	
	:	
Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	
	:	C-2009-2089694
v.	:	
	:	
Celeren Corporation.	:	

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 Preliminary Objections of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, 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
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, October 5, 2015



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Ward.Smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	C-2008-2058320
v.	:	
PECO Energy Company	:	
Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	C-2009-2089694
v.	:	
Celeren Corporation	:	

PECO Energy Company’s Preliminary Objections to the Third Amended Complaint¹

I. Background

1. PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §§ 5.101 and 5.483, makes these Preliminary Objections to the Third Amended Complaint of Rama Construction, Inc., t/a Ramada Inn International Airport (“Rama” or “Complainant”).

2. On August 14, 2004, PECO filed its Preliminary Objections to Rama’s Second Amended Complaint in this proceeding. Broadly stated, PECO’s Preliminary Objections to the Second Amended Complaint made the following arguments:
 - That Count One has insufficient specificity, and that Rama should be required to identify “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.”

 - That a Count One request for attorney’s fees is outside of the Commission’s jurisdiction.

¹ PECO is contemporaneously filing a Motion to Dismiss with Prejudice, and for Further Sanctions, for Failure to Comply with Order #4.

- That Count Two should be stricken because (a) it is a claim for damages, (b) it is based on a legal theory that has been rejected by the Commission as legally insufficient, (c) PECO and Exelon are not licensed Natural Gas Suppliers, and (d) it is time-barred.
3. On August 27, 2015, Administrative Law Judge Cynthia Williams Fordham issued Order #4 Granting PECO Energy Company's Preliminary Objections to the Second Amended Complaint. In that Order, ALJ Fordham granted each of PECO's arguments set forth above.
 4. On September 17, 2015, Rama filed its Third Amended Complaint. The Third Amended Complaint contains precisely two changes from the Second Amended Complaint. First, a new paragraph 25 has been added in the Background section. It states that:

25. PECO and Exelon owed [Rama] duty to disclose to Rama the fact that PECO had not been paid by Celeren for electricity purchased by Rama upon the duty of good faith and fair dealing implied within the contract between Rama and PECO.

Second, the request for attorney's fees, which had been contained in paragraph 48(d) of the Second Amended Complaint, was removed.

II. Preliminary Objection to Strike Count One (¶¶ 33-48) for Insufficient Specificity

5. Paragraphs 1-22 of PECO's Preliminary Objections to the Second Amended Complaint are incorporated herein as if set forth in full.
6. In Order #4, Ordering Paragraph 1 (p. 18), the ALJ ordered Rama to "file a Third Amended Complaint that identifies the 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."

7. The Third Amended Complaint contains only one new allegation – a new paragraph 25 that alleges that: “PECO and Exelon owed [Rama] duty to disclose to Rama the fact that PECO had not been paid by Celeren for electricity purchased by Rama upon the duty of good faith and fair dealing implied within the contract between Rama and PECO.”
8. The new paragraph 25 makes no mention of a specific provision of PECO’s tariff.
9. The new paragraph 25 makes no mention of a specific provision of the Commission’s regulations.
10. The new paragraph 25 makes no mention of a specific provision of the Public Utility Code.
11. The new paragraph 25 makes no mention of a specific provision of any Commission Order.
12. The Third Amended Complaint thus suffers from the same infirmity of insufficient specificity as the Second Amended Complaint.
13. Complainant should be directed to file a Fourth Amended Complaint that identifies the 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.

III. Preliminary Objection to Strike Count Two

14. Paragraphs 26-49 of PECO's Preliminary Objections to the Second Amended Complaint are incorporated herein as if set forth in full.

15. In Order #4, Ordering Paragraphs 3-7 (p. 18), the ALJ dismissed Count Two on four grounds – (1) it is a claim for damages, (2) it is based on a legal theory that has been rejected by the Commission, (3) PECO and Exelon are not Natural Gas Suppliers, and (4) it is time-barred.

16. The Third Amended Complaint includes Count Two, intact and verbatim, as set forth in the Second Amended Complaint.

17. Complainant should be directed to file a Fourth Amended Complaint in which the entirety of Count Two is removed from the Complaint.

IV. Conclusion

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

1. Within 20 days of the date of this Order, the Complainant shall file a Fourth 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.
2. Within 20 days of the date of this Order, the Complainant shall file a Fourth Amended Complaint in which the entirety of Count Two is removed from the Complaint.

Respectfully submitted,



Ward L. Smith
Assistant General Counsel
PECO Energy Company
Attorney I.D. 47670
2301 Market Street
S23-1
Philadelphia, PA 19103
215-841-6863

ward.smith@exeloncorp.com

Counsel for PECO Energy Company and Exelon Corporation

October 5, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	C-2008-2058320
	:	
v.	:	
	:	
PECO Energy Company	:	
	:	
Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	
	:	C-2009-2089694
v.	:	
	:	
Celeren Corporation.	:	

VERIFICATION

I, Ward L. Smith, hereby declare that I am counsel for 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 L. Smith

Date: October 5, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rama Construction, Inc. t/a Ramada Inn International Airport	:	
	:	C-2008-2058320
	:	
v.	:	
	:	
PECO Energy Company	:	
	:	
Rama Construction, Inc. t/a Ramada Inn International Airport	:	
	:	C-2009-2089694
	:	
v.	:	
	:	
Celeren Corporation.	:	

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objections to the Third Amended Complaint in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Davis Bucco
Paul A. Bucco, Esquire
10 E. 6th Avenue, Suite 100
Conshohocken, PA 19428

Dated at Philadelphia, Pennsylvania, October 5, 2015



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6863
Fax: 215.568.3389
Ward.Smith@exeloncorp.com