



An Exelon Company

Legal Department
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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 Motion to Dismiss, with Prejudice, and for Other Sanctions for Failure to Comply with Order #4* with regard to the matter referenced above.

Very truly yours,

A handwritten signature in cursive script, 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

To: Paul A. Bucco, Esquire

Rama Construction, Inc. t/a Ramada Inn International Airport

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 Motion to Dismiss within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane Lee, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

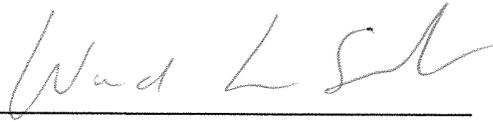
File with:

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

A handwritten signature in black ink, appearing to read "Ward L. Smith". The signature is written in a cursive style with a horizontal line underneath it.

Ward L. Smith
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whatsoever to identify 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.” And Rama retained Count Two of its Complaint, even though that Count had been dismissed on four different bases.

In this motion, PECO respectfully requests that Your Honor dismiss the complaint, with prejudice, for failure to comply with Order #4. In addition, PECO seeks an additional sanction – it requests an order that it be allowed to begin charging late fees on the disputed balance, in the amount of 1 ½% per month, beginning on September 17, 2015. In support thereof, PECO states as follows:

I. Background

1. PECO makes this motion pursuant to 52 Pa. Code §§ 5.103, 5.372, 5.483, and 5.485 of the Commission’s regulations and Rule 17.5 of PECO’s Electric Service Tariff.
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.
 - 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. Argument

A. The Complaint Should Be Stricken, With Prejudice, For Failure to Comply With Order #4.

5. 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."
6. 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.”

7. The new paragraph 25 makes no mention of a specific provision of PECO’s tariff.
8. The new paragraph 25 makes no mention of a specific provision of the Commission’s regulations.
9. The new paragraph 25 makes no mention of a specific provision of the Public Utility Code.
10. The new paragraph 25 makes no mention of a specific provision of any Commission Order.
11. 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.
12. The Third Amended Complaint includes Count Two, intact and verbatim, as set forth in the Second Amended Complaint.
13. The Third Amended Complaint made no attempt whatsoever to comply with the directives of Order #4.
14. The ALJ has the authority to issue such orders as are necessary to regulate the course of this proceeding. *See* 52 Pa. Code § 5.483(a), which states that: “The presiding officer will have the authority specified in the act, subject to this title. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.”

15. In the analogous situation of a party failing to comply with a discovery order, the Commission's regulations allow an ALJ to strike some or all of pleadings, or to enter judgment against the disobedient party. *See* 52 Pa. Code §5.372(a), which states that a presiding officer may enter:

(1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

16. When a party disregards a ruling of the ALJ – and that is clearly what has happened here – the ALJ's authority includes recommending suspension or disbarment. *See* 52 Pa. Code § 5.485(b), which states that: "The presiding officer may note on the record a party's disregard of a ruling. When necessary, the presiding officer may submit a report to the Commission recommending suspension and disbarment of the offending person as provided by § 1.27 (referring to suspension and disbarment).

17. Read together, these regulations make it clear that the ALJs authority to address disregard of a ruling includes striking a pleading or entering judgment against a party.

18. Moreover, dismissal with prejudice is an appropriate remedy in this case. We are nearly seven years into this case. Rama is represented by sophisticated commercial counsel. Order #4 gave clear direction of what issues needed to be addressed in the Third Amended Complaint. Rama's filing of

the Third Amended Complaint clearly disregarded the ALJs ruling. The complaint should be dismissed in its entirety, with prejudice.

B. As a Further Sanction, PECO Should Be Allowed to Assess a Late Fee of 1 ½% Per Month of the Contested Balance, Beginning on September 17, 2015, and Continuing Until the Contested Balance is Paid in Full

19. It is common Commission and PECO practice to suspend all collection activities, including the assessment of late fees and interest, for balances that are contested in a formal complaint proceeding until final resolution of the complaint.
20. PECO followed that practice in the instant proceeding and suspended collection activities on \$136,741.13 beginning in August 2008 and continuing until today.
21. As a consequence, Rama has had the use of PECO's funds of nearly \$137,000, interest-free, for over seven years.
22. On September 17, 2015, Rama filed the Third Amended Complaint with disregard for the directives of Order #4. Because it has done so, this proceeding could be delayed by many additional months. Rama should not be allowed to benefit by any delay caused by its disregard for a ruling of the ALJ.
23. This can be addressed by allowing PECO to begin assessing late fees on the contested balance. The appropriate date to allow PECO to begin assessment of those fees is September 17, 2015 – the date on which Rama demonstrated its disregard for Order #4.
24. The Rama account(s) take service under PECO's Rate GS.

25. PECO's Electric Service Tariff, Rule 17.5, provides that the appropriate late fee for Rate GS accounts is 1 ½% per month. It states that:

17.5 LATE FEES AND COLLECTION COSTS. If payment is made at a Company office or authorized payment agency after the due date shown on the bill, a late fee will be added to the unpaid balance until the entire bill is paid. If payment is made by mail, the late fee will be added if the payment is received by the Company more than five days after the due date shown on the bill. For Rates R, R-H, RS-2, OP, POL and GS this late fee will be 1-1/2 % per month; for all other rates the late fee will be 2% per month. If the Company files suit to collect a delinquent balance on an account (whether active or inactive) or to ensure payment of current bills, the customer will be required to pay the Company's out of pocket court costs (including filing, service, and witness fees) as ordered by the court and such costs will be added to commercial and industrial accounts.

26. Allowing PECO to assess, and requiring Rama to pay, late fees in this amount is an appropriate sanction for Rama's disregard of Order #4, in that the financial consequence of further delay in this proceeding caused by Rama's disregard will be moved from PECO, to Rama.

III. Conclusion

27. PECO therefore respectfully moves that:

1. This matter be dismissed, with prejudice, in its entirety, and
2. PECO be allowed to assess, and Rama be required to pay, a late fee on the contested balance of \$136,741.13, at a rate of 1 ½ % per month, beginning on September 17, 2015, and continuing until the contested amount is paid in full.

Respectfully submitted,



Ward L. Smith
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PECO Energy Company
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215-841-6863

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Counsel for PECO Energy Company and Exelon Corporation

October 5, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
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**

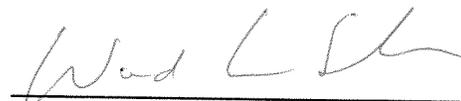
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v.	:	
Celeren Corporation.	:	

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of PECO Energy Company's Motion to Dismiss, with Prejudice, and for Other Sanctions for Failure to Comply with Order #4 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



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