



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19101-8699

Direct Dial: 215-841-6863

November 30, 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.
PECO Energy Company
Docket No. C-2009-2089694**

Dear Ms. Chiavetta:

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

Very truly yours,

Ward Smith
Counsel for PECO Energy Company

A handwritten signature in cursive script that reads "Ward L Smith".

WS/ab
Enclosure

cc: Certificate of Service
ALJ Cynthia Williams Fordham (via e-mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	C-2008-2058320
v.	:	
PECO Energy Company	:	
v.	:	
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, November 30, 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
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v.	:	
Celeren Corporation	:	

PECO Energy Company’s Preliminary Objections to the Fifth 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 Fifth Amended Complaint of Rama Construction, Inc., t/a Ramada Inn International Airport (“Rama” or “Complainant”).
2. This proceeding was initiated on August 7, 2008 when Rama filed a complaint with the Pennsylvania Public Utility Commission naming, as Respondents, PECO Energy Company, Exelon Corporation, Hess Corporation, and Celeren Corporation.
3. On September 24, 2008, having sought and obtained an Extension of Time in which to file its Answer, PECO filed its Answer to the initial Complaint.

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

4. On April 6, 2009, a bankruptcy court trustee in the ongoing Celeren bankruptcy proceeding contacted then-presiding officer Administrative Law Judge Guy M. Koster and invoked the automatic stay provisions of the United States Bankruptcy Code.
5. On April 7, 2009, ALJ Koster issued an Order consolidating the various open docket numbers in this dispute, and staying the combined proceedings until resolution of the Celeren bankruptcy.
6. On February 18, 2014, the Bankruptcy Court issued a Final Decree closing the Celeren bankruptcy proceeding.
7. On March 18, 2014, counsel for the Bankruptcy Trustee informed the Commission and the parties, by letter addressed to now-presiding officer Administrative Law Judge Cynthia Williams Fordham, of the Bankruptcy Court Final Decree.
8. On April 22, 2014, PECO Energy filed and served a Motion to Lift Stay and Re-Activate the Proceeding.
9. On April 24, 2014, PECO filed a Motion to Require the Filing of an Amended and More Specific Complaint. The overarching gravamen of that Motion was that, given the conclusion of the Celeren bankruptcy and the passage of time, the Complaint should be updated to reflect the current status of the Complainant's issues. In that Motion, (§11), PECO argued at length that Ramada 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.
10. Rama 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, Rama filed an Amended Complaint. The Amended Complaint did not introduce any new arguments, information, or language to provide the

requested specificity. Put differently, for the requested specificity, the initial Complaint and the Amended Complaint were virtually identical.

11. On July 9, 2014, PECO filed Preliminary Objections to the Amended Complaint. In those Preliminary Objections, PECO argued that certain parts of the Amended Complaint should be dismissed because they constituted claims for damages that were outside of the Commission's jurisdiction. In addition, PECO reiterated its argument from its prior Motion that Ramada 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.
12. Rama did not file an answer to PECO's Preliminary Objections to the Amended Complaint. Instead, on or about July 23, 2014, Rama filed a Second Amended Complaint. PECO was served with the Second Amended Complaint on July 29, 2014.
13. On August 14, 2014, 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.

14. On August 29, 2014, Rama filed its Reply to PECO's Preliminary Objections to the Second Amended Complaint.

15. 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.

16. 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 was 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.

17. On October 5, 2015, PECO filed its Preliminary Objections to Third Amended Complaint. In those Preliminary Objections, PECO argued that, because the Third Amended Complaint did not make any material changes in the specificity provided in Count One, it was still deficient 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." PECO also noted that the Count Two claims of deception and fraud, which had been dismissed in Order #4 on four independent bases, had nonetheless been incorporated verbatim into the Third Amended Complaint.

18. On October 5, 2015, PECO contemporaneously filed its Motion to Dismiss, With Prejudice, and for Further Sanctions for Failure to Comply with Order #4. In that Motion, PECO averred that the Third Amended Complaint was “nearly contemptuous in its casual disregard of the directives of Order #4.” In its Motion to Dismiss, PECO argued that Rama had flagrantly disregarded and violated Order #4 by failing 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 by leaving the fraud and deception claims intact in the Third Amended Complaint.

19. On October 23, 2015, Rama filed two documents. First, it filed its Answer to PECO’s Motion to Dismiss in which it claimed (¶122) that the inclusion of the Count Two fraud and deception claims was due to a “clerical order which has been corrected by the filing of its Fourth Amended Complaint.”² Rama also filed its Fourth Amended Complaint, which had two changes from the Third Amended Complaint. First, the Fourth Amended Complaint added new ¶132, which states that:

“Celeren and PECO acted in concert to induce Rama to make payments to Celeren for electricity, knowing that Celeren would not make payment for said electricity to PECO.”

Second, the fraud and deception claims that were previously contained in Count Two were moved to Count One. Specifically, what had been paragraphs 51-53 and 61-65 of Count Two of the Third Amended Complaint were repurposed to become paragraphs 52-65 of Count One of the Fourth Amended Complaint. These paragraphs continued to set forth the “fraud and deception” claims against PECO that had been specifically dismissed in Order #4.

² Presumably, this was meant to read “clerical error.”

20. On November 9, 2015, Rama filed its Fifth Amended Formal Complaint. The Fifth Amended is identical to Fourth Amendment Complaint but for three changes in which Rama removes the phrase “fraud and deception” or similar language, as follows:

- Paragraph 51: The introductory phrase from ¶51 of the Fourth Amended Complaint previously read: “At all times relevant herein, Celeren conspired, committed fraud and made fraudulent misrepresentations to Rama as set forth above and as follows:” and then set forth nine subparagraphs describing the alleged fraudulent and deceptive behavior. Now, the introductory phrase from ¶51 of the Fifth Amended Complaint reads: “At all times relevant herein, Celeren:” and then sets forth the same nine subparagraphs, verbatim.
- Paragraph 52: ¶52 of the Fourth Amended Complaint previously read in its entirety: “Upon information and belief, the Defendants have committed the same or similar acts of fraud and deception upon other utility customers like Rama, over the past several years.” ¶52 of the Fifth Amended Complaint reads in its entirety: “Upon information and belief, the Defendants have committed the same or similar acts upon other utility customers like Rama, over the past several years.”
- Paragraph 56: ¶56 of the Fourth Amended Complaint previously read in its entirety: “The existence of the 210 Proofs of Claim filed in Celeren’s bankruptcy action is evidence that Celeren has clearly committed a widespread and systematic course of fraud and deception against other utility purchasers and utility companies in addition to Rama.” ¶52 of the Fifth Amended Complaint reads in its entirety: “The existence of the 210 Proofs of Claim filed in Celeren’s bankruptcy action is evidence that Celeren has carried out similar acts and omissions against other utility purchasers and utility companies in addition to Rama.”

II. Preliminary Objection to Strike Count One (¶¶ 1-50) for Insufficient Specificity

21. Paragraphs 1-22 of PECO's Preliminary Objections to the Second Amended Complaint are incorporated herein as if set forth in full.
22. 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."
23. The Third Amended Complaint contained only one new statement regarding Count One,³ and it was contained in the Background Section – 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."
24. The Fourth Amended Complaint contained only one new statement regarding Count One, and it was contained in the Background Section – a new paragraph 32 that alleges that: "Celeren and PECO acted in concert to induce Rama to make payments to Celeren for electricity, knowing that Celeren would not make payment for said electricity to PECO."

³ PECO does not believe that the movement of the fraud and deception claims from Count Two to Count One qualifies as a material new claim being made in Count One. However, PECO does note that none of the paragraphs that were moved into Count One – new ¶¶ 51-56 – specify any which portions of PECO's tariff, the Public Utility Code, the Commission's regulations, or Commission Order that Rama claims that PECO has violated. Thus, even if those paragraphs are deemed to be a new material part of Count One, the Preliminary Objection applies with equal force to those paragraphs as well.

25. Count One as stated in the Fifth Amended Complaint is unchanged from the Fourth Amended Complaint statement of claim.⁴
26. With the exception of the two new paragraphs (25 and 32), Count One of the Fifth Amended Complaint is thus identical to Count One of the Second Amended Complaint. Order #4 stated that Rama was required, with respect to Count One, 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.”
27. The new ¶¶ 25 and 32 make no mention of a specific provision of PECO’s tariff.
28. The new ¶¶ 25 and 32 make no mention of a specific provision of the Commission’s regulations.
29. The new ¶¶ 25 and 32 make no mention of a specific provision of the Public Utility Code.
30. The new ¶¶ 25 and 32 make no mention of a specific provision of any Commission Order.
31. The Fifth Amended Complaint thus suffers from the same infirmity of insufficient specificity as the Second Amended Complaint.
32. In its Updated Motion to Dismiss With Prejudice, which PECO is filing contemporaneously with these Preliminary Objections, PECO argues that Rama’s actions in this proceeding warrant dismissal of this proceeding with prejudice. If and only if the Commission does not rule in PECO’s favor on that Motion, Complainant should be directed to file a Sixth 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.

⁴ With the exception of adding the fraud and deception claims to Count One. See footnote 3.

III. Preliminary Objection to Strike Count One ((¶¶ 51-56) Because Those Paragraphs are a Verbatim Recitation of the Fraud and Deception Claims of Count Two, Which Were Dismissed as Time-Barred in Order #4.

33. Paragraphs 26-49 of PECO's Preliminary Objections to the Second Amended Complaint are incorporated herein as if set forth in full.
34. In Order #4, Ordering Paragraphs 3-7 (p. 18), the ALJ dismissed the 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 because the events complained of occurred between 2005 and 2008, but were not alleged as a claim against PECO until 2014, when the Second Amended Complaint was filed.
35. The Third Amended Complaint includes Count Two, intact and verbatim, as set forth in the Second Amended Complaint.
36. The Fourth Amended Complaint simply moved what had been paragraphs 51-53 and 61-65 of Count Two of the Third Amended Complaint to become paragraphs 52-65 of Count One of the Fourth Amended Complaint.
37. The only alteration made to this claim in the Fifth Amended Complaint was the elimination of the explicit phrase "fraud and deception" and related phrases. All of the behavioral and factual allegations that underlie that claim remained verbatim from the Second, Third, and Fourth Amended Complaints. In other words, the claim being made – whether the words "fraud and deception" are included in the language of the Complaint or not -- remain the same claims that were dismissed in Order #4. Critically, these claims were dismissed as time-barred as to PECO because the events

being complained of occurred between 2005 and 2008 and Rama did not make the allegations against PECO that were contained in Count Two (and have now been migrated to Count One) until July 29, 2014, in the Second Amended Complaint. Even though Rama has now removed the phrase “fraud and deception” from its claims, the factual basis for the claim set forth in the Fifth Amended Complaint remains the same as the factual basis for that claim that was set forth in the Second Amended Complaint – and it is time-barred by the ruling in Order #4.⁵

38. In its Updated Motion to Dismiss With Prejudice, which PECO is filing contemporaneously with these Preliminary Objections, PECO argues that Rama’s actions in this proceeding warrant dismissal of this proceeding with prejudice. If and only if the Commission does not rule in PECO’s favor on that Motion, Complainant should be directed to file a Sixth Amended Complaint in which the entirety of Count One, ¶¶ 51-56, be removed from the Complaint.

⁵ If Rama were to try to now convert its fraud and deception claim into a new claim that was not previously pled (via the mechanism of removing the phrase “fraud and deception”), that new claim would obviously also be time-barred because it also is based upon events that occurred between 2005 and 2008, and the limitation period would also apply to that claim.

IV. Conclusion

In its Updated Motion to Dismiss With Prejudice, which PECO is filing contemporaneously with these Preliminary Objections, PECO argues that Rama's actions in this proceeding warrant dismissal of this proceeding with prejudice. If and only if the Commission does not rule in PECO's favor on that Motion, PECO respectfully requests the issuance of an Order stating that:

1. Within 20 days of the date of this Order, the Complainant shall file a Sixth 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 Sixth Amended Complaint in which the entirety of the claims now contained in Paragraphs 51-56 be 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

November 30, 2015

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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 Fifth Amended Complaint, in the above matter upon all interested parties via e-mail and postage prepaid to:

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

Dated at Philadelphia, Pennsylvania, November 30, 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