



Email: William.Oleckna@davisbucco.com

July 14, 2017

VIA REGULAR MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O Box 3265
Harrisburg, PA 17105-3265

Re: Crescent Hotel Plymouth Meeting, L.P. vs. PECO, et al.
Docket Nos.: C-2008-2068258; C-2008-2068267; C-2009-2089563
Our File No.: B-2408-A

Dear Secretary Chiavetta:

Enclosed for filing is the original of Crescent Hotel Plymouth Meeting, L.P.'s Application for Subpoena of Gerald McCabe in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be 'W. Oleckna', written over a horizontal line.

William D. Oleckna

WDO/mcm

Enclosure

cc: Paul A. Bucco, Esquire (*via email*)
Marta Guhl (*via email*)
Ward L. Smith, Esquire (*via email*)
Christopher T. Wright, Esquire (*via email*)
David MacGregor, Esquire (*via email*)
Marta Guhl, Administrative Law Judge (*via first class mail*)
Celeren Corporation (*via first class mail*)
Frank H. Markle, Esquire (*via first class mail*)

RECEIVED
2017 JUL 17 AM 10:56
PA PUC
SECRETARY'S BUREAU

10 East 6th Avenue, Suite 100, Conshohocken, PA 19428 | 780 Burmont Road, Drexel Hill, PA 19026

P (610) 238-0880 | F (610) 238-0244 | www.davisbucco.com

PENNSYLVANIA. NEW JERSEY.

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE 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


NOTICE TO PLEAD

Pursuant to 52 Pa. Code §5.421, Crescent Hotel Plymouth Meeting, LP has filed an Application for Subpoena in the above-referenced matter. You are hereby notified that you may file a written response or objection within ten (10) days of service of the Application, pursuant to 52 Pa. Code §5.421(b)(3). An original copy of your response must be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

A copy must also be served on the presiding officer and undersigned counsel.

Dated: 7/14/17


William D. Oleckna, Esquire
Attorney ID No. 309403

RECEIVED
2017 JUL 17 AM 10:56
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRESCENT HOTEL PLYMOUTH MEETING, LP:

	:	
	:	C-2008-2068258
Complainant	:	
	:	C-2008-2068267
v.	:	
	:	C-2009-2089563
PECO ENERGY,	:	
EXELON CORPORATION	:	
CELEREN CORPORATION and	:	
UGI ENERGY SERVICES, INC.	:	
Respondents	:	

REQUEST FOR SUBPOENA OF GERALD MCCABE

AND NOW comes Crescent Hotel Plymouth Meeting, L.P. (“Crescent”) by and through its undersigned counsel, Davis Bucco, P.C., hereby files this Request for Subpoena of Gerald McCabe pursuant to § 5.421(a)(2) of the Public Utility Code, and in support thereof avers as follows:

1. Crescent filed a Second Amended Formal Complaint (hereinafter the “Complaint”) on or about July 23, 2014 against PECO Energy (“PECO”), Exelon Corporation (“Exelon”), UGI Energy Services, Inc. (“UGI”), and Celeren Corporation (“Celeren”).
2. Crescent’s Complaint alleged, among other things, that PECO knew that Celeren was supposed to pay the bills of Crescent, but did not notify Crescent of the delinquency or forbearance and/or payment agreements entered by Celeren and PECU until June 2008. *See* Exhibit “A” of the Complaint, which is incorporated herein as if set forth fully herein by this reference.
3. Crescent kept making regular payments to Celeren.
4. Upon information and belief, PECO and Exelon knew that Celeren was responsible for remitting payment to PECO and Exelon for electric service.

5. Nevertheless, PECO and Exelon have informed Crescent that as of July 14, 2008, the amount of delinquencies is approximately \$125,000.00.

6. PECO and Exelon required Crescent to pay \$125,000.00 to avoid having its power shut off.

7. Crescent seeks a refund from PECO and/or Exelon in the amount of the \$125,000.00 based on, in part, their breach of duty to PECO based on their knowledge of the agreement between Crescent and Celeren wherein Celeren was responsible for paying PECO and nevertheless coercing Crescent to make a duplicative payment for electrical services.

8. On September 12, 2008, Celeren Corporation filed a voluntary petition for reorganization under Chapter 11 in the U.S. Bankruptcy Court for the District of Delaware.

9. Former employees and/or agents of Celeren possess relevant, material, and necessary information and documents for the prosecution of Crescent's claim.

10. Crescent will be extremely prejudiced if its Request for Subpoena of Gerald McCabe is denied.

11. McCabe has unique and exclusive knowledge which is integral to Complainant's case.

12. A subpoena is necessary since Celeren has filed for bankruptcy in 2008.

13. As such, Celeren failed to attend the prehearing conference on July 12, 2017 and is not anticipated to cooperate whatsoever in the prosecution of this action.

14. Upon information and belief, McCabe has knowledge of whether PECO knew of the agreement between Crescent and Celeren.

15. Upon information and belief, McCabe has knowledge of and/or possession of documents that include but are not limited to e-mails, agreements, correspondence, memoranda,

copies of checks and communications between Celeren and PECO and/or Exelon regarding the averments contained in the Complaint.

16. Upon information and belief, the expected testimony and documents produced by McCabe is expected to evidence, among other things, that:

- a) PECO sought to defraud Crescent;**
- b) PECO has committed the same or similar acts of fraud and deception upon other utility consumers, like Crescent, in the past;**
- c) PECO and Celeren conspired to bilk Crescent out of at least \$125,000.00;**
- d) PECO was aware that Crescent made payments to Celeren;**
- e) PECO did not notify Crescent of the delinquent account timely;**
- f) Despite being so aware, it never informed Crescent until the \$125,000 demand;**
- g) PECO entered into forbearance and/or payment agreements with Celeren;**
- h) PECO knowingly demanded a double payment from Crescent;**
- i) PECO breached a duty to Crescent;**
- j) PECO knew or should have known that its threat of a shut off was inappropriate;**
- k) PECO actions in billing Crescent were willful, wanton, and/or done with careless indifference to the rights of Crescent;**
- l) PECO made intentional misrepresentations and/or fraudulent acts made for the purpose of defrauding Crescent; and**
- m) Crescent should be afforded a refund of the duplicative payment.;**

12. Section 5.421(a)(2) of the Commission's regulations permits a party to submit a written application for a subpoena to the presiding officer. 52 Pa. Code§ 5.421(a)(2).

The application for a subpoena must specify the general relevance, materiality and scope of

the testimony or documentary evidence sought, including specification of the documents desired. 52 Pa. Code§ 5.421(b)(1).

17. Because of Celeren's bankruptcy and inability to participate in the proceedings as an entity, Crescent will be deprived of its right to due process and will be prevented from engaging in fair litigation, if the subpoena is not issued.

18. Former employees of Celeren have exclusive knowledge and/or possession of information vital to Crescent's Complaint that are material and relevant to the fair resolution and hearing on this matter.

19. Therefore, the testimony of Gerald McCabe is essential to the topics referenced above and in the Complaint.


20. His testimony is relevant and material to the resolution of the case.

WHEREFORE, for based on the aforementioned authority and facts, Crescent Hotel Plymouth Meeting, LP respectfully requests that Administrative Law Judge Guhl issue a Subpoena requiring Gerald McCabe to be deposed and produce the relevant, material documents for the fair adjudication of Crescent's Complaint.

Respectfully submitted,

Dated: July 14, 2017

By:


William D. Oleckna, Esquire
DAVIS BUCCO
10 E Sixth Avenue, Suite 100
Conshohocken, PA 19428
610-238-0880
610-238-0244
PA ID No.: 309403
woleckna@davisbucco.com

Christopher T. Wright, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101
CWright@PostSchell.com

David MacGregor, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101
dmacgregor@postschell.com

VIA FIRST CLASS MAIL
Marta Guhl, Administrative Law Judge
Pa. Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

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

Gerald McCabe, Esquire
Mitts Law, LLC
1822 Spruce Street
Philadelphia, PA 19103

Dated: 7/14/17

By: 

William D. Oleckna, Esquire
10 E Sixth Avenue, Suite 100
Conshohocken, PA 19428
610-238-0880
610-238-0244
PA ID No.: 309403
woleckna@davisbucco.com

RECEIVED
2017 JUL 17 AM 10:56
PA PUC
SECRETARY'S BUREAU

Davis Bucco
10 E. Lott Ave Suite 100
Conshohocken PA, 19428

Hasler

FIRST-CLASS MAIL

07/14/2017

US POSTAGE \$001.61⁰



ZIP 19428
011D10646186

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O Box 3265
Harrisburg, PA 17105-3265