

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215.841.6863

July 21, 2017

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

Re: Crescent Hotel-Plymouth Meeting, LP v. PECO Energy Company
Crescent Hotel-Plymouth Meeting, LP v. UGI Energy Services, Inc.
Crescent Hotel-Plymouth Meeting, LP v. Celeren Corporation
Docket No. C-2008-2068258
Docket No. C-2008-2068267
Docket No. C-2009-2089563

Dear Secretary Chiavetta:

Attached for filing please find PECO Energy Company's Objection to Crescent Hotel's Request for Subpoenas.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/ads
Enclosures

c: ALJ Marta Guhl
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Crescent Hotel-Plymouth Meeting, LP	:	
	:	
v.	:	C-2008-2068258
	:	
PECO Energy Company	:	
Crescent Hotel-Plymouth Meeting, LP	:	
	:	
v.	:	C-2008-2068267
	:	
UGI Energy Services, Inc.	:	
Crescent Hotel-Plymouth Meeting, LP	:	
	:	
v.	:	C-2009-2089563
	:	
Celeren Corporation	:	

PECO Energy Company’s Objection
to
Crescent Hotel’s Requests for Subpoenas

On July 14, 2017, Crescent Hotel (“Crescent”) filed two Requests for Subpoena in the above-listed dockets, seeking to take the depositions of two former Celeren employees (Gerald McCabe and Gary Dean). Pursuant to 52 Pa. Code §5.344(b), PECO hereby objects to the issuance of the requested subpoenas and the taking of the requested depositions. The subpoena requests clearly and explicitly state that Crescent intends to ask questions and seek discovery at these depositions regarding its fraud claim that has been stricken from this proceeding by Order #4. Crescent should not be allowed to pursue discovery on the stricken fraud claim and, given the status of the case, should be required to pursue written discovery under 52 Pa. Code §5.341. In support thereof PECO states as follows:

I. The Requests for Subpoena should be denied because Crescent has clearly stated in its Requests for Subpoena that it intends to use the depositions to seek evidence related to its stricken fraud claim.

1. On July 23, 2014, Crescent filed its Second Amended Complaint in which, for the first time, it included claims that PECO and/or Exelon had engaged in fraud against Crescent.

2. On August 18, 2014, PECO filed Preliminary Objections to the Second Amended Complaint in which it argued, in material part, that the fraud claim should be stricken because (1) it is based upon a legal theory that has already been rejected by the Commission; (2) it is based on the incorrect assumption that PECO and Exelon are Natural Gas Suppliers; and (3) it is time-barred.

3. On September 8, 2016, then-Presiding Officer Cynthia Williams Fordham issued her Order #4 in this proceeding. In Order #4, ALJ Fordham sustained PECO's Preliminary Objections to the fraud claim on all three grounds and struck Crescent's fraud claim. .

4. The Requests for Subpoena identify 13 subject matters about which Crescent expects to inquire at the depositions (§§ 17 a-m of the Gary Dean Request for Subpoena and §§ 16 a-m of the Gerald McCabe Request for Subpoena).

5. Four of the identified subject matters are explicitly related to the stricken fraud claim. Crescent states that it will seek evidence and testimony from the Celere witnesses to demonstrate 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;

1) PECO made intentional misrepresentations and/or fraudulent acts made for the purpose of defrauding Crescent.

6. It bears repeating: Crescent's fraud claim has been stricken. Crescent should not be allowed to waste the resources of the parties – and ultimately of the Commission – seeking discovery on a stricken claim.

7. Moreover, Crescent is exhibiting a casual disregard to Order #4 that in itself should be fatal to its request for depositions. It seems quite clear that, if Crescent is allowed to proceed with depositions, it will seek to ask questions in furtherance of its stricken fraud claim regardless of whether it is ordered not to do so. Indeed, given the indifference with which it is treating the ruling of Order #4, we can expect those questions to be asked at deposition even if Your Honor issues a order that specifically limits or prohibits such questions. Given that obvious predilection, the difference in procedure between written interrogatories and oral depositions is critical. If Crescent is required to follow normal practice and serve written discovery, PECO will have ten days to review and object to a question if it believes that it impermissibly strays into the stricken fraud claim; Crescent will then not be able to pursue discovery on the stricken fraud claim without making a presentation to Your Honor (through a Motion to Compel) demonstrating why it should be allowed to continue such a line of questioning given Order #4. At oral deposition, by contrast, Crescent will be allowed to keep inquiring into objectionable matters, without Your Honor's review or oversight, unless PECO takes the extreme step of halting the depositions. Given those alternatives, Crescent should be required to use the written discovery procedures rather than being allowed to take oral depositions.

II. The other nine subject matters identified in the Requests for Subpoena do not warrant the taking of oral depositions of Celeren employees because very few of them relate to Celeren in any way and Crescent has not explained why they cannot be adequately pursued through written interrogatories.

9. Aside from the four fraud inquiries set forth above, Crescent's Requests for Subpoena identify nine other subject matters about which it intends to inquire at the depositions. Crescent states that it will seek evidence and testimony from the Celeren witnesses to demonstrate that:

- 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 in appropriate;
- k) PECO actions in billing Crescent were willful, wanton, and/or done with careless indifference to the rights of Crescent;
- m) Crescent should be afforded a refund of the duplicative payment.

10. Only two of these identified subject matters – (d) and (g) -- even mention Celeren. Many of them refer to PECO's state of awareness or knowledge – for example, (d), (f), (h), and (j) all explicitly refer to PECO's state of awareness or knowledge. Several deal only with PECO's interactions with Crescent – see (e), (g), (h), and (k). Several are legal conclusions or requests for relief on which no meaningful discovery can be pursued in any event – see (k) and

(m). Individually and collectively, Crescent has provided no reason to believe that discovery of Celeren employees could reasonably lead to the discovery of admissible evidence that, *e.g.*, “(h) PECO knowingly demanded a double payment from Crescent.” And, even if such a showing were to be made and if discovery of Celeren employees were to be allowed on these issues, Crescent has provided no reason to believe that written interrogatories will not be sufficient to extract any such knowledge in the possession of those employees.

III. Conclusion

For the reasons set forth above, PECO requests that Your Honor issue an Order that:

1. Crescent’s Requests for Subpoena are denied.
2. Crescent may not pursue discovery with respect to its stricken fraud claim.
3. Crescent is directed to proceed expeditiously with written discovery pursuant to 52 Pa. Code §5.341.

Respectfully submitted,



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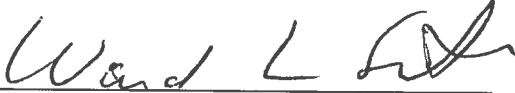
CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that I have this day served a copy of PECO Energy Company's Objection to Crescent Hotel's Requests for Subpoenas in the above matter, upon all interested parties via email to:

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Dated: July 21, 2017



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