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September 8, 2017

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**

Dear Ms. Chiavetta:

*PECO Energy Company's Motion to Compel Answers to Discovery* in this docket is attached for filing.

Very truly yours,



Ward Smith  
Counsel for PECO Energy Company

WS/ab  
Enclosure

cc: Honorable Marta Guhl, ALJ  
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	:	

**CERTIFICATE OF SERVICE**

I, Ward L. Smith, hereby certify that I have this day served a copy of *PECO Energy Company's*

*Motion to Compel Answers to Discovery* via email to:

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*Representing Crescent Hotel,  
Plymouth Meeting*

Dated at Philadelphia, Pennsylvania, September 8, 2017



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Rama Construction, Inc. t/a</b>	:	
<b>Ramada Inn International Airport</b>	:	
<b>v.</b>	:	<b>C-2008-2058320</b>
	:	
<b>PECO Energy Company and</b>	:	
<b>Exelon Corporation</b>	:	

**PECO Energy Company’s  
Motion to Compel Answers to Discovery**

On August 28, 2017, 2016, PECO Energy Company (“PECO”) served its Set I Discovery on Complainant Rama Construction, Inc. (“Rama”). As described in more detail below, PECO’s Set I Discovery is comprised of eighteen questions – seventeen of which identify specific statements in the Fifth Amended Complaint and ask Rama to state the basis for the statement made in the Complaint, and to provide any documents that support the statement made in the Complaint. On September 7, 2017, Rama objected to all eighteen questions. A copy of Rama’s Objections, which restate PECO’s discovery questions, is attached to this Motion to Compel.

PECO addresses the individual objections in the body of this Motion. Globally, however, these objections are best understood against the background of when each party served its respective discovery requests. PECO served its discovery requests on August 28, 2017. With a 20-day return period, Rama’s responses are due on Monday, September 18, 2017.<sup>1</sup> Rama served it Set I discovery on PECO on August 30, 2017. With a 20-day return period, PECO’s

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<sup>1</sup> Because the 20<sup>th</sup> day falls on a Sunday, Rama’s actual return date is 21 days after service.

answers are due on Tuesday, September 17, 2017. On that schedule, Rama answers discovery first, with PECO answers due one day later.

One of the main thrusts of Rama's objections is that it claims that it needs to see PECO's discovery answers before it can provide its own answers to discovery. These objections should thus be seen, in large part, as a tactical effort by Rama to delay the due date for its discovery responses so that it can review PECO's answers before it replies to discovery.

PECO respectfully submits that this should not be allowed. Effectively all of PECO's questions relate to statements made in Rama's 2008 complaint (albeit the questions are focused on the Fifth Amended Complaint, but effectively all of the statements in the Fifth Amended Complaint survive intact from the original Complaint). As set forth in detail below, PECO's questions go to what basis Rama had for making those statements in 2008. That, in turn, requires Rama to review its files and records and provide answers that establish what it knew and thought, and when.

As to timing, PECO accelerated its discovery questions in this docket – beating Rama to the punch by a few days – specifically so that Rama would have to delve into its own records (not PECO's records) to support the statements made in its Complaint. Viewed in that context, Rama's objections can also be seen as a transparent admission that it has no intention of reviewing its own records – it plans to answer discovery by parroting back the answers that PECO gives to it. Moreover, if PECO is incorrect in that assessment – if Rama does intend to delve into its own records to answer discovery – then its objections have no weight, and it should be required to reply on the normal 20-day reply schedule.

Pursuant to 52 Pa. Code §5.432(g)(1), Rama's answer to this Motion is due in 5 days – that is, by Monday, September 18.<sup>2</sup> Pursuant to 52 Pa. Code § 5.432(g)(2), PECO requests that Your Honor rule on this Motion within 15 days – that is, by Tuesday, September 26, 2017.<sup>3</sup> (Based on a deemed filing date of Monday, September 11 for PECO's Motion.) Finally, PECO requests that Your Honor rule that Rama must serve its discovery responses no later than five days after the ruling – that is, by Monday, October 6.

This leaves a difficult timing issue. PECO's answers to discovery are due on September 19 and, on the schedule set forth above, Rama will not serve its Answers until October 6. That means that Rama will have "flipped" the existing order of service and will have attained its goal of seeing PECO's responses before Rama has to craft its own responses. That can be avoided if Your Honor issues an interim order that PECO is not required to serve its discovery responses until this issue is resolved. PECO will continue to prepare its discovery responses in the interim so that they are "in the can," but requests an interim order stating it does not have to serve those responses until after Your Honor rules on this Motion. PECO further requests that, when Your Honor issues the final ruling on this Motion, you rule that PECO is not required to serve its discovery responses until Tuesday, October 7, or one day after it receives the Rama responses, whichever is later. This will retain the current sequence of service.

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<sup>2</sup> Because PECO filed this Motion after noon of Friday, it is deemed filed on Monday, September 11. The fifth day after filing is Saturday, September 16; Rama's Answer is due the next business day, or Monday, September 18.

<sup>3</sup> "The presiding officer will rule on the motion as soon as practicable. The motion shall be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues the presiding officer will, upon notice to the parties, rule in no more than 20 days after its presentation."

Finally, the approach suggested by PECO will not cause prejudice to case preparation because this matter has not yet been set for hearing, and the schedule for prefiled testimony has not yet been established.

In support of its Motion, PECO states the following with respect to its Discovery Requests and Rama's objections:

**PECO Discovery Request I-1:**

PECO's 1<sup>st</sup> Discovery Request states:

1. Reference the Fifth Amended Complaint, ¶8, which states: "Rama believes and therefore avers that prior to August 7, 2007, PECO entered into an agreement with Celeren whereby Celeren purchased the rights to supply and outsource utility services, including electricity, to end users such as Rama."
  - a. Please state all facts or other grounds that form the basis for this belief;
  - b. Please provide all documents that support this belief or refer to facts underlying this belief.
  - c. Please state the terms and conditions of the noted agreement as Rama believes them to be.

Rama lodged the following objection:

**Objection.** This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.

First, let's deal with the objection that: "[B]ecause PECO was a party to the alleged agreements . . . they would properly be in possession of same." Let's set the dynamic here – in its Answer to the Fifth Amended Complaint PECO denied that it had entered into any such agreement. Thus, Rama has alleged that an agreement existed between PECO and Celeren, and PECO has denied that any such agreement exists. It is reasonable for PECO to ask why Rama

believes that such an agreement exists, and to demand that it provide any documents demonstrating the existence of such an agreement. And given the fact that PECO denies the existence of such an agreement, it is nonsensical of Rama to claim that this information “would properly be in possession of” PECO. Moreover, it should be noted that PECO did not merely request documents – it requested that Rama state the facts or other grounds that form the basis for its belief that such an agreement exists. Did someone tell them that it exists? If so, who? Has Rama seen a copy of such an agreement? When and where? Etc. These are all valid questions to which Rama, and only Rama, knows the answer – and which are incorporated into PECO’s single inquiry to state the facts and other grounds for Rama’s belief that an agreement exists.

As to the objection that “This request is unduly burdensome,” the simple answer is that, when Rama’s counsel signed the Fifth Amended Complaint, that signature “constitute[d] a certificate” by counsel that he had performed “a reasonable inquiry” and determined that the pleading was “well grounded in fact.” 52 Pa. Code §1.35(c)(1)(iii). Counsel, having already certified that he conducted a reasonable inquiry of this allegation prior to signing the Complaint, cannot plausibly now claim that it would be unduly burdensome to require his client to disclose the results of that inquiry. PECO’s discovery question was targeted to a specific factual allegation made in the Complaint – what is the basis for that statement?

Finally, as to the objection that: “Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents,” this is the issue discussed in the introductory section above, and PECO incorporates that discussion here. PECO further notes that Rama’s obligation to answer

discovery in no way hinges upon when it receives answers to its discovery to PECO. Rama has its own files, documents, and information that it is obliged to review and reveal in the discovery process.

PECO also notes that its question asks for the basis of *Rama's belief* as stated in the Fifth Amended Complaint (and that allegation has remained the same since the original Complaint in 2008). It is not possible that Rama's belief, originally stated in 2008, could have been based upon PECO's September 2017 discovery answers, due on September 19, but which Rama has never seen.

Overall, however, the situation is really quite simple. If Rama had a basis for making this allegation in its Complaint, it must provide that basis in discovery, *and if it did not and does not currently have a basis* for having made that statement, it must say so in a discovery answer – which PECO then plans to use in a summary judgment motion. Rama should not be allowed to evade the responsibility to answer simple questions about statements it made in its Complaint through the artifice of these boilerplate objections.

### **PECO Discovery Request I-2:**

PECO's 2nd Discovery Request states:

2. Reference the Fifth Amended Complaint, §11, which states: "At all relevant times herein, it was Rama's belief and understanding, based upon the language of the Agreement, that Celeren would supply the electricity for the Building through an Ancillary Agreement Celeren had with PECO and Exelon."
  - a. Please identify the language of the Agreement that refers so such an Ancillary Agreement or which otherwise forms the basis for Rama's belief and understanding, as stated in this paragraph of the Fifth Amended Complaint, that such an Ancillary Agreement exists.
  - b. Please state the terms and conditions of the Ancillary Agreement, as believed and understood by Rama.

Rama lodged the following exception:

**Objection.** This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.

The purported "Ancillary Agreement" referred to here is apparently the same agreement referred to (in lowercase) in ¶8 of the Fifth Amended Complaint; the objection is the same and PECO incorporates its answer from above. It should be noted, however, that by now capitalizing the phrase "Ancillary Agreement" Rama is clearly trying to leave the impression that this is an actual document that it has seen or about which it has knowledge. Given that PECO has denied the existence of such an Ancillary Agreement, PECO is entitled to know the basis for that allegation.

### **PECO Discovery Request I-3**

PECO's 3<sup>rd</sup> Discovery Request states:

3. Reference the Fifth Amended Complaint, ¶14, which states: "At all times relevant herein, Celeren represented to Rama that it had procured and executed an Agreement with PECO, whereby PECO would supply electricity to Rama in return for Celeren's payment of the monthly natural gas and electric bills for Rama."
  - a. Please provide all correspondence or emails in which Celeren made the noted representations;
  - b. If the representation(s) were made verbally, please state the date and manner in which all such representation(s) were made, including the names of personnel at Celeren who made such representations and the names of personnel at Rama who received such representations.
  - c.. Please provide a copy of the referenced Agreement between Celeren and PECO.

Rama lodged the following objection:

**Objection:** This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request PECO has not responded to the discovery request, therefore, Rama does not have the documents.

Again, the same objections and the same response regarding the Ancillary Agreement – with the added element for this Discovery Request that Rama has specifically alleged that Celeren made representations to Rama regarding an agreement between Celeren and PECO. There is no reason to believe that Celeren’s representations to Rama, or any notes regarding those representations, would be found in PECO’s files.

#### **PECO Discovery Request I-4:**

PECO’s 4<sup>th</sup> Discovery Request states:

**4. Reference the Fifth Amended Complaint, ¶17, which states: "Rama believes and therefore avers that Celeren despite receiving the payments from Rama pursuant to the Agreement, failed to make the appropriate payments for the electric service to PECO and Exelon pursuant to its agreement with PECO and Exelon."**

- a. Please state all facts or other grounds that form the basis for this belief;**
- b. Please provide all documents that support this belief or refer to the facts underlying this belief.**

Rama lodged the following objection.

**Objection.** This request is unduly burdensome. See the Complaint and Shut Off and/or Termination Notices sent by PECO. PECO is in possession of information responsive to this request, however, it seeks to unreasonably annoy Rama.

While PECO has records on payments made to it by Celeren, and will provide that information in its discovery responses to Rama, that fact in no way frees Rama of the

obligation to state whether it has records of its own, and if so, to provide them. PECO anticipates that, at the evidentiary hearing in this matter, the parties may not agree as to the amount and number of payments made by Celeren on behalf of Rama. PECO intends to establish its case on the basis of its own records, but it is still entitled to know during discovery whether Rama has its own records that lead to a different result. Rama should therefore be required to provide its records on this issue, or state that it has none.

#### **PECO Discovery Request I-5:**

PECO's 5<sup>th</sup> Discovery Request states:

5. Reference the Fifth Amended Complaint, ¶19, which states: "On or about June 2008, Rama received notice from PECO and Exelon that the payments for the electric service for the Building were delinquent." Please provide a copy of the notice referenced to herein.

Crescent lodged the following objection:

**Objection.** This request is unduly burdensome because PECO was the sender of the communication. As such, they would properly be in possession of same and have equal access. Given the timing of this action, PECO had a duty to preserve the communications or it would have spoliated evidence. This request may have been made in bad faith, or at the least, is made to unreasonably annoy Rama. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.

These are largely the same objections set forth in response to previous Discovery Requests, and PECO incorporates its response in full here. But the paucity of Crescent's "unduly burdensome" objection is on stark display as to this discovery request. The Complaint refers to a document that Crescent *admits that it received* and which forms a material basis for its

Complaint – and yet it claims that it would be burdensome for it to provide that document!

Rama also now adds a preemptive strike spoliation claim; PECO provides the following response: Rama admits in its Fifth Amended Complaint that it received the referenced document. Does it still have that document? If so, it must provide it. If not, then it must explain why it did not preserve the documents that formed the basis for its Complaint.

#### **PECO Discovery Request I-6:**

PECO's 4th Discovery Request states:

4. Reference the Fifth Amended Complaint, ¶2w, which states: "At no time during the Delinquency Period did Celeren inform Rama that it had failed to make the payments to PECO and Exelon for the electric service it supplied to Rama." Please provide copies of all correspondence or emails between Celeren and Crescent during the Delinquency Period.

Crescent lodged the following objection:

Objection. This request is unduly burdensome and sent to unreasonably annoy Rama. No such correspondence related to ¶22 of the Complaint exists and therefore, cannot be produced.

Here's the problem. Rama's stated objection --"No such correspondence related to ¶22 of the Complaint exists and therefore, cannot be produced." – is actually a substantive answer to the Discovery Request. If it is stated as an answer, with a supporting witness and verification, it can be used in cross-examination and a summary judgment motion. As an objection, it does not become part of the evidentiary record and cannot be used for those purposes. Rama's counsel has stated a substantive response to this question. It now needs to have a fact witness make that statement and verify it so that it can be part of the evidentiary record.

#### **PECO Discovery Request I-7:**

PECO's 7<sup>th</sup> Discovery Request states:

**7. Reference the Fifth Amended Complaint, ¶23, which states: "At all times relevant herein, PECO and Exelon knew and understood that Celeren was responsible for remitting payment to PECO and Exelon for the electric service for the Building."**

- a. Please state all facts or other grounds that form the basis for this statement;**
- b. Please provide all documents that support this statement or refer to facts underlying this statement;**
- c. Please provide copies of all correspondence or emails in which Rama informed PECO that Celeren would be responsible as Rama's agent, billing agent, representative responsible for the remittance of payment, or in any other role.**

Crescent lodged the following objection:

**Objection. This request is unduly burdensome and sent to unreasonably annoy Rama. Upon information and belief, PECO is in possession of documents and correspondence responsive to this request. Subject to and without waiving the foregoing, see the Complaint filed by Rama.**

Again, it makes no difference whether PECO has documents that address this issue. (Its files do have documents on this issue, and it will provide them when its discovery responses are due.) Rama's obligation to answer discovery in no way hinges upon when it receives answers to its discovery to PECO. Rama has its own files, documents, and information that it is obliged to review and reveal in the discovery process. And, given the importance of this documentation to Rama's claim – this purported "knowledge" on PECO's part is allegedly the basis of a claimed duty owed by PECO -- it would be irresponsible of PECO to leave itself blind to what is in Rama's files.

## **PECO Discovery Request I-8:**

**PECO's 8<sup>th</sup> Discovery Request states:**

**8. Reference the Fifth Amended Complaint ¶22, which states: "PECO and Exelon failed to notify Rama about the delinquent status of its account for almost one year after the delinquency began." Please provide copies of all correspondence or emails received by Rama from PECO or Exelon during the time period referred to in this question.**

**Crescent lodged the following objection:**

**Objection. This request sent in bad faith to unreasonably annoy Rama. No such correspondences exist, and therefore, cannot be produced.**

**PECO recognizes that this is a difficult question to answer, but it was not asked in bad faith, and it is not burdensome. Rama's Complaint pleads a broad negation – that no communications occurred, over a period of a year, on a given subject. PECO has reviewed its own files to determine whether it has any communications containing this subject matter and will continue to seek such information, but it is quite possible that such communications occurred, and that PECO did not keep or will be unable to find a copy – but that a copy exists in Rama's files. It's also possible that communications occurred by phone and Rama has notes from those calls. The only way to find out whether such documents reside in Rama's files is for Rama to turn over its files of all communications between the two parties.**

**There is another reason that this question should not be seen as burdensome, and it is found in Crescent's objection, where it states that "No such correspondence exists, and therefore, cannot be produced." How does Rama know that other than by having gone to its files and reviewed the correspondence and emails between it and PECO during this period? If it has done that review, then the emails and correspondence must be collected and easily available to it. And**

that correspondence cannot be voluminous, because Rama is alleging that there was little or no communication between it and PECO during this period. If Rama looked through all of its files and found nothing, then that is not an objection – that’s an answer that should be provided in a verified discovery response. Given all of this, Rama should be required to answer this question, notwithstanding that it is one of the more difficult questions posed by PECO.

### **PECO Discovery Request I-9:**

**PECO’s 9<sup>th</sup> Discovery Request states:**

**9. Reference the Fifth Amended Complaint, ¶125, which states: "PECO and Exelon owed it 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."**

- a. Please provide a copy of the contract between Rama and PECO referred to in this paragraph.**
- b. If the referenced contract is verbal, please state the date on which the verbal contract was entered into, the individuals who entered into it, and the terms and conditions of the contract as understood by Rama;**
- c. If the referenced contract is implied, please the basis for such implication, including the date(s) on which the implied contract was formed, and the terms and conditions of the contract as under stood by Rama:**
- d. [f the claimed "duty to disclose" has any basis other than the contract referred to in this paragraph, please state with specificity the other basis for the claimed duty to disclose.**

**Rama lodged the following objection:**

**Objection. This request seeks protected information that covered by the attorney/client privilege. Pursuant to ¶5.321(c), "a party may obtain discovery regarding any matters not privileged."**

**In this Discovery Request, PECO asked for a copy of a contract referred to in this paragraph of the Complaint, and Rama’s objection is that the alleged contract between PECO**

and Rama is subject to the attorney-client privilege? That isn't even a good faith objection. Any contract between Rama and PECO is perforce a public document to which the privilege cannot attach.

Moreover, PECO also requested information regarding a claimed "duty to disclose," and Rama similarly states that all information in its possession on the claimed duty to disclose is protected by the attorney-client privilege. Rama claims that PECO owes it a duty – but objects to saying why PECO owes it a duty because the only source of information regarding that duty is a privileged communication from its attorneys? It hardly seems plausible that the only source of information regarding a legal duty lies within attorney/client privileged documents from Rama's counsel – the duty ought to at least have an externally referenceable source in a statute, regulation, tariff, common law, or other public source that can be identified without revealing an attorney-client communication -- but if this duty is so deeply buried that it exists only within attorney/client communications, one must wonder how PECO was supposed to be aware of this duty. In any event, if that is the claim, then PECO requests that Rama be required to provide a log of such claimed privilege documents and submit the documents themselves to Your Honor for *in camera* inspection. On the other hand, if there is any source or information regarding this duty other than privileged documents from its counsel, Rams is obliged to provide the information from those other sources or to state that no such information exists, notwithstanding this objection. 52 Pa. Code §5.342(c)(6).

## **PECO Discovery Request I-10:**

**PECO's 10<sup>th</sup> Discovery Request states:**

**10. Reference the Fifth Amended Complaint, ¶29, which states in part that: "[D]uring the Delinquency Period, Celeren entered into forbearance, and/or payment agreements with PECO."**

- a. Please state all facts or other grounds that form the basis for this statement;**
- b. Please provide all documents that support this statement or refer to the facts underlying this statement.**
- c. Please state the terms and conditions of the noted forbearance agreement as Rama believes them to be.**

**Rama lodged the following objection:**

**Objection. This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.**

**Again, the fact that PECO has information in its files regarding forbearance/payment arrangements (and as to this question, PECO has confirmed that it has information regarding the scope and nature of forbearance/payment arrangements and has provided that information in its discovery responses) in no way relieves Rama of the obligation to provide the information that it relied upon, nine years ago, when it originally made this allegation. PECO has no assurance that the information in its records is identical to the information in Rama's records, and PECO is entitled to know what is in Rama's files so that it is not surprised at hearing.**

### **PECO Discovery Request I-11:**

PECO's 11<sup>th</sup> Discovery Request states:

11. Reference the Fifth Amended Complaint, ¶39, which states: "PECO and Exelon owed a duty to Rama to investigate whether Celeren qualified as an EGS under the Tariff."

a. Please state all facts or other grounds that form the basis for the claim that PECO owed the stated duty to Rama;

b. Please provide all documents that support or refer to the claim that PECO owed the stated duty to Rama.

Rama lodged the following objection:

Objection. This request seeks protected information that covered by the attorney/client privilege. Pursuant to § 5.321(c), "a party may obtain discovery regarding any matters not privileged."

This is the same objection made in response to PECO Discovery Request #9, and PeCO incorporates its answer thereto.

### **PECO Discovery Request I-12:**

PECO's 12<sup>th</sup> Discovery Request states:

12. Reference the Fifth Amended Complaint, ¶40, which states: "If Celeren qualified as an EGS, PECO and Exelon owed a duty to Rama to treat Rama as an end user with all of the rights and protect ions any customer who received electricity directly from PECO and Exelon."

a. Please state all facts or other grounds that form the basis for the claim that PECO owed the stated duty to Rama;

b. Please provide all documents that support or refer to the claim that PECO owed the stated duty to Rama.

Rama lodged the following objection:

**Objection. This request seeks protected information that covered by the attorney/client privilege. Pursuant to §5.321(c), "a party may obtain discovery regarding any matter, not privileged."**

This is the same objection made in response to PECO Discovery Request #9, and PeCO incorporates its answer thereto.

### **PECO Discovery Request I-13:**

PECO's 13<sup>th</sup> Discovery Request states:

**13. Reference the Fifth Amended Complaint, ¶41, which states: "In the alternative, if Celeren was not an EGS, PECO and Exelon owed Rama a duty to so inform Rama and provide it with notice that Celeren was not fulfilling the terms of its agreement with PECO and Exelon, thereby subjecting Rama to the possibility of having the service terminated."**

- a. Please state all facts or other grounds that form the basis for the claim that PECO owed the stated duty to Rama;**
- b. Please provide all documents that support or refer to the claim that PECO owed the stated duty to Rama.**

Rama lodged the following objection:

**Objection. This request seeks protected information that covered by the attorney/client privilege. Pursuant to ¶ 5.321(c) "a party may obtain discovery regarding any matter, not privileged."**

This is the same objection as was lodged to Discovery Request #9, and PECO incorporates its reply in full.

### **PECO Discovery Request I-14:**

PECO's 14<sup>th</sup> Discovery Request states:

**14. Reference the Fifth Amended Complaint, ¶42, which states: "Pursuant to the Tariff the PUC regulations and the applicable statute, Title 66 of the Pennsylvania**

Consolidated Statutes, PECO and Exelon owed a duty to Rama to inform it of the alleged delinquency so that Rama could take appropriate action to enforce its rights against Celeren and mitigate the alleged delinquency."

a. Please identify the specific portions of PECO's tariffs that you allege create the duty to inform described in this paragraph of the Fifth Amended Complaint;

b. Please identify the specific sections of the Commission's regulations that you allege create the duty to inform described in this paragraph of the Fifth Amended Complaint;

c. Please identify the specific sections of Title 66 of the Pennsylvania Consolidated Statutes regulations that you allege create the duty to inform described in this paragraph of the Fifth Amended Complaint.

Crescent lodged the following objection:

**Objection.** This request seeks protected information that covered by the attorney/client privilege. Pursuant to §5.321(c), "a party may obtain discovery regarding any matter, not privileged."

Again, this parallels the objection (and PECO's incorporated reply) from Discovery Request #9 – with the added twist that Rama now says that even though it specifically states in its Complaint that PECO is violating, inter alia, its own tariff, Rama need not say which section of its tariff PECO is violating because the only person who knows the answer to that question is their attorney – and he's not telling, other than via privileged documents.

#### **PECO Discovery Request I-15:**

PECO's 15<sup>th</sup> Discovery Request states:

15. Reference the Fifth Amended Complaint, f151 (e), which states: "At all relevant times, Celeren represented to Rama that it was paying the utility bills as required by the parties' Agreement." Please provide copies of all correspondence, emails, or other communications in which Rama made the representations described in paragraph 51(e).

Crescent lodged the following objection:

**Objection.** This request is unduly burdensome in that it request communications that may not be relevant to the subject action. Subject to and without waiving the foregoing, Rama is searching its files for responsive documents for this request and will provide PECO with same.

This is a remarkable argument. Rama makes a statement in its Complaint and, when PECO asks for additional information regarding that statement, *Rama claims that the statement that Rama made in its Complaint* “may not be relevant to the subject action.”

Rama has had many, many, opportunities to amend its complaint and plead only those matters that it deems relevant. As long as this allegation remains in the Complaint, PECO is entitled to seek discovery regarding it.

#### **PECO Discovery Request I-16:**

PECO’s 16<sup>th</sup> Discovery Request states:

16. Reference the Fifth Amended Complaint, ¶152, which states: “Upon information and belief, the Defendants have committed the same or similar acts upon other utility customers like Rama, over the past several years.”
- a. Please state all facts or other grounds that form the basis for the belief that PECO and/or Exelon “committed the same or similar acts upon other utility customers”;
  - b. Please provide all documents that support the belief or demonstrate that that PECO and/or Exelon “committed the same or similar acts upon other utility customers.”

Rama lodged the following objection:

**Objection.** This request is unduly burdensome. Rama has requested this information from PECO, however, PECO has not responded to Rama's requests. Subject to and without waiving the foregoing, Rama is compiling responsive documents and will provide PECO with same.

It should first be noted that this statement in the Complaint, and the associated Discovery Request, deal with Rama's fraud claim, which pursuant to Order #4 has been dismissed. However, notwithstanding that order, Rama has persisted, through Five Amended Complaints, in reiterating this claim as part of its Complaint. And, as Rama notes in its objection, it has asked PECO discovery on this same issue (to which PECO will shortly object). PECO's view is that this claim is dismissed and no party should be allowed to pursue discovery regarding it, but as long as Rama continues to pursue it – in absolute rank defiance of Order #4 – PECO must protect itself by also seeking discovery.

As to the actual objection, PECO simply notes that Rama stated in its complaint that its statement was based on "information and belief." It is required to reveal that information now via discovery response.

#### **PECO Discovery Request I-17:**

PECO's 17<sup>th</sup> Discovery Request states:

**17. Reference the Fifth Amended Complaint, ¶56, which states: "The existence of the 210 Proofs of Claim filed in Celeren's bankruptcy is evidence that Celeren carried out similar acts and omissions against other utility purchasers and utility companies in addition to Rama."**

- a. Please provide complete copies of the referenced 210 Proofs of Claim.**
- b. Please provide all correspondence or emails between Rama and any of the entities that filed the 210 Proofs of Claim, insofar as such correspondence or emails are related to the Celeren, PECO, or Exelon and the claims in this proceeding.**

**Rama lodged the following objection**

**Objection. This request is unduly burdensome and unreasonably annoying. Rama provided a copy of the 210 Proof of Claims in its discovery request and the information is available online. Rama is waiting for PECO's discovery responses with respect to communications and documents related to or referring to the Proof of Claims. By way of further response and without waiving the foregoing, Rama is compiling responsive documents and will provide any discoverable to PECO.**

**Again, this statement in the Complaint and the related Discovery Request relate to the stricken fraud claim, but until Rama actually removes the claim from its Complaint and ceases sending discovery on it, PECO must protect itself by seeking discovery of its own.**

**As to the objection, it is Rama that claims that these Proofs are "evidence" of one of its claims. PECO's view is: Enough with the generalities and adjectival characterizations. The time has come to prove that the evidence says what you claim it does. And discovery to produce the actual documents is a valid use of the discovery tools.**

#### **PECO Discovery Request I-18:**

**PECO's 18<sup>th</sup> Discovery Request states:**

**18. Please identify and produce all procedures and policies of Rama with respect to its process for providing oversight of Celeren during the period in which it had a business relationship with Celeren. If such policy or procedure does not exist in written form, please provide a written summary of the unwritten process.**

**Rama lodged the following objection:**

**Objection. This request is irrelevant and unduly burdensome. At issue, among other things, is PECO's knowledge of Celeren's actions that led to Rama delinquent account and breach of duty owed to Rama in not informing them of same.**

**In this question, PECO asks whether Rama had a policy of watching its agent, Celeren. This is relevant to this proceeding because one of PECO's arguments in this case is that Rama**

hired Celeren as its agent and had a responsibility to manage its own agent. If Rama did not have a procedure for oversight of Celeren, that fact is relevant to PECO's defense because it demonstrates the Rama acted unreasonably in managing its agent and could have avoided the issue by keeping tighter tabs on its agent. If Rama had a procedure but did not follow it, that is also relevant to PECO's defense, for the same reason. If Rama had a procedure and followed it, then Rama's claims that PECO kept it in the dark for too long are suspect – active management would have informed Rama on an ongoing basis. Any of those facts, if elicited in discovery, would be admissible in evidence as relevant to PECO's position. The only way to explore whether Rama had such a policy, and followed it, is through discovery which, as just described, is reasonably calculated to lead the discovery of admissible evidence – which makes the discovery allowable. See 52 Pa. Code §5.321(c).

**WHEREFORE:**

PECO respectfully requests that, by September 26, Your Honors issue an Order requiring Complainant to provide full and complete answers to PECO's Set I discovery no later than Friday, October 6, 2017. Moreover, PECO requests that Your Honor issue an interim ruling that PECO is not required to serve its answers to discovery until October 7, 2017, or one day after it receives Rama's answers, whichever is later.

Respectfully submitted,



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Ward Smith  
Assistant General Counsel  
PECO Energy Company  
215-841-6863  
[ward.smith@exeloncorp.com](mailto:ward.smith@exeloncorp.com)

September 8, 2017

## **Attachment A**

### **Rama's Objections**



avers that prior to October, 2005, PECO entered into an agreement with Celeren whereby Celeren purchased the rights to supply and outsource utility services, including electricity, to end users such as Rama."

- a. Please state all facts or other grounds that form the basis for this belief;
- b. Please provide all documents that support this belief or refer to facts underlying this belief.
- c. Please state the terms and conditions of the noted agreement as Crescent believes them to be.

**Objection.** This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.

2. Reference the Fifth Amended Complaint, ¶11, which states: "At all relevant times herein, it was Rama's belief and understanding, based upon the language of the Agreement, that Celeren would supply the electricity for the Building through an Ancillary Agreement Celeren had with PECO and Exelon."

- a. Please identify the language of the Agreement that refers so such an Ancillary Agreement or which otherwise forms the basis for Rama's belief and understanding, as stated in this paragraph of the Fifth Amended Complaint, that such an Ancillary Agreement exists.
- b. Please state the terms and conditions of the Ancillary Agreement, as believed and understood by Rama.

**Objection.** This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.

3. Reference the Fifth Amended Complaint, ¶14, which states: "At all times relevant herein, Celeren represented to Rama that it had procured and executed an Agreement with PECO, whereby PECO would supply electricity to Rama in return for Celeren's payment of the monthly natural gas and electric bills for Rama."

- a. Please provide all correspondence or emails in which Celeren made the noted representations;
- b. If the representation(s) were made verbally, please state the date and manner in which all such representation(s) were made, including the names of personnel at Celeren who made such representations and the names of personnel at Rama who received such representations.
- c.. Please provide a copy of the referenced Agreement between Celeren and PECO.

**Objection<sup>1</sup>.** This request is unduly burdensome because PECO was a party to the

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<sup>1</sup> Rama, despite objection, will continue to make good-faith efforts to uncover and provide PECO will all responsive

**alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.**

4. Reference the Fifth Amended Complaint, ¶17, which states: "Rama believes and therefore avers that Celeren, despite receiving the payments from Rama pursuant to the Agreement, failed to make the appropriate payments for the electric service to PECO and Exelon pursuant to its agreement with PECO and Exelon.

- a. Please state all facts or other grounds that form the basis for this belief;
- b. Please provide all documents that support this belief or refer to facts underlying this belief.

**Objection. This request is unduly burdensome. See the Complaint and Shut Off and/or Termination Notices sent by PECO. PECO is in possession of information responsive to this request, however, it seeks to unreasonably annoy Rama.**

5. Reference the Fifth Amended Complaint, ¶19, which states: "In or about June 2008. Rama received notice from PECO and Exelon that the payments for the electric service for the Building were delinquent" Please provide a copy of the notice referred to in Paragraph 19.

**Objection. This request is unduly burdensome because PECO was the sender of the communication. As such, they would properly be in possession of same and have equal access. Given the timing of this action, PECO had a duty to preserve the communications or it would have spoliated evidence. This request may have been made in bad faith, or at the least, is made to unreasonably annoy Rama. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents.**

6. Reference the Fifth Amended Complaint, ¶22, which states: "At no time during the Delinquency Period did Celeren inform Rama that it had failed to make the payments to PECO and Exelon for the electric service it supplied to Rama." Please provide copies of all correspondence or emails between Celeren and Rama during the Delinquency Period .

**Objection. This request is unduly burdensome and sent to unreasonably annoy Rama. No such correspondence related to ¶22 of the Complaint exists and therefore, cannot be produced.**

7. Reference the Fifth Amended Complaint, ¶ 23, which states: "At all times relevant herein, PECO and Exelon knew and understood that Celeren was responsible for remitting payment to PECO and Exelon for the electric service for the Building."

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documents that are within the scope of discovery which are relevant to Crescent's claim and PECO.

- a. Please state all facts or other grounds that form the basis for this statement;
- b. Please provide all documents that support this belief or refer to facts underlying this statement.
- c. Please provide copies of all correspondence or emails in which Rama informed PECO that Celeren would be responsible as Rama's agent, billing agent, representative responsible for the remittance of payment, or in any other role.

**Objection. This request is unduly burdensome and sent to unreasonably annoy Rama. Upon information and belief, PECO is in possession of documents and correspondence responsive to this request. Subject to and without waiving the foregoing, see the Complaint filed by Rama.**

8. Reference the Fifth Amended Complaint, ¶24, which states: "PECO and Exelon failed to notify Rama about the delinquent status of its account for almost one year after the delinquency began." Please provide copies of all correspondence or emails received by Rama from PECO or Exelon during the time period referred to in this question.

**Objection. This request sent in bad faith to unreasonably annoy Rama. No such correspondences exist, and therefore, cannot be produced.**

9. Reference the Fifth Amended Complaint, ¶25, which states: "PECO and Exelon owed it 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."
  - a. Please provide a copy of the contract between Rama and PECO referred to in this paragraph.
  - b. If the referenced contract is verbal, please state the date on which the verbal contract was entered into, the individuals who entered into it, and the terms and conditions of the contract as understood by Rama;
  - c. If the referenced contract is implied, please the basis for such implication, including the date(s) on which the implied contract was formed, and the terms and conditions of the contract as under stood by Rama:
  - d. [f the claimed "duty to disclose" has any basis other than the contract referred to in this paragraph, please state with specificity the other basis for the claimed duty to disclose.

**Objection. This request seeks protected information that covered by the attorney/client privilege. Pursuant to § 5.321(c), "a party may obtain discovery regarding any matter, not privileged."**

10. Reference the Fifth Amended Complaint, ¶29, which states that: "[D]uring the Delinquency Period, Celeren entered into forbearance, and/or payment agreements with PECO."
  - a. Please state all facts or other grounds that form the basis for this statement;
  - b. Please provide all documents that support this statement or refer to facts underlying this

statement.

c. Please state the terms and conditions of the noted forbearance agreement as Crescent believes them to be.

**Objection.** This request is unduly burdensome because PECO was a party to the alleged agreements, not Rama. As such, they would properly be in possession of same. Accordingly, Rama has served discovery requests on PECO seeking copies of any and all agreements, communications, and documents that refer or relate to this request. PECO has not responded to the discovery request, therefore, Rama does not have the documents. Further, this request is addressed to "Crescent" and its belief.

11. Reference the Fifth Amended Complaint, ¶39, which states: "PECO and Exelon owed a duty to Rama to investigate whether Celeren qualified as an EGS under the Tariff."

a. Please state all facts or other grounds that form the basis for the claim that PECO owed the stated duty to Rama;

b. Please provide all documents that support or refer to the claim that PECO owed the stated duty to Rama.

**Objection.** This request seeks protected information that covered by the attorney/client privilege. Pursuant to § 5.321(c), "a party may obtain discovery regarding any matter, not privileged."

12. Reference the Fifth Amended Complaint, ¶40, which states: "If Celeren qualified as an EGS, PECO and Exelon owed a duty to Rama to treat Rama as an end user with all of the rights and protections any customer who received electricity directly from PECO and Exelon."

a. Please state all facts or other grounds that form the basis for the claim that PECO owed the stated duty to Rama;

b. Please provide all documents that support or refer to the claim that PECO owed the stated duty to Rama.

**Objection.** This request seeks protected information that covered by the attorney/client privilege. Pursuant to § 5.321(c), "a party may obtain discovery regarding any matter, not privileged."

13. Reference the Fifth Amended Complaint, ¶41, which states: "In the alternative, if Celeren was not an EGS, PECO and Exelon owed Rama a duty to so inform Rama and provide it with notice that Celcren was not fulfilling the terms of its agreement with PECO and Exelon, thereby subjecting Rama to the possibility of having the service terminated ..."

a. Please state all facts or other grounds that form the basis for the claim that PECO owed the stated duty to Rama;

Please provide all documents that support or refer to the claim that PECO owed the stated duty to Rama.

**Objection.** This request seeks protected information that covered by the attorney/client privilege. Pursuant to § 5.321(c), "a party may obtain discovery regarding any matter, not privileged."

14. Reference the Fifth Amended Complaint, ¶42, which states: Pursuant to the Tariff, the PUC regulations and the applicable statute, Title 66 of the Pennsylvania Consolidated Statutes, PECO and Exelon owed a duty to Rama to inform it of the alleged delinquency so that Rama could take appropriate action to enforce its rights against Celeren and mitigate the alleged delinquency."

a. Please identify the specific portions of PECO's tariffs that you allege create the duty to inform described in this paragraph of the Fifth Amended Complaint;

b. Please identify the specific sections of the Commission's regulations that you allege create the duty to inform described in this paragraph of the Fifth Amended Complaint;

c. Please identify the specific sections of Title 66 of the Pennsylvania Consolidated Statutes regulations that you allege create the duty to inform described in this paragraph of the Fifth Amended Complaint.

**Objection.** This request seeks protected information that covered by the attorney/client privilege. Pursuant to § 5.321(c), "a party may obtain discovery regarding any matter, not privileged."

15. Reference the Fifth Amended Complaint, ¶51 (e), which states: "At all relevant times, Celeren represented to Rama that it was paying the utility bills as required by the parties' Agreement." Please provide copies of all correspondence, emails, or other communications in which Rama made the representations described in paragraph 51(e).

**Objection.** This request is unduly burdensome in that it request communications that may not be relevant to the subject action. Subject to and without waiving the foregoing, Rama is searching its files for responsive documents for this request and will provide PECO with same.

16. Reference the Fifth Amended Complaint, ¶52, which states: "Upon information and belief, the Defendants have committed the same or similar acts upon other utility customers like Rama, over the past several years."

a. Please state all facts or other grounds that form the basis for the belief that PECO and/or Exelon "committed the same or similar acts upon other utility customers";

b. Please provide all documents that support the belief or demonstrate that that PECO and/or Exelon "committed the same or similar acts upon other utility customers."

**Objection.** This request is unduly burdensome. Rama has requested this information from PECO, however, PECO has not responded to Rama's requests. Subject to and without waiving the foregoing, Rama is compiling responsive documents and will provide PECO with same.

17. Reference the Fifth Amended Complaint, ¶56, which states: "The existence of the 210 Proofs of Claim filed in Celeren's bankruptcy is evidence that Celeren carried out similar acts and omissions against other utility purchasers and utility companies in addition to Rama."

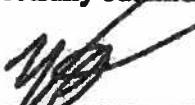
- a. Please provide complete copies of the referenced 210 Proofs of Claim.
- b. Please provide all correspondence or emails between Rama and any of the entities that filed the 210 Proofs of Claim, insofar as such correspondence or emails are related to the Celeren, PECO, or Exelon and the claims in this proceeding.

**Objection. This request is unduly burdensome and unreasonably annoying. Rama provided a copy of the 210 Proof of Claims in its discovery request and the information is available online. Rama is waiting for PECO's discovery responses with respect to communications and documents related to or referring to the Proof of Claims. By way of further response and without waiving the foregoing, Rama is compiling responsive documents and will provide any discoverable to PECO.**

18. Please identify and produce all procedures and policies of Rama with respect to its process for providing oversight of Celeren during the period in which it had a business relationship with Celeren. If such policy or procedure does not exist in written form, please provide a written summary of the unwritten process.

**Objection. This request is irrelevant and unduly burdensome. At issue, among other things, is PECO's knowledge of Celeren's actions that led to Rama delinquent account and breach of duty owed to Rama in not informing them of same.**

Respectfully submitted,

  
\_\_\_\_\_  
Paul A. Bucco, Esquire  
William D. Oleckna, Esquire  
Attorneys for Complainant,  
Crescent Hotel Plymouth Meeting, L.P.

Dated: September 7, 2017