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September 11, 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 Strike Designated Paragraphs of the Fifth Amended Complaint* 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	:	

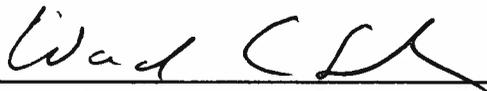
NOTICE TO PLEAD

Pursuant to the 52 Pa. Code § 5.61, you are hereby notified that PECO Energy Company has filed a Motion to Strike and you must file an Answer within twenty (20) days. If you file an Answer, you must provide a full copy to counsel for PECO, counsel to other parties, the Commission, and the Administrative Law Judge.

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, September 11, 2017



Ward L. Smith
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**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 Strike* via email to:

Paul A. Bucco, Esquire
William Oleckna, Esquire
Paul.Bucco@Davisbucco.com
William.Oleckna@Davisbucco.com
Counsel for Rama Construction

Dated at Philadelphia, Pennsylvania, September 11, 2017



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rama Construction, Inc. t/a Ramada Inn	:	
International Airport	:	C-2008-2058320
v.	:	
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PECO Energy Company’s Motion to Strike Designated Paragraphs of the Fifth Amended Complaint

The initial complaint in this proceeding was filed on August 7, 2008. On August 27, 2015, Administrative Law Judge (“ALJ”) Cynthia Williams Fordham issued her Order #4 Granting PECO Energy Company’s Preliminary Objections to the Second Amended Complaint. In Order #4, ALJ Fordham dismissed Count Two of the Complaint – which was a fraud claim -- on four different grounds, and ordered Rama to file a newly-amended Complaint with the fraud claim removed.

Rama subsequently filed a Third, Fourth, and Fifth Amended Complaint, and the factual allegations that comprised the fraud claim are still being pled by Rama, most recently in paragraphs 51-56 of the Fifth Amended Complaint. Moreover, that is not a mere historical anomaly – Rama is still actively pursuing that claim in the litigation process. Indeed, on August 30, 2017, Rama served discovery questions on PECO with respect to factual allegations underlying the fraud claim. Those discovery questions ask PECO 19 different questions for each of 210 entities that were involved in Celeren’s bankruptcy proceeding, or a total of 3,990 discovery questions related to the factual allegations underlying the fraud claim. If PECO takes even 10 minutes per question, it will take it 665 hours to answer these questions (3,990 x 10 / 60). (PECO has objected to answering these questions.)

This has simply got to stop. And, because Rama has repeatedly shown itself unable or unwilling to follow the clear directions of Order #4 and file an Amended Complaint with the fraud claim fully eliminated, PECO is seeking a simple solution – will Your Honor issue an Order striking paragraphs 51-56 of the Fifth Amended Complaint?

I. Background

- 1. 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.**
- 2. 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.**
- 3. 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.**
- 4. 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.**
- 5. On February 18, 2014, the Bankruptcy Court issued a Final Decree closing the Celeren bankruptcy proceeding.**

6. On March 18, 2014, counsel for the Bankruptcy Trustee informed the Commission and the parties, by letter addressed to then-presiding officer Administrative Law Judge Cynthia Williams Fordham, of the Bankruptcy Court Final Decree.
7. On April 22, 2014, PECO Energy filed and served a Motion to Lift Stay and Re-Activate the Proceeding.
8. 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 Ram 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.
9. 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.
10. 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 Rama 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.

11. 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. For the first time in this proceeding, Rama stated its fraud claim and discussed the factual underpinnings of that claim – Rama hoped to prove this claim by reference to 210 "Proofs of Claim" filed in the Celeren Bankruptcy.
12. On August 14, 2014, PECO filed its Preliminary Objections to Rama's Second Amended Complaint in this proceeding. As to the fraud claim, PECO's Preliminary Objections to the Second Amended Complaint argued 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.
13. On August 29, 2014, Rama filed its Reply to PECO's Preliminary Objections to the Second Amended Complaint.
14. 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 and dismissed the fraud claim on all four grounds pled by PECO.

15. On September 17, 2015, Rama filed its Third Amended Complaint. The Third Amended Complaint contained 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.

16. On October 5, 2015, PECO filed its Preliminary Objections to the Third Amended Complaint. In those Preliminary Objections, PECO argued, in material part, 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, and that Rama should be required to file an amended complaint that did not include that claim.

17. 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

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. (That Motion is still pending, and is not superceded by the much less extensive relief that PECO seeks today.)

18. On October 23, 2015, Rama filed two documents. First, it filed its Answer to PECO’s Motion to Dismiss in which *it claimed (¶22) 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.”*¹ Rama also filed its Fourth Amended Complaint, which had two changes from the Third Amended Complaint. First, the Fourth Amended Complaint added new ¶32, 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 51-56 of Count One of the Fourth Amended Complaint. These paragraphs continued to set forth the “fraud and deception” claims against PECO. .

¹ Presumably, this was meant to read “clerical error.”

19. On November 9, 2015, Rama filed its Fifth Amended Formal Complaint. The Fifth Amended Complaint is identical to the 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 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.” ¶56 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. Argument – Paragraphs 51-56 of the Fifth Amended Complaint Should be Stricken

20. In Order #4, Ordering Paragraphs 3-7 (p. 18), ALJ Fordham dismissed the Count Two fraud claim 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.
21. The Third Amended Complaint included Count Two, intact and verbatim, as set forth in the Second Amended Complaint.
22. 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 51-56 of Count One of the Fourth Amended Complaint.
23. 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 regarding the 210 Proofs of Claim relate to events that occurred between 2005 and 2008, but which were first raised by Rama in the Second Amended Complaint on July 23, 2014, which was nearly six years after the initial complaint was filed. Consequently, those claims were dismissed as time-barred. 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 thus time-barred by the ruling in Order #4.²

24. Rama has continued to plead, in the Third, Fourth, and Fifth Amended Complaints, a claim that Order #4 dismissed.
25. Rama continues to serve discovery on the 210 Proofs of Claim that form the underlying factual basis of the fraud claim.
26. Rama’s behavior should not be tolerated. ALJ Fordham’s ruling in Order #4 should have been taken by all parties as having disposed of this issue, and Rama continues to show nearly contemptuous disregard for that Order. .
27. Your Honor has broad plenary authority to regulate the course of this proceeding. *See* 52 Pa. Code § 5.483(a). That plenary authority includes the power to strike offending portions of a complaint. Indeed, in the parallel case of *Crescent Hotel v PECO*, ALJ Fordham utilized that

² If Rama were to argue that its fraud and deception claim has been transmuted into a new claim that has some legal basis other than fraud and deception (via the mechanism of removing the phrase “fraud and deception), that new claim would obviously also be time-barred because it was just newly introduced and is based upon events that occurred between 2005 and 2008.

authority to grant precisely the relief sought here be PECO – instead of ordering Crescent to file an amended complaint that removed the offending fraud claim, ALJ Fordham simply struck designated specific paragraphs of the Second Amended Complaint that embodied the fraud claim.

III. Conclusion

PECO therefore respectfully requests that Your Honor issue an Order: that, pursuant to Order #4, paragraphs 51-56 of the Fifth Amended Complaint are stricken.

Respectfully submitted,



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