



Email: William.Oleckna@davisbucco.com

September 13, 2017

**VIA ELECTRONIC FILING**

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

**Re: Crescent Hotel-Plymouth Meeting, LP v. PECO Energy Company; Docket No: C-2008-2068258**

**Crescent Hotel-Plymouth Meeting, LP v. UGI Energy Solutions, Inc.; Docket No: C-2008-2068267**

**Crescent Hotel-Plymouth Meeting, LP v. Celeren Corporation; Docket No: C-2009-2089563**

Dear Ms. Chiavetta:

Enclosed for electronic filing is the Answer of Crescent Hotel-Plymouth Meeting, L.P. to the Motion to Compel of PECO Energy Company in the above-captioned matter.

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

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'WDO', with a horizontal line extending to the right.

William D. Oleckna

WDO/mcm  
Enclosure

cc: ALJ Marta Guhl (via email and 1<sup>st</sup> class mail)  
All parties per certificate of service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PROPOSED ORDER**

THEREFORE,

IT IS ORDERED:

That Crescent Hotel Plymouth Meeting, L.P.'s Objections to PECO Energy Company's Written Interrogatories and Request for Production 1, 3, 5, 7, 12, and 14 are sustained.

Crescent must answer the remaining Interrogatories and Request for Production of Documents by \_\_\_\_\_.

A Telephonic Conference is scheduled for \_\_\_\_\_ at \_\_\_\_\_ between counsel for PECO Energy Company and Crescent Hotel Plymouth Meeting, L.P. with Administrative Law Judge Guhl.

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**BEFORE THE  
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CRESCENT HOTEL PLYMOUTH MEETING, LP:	:	
Complainant	:	C-2008-2068258
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PECO ENERGY,	:	
EXELON CORPORATION	:	
CELEREN CORPORATION and	:	
UGI ENERGY SERVICES, INC.	:	
Respondents	:	

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**CRESCENT HOTEL PLYMOUTH MEETING, L.P.’S ANSWER TO PECO ENERGY  
COMPANY’S MOTION TO COMPEL**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.342(g)(1), Crescent Hotel Plymouth Meeting, L.P. (“Crescent”), Complainant in the above-captioned matter, by and through its counsel, hereby requests that the presiding Administrative Law Judges sustain its objections to discovery requested by PECO Energy Company (“PECO”). In support thereof, Crescent avers as follows:

**Background**

The above-referenced matters were initiated by Crescent beginning in 2008 and consolidated. Shortly thereafter, the actions were stayed because Celeren Corporation filed for Bankruptcy and the stay existed until 2014. Unbeknownst to Crescent and PECO, until just before the prehearing conference in this matter (on or about July 11, 2017), PECO’s Preliminary Objections to Crescent’s Second Formal Amended Complaint were decided. As such, in observance of the stay – as required by law – and because the scope the action had not been ruled

upon, Crescent has been unable to conduct discovery both legally and factually, despite the representations of both PECO and UGI Energy Services, Inc.<sup>1</sup>

### **PECO's Discovery Request I-1**

Crescent objected to this interrogatory because it is disingenuous and unduly burdensome. Crescent propounded discovery upon PECO seeking copies of all documents existence between Crescent and Celeren. PECO's discovery response included no such documents whatsoever<sup>2</sup>.

Upon information and belief, PECO's response is either in bad faith or evidences spoliation of evidence. Given that Crescent was not a party to the referenced document in interrogatory 1, so it's a rather odd request. Especially, given PECO's failure to provide sufficient responses and requested documents, as well as documents that PECO identified. It is highly suspicious for PECO to request the documents of Crescent that it was not a party to and PECO had a duty to maintain over the years due to pending litigation. Crescent's concern with PECO's behavior leads to a concerning possibility that if Crescent does not produce a document, does PECO intent to not to produce it? Their motivation is unclear. Should any documents have been lost, disappear, or if PECO alleges it cannot find documents that in fact existed, an adverse inference due to spoliation of evidence will be requested.

Regrettably, absent a telephone conference, Crescent will be compelled to prepare a Motion for Sanctions to protect its rights and entitlement to information, documents, and communications. If PECO has verified that the requested document or agreement never existed, then the story is completely different and it would be clear that this interrogatory is not relevant.

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<sup>1</sup> Crescent respectfully requests a telephonic conference with PECO and the Administrative Law Judge to expedite this matter and resolve multiple discovery issues.

<sup>2</sup> PECO's responses to Crescent's Interrogatories and Request for Production are deficient and incomplete. It is clear that they have failed to produce documents request and produce documents it identified. In lieu of further motion practice, Crescent prays for the intervention of the Pennsylvania Public Utility Commission.

Further, it's unduly burdensome and seeks to cause unreasonable annoyance that PECO would request same documents after knowing that Crescent requested the same from PECO.

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

Crescent objected to the second interrogatory propounded upon it by PECO because it again sought information that Crescent asked of PECO, which – again – Crescent was not a party or in privity to any contract between Celeren and Crescent. This information should be in the possession of PECO. Discovery *should* be the free-flow of information, not raise suspicions that documents are being hidden or evidence destroyed. Instead, based upon counsel's own words, it seeks to use Crescent's responses as fodder for its Motion for Summary Judgment, which again would be all too convenient after it failed to produce the requested documents and has barely met or failed to meet all deadlines, except – of course – the filing of their Motion to Compel, which was done on the first day.

Notwithstanding the objection, Crescent still provided PECO with a copy of a spreadsheet that detailed all payments made by Crescent which shows that it paid Celeren or its energy supply. It also shows that, despite the fact that it paid Celeren for its energy supply that PECO billed them for in excess of \$100,000.00 due to months of delinquency...despite PECO's knowledge that Celeren was in charge of paying PECO's account. Crescent has sought information regarding PECO's knowledge and relationship with creditors of Celeren who are customers, and related documents thereto, but PECO has filed a bald objection stating that the information requested is being used to support a stricken claim; however, the information is reasonably calculated to lead to the discovery of admissible evidence in that it would clearly do to PECO's knowledge and notice, at the very least.

Further, the spreadsheet produced by Crescent was attached to an e-mail. The e-mail references a deposit request that was made by PECO to Celeren. The e-mail also states that certain of Celeren's customers were successful in having PECO removed their requested deposit request, but that it took some persistence. Again, clearly Crescent is not in a position to provide information with respect to the transactions between PECO and Celeren. As evidenced by the footnote in Crescent's objection and the Rules of Professional Conduct, Crescent intends to respond to this interrogatory; however, PECO has failed to provide a complete set of documents and produce specified and discoverable documents to Crescent's discovery requests. It is incredible that PECO has filed a Motion to Compel documents from Crescent that Crescent was not a party to, meanwhile, PECO failed to provide all requested documents and provide complete responses...without any explanation.

PECO says that it intends to establish its case on the basis of its own records, however, they did not provide any records they provided a spreadsheet and a general policy. They provided no documents for communications despite extensive interrogatories and request for production that specify exactly what is requested, for example: Shut Off or Termination Notice. Nevertheless, this objection is withdrawn and Crescent will provide a formal response to this interrogatory.

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

Again, Crescent objects to this discovery request because it requests correspondence that was sent by PECO and Exelon. As such, it's equally available to them as it is to Crescent. Nevertheless, PECO and Exelon failed to provide the referenced notice in response to Crescent's discovery request. Given these circumstances, not only is the discovery request made and objected to because it's in bad faith, but it also shows again, that PECO's counsel as exhibited sanctionable behavior. This is discovery, this is the free flow of information, however, PECO seems to be

playing hide and seek. It's hiding the documents that Crescent clearly requested, which it must maintain as a Respondent before this Commission since 2008. The fact that PECO is seeking documents, seeking to compel them, that they should have, knew Crescent requested, and failed to produce is highly suspicious and concerning. Due to concerns raised by PECO's discovery responses as well as PECO own filings evidencing an inability to maintain or produce documents, a telephone conference with Administrative Law Judge Guhl is requested immediately.

#### **PECO's Discovery Request I-4**

Crescent withdraws its objection. Crescent will provide all documents, e-mails, and correspondence that it has in its possession and can find responsive to this request in its answer to PECO's discovery request.

#### **PECO's Discovery Request I-5**

This request is objectional because it is unduly burdensome and propounded on Crescent to cause unreasonable annoyance. That objection notwithstanding, Crescent provided a document that shows PECO knew that Celeren was responsible for remitting payment to PECO for electrical service because they requested a deposit of Celeren for Crescent. Crescent will provide all documents, correspondence, and e-mails in its possession that is responsive to this request. Crescent withdraws its objection to this question. As its stated in its response, it has averred that PECO and Exelon failed to notify Crescent, as such, there are no documents.

What is concerning about PECO's response to the Motion to Compel is that it says that if PECO did not keep or was unable to find a copy. As aforesaid, PECO did not provide a single e-mail, internal communication, or similar communications in response to Crescent's discovery request, which seems unbelievable and is highly suspicious. Since Crescent sued PECO in 2008,

as such, all such communications and documents should be maintained otherwise PECO will be guilty of spoliation of evidence and should be subject to adverse inferences.

**PECO Discovery Request I-6**

Objection withdrawn. Crescent will provide a full and complete response. By way of further response, none are known to exist prior to the threat to shut off the power to the hotel and PECO failed to provide a single communication (email, letter, facsimile, or otherwise).

**PECO Discovery Request I-7**

Once again, this objection is based upon the fact that Crescent was not a party to the alleged agreement. As such, PECO as a party of the agreement would be in possession of documents and communications relevant to same. Once again, Crescent will provide all documents that are responsive to PECO's discovery requests by Monday, September 18, 2017. However, Crescent is disturbed and highly suspicious that PECO has not produced any of the documents it references or that were specifically requested and it again states that the basis of its entitlement to this information is that it wants to know what's in Crescent's files, yet has not provided documents that should be, were, and must be in their files.

**PECO's Discovery Request I-8**

Objection withdrawn<sup>3</sup>. Crescent will provide a full and complete response by September 18, 2017.

**PECO's Discovery Request I-9.**

Objection withdrawn. Crescent will provide a full and complete response.

**PECO's Discovery Request I-10.**

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<sup>3</sup> Crescent, upon consideration of PECO's response, will withdraw its objections that seek the legal basis for statements made in the Complaint, since they have verified that a response is require. Moreover, Crescent is serving PECO with discovery to ascertain its purported relationships and duties relative to this matter.



Objection withdrawn. Crescent will provide a full and complete response.

**PECO's Discovery Request I-11.**

Objection withdrawn. Crescent will provide a full and complete response.

**PECO's Discovery Request I-12.**

This objection is again unduly burdensome and potentially made in bad faith. As you are well aware at this point, Crescent served its discovery on PECO first. It sought information, documents, and communications that would only be in PECO's possession, nevertheless, PECO has requested same from Crescent even though discovery is how they would find that information. It is presumably bad faith because PECO was the originator of the referenced correspondence, yet did not provide any correspondence to Crescent in discovery, and now, after reading Crescent's discovery and failing to provide responsive documents, it seeks same from PECO. At the least, it is disingenuous.

PECO, as a respondent in this matter and since 2008, has a duty to maintain their documents, correspondence, and communications that are related to or referred to this claim. As such, it is believed that this request is made in bad faith which is further evidence by the fact that PECO did not provide a copy of any correspondence or e-mails.

Objection withdrawn. Crescent will provide a full and complete response.

**PECO's Discovery Request I-13.**

Objection withdrawn. Crescent provided Celeren a spreadsheet that demonstrated payments from Crescent to Celeren during the relevant period. Crescent will continue to search in good-faith for responsive documents and provide a full and complete response.

**PECO's Discovery Request I-14.**

PECO again objects to this discovery request as it is not relevant to the cause of action instituted by Crescent. The issue here is the knowledge and notice that PECO had and what they did with respect to its customer, Crescent. They were in charge of servicing and/or the rates involved and needless to say again, their knowing failure to act appropriately then and now is concerning. It is not the knowledge and duty that Crescent had with itself. It is uncertain whether PECO is pursuing a comparative negligence defense since they clearly knew and failed to act properly with respect to its customer, Crescent, who accumulated a deficiency in excess of \$100,000.00.

WHEREFORE, for the reasons set forth above, Crescent respectfully requests that its Objections to Interrogatories and Request for Production of Documents numbers 1, 3, 5, 7, 12 and 14 be sustained.

Respectfully submitted,

**DAVIS BUCCO**

Dated: 9/13/17

By: \_\_\_\_\_



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**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRESCENT HOTEL PLYMOUTH MEETING, LP :  
Complainant :

C-2008-2068258  
C-2008-2068267  
C-2009-2089563

v. :

PECO ENERGY,  
EXELON CORPORATION  
CELEREN CORPORATION and  
UGI ENERGY SERVICES, INC.  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Crescent Hotel Plymouth Meeting, L.P.'s Answer to PECO Energy Company and Exelon Corporation's Motion to Compel was served upon the following persons via first class mail, postage prepaid, and/or email at the following address on **September 13, 2017**:

**VIA FIRST CLASS MAIL**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Harrisburg, PA 17120

**VIA E-MAIL AND FIRST CLASS MAIL**

Marta Guhl, Administrative Law Judge  
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Dated: September 13, 2017

By: \_\_\_\_\_



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