

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RAMA CONSTRUCTION, INC. t/a
RAMADA INN INTERNATIONAL AIRPORT

Complainant

v.

PECO ENERGY,
EXELON CORPORATION
CELEREN CORPORATION and

Defendants

C-2008-2058320

C-2009-2089694

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §5.342, you are hereby notified that you must reply to Rama Construction, Inc. t/a Ramada Inn International Airport's Motion to Compel within five (5) days. You must prove a full copy of answer to counsel for Rama and to the Commission and the Administrative Law Judges.

File with:

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

With a copy to:

Ward L. Smith
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated: 9/18/17



William D. Oleckna, Esquire
Attorney ID No. 309403

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	:	
Defendants	:	

**RAMA CONSTRUCTION, INC. T/A RAMADA INN INTERNATIONAL AIRPORT'S
MOTION TO COMPEL ANSWER TO DISCOVERY**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION;

Pursuant to 52 Pa. Code § 5.342(g)(1), Rama Construction, Inc. t/a Ramada Inn International Airport (“Rama”), hereby files this Motion to Compel respectfully requesting the Administrative Law Judges to dismiss PECO Energy Company’s Objections and Compel that the Interrogatories be answered and documents and/or communications produced. In support thereof avers as follows;

Background:

Rama Construction, Inc. t/a Ramanda Inn International Airport is compelled to file this Motion to Compel because of the objections filed by PECO Energy Company and Exelon Corporation. Discovery requests that are being objected¹ to pertain to creditors of Celeren Corporation. Celeren Corporation was responsible for making payments to PECO Energy

¹ PECO made the same objections to all nineteen interrogatories. Both the objections and interrogatories are incorporated herein by this reference. In addition, the pertinent interrogatories and objections are attached hereto and marked as Exhibit “A” collectively.

Company or the electrical used at Rama Inn International Airport. The discovery propounded that it's been objected to has been served to ascertain the knowledge and notice that PECO had at the time that Celeren was responsible for making payments to PECO prior to its bankruptcy.

1: Admitted.

2: Denied. The averment in the corresponding paragraph references a written document, Second Amended Complaint, which speaks for itself in any characterization is specifically denied. By way of further answer, it is irrelevant where and when the 210 Proof of Claim are discussed. The discovery requested of PECO and Exelon seeks information that is reasonably calculated to lead to the discovery of admissible evidence, the knowledge, relationship, and notice of PECO. See: Digital 833 Chestnut, LLC; v.; Philadelphia Gas Works, 2010 Pa. PUC LEXIS 823.

3: Denied. The averment in the corresponding paragraph constitute legal conclusion which speaks for itself. Further, Order Number 4 is a written document which speaks for itself and any characterization is specifically denied. By way of further answer, the reasoning behind the dismissed fraud claim has no bearing on the information sought by Rama which is reasonable calculated to lead to the discovery of admissible evidence. PECO's knowledge is of critical importance to Rama's case.

4: Denied. The averment in the corresponding paragraph refers to a written document which speaks for itself. Any characterization of the same is strictly denied. This paragraph is irrelevant to Rama's discovery request.

5: Denied. The adverse inference in the corresponding paragraph refers to a written document, Forth Amended Complaint, which speaks for itself. Any characterization of same is expressively denied. By way of further answer the fact that "Rama left in the fraud claim and the

210 proofs of claim are discussed only as part of Rama's stricken claim" is irrelevant the discovery requested. The discovery requested of PECO and Exelon seeks information that is reasonably calculated to lead to the discovery of admissible evidence, the knowledge, relationship, and notice of PECO. See: Digital 833 Chestnut, LLC; v.; Philadelphia Gas Works, 2010 Pa. PUC LEXIS 823.

6: Denied. The averment in the corresponding paragraph constitutes a conclusion of law which no response is required. Further, the fifth amended complaint is a written document which speaks for itself in any characterization of same is express and denied.

7: Denied. Rama is not seeking discovery on a claim that has been stricken. By way of further answer, Rama is seeking to obtain for discovery PECO's knowledge, notice, and relationship to the referenced creditors of Celeren who were in similar situation as Rama in support of its remaining claim(s). PECO is the only one who keeps mentioning the stricken fraud claim. What PECO knew and when is relevant and reasonably calculated to lead to the discovery of admissible evidence.

8: Admitted in part, denied in part. It is admitted that PECO has objected to 19 questions. It is denied that each of those questions applies to 210 Corporate Entities. In fact, the first question that PECO objected to asked PECO to identify what creditors were customers of PECO. Therefore, if none of them were customers of PECO, there are no more questions to be answered and it would take only a short period to make such a determination. Conversely, the 19 questions only apply if PECO had a relationship with any of the 210 customers. Upon information and belief, it is highly unlikely that they were all customers of PECO. PECO is gravely exaggerating the amount of time and effort it would take for it to reveal information that is reasonably calculated to lead to the discovery of admissible evidence.

9: Denied. Once again, PECO mischaracterizes discovery requests. The discovery requests are straight forward and seek to only obtain or discover what PECO's relationship, knowledge, and notice was with respect to creditors of Celeren like Rama. This information is reasonably calculated to lead to discovery of admissible evidence.

10: Denied. This calculation is ridiculous. PECO is being asked to supply information that is reasonably calculated to lead to discovery of admissible evidence only as to creditors of Celeren to which it had a relationship with at the time Rama also was using Celeren as its supplier and/or marketer of energy through PECO. It is expressly denied that this discovery request would unduly burdensome and it is averred that these objections are bald and frivolous. By way of further response, what PECO knew and when as well as their relationship to other creditors is relevant and reasonably calculated to lead to the discovery of admissible evidence.

WHEREFORE, Crescent respectfully requests that the Administrative Law Judge overrule PECO's objections to the discovery since the discovery requests are reasonably calculated to lead to the discovery of admissible evidence and the Administrative Law Judge should order PECO to provide full and complete responses as well as all documents within five (5) days of this Order.

Respectfully submitted,

DAVIS BUCCO

Dated: 9/18/17

By: 

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WILLIAM D. OLECKNA, ESQUIRE
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EXHIBIT “A”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PECO Energy Company's Objection to Rama's Discovery Set I, Qs 29-48

On August 30, 2017, PECO Energy Company ("PECO") was served with Rama Construction, Inc.'s ("Rama") Written Interrogatories and Request for Production of Documents, Set I, comprised of 50 numbered questions. PECO objects¹ to questions 29-48, a copy of which is attached, with the following objections applying to each question as if stated individually in response to each separate question and incorporated herein as if set forth fully and individually, and states as follows:

Objection 1: The questions relate to Rama's dismissed fraud claim

1. Rama's Set I Discovery, questions 29-48, each and all relate to 210 entities that filed respective Proofs of Claim during Celeren's bankruptcy proceeding.
2. In the Second Amended Complaint, the 210 Proofs of Claim are discussed only as part of Rama's Fraud claim.

¹ Pursuant to 52 Pa. Code § 5.342 (e), PECO's objections are to be served within 10 days of service of the discovery. The 10th day after service of the Supplemental discovery questions fell on Saturday, Sunday, Aug. 10. Under the timing rule set forth at 52 Pa. Code §1.12, the due date for PECO's objections automatically extended until Monday, Sept. 11.

3. In Order #4, Rama's fraud claim was dismissed from because it (a) is based upon a legal theory that has been rejected by the Commission; (b) incorrectly assumes that that PECO and Exelon are natural gas suppliers; and (c) is time-barred. See Order #4.

4. In the Third Amended Complaint, Rama left in the fraud claim and the 210 Proofs of Claim are discussed only as part of Rama's fraud claim.

5. In the Fourth Amended Complaint, Rama left in the fraud claim and the 210 Proofs of Claim are discussed only as part of Rama's fraud claim.

6. In the Fifth Amended Complaint, Rama removed the fraud claim and moved the discussion of the 210 Proofs of Claim to a portion of the Complaint that is not entitled "fraud." However, the factual allegations made regarding the 210 Proofs of Claim remained the same as they had throughout the various iterations of the dismissed fraud claim. The factual allegations made in the Fifth Amended Complaint are thus still a part of the factual investigation of the dismissed fraud claim.

7. Rama cannot seek and should not be allowed to seek discovery on a claim that has been stricken.

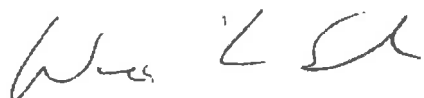
Objection 2: Unduly burdensome

8. PECO objects to 19 questions. Each of those questions applies to 210 corporate entities. PECO is thus being asked the equivalent of 3,990 (19 x 210) discovery questions.

9. On its face, it is patently burdensome to send the functional equivalent of 3,990 discovery questions for a PUC complaint proceeding involving a claimed dispute of approximately \$125,000.

10. Assuming that PECO took a very short average time of 10 minutes per question to research, review, and answer the 3,990 posed questions, it would take PECO 665 hours to respond to this discovery. $(3990 \times 10 / 60)$. It is unduly burdensome to request PECO to spend 665 hours or more answering discovery associated with such a claim.

Wherefore, PECO objects to answering Rama's Discovery Set I, Qs 29-48.



Ward L. Smith
Assistant General Counsel
PECO Energy Company
215-841-6863
Ward.smith@exeloncorp.com

Sept. 11, 2017

Attachment A

Rama's Discovery, Set I, Qs 29-48

29. Identify from the list of Creditors of Celeren Corporation, which is attached hereto, who were customers of PECO from 2007 to 2009.

30. Identify and produce documents in your possession, from 2007 to 2009, that refer or relate to PECO's supply of electrical utility services to the creditors (hereinafter the "Creditors") who filed a Proof of Claim during the Celeren Corporation's bankruptcy².

31. Identify and produce any communications by or to PECO from 2007 to 2014 that refer or relate to the creditors identified in Exhibit "A" who PECO supplied electricity to from 2007 to 2009.

32. Identify and produce all Shut Off Notices and/or Termination Notices that PECO sent to the Creditors.

¹ Pursuant to § 5.349, alternatively, produce and permit Ramada's attorneys to inspect and copy such designated documents.

² Attached hereto, incorporated herein, and marked as Exhibit "A" is a list of all persons and/or entities who filed a Proof of Claim during Celeren Corporation's bankruptcy.

33. Identify all times that one of the Creditors made a late payment to PECO on behalf from 2007 to 2009.
34. Identify and produce all communications wherein PECO notified a Creditors that payments on were past due or received late from 2007 to 2009.
35. Identify and produce all documents that refer or relate Shut Off or Termination Notices sent by PECO to Creditors.
36. Identify and produce all emails, letters, communications, and/or documents exchanged between PECO and the Creditors that refer or relate to non-payment from 2007 to 2009.
37. Identify and produce all communications of PECO and/or its employees and agents with respect to the Creditors' delinquent or non-paying accounts from 2007 to 2009.
38. Identify and produce all internal documents, communications, e-mails, and letters of PECO or from PECO employees or agents that refer or relate to the Creditors' missed payments for electrical services between 2007 and 2009.
39. Identify and produce all communications wherein PECO notified any Creditor who was a customer that its payments were past due or received late.
40. Identify all times that PECO notified Creditors that its payments for electrical services were not timely received.
41. Identify all extensions of time provided by PECO to Celeren on behalf of Ramada and/or Ramada for payments for electrical services owed by Ramada.
42. State the full name and last known address (business and residential), giving the street, street number, city and state, of every person known to you or to your attorneys who has any relevant knowledge regarding the facts and/or circumstances of the Creditors claims against PECO in this case, and for each identify the nature and source of such knowledge.

43. State the full name and last known address (business and residential), giving the street, street number, city and state, of every person known to you or to your attorneys who was a Creditor's account executive, manager, and/or similar position.

44. Describe by title, category, contents and size or quantity the files and/or records you have which refer or relate to this matter and produce them.

45. Produce copies of PECO's file regarding the Creditors' accounts from 2007 to 2009³.

46. Set forth whether you have made or given any statements or admissions to anyone regarding the delinquent accounts, non-payment, and/or Shut Off or Termination Notices issued by PECO to the Creditors between 2007 and 2009.

47. Produce a photostatic copy or like production of any statements previously made by PECO, another party, or witness involving the Creditors' accounts who were customers of PECO between 2007 and 2009 and missed at least one payment.

48. For each Proof of Claim identified in the attached Exhibit A, describe PECO's interaction and/or role with respect to same.

DAVIS BUCCO

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Attorneys for Complainant

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	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, William D. Oleckna, Esquire hereby certify that I have this day served a copy of Rama Construction, Inc. t/a Ramada Inn International Airport’s Motion to Compel filed by PECO Energy Company via email to:

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

Ward L. Smith, Esquire
2301 Market Street S-23
Philadelphia, PA 19101-8699

VIA EMAIL & REGULAR MAIL

Marta Guhl, Administrative Law Judge
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Dated: 9/18/17

By:



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