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December 5, 2017

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

Re: Crescent Hotel-Plymouth Meeting, LP v. PECO Energy Company; 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 filing please find Crescent's Answer to UGI's Motion to Vacate and Clarify the Order of October 26, 2017 with regard to the matter reference above.

A Certificate of Service evidencing that service is attached for filing.

Thank you.

Very truly yours,

William D. Oleckna

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Enclosure
cc: Honorable Marta Guhl, ALJ (via first class mail & email)
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	:	

CRESCENT HOTEL PLYMOUTH MEETING, LP'S ANSWER TO UGI'S MOTION TO VACATE AND CLARIFY THE ORDER OF ADMINISTRATIVE LAW JUDGE GUHL OF OCTOBER 26, 2017

Complainant, Crescent Hotel Plymouth Meeting, L.P. ("Crescent"), hereby files this Answer in opposition to the Motion to Vacate and Clarify ALJ Guhl's Order of October 26, 2017 (the "Motion") filed by UGIES, on behalf of UGI Energy Services, Inc. and Gasmark (hereinafter "Moving Respondents"). It is respectfully requested that the Motion should be denied for the following reasons.

Procedurally, the Motion is essentially a Motion for Reconsideration, which was not filed within twenty (20) days. Furthermore, the matter is interlocutory and should be subject to appeal at the end of the case. As such, not only is the procedural device questionable given the timeliness of the Motion. Lastly, it does not appear to include any new facts or law.

Substantively, the three grounds asserted by UGI all fail for different reasons. First, UGI admits in its Motion that UGI was a NGS, however, they are attempting to trade UGI for UGIES due to a transfer from 2013. Whenever the transfer took place, UGIES accepted all liabilities then of UGI. These circumstances and facts took place in 2007 to 2008. As such, the Complaint is

properly filed and subject to the jurisdiction of the Pennsylvania Public Utility Commission (the "Commission"), since UGI was a NGS per the averments and verification of the Motion.

In this action, Crescent seeks an Order from the Court establishing the unreasonable or unjust of the services provided by UGI in causing and demanding a double payment from Crescent. Here, UGI had knowledge of unreasonable service via delinquent payments and charge unjust rates to Crescent. The unjust rates and/or service were double payments that they caused because they knew that Celeren was making late payments and should have notified Crescent through at least a simple letter. Moreover, the "Standards of conduct and disclosure for licensees" 52 Pa. Code § 62.114(e) provides that "A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives." In this action, as has born out in discovery, UGI/Gasmark and Exelon/PECO knew of Crescent's widespread habitual, delinquent, and late payments that it was making – for months – on behalf of its customers, including Crescent and yet nonetheless allowed it to continue until Celeren filed for bankruptcy and it demanded Crescent to make payments to avoid a shut off of its electricity and gas supply at its hotel.

Lastly, Crescent seeks and Order to establish prima facie evidence in a Court of law to restate that the unreasonable services are unjust service and payments made by Crescent were unreasonably and refunded, not monetary damages.

For the foregoing reasons and law, the Motion should be denied.

I. PROCEDURALLY HISTORY

1. Admitted that Crescent filed its formal Complaint on October 1, 2008.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted that Crescent alleged that UGI and Gasmark failed to notify Crescent of ongoing widespread habitual, delinquent, and late payments that Celeren had demonstrated – for months – on behalf of its customers, including Crescent, in violation of the Rules of the Commission and its duty to Crescent.

18. Admitted.

19. Admitted.

20. Admitted.

21. Denied. The corresponding paragraph references Moving Respondents' Motion for Summary Judgment, which is writing which speaks for itself and any characterization of same is

denied. By way of further response, "Standards of conduct and disclosure for licensees" 52 Pa. Code § 62.114(e) provides that "A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives."

22. Admitted.

23. Denied. The corresponding paragraph references Moving Respondents' Motion for Summary Judgment, which is writing which speaks for itself and any characterization of same is denied. By way of further response, the Commission has jurisdiction over the unreasonable and/or unjust rates and/or services provided by the Moving Respondents given the improper and/or fraudulent behavior that resulted in the damages to Crescent in this action.

24. Admitted to the extent that UGIES has filed a Pleading entitled Motion to Vacate and Clarify by the October 26, 2017 Order.

II. ARGUMENT

25. The corresponding paragraph contains a corporation language to which no response is required.

26. Admitted in part, denied in part. It is admitted that Moving Respondents aver and verify that they are not a public utility, however, it is denied that Moving Respondents are not subject to the Commissioner's jurisdiction. The unjust rates and/or service were double payments that they caused because they knew that Celeren was making late payments and should have notified Crescent through at least a simple letter. Moreover, the "Standards of conduct and disclosure for licensees" 52 Pa. Code § 62.114(e) provides that "A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives." In this action, as has born out in discovery, UGI/Gasmark

and Exelon/PECO knew of Crescent's widespread habitual, delinquent, and late payments that it was making – for months – on behalf of its customers, including Crescent and yet nonetheless allowed it to continue until Celeren filed for bankruptcy and it demanded Crescent to make payments to avoid a shut off of its electricity and gas supply at its hotel.

27. Denied. Crescent seeks a declaration from the Commission as to Moving Respondents' unjust and/or unreasonable services and/or rates imposed upon Crescent and for its violation of 52 Pa. Code § 62.114(e) due to its action and inaction that directly caused damage to Crescent, in the form of demanded double payments from UGI or it would shutoff supply of the hotel's gas, which in itself was coercive and unreasonable. As such, Moving Respondents are subject to the Commission's jurisdiction.

28. Denied. The averments in the corresponding paragraph constitutes conclusion of law to which no response is required. By way of further answer, the issues involved concern whether Moving Respondents violated "any law which the Commission has jurisdiction administer" or violated "any regulation or Order of the Commission" or "any other relief that the Commissions deems just unreasonable under the circumstances."

29. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further answer, it is admitted that the Commission must first have jurisdiction over parties and subject matter of dispute.

30. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further response, it is admitted that the Commission must have jurisdiction over parties.

31. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further response, it is admitted that the Commission must have jurisdiction over parties.

32. Denied. The averments in the corresponding paragraphs attempt to characterize the Second Amended Complaint which is a writing, any characterization of the same is specifically denied with strict proof demanded at the time of trial or hearing if relevant. By way of further response, "Standards of conduct and disclosure for licensees" 52 Pa. Code § 62.114(e) provides that "A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives." In this action, as has borne out in discovery, UGI/Gasmark and Exelon/PECO knew of Crescent's widespread habitual, delinquent, and late payments that it was making – for months – on behalf of its customers, including Crescent and yet nonetheless allowed it to continue until Celeren filed for bankruptcy and it demanded Crescent to make payments to avoid a shut off of its electricity and gas supply at its hotel.

33. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further answer, see response to ¶ 32.

34. Denied. UGIES' Motion for Summary Judgment is a writing which speaks for itself and any characterization is specifically denied with strict proof demanded at the time of hearing.

35. Denied. The Order of October 26, 2017 is a writing which speaks for itself and any characterization of same is specifically denied with strict proof demanded at the time of hearing if relevant.

36. Denied. The Order of October 26, 2017 is a writing which speaks for itself and any characterization of same is specifically denied with strict proof demanded at the time of hearing if relevant.

37. Admitted in part; denied in part. It is denied that the conclusion of ALJ Guhl obtained the Order of October 26, 2017 contained a fundamental problem. Moving Respondents are subject to the Commission's jurisdiction. See response to ¶ 27.

38. Denied. Denied to the extent that the corresponding paragraph attempts to characterize a writing which speaks for itself and contains conclusions of law, which do not require a response. Moving Respondents are subject to the Commission's jurisdiction. See response to ¶ 27.

39. Denied. The corresponding paragraph is denied as it is a conclusion of law. By way of further response, Crescent herein alleges that Moving Respondent have breached their duty to Crescent by, in part, violating 52 Pa. Code § 62.114(e).

40. Denied. The corresponding paragraph is denied as it is a conclusion of law. By way of further response, Crescent herein alleges that Moving Respondent have breached their duty to Crescent by, in part, violating 52 Pa. Code § 62.114(e).

41. Denied. The averment in the corresponding paragraph constitutes conclusion of law to which no response is required. By way of further response, Moving Respondents are subject to the Commissions Jurisdiction, because Moving Respondents have breached their duty to Crescent by violating 52 Pa. Code § 62.114(e) and providing unreasonable and unjust rates and/or service to Crescent.

WHEREFORE, Crescent respectfully requests that Moving Respondents Motion to Vacate and Clarify the Order of October 26, 2017 be denied.

B.

42. The corresponding paragraph contains incorporation language to which no response is required.

43. Denied. The Order should not be vacated or clarified. The Commission has jurisdiction over this matter, which arose in and around 2007 and 2008. Moving Respondents' imposed unjust and/or unreasonable services and/or rates upon Crescent and its actions as well as inaction constitute a violation of 52 Pa. Code § 62.114(e) that caused damage to Crescent, in the form of demanded double payments from UGI or it would shutoff supply of the hotel's gas, which in itself was coercive and unreasonable. As such, Moving Respondents are subject to the Commission's jurisdiction.

44. Admitted. Admitted that Crescent has made allegations that Moving Respondents' imposed unjust and/or unreasonable services and/or rates upon Crescent and its actions as well as inaction constitute a violation of 52 Pa. Code § 62.114(e) that caused damage to Crescent, in the form of demanded double payments from UGI or it would shutoff supply of the hotel's gas.

45. Admitted in part, denied in part. Admitted that Moving Respondents argued that Count II is a breach of contract claim over which Commission lacks jurisdiction, however, it is denied that Count Two is simply a breach of contract claim. See response to ¶ 44. Furthermore, Crescent named UGI and Gasmark is Count Two of the Second Amended Complaint. Nevertheless, it appears that Moving Respondents are attempting to substitute the two named Respondents for an entity that acquired a license five (5) years after this matter was initiated without a formal pleading or proof. Furthermore, the relief sought is in the nature of a declaration that Moving Respondents violated the Commission's rules and regulations, including 52 Pa. Code § 62.114(e), and provided unjust and unreasonable service and/or facts to Crescent for which is

should be refunded[1]. Here, Moving Respondents imposed upon Crescent to unreasonable disadvantage and prejudice because it gave unreasonable preference to Celeren and permitted its habitual, late payments, to the prejudice of Crescent, in permitting it to "We are becoming the bank for Celeren, cheap easy financing" months before the instant issues arose, meanwhile never informing Crescent of the habitual and systemic late payments made by Celeren on behalf of Crescent during 2007 and/or 2008. Moving Respondents' unreasonable service and accompanying rates were unreasonable and the double payments were caused by their insufficient service. A true and correct copy of an e-mail produced by Moving Respondents is attached hereto, incorporated here, and marked as Exhibit "A" that shows Moving Respondents' unreasonable preference for Crescent that subjected Crescent to unreasonable disadvantage, in that it forced Crescent to pay it for utility services after Crescent paid Celeren, thereby causing a double payment.

46. Admitted in part, denied in part. It is admitted that the Commission does not have jurisdiction over breach of contract matter, however, it is denied that Count II simply is a breach of contract action. *See* Answer to ¶44. Furthermore, "the reasonableness, adequacy and sufficiency of public utility service are all matters within the exclusive original jurisdiction of the Commission." Di Santo v. Dauphin Consol. Water Supply Co., 291 Pa. Super. 440, 436 A.2d 197 (1981). By way of further response, jurisdiction is proper because the Commission is empowered to correct, by regulation or order, abuses in the provision of service. Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977). Therefore, only the Commission can determine

[1] While certain statutes and violation of the Commission's rules were not specifically plead in the Second Amended Complaint, it is proper for the Commission to consider Crescent's request as to the improper, unreasonable, and unjust service and/or rates provided by the Defendants in this case, here UGI and Gasmark. *See* Di Santo v. Dauphin Consol. Water Supply Co., 291 Pa. Super. 440, 436 A.2d 197 (1981) (when a utility's failure to maintain reasonable and adequate service is alleged, regardless of the form of the pleading in which the allegations are couched, it is for the Commission initially to determine whether the service provided by the utility has fallen short of the statutory standard required of it).

whether the service received by Crescent by Moving Respondents was reasonable and sufficient, not unjust and unreasonable.

47. Denied. The corresponding paragraph references the Order which is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant. The Commissions has jurisdiction over the Moving Respondents and the subject matter of this action. See ¶¶ 45 and 46.

48. Admitted, upon information and belief.

49. Denied. The corresponding paragraph references a "Master Natural Gas Sales Agreement" which is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant. By way of further response, only the Commission can determine whether the service received by Crescent from Moving Respondents was reasonable and sufficient, not unjust and unreasonable, and whether or not if violated the Commissions rules and regulations, including but not limited to, 52 Pa. Code § 62.114(e). As such, Moving Respondents are subject to the Commissions' jurisdiction. By way of further response, upon information and belief, Crescent had a relatively small electricity need, for a commercial account, and should be considered a small commercial natural gas customer.

50. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. To the extent a response is required, the Commission has jurisdiction over Moving Respondents in this matter.

51. Denied. *See* responses to ¶44. By way of further response, this matter is distinguishable from Valentino v. Dominion Retail, Inc. t/a/ Peoples Plus, Docket No. C-20055447, 2006 Pa. PUC LEXIS 27 because that rate concerned the rates charged under a private contract. Here, we are dealing with double-billings that resulted from not disclosing habitual, late,

and delinquent payments being made on its behalf. That conduct, certainly is not within the Contract, as there certainly would not be a "meeting of the minds" that such a circumstance would occur, because Moving Respondents' conduct was improper, unreasonable, and unjust.

52. Admitted in part, denied in part. It is admitted that the Commission may not "entertain an action for breach of contract or to award damages." It is denied that Crescent is asserting a breach of contract action. Instead, it claims entitlement to a declaration that it should be entitled to refund for unreasonable services and/or rates. Crescent would use such a declaration as prima facie evidence in a subsequent action, which is a well-established method of relief. *See* responses to ¶¶ 44, 45, and 46.

53. Denied. The corresponding paragraph references the Order which is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant. By way of further response, this action is within the exclusive Jurisdiction of the Commission as it relates to unreasonable service and/or rates, not a breach of contract. *See* responses to ¶¶ 44, 45, and 46.

54. Denied. The corresponding paragraph references the Second Amended Complaint which is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant. The Commissions has jurisdiction over this action as it relates to the reasonableness of service and rates, as well as alleged violations of the Commissions' rules and regulations. *See* responses to ¶¶ 44 and 45.

55. Denied. The corresponding paragraph references the Order which is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant. By way of further response, *see* responses to ¶¶ 44

and 45, which relate to the nature of the action, relief requested, and basis for the Commission's exclusive jurisdiction.

WHEREFORE, Crescent respectfully requests that Moving Respondents' Motion to Vacate and Clarify the October 26, 2017 Order be denied.

C.

56. The corresponding paragraph contains incorporation language to which no response is required.

57. Admitted that Crescent seeks a declaration that it should be entitled to a repayment or refund of natural gas charges paid to Moving Respondents' that were duplicative payments caused by the unreasonable and/or unjust service and/or rates provided by Moving Respondents' in violation of the Commission's rules and regulations.

58. Denied. The subject Motion for Summary Judgment is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant. As aforesaid, the Commission has the authority to declare the rates and/or service provided by Moving Respondents' was unjust or unreasonable.

59. Denied. The Order is a writing and speaks for itself, any characterization of the same is specifically denied and strict proof is demanded at the time of hearing, if relevant.

60. Denied. The averment in the corresponding paragraph is a conclusion of law to which no response is required. To the extent a response is required, this matter is within the exclusive jurisdiction of the Commission as it relates to the service and/or rate provided and Crescent seeks a declaration as to same which would be used as prima facie evidence in a subsequent proceeding.

61. Denied. The averment in the corresponding paragraph is a conclusion of law to which no response is required. To the extent a response is required, Crescent seeks a declaration as to the unreasonable or unjust service and/or rates received and imposed on Crescent, which would be used as prima facie evidence in a subsequent proceeding. Crescent does not seek any monetary damages instantly.

62. Denied. The averment in the corresponding paragraph is a conclusion of law to which no response is required.

63.

64. Denied. The averment in the corresponding paragraph is a conclusion of law to which no response is required.

65. Denied. The averment in the corresponding paragraph is a conclusion of law to which no response is required.

WHEREFORE, Crescent respectfully requests that Moving Respondents' Motion to Vacate and Clarify the October 26, 2017 Order be denied.

Respectfully submitted,

DAVIS BUCCO

Dated: 12-5-17

By: _____

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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.	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, William D. Oleckna, Esquire, hereby certify that a true and correct copy of Crescent Hotel Plymouth Meeting, L.P.'s Answer to UGI's Motion to Vacate and Clarify the Order of Administrative Law Judge Guhl of October 26, 2017 were served upon the following persons via first class mail, postage prepaid, and/or email at the following address on **December 5, 2017:**

VIA FIRST CLASS MAIL
Rosemary Chiavetta, Secretary
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Respectfully submitted,

DAVIS BUCCO

Dated: 12/5/17

By: _____

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