



Email: William.oleckna@davisbucco.com

January 8, 2018

**VIA FIRST CLASS MAIL**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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 please find a copy of our Answer in Opposition to Defendant UGI's Motion to Compel which was electronically filed with the Pennsylvania Public Utility Commission this afternoon.

Thank you.

Very truly yours,

  
William D. Oleckna

WDO/mcm  
Enclosure

cc: Honorable Marta Guhl, ALJ (via first class mail & email)  
Certificate of Service

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER IN OPPOSITION TO DEFENDANT UGI'S MOTION TO COMPEL**

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Complainant, Crescent Hotel Plymouth Meeting, L.P. ("Crescent"), hereby files this Answer in Opposition to Respondent, UGI Energy Services, UGIES, and Gas Mark, Inc.'s (hereinafter collectively "UGI") Motion to Compel, and in support thereof, avers as follows;

**I.     INTRODUCTION**

On July 12, 2017, the Further Prehearing Conference was presided by Administrative Law Judge Guhl (hereinafter "ALJ Guhl") and was attended by Mr. Wright, Mr. Smith, Mr. Bucco, and Mr. Oleckna (hereinafter the "Parties"). Among the issues discussed and determined was the length of time for discovery. The Parties decided that ninety (90) days would be allotted for discovery, which represented a balance of Crescent's desire for more than 90 days and PECO/Exelon and UGI's intent to have a more abbreviated discovery period. The discovery period has been in effect since then, has been referenced in e-mail, see Exhibit "A" and memorialized in the transcript of the Further Pretrial Conference<sup>1</sup>.

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<sup>1</sup> Ironically, UGI continuously states that Crescent's refusal to answer the untimely discovery is without merit, however, it is clear that UGI, through its counselors, did not do any due diligence, such as checking the Further Prehearing Conference transcript or their e-mail, for the discovery deadline. Instead, UGI has submitted false pleadings to the Commission in violation of the Commission's Rules and Rules of Professional Responsibility.

Although not specifically in Order #5, the Parties negotiated and agree to the length of time for discovery. Accordingly, the last day for discovery (“Discovery End-Date”) was October 12, 2017. Therefore, UGI’s discovery requests of December 15, 2017 were untimely.

Upon receipt of discovery requests, more than 60 days past the Discovery End-Date, the undersigned tried to work out the issue pursuant to the directive of ALJ Guhl by immediately advised UGI that its requests were untimely. Nonetheless, counsel for UGI refused to withdraw the requests and – apparently – they did do any due diligence. Conversely, they filed a frivolous motion which consistently referred to Crescent citation of the agreed upon Discovery End-Date as “baseless, unfounded, bald, and without merit” repeatedly.

As a result, Crescent was forced to file an Omnibus Objection to all discovery requests asserting that the untimely requests were invalid on their face and objectionable procedurally. Crescent’s Omnibus Objection was attached and incorporated in UGI’s Motion to Compel and Crescent hereby incorporates the Omnibus Objection by this reference as if set forth at length herein. That notwithstanding, UGI still filed the subject frivolous Motion to Compel, despite the objections of Crescent and warning of the frivolous nature of their Motion. As a result, UGI’s discovery requests should be stricken.

Furthermore, upon information and belief, the litigation schedule adopted by ALJ Guhl was purposefully setup for discovery to be completed prior to the submission of direct testimony. As such, Crescent believes the discovery requests constitute an unreasonable investigation, are oppressive and are prejudicial to the Complainant, Crescent, and are procedurally objectionably.

Nevertheless, apparently without any investigation prior to verifying the pleading, counsel for UGI filed the subject Motion to Compel that astonishingly refused to acknowledge the discovery deadlines and procedurally improper requests. As such, Crescent is compelled to – again

- file another pleading of record to oppose the frivolous Motion to Compel and object to UGI's discovery requests that violate ALJ's schedule and the Commission's rules:

**II. ANSWER**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted in part, denied in part. It is admitted that Crescent objected to UGI's discovery requests, however, it is denied that Crescent objected only because it was untimely.

## **II. MOTION TO COMPEL**

28. It is admitted that UGI requests the relief stated in the corresponding paragraph, however, it is denied that it should be entitled to discovery past the Discovery End-Date of October 12, 2017.

29. Denied. The averments in the corresponding paragraph constitute conclusions of law to which no response is required. By way of further response, the timeline agreed upon by all parties for discovery has elapsed. A true and correct copy of an email from Ward Smith, Esquire attorney for PECO Energy Company and Exelon Corporation to counsel for UGI and Crescent, as well as ALJ Guhl, confirming the discovery end date with an appropriate citation to the transcript of the further pre-hearing conference is attached hereto incorporated herein and made apart hereof and marked as "Exhibit A." *See also:* Further Prehearing Conference transcript at p. 15, line 13.

30. Denied. The averments in the corresponding paragraph constitute conclusions of law to which no response is required. By way of further response, the timeline agreed upon by all parties for discovery has elapsed. *See:* "Exhibit A"; *See also:* Further Prehearing Conference

transcript at p. 15, line 13.

31. Denied. The averments in the corresponding paragraph constitute conclusions of law to which no response is required. By way of further response, the timeline agreed upon by all parties for discovery has elapsed. *See*: "Exhibit A"; *See also*: Further Prehearing Conference transcript at p. 15, line 13.

32. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further response, Crescent objects to the discovery request as they are untimely, in addition to being objectionable as an unreasonable investigation oppressive and prejudicial due to their submission following Crescent's direct testimony.

33. Admitted in part, denied in part. It is admitted that Crescent objects to the UGI discovery in their entirety. It is denied that Crescent objections to the discovery requests purely because it is untimely. The discovery requests should be stricken as untimely, however, if not, they are objectionable as an unreasonable, prejudicial investigation as incongruent with ALJ Guhl's discovery and litigation schedule.

34. Denied. The corresponding paragraph references a writing which speaks for itself and any characterization thereof is specifically denied. By way of further response, time for discovery has ended. *See*: "Exhibit A"; *See also*: Further Prehearing Conference transcript at p. 15, line 13. Furthermore, upon information and belief, the discovery end date was the basis for the litigation schedule. UGI is attempting to take advantage of their carelessness in serving discovery after the Discovery End-Date, and after events on the litigation schedule have commenced, specifically, Crescent's written direct testimony. UGI's Motion not only is disingenuous and ignores a fact of record, it also seeks to subvert ALJ's discovery and litigation schedule as well as the Commission's case management. It is remarkable, that UGI did not serve any discovery during

the pertinent period and now seeks to “pass the buck” onto ALJ Guhl because there is nothing in Order #5, and even more remarkable, it seeks to “profit” in the way of obtaining discovery on Crescent’s written direct testimony.

**I.**

**B. UGI’S DISCOVERY REQUESTS ARE UNTIMELY**

35. Denied. The corresponding paragraph references a writing which speaks for itself any characterization thereof is specifically denied. Crescent objected initially and formally because UGI’s discovery requests were served after the ninety (90) day period for discovery. Crescent did not content that the ninety (90) day period reflected on the transcript was in Order #5. UGI clearly has not done any due diligence, not even checked their e-mail, to ascertain whether Crescent was correct. Instead, it has filed frivolous pleadings which could have been avoided had it done its required due diligence. *See Exhibit “A.” See also: Further Prehearing Conference transcript at p. 15, line 13.*

36. Denied. Order #5 is a writing which speaks for itself any characterization thereof is specifically denied with strict proof demanded. By way of further answer, Counsel for UGI was present during the Further Prehearing Conference and negotiated with PECO and Crescent with respect to the discovery scheduled. Counsel for UGI was also included on Mr. Smith’s email that, again, states the 90 day period for discovery. *See Exhibit “A”* to which Mr. Wright was a part to confirm the discovery end date and make no objections. Crescent notified UGI of its inappropriate discovery attempts and advised it that it would seek sanctions if forced to answer a Motion to Compel. This frivolous Motion to Compel that could have been avoided by a simple search of Mr. Wright’s email, instead this frivolous pleading has been endorsed and filed, despite being false.

37. Denied. UGI was negligent and/or careless and not undertaking discovery. Crescent

served discovery on UGI and a day later it filed for a Motion for Summary Judgment. It was UGI's decision not to serve discovery within the timeline set by all parties including UGI for discovery. UGI decided to seek dismissal and not avail itself to discovery. Their 2 month late discovery should not be permitted, especially when it seeks information not available to it at that time. Also, Crescent should not be prejudiced by UGI's carelessness. The fact that ALJ Guhl ruled against UGI in its Motion for Summary Judgment should not permit UGI to alter the discovery schedule and take advantage of the fact that Crescent has been diligent in pursuing discovery and abiding by ALJ Guhl's schedule. UGI decided not to avail itself of discovery. The Complaint should not be prejudiced by the inappropriate discovery requests.

38. Denied. The corresponding paragraph is a conclusion of law to which no response is required. By way of further answer, it is past the discovery deadline. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13.

39. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further answer, it is past the discovery deadline and no further discovery is permitted. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13.

40. Denied. The corresponding paragraph references a writing and any characterization thereof is specifically denied. By way of further answer, it is past the discovery deadline and no further discovery is permitted. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13.

41. Denied. The discovery end date was established and UGI is not within that Discovery End-Date. Furthermore, UGI served no discovery during the period negotiated by the parties and it should not be permitted to serve late discovery.



42. Denied. It is past the discovery end date and it should not be permitted to serve late discovery.

43. Denied. ALJ Guhl had the parties meet in private to discuss a Discovery End-Date. Thereafter, the date and schedule was put on record. The fact that it's not on Order #5, does not excuse UGI's carelessness. Counsel for UGI was present and participated at the Further Prehearing Conference and was noticed with the Discovery End-Date, both actual and constructive. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13.

44. Denied. UGI's late and inappropriate discovery request would be stricken and they should not be permitted any late discovery requests.

**2. The Discovery Requests Are Untimely and Inappropriate**

45. Admitted that Crescent stated that the discovery requests, in addition to being more than 2 months late or 60 days, were oppressive and constitute unreasonable investigation pursuant to the Pennsylvania Public Utility Commissions Rules. *See* Crescent's Omnibus Objection and 52 Pa. Code § 5.361.

46. Denied. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13. By way of further response, UGI not only is seeking discovery months late, it is served discovery after the discovery schedule and after Crescent has served its written direct testimony in the litigation schedule. As such, the discovery requests are unreasonable investigations and oppressive to Complaint, Crescent.

47. Denied. UGI's discovery request are untimely, pursuant to the discovery schedule agreed upon by the parties. Crescent has support for its statements in the exhibited e-mail and in the transcript. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13. Upon information and belief, UGI has violated Pennsylvania Code by signing unverified

avermments. UGI has the audacity to say that the averments and statements are not supported, however, if it were to search its mailbox it would see that the statements are supported and not bald and instead they are harassing and pursuing frivolous litigation which should be sanctioned or penalized.

48. Denied. The corresponding paragraph constitutes conclusion of law to which no response is required by way of further response discovery is untimely, oppressive, and prejudicial. *See* 52 Pa. Code § 5.361.

49. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. The request constitutes an oppressive unreasonable investigation because Crescent has submitted its written direct testimony and now UGI seeks to extend a Discovery End-Date that was agreed by the parties and recreate the litigation schedule adopted by ALJ Guhl.

50. Denied. UGI's discovery request is a written document which speaks for itself and any characterization thereof is specifically denied. By way of further answer, UGI's discovery requests seek information related to the filed written testimony of Crescent and contravene the order of operations and administration set up by ALJ Guhl.

51. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further answer, the discovery requests are untimely and would be oppressive, prejudicial, and constitute an unreasonable investigation to Crescent. *See* 52 Pa. Code § 5.361.

52. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further answer, the discovery requests are untimely, oppressive, and prejudicial. *See* 52 Pa. Code § 5.361.

53. Denied. The corresponding paragraph constitutes a conclusion of law to which no

response is required. By way of further answer, it is respectfully requested that Order that UGI's Set I is stricken as untimely and inappropriate.

**3. UGI SEEKS TO MANIPULATE THE SCHEDULE TO THEIR BENEFIT**

54. Admitted in part, denied in part. Crescent asserts that it would be prejudiced because UGI was distorting the order of operations and administration of this matter adopted by ALJ Guhl, however, it is denied that argument is without merit. ALJ Guhl adopted a specific schedule for discovery and a specific discovery for litigation. UGI's attempt to flaunt this schedule as well as the administration of ALJ Guhl in such a knowing and/or negligent way is outrageous.

55. Denied. It is admitted that Crescent would be prejudiced if compelled to answer UGI's Set I, however, it is denied that it is entirely based upon the position that these are untimely. It is also based upon the position that producing discovery after it has filed written direct testimony is against the agreement of the parties and the procedure set up by the pre-hearing conference. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13.

56. Denied. *See* Exhibit "A"; *see also*: Further Prehearing Conference transcript at p. 15, line 13.

57. Denied. The corresponding paragraph refers to a writing which speaks for itself, any characterization thereof is denied, and strict proof is demanded. Pursuant to ALJ Guhl's schedule discovery regarding direct testimony is not permitted. That is how ALJ Guhl set up the proceedings and all parties agreed. UGI cannot unilaterally change the discovery schedule and litigation schedule just because it did not like the ruling of ALJ Guhl or it was careless not to serve any discovery. UGI decided not to take discovery and a day after Crescent served UGI with discovery requests, UGI filed a Motion for Summary Judgment.

58. Denied. The corresponding paragraph is a conclusion of law to which no response

is required. Furthermore, the corresponding paragraph refers to a writing which speaks for itself, any characterization thereof is denied, and strict proof is demanded. By way of further response, the discovery requests are untimely and UGI's unilateral disregard for the discovery and litigation schedule adopted by the parties and ALJ Guhl is reckless. UGI should not be permitted to extend discovery, to the prejudice for Crescent, because counsel for Crescent will be on paternity leave.

59. Denied. Crescent would be prejudiced because the discovery schedule was to proceed the litigation schedule. UGI's negligence in failing to serve discovery should not be excused and it should not be permitted to oppressively and unreasonably investigate Crescent after the Discovery End-Date. *See Exhibit "A"; see also: Further Prehearing Conference transcript at p. 15, line 13.*

60. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further response, UGI cannot unilaterally alter the discovery schedule and interrupt the litigation schedule with its untimely discovery requests. The fact that UGI did not do its due diligence and has blindly verified a frivolous pleading is outrageous and ALJ Guhl should strike the requests.


61. Denied. The corresponding paragraph constitutes a conclusion of law to which no response is required. By way of further answer, all parties agreed to a 90-day discovery period which since then has elapsed. UGI's own carelessness or negligence caused it to miss this deadline. Nothing should excuse this non-compliance especially ignoring the fact that a schedule was set up and calling objections based on the schedule as agreed by the parties baseless and unfounded and causing Crescent to answer and object to these untimely discovery requests.

62. Denied. ALJ Guhl should not permit the UGI discovery since it is untimely, oppressive, and constitutes an unreasonable investigation.

### III. CONCLUSION

Based upon the foregoing reasons, authority, and evidence, Crescent Hotel Plymouth Meeting, L.P. respectfully requests that Administration Law Judge Marta Guhl deny UGI's Motion to Dismiss Objections and Compel responses to discovery because they are untimely.

Respectfully submitted,



\_\_\_\_\_  
Paul A. Bucco, Esquire  
William D. Oleckna, Esquire  
PA Attorney ID Nos.: 52561/309403  
*Attorneys for Complainant,  
Crescent Hotel Plymouth Meeting, L.P.*

Dated: January 8, 2018

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**Exhibit "A"**

## **Will Oleckna**

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**From:** Smith, Ward L:(PECO) <ward.smith@exeloncorp.com>  
**Sent:** Friday, September 15, 2017 11:05 AM  
**To:** Guhl, Marta; Will Oleckna; Paul Bucco; Wright, Christopher;  
'dmacgregor@postschell.com'  
**Subject:** Crescent v PECO -- Offer to extend discovery period by 11 days

Your Honor and counsel:

As Mr. Oleckna has previously pointed out, PECO did serve Set I discovery answers 2 days late in this proceeding – that is, it took 22 days, rather than 20 days, to provide its answers. While this delay was inadvertent – PECO received both electronic and snail mail copies of the original service, and because it received the paper copy, it inappropriately added the 3-day mailbox rule in its calculation of the return date -- PECO wishes to eliminate any prejudice that may have been caused by that delay. The discovery period in this proceeding is set to end on October 12, 2017. (July 12, 2017 Transcript, p. 15). In order to remove any prejudice associated with its two-day delay, PECO hereby offers to treat the discovery period as having been extended by an additional 11 days. That is, for any discovery request served on PECO on or before 4:30 p.m. on Monday, October 23, 2017, PECO will not object to that discovery on grounds of timeliness.

PECO believes that this offer is consistent with 52 Pa. Code Section 5.372(b), which generally states that “when a party fails to answer discovery requests on the date due” the proper course of action is to modify the hearing schedule to reflect the late service. PECO believes that providing an additional 11 days for Crescent to conduct its discovery removes any prejudice that may have been caused by PECO’s 2-day delay in answering questions.

Ward Smith

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**DAVIS BUCCO**

By: Paul A. Bucco, Esquire  
William D. Oleckna, Esquire  
Attorney ID Nos. 52561/309403  
10 E. 6<sup>th</sup> Avenue, Suite 100  
Conshohocken, PA 19428  
(610) 238-0880

Attorneys for Complainant

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRESCENT HOTEL PLYMOUTH MEETING, LP :

Complainant

v.

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

C-2008-2068258

C-2008-2068267

C-2009-2089563

**VERIFICATION**

I, William D. Oleckna, Esquire, hereby state that the facts set forth in Crescent Hotel Plymouth Meeting L.P.'s Answer to UGI Motion to Compel are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

1/8/18

By:

William D. Oleckna



**DAVIS BUCCO**

By: Paul A. Bucco, Esquire/ William D. Oleckna, Esquire  
Attorney ID Nos. 52561/309403  
10 E. 6<sup>th</sup> Avenue, Suite 100  
Conshohocken, PA 19428  
(610) 238-0880

Attorneys for Complainant

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CRESCENT HOTEL PLYMOUTH MEETING, LP :

Complainant

v.

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

C-2008-2068258

C-2008-2068267

C-2009-2089563

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the Crescent Hotel Plymouth Meeting, L.P.'s Answer to Motion to Compel was served upon the following persons by the following means on **January 8, 2018**:

**VIA E-MAIL**

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

Christopher T. Wright, Esquire  
David MacGregor, Esquire  
Post & Schell, P.C.  
17 North Second Street  
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CWright@PostSchell.com

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Pamela McNeal  
Legal Assistant to ALJ Guhl  
pmcneal@pa.gov

**VIA FIRST CLASS MAIL**

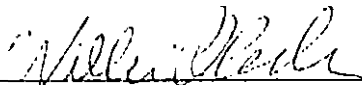
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA FIRST CLASS MAIL and E-MAIL**

Marta Guhl, Administrative Law Judge  
Pa. Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
mguhl@pa.gov

Dated: 1/8/18

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

  
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