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March 2, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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 Corporation
Docket No. C-2008-2068267**

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

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of UGI Energy Services LLC to Stay the Proceeding Pending Interlocutory Review in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Marta Guhl
Certificate of Service

CERTIFICATE OF SERVICE

(Docket Nos. C-2008-2068258, C-2008-2068267 and C-2009-2089563)


I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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Date: March 2, 2018



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


Crescent Hotel – Plymouth Meeting, LP	:	Docket Nos. C-2008-2068258
v.	:	C-2008-2068267
PECO Energy Company,	:	C-2009-2089563
UGI Corporation, and	:	
Celeren Corporation	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. **BECAUSE THE EVIDENTIARY HEARINGS ARE SCHEDULED FOR MARCH 19-20, 2018, UGI ENERGY SERVICES, LLC REQUESTS IN THE INSTANT MOTION THAT YOUR ANSWER BE FILED BY MARCH 9, 2018, TO FACILITATE A RULING IN SUFFICIENT TIME BEFORE HEARINGS COMMENCE.** YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully submitted,

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Date: March 2, 2018

Counsel for UGI Energy Services, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Crescent Hotel – Plymouth Meeting, LP	:	Docket Nos. C-2008-2068258
v.	:	C-2008-2068267
PECO Energy Company,	:	C-2009-2089563
UGI Corporation, and	:	
Celeren Corporation	:	

**MOTION OF UGI ENERGY SERVICES, LLC TO
STAY THE PROCEEDING PENDING
INTERLOCUTORY REVIEW**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Pursuant to 52 Pa. Code § 5.103, UGI Energy Services, LLC (“UGIES” or the “Company”) hereby files this Motion to Stay the Proceeding Pending the Pennsylvania Public Utility Commission’s (“Commission”) disposition of the Company’s Petition for Interlocutory Review and Answer to Material Question (“Petition”), which was filed on February 23, 2018.

In the Petition, UGIES seeks interlocutory review of the Administrative Law Judge Marta Guhl’s (“ALJ”) finding that the Company, which is a licensed natural gas supplier (“NGS”), is subject to the Commission’s jurisdiction under Section 1501 of the Public Utility Code. As explained in the Petition, Section 1501 is inapplicable to UGIES because the Company is not a public utility. If the Commission grants the Petition and reverses this finding, Crescent Hotel – Plymouth Meeting, LP’s (“Crescent Hotel”) Complaint against UGIES should be dismissed. Therefore, the Commission’s disposition of the pending Petition will immediately and directly affect the outcome of the above-captioned Complaint.

Thus, to prevent substantial prejudice and the incurrence of unnecessary legal expenses, UGIES respectfully requests that the above-captioned proceeding be stayed and that no evidentiary hearings be held until the Commission’s final disposition of the Company’s Petition.

Further, given that evidentiary hearings are scheduled to be held in this proceeding on March 19-20, 2018, the Company respectfully requests that the responsive period to the instant Motion be reduced, such that any Answer to the Motion be due by Friday, March 9, 2018.¹ Similarly, UGIES respectfully requests that the ALJ rule on the instant Motion on or before Thursday, March 15, 2018.²

In support of its Motion, UGIES states as follows:

I. BACKGROUND

1. This matter was initiated on October 1, 2008, when Crescent Hotel filed its initial Formal Complaints with the Commission.

2. In its initial Formal Complaints, Crescent Hotel named PECO Energy Company/Exelon Corporation (“PECO”), Celeren, and UGI Energy Services, Inc.³ as respondents.

3. The initial Formal Complaint against UGIES was served via a Secretarial Letter dated October 9, 2008. UGIES filed an Answer to the Formal Complaint on October 29, 2008.

4. On or about April 1, 2009, Celeren filed for bankruptcy. As a result, the above-captioned proceedings were stayed by Order issued on April 2, 2009, until the disposition of Celeren’s bankruptcy.

¹ See 52 Pa. Code § 5.103(c) (“A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.”) (emphasis added).

² Attached hereto is a Proposed Order granting the stay consistent with the instant Motion.

³ UGI Energy Services, Inc. was an NGS licensed by the Commission, at Docket No. A-12508, to provide competitive natural gas supplies in Pennsylvania. The NGS license of UGI Energy Services, Inc. was transferred to UGIES on September 12, 2013. See *Petition to Transfer Natural Gas Supplier License from UGI Energy Services, Inc. to UGI Newco, LLC, Natural Gas Supplier License Application of UGI Newco, LLC and Abandonment of the Natural Gas Supplier License of UGI Energy Services, Inc.*, Docket Numbers: A-125018 and A-2013-2369286 (Order entered Sept. 12, 2013).

5. On February 18, 2014, the Bankruptcy Court issued a Final Decree closing the Celeren bankruptcy proceeding.

6. On March 12, 2014, the above-captioned proceedings were reassigned to Administrative Law Judge Cynthia W. Fordham.

7. On April 22, 2014, PECO filed a Motion to Lift Stay and Re-Activate the above-captioned proceedings. PECO noted that the Celeren bankruptcy proceeding was completed and that there was no longer any reason to stay the instant proceeding. On May 12, 2014, UGIES filed a letter indicating that it had no objection to PECO's 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. On May 12, 2014, UGIES filed a letter indicating that it took no position on PECO's request, but reserved the right to file an answer, new matter and/or motions to any such amended complaint.

9. On June 20, 2014, Crescent Hotel filed and served an Amended Complaint.

10. On July 9, 2014, PECO filed Preliminary Objections to the Amended Complaint.

11. On July 10, 2014, UGIES filed an Answer and New Matter in response to the Amended Complaint.

12. On July 29, 2014, Crescent Hotel filed a Second Amended Formal Complaint. In its Second Amended Complaint, Crescent Hotel asserted the following counts: Count I was against PECO, Exelon Corporation, and Celeren (Second Amended Complaint, ¶¶ 31-46); Count II was against UGIES (Second Amended Complaint, ¶¶47-59); Counts III through V were against Celeren (Second Amended Complaint, ¶¶ 60-86); and Count VI was against PECO and Exelon Corporation (Second Amended Complaint, ¶¶ 87-100).

13. On August 18, 2014, UGIES filed an Answer and New Matter to the Second Amended Complaint. Crescent Hotel did not file any response or answer to UGIES's New Matter.

14. On August 18, 2014, PECO filed Preliminary Objections to the Second Amended Complaint.

15. On August 29, 2014, Crescent Hotel filed an Answer to the Preliminary Objections to the Second Amended Complaint.

16. On September 8, 2016, Administrative Law Judge Cynthia W. Fordham issued Order #4, which granted in part and denied in part PECO's Preliminary Objections. Specifically, Order #4 granted Preliminary Objections and dismissed the following:

Paragraphs 11-17, 30, and 40 of Count I were stricken from the Second Amended Complaint;

The attorney fee claim in Paragraph 46(d) of Count I of the Second Amended Complaint was dismissed;

Count III of the Second Amended Complaint was dismissed and struck in its entirety, including the claim that the defendants violated the Commission's regulations at 52 Pa. Code § 62.102(d) and (f); and

Paragraph 93 of Count IV was stricken from the Second Amended Complaint because it pertains to a breach of contract claim.

See Order #4, p. 20. Consequently, the only remaining claim against UGIES is Count II of the Second Amended Complaint.

17. Count II of the Second Amended Complaint alleges that UGIES breached its duty by failing to notify Crescent Hotel when its authorized billing agent, Celeren, failed to pay for the natural gas supply provided by UGIES and received by Crescent Hotel. (*See Second Amended Complaint ¶¶ 54-55*)

18. On September 28, 2016, PECO filed an Answer to the Second Amended Complaint.

19. The matter was reassigned to the ALJ on or about March 16, 2017.

20. A prehearing conference was held on July 12, 2017. A procedural schedule was adopted and issued in Order #5.

21. On August 17, 2017, UGIES filed a Motion for Summary Judgment requesting that Count II of the Second Amended Complaint be dismissed in its entirety and with prejudice for the following reasons:

- A. There is nothing in the Public Utility Code, Commission regulations or Commission orders that requires a licensed NGS to notify a large commercial and industrial customer when the customer's authorized billing agent or representative -- who was designated solely by the customer -- fails to remit timely payment for the natural gas supply received by the large commercial and industrial customer.
- B. Count II of the Second Amended Formal Complaint is a claim for breach of the private natural gas supply contract between Crescent Hotel and UGIES, which the Commission lacks jurisdiction to adjudicate.
- C. The relief requested in Count II of the Second Amended Complaint is beyond the Commission's jurisdiction.

22. On September 6, 2017, Crescent Hotel filed its Answer to the Motion for Summary Judgment, together with a New Matter. On September 18, 2017, UGIES filed an Answer to the New Matter.

23. On October 26, 2017, the ALJ issued an Order denying UGIES's Motion for Summary Judgment ("October 26, 2017 Order" or "Order"). While the ALJ recognized that UGIES is an NGS, not a public utility, and confirmed the prior ruling that any breach of contract claim or request for damages is dismissed, the ALJ nevertheless found that "the notice issues as they relate to Section 1501 of the Public Utility Code should be addressed and heard at

hearing.”⁴ See Order at 6, 10-13. The ALJ reasoned that the Commission has jurisdiction under Section 1501 to determine “whether a utility has provided adequate, efficient, safe and reasonable service.” Order at 11 (emphasis added). Further, the ALJ relied upon *Digital 833 Chestnut LLC v. PECO Energy Co.*, Docket No. C-2008-2076610 (Order entered Mar. 26, 2010), which held that a utility’s failure to notify a customer may violate Section 1501. Order at 11-12.

24. On November 16, 2017, UGIES filed a Motion to Vacate and Clarify the Order (“Motion to Vacate”), arguing that the Order erred in finding that UGIES, which is not a public utility, is subject to 66 Pa.C.S. § 1501 and otherwise not dismissing Count II. Therein, the Company requested that the ALJ vacate and clarify the Order, particularly the finding that UGIES was subject to Section 1501, and dismiss Count II against UGIES. Alternatively, UGIES requested that the ALJ certify the issue to the Commission for interlocutory review.

25. To date, the ALJ has not ruled on UGIES’s Motion to Vacate.

26. On February 23, 2018, UGIES filed a Petition for Interlocutory Review and Answer to Material Question. In the Petition, the Company averred that the Order erred in finding that UGIES, which is not a public utility, is subject to 66 Pa.C.S. § 1501. As a result, the remainder of the Complaint against UGIES should be dismissed in its entirety.

27. Evidentiary hearings are currently set to be held on March 19-20, 2018, in Philadelphia, Pennsylvania.

II. MOTION TO STAY

28. UGIES respectfully requests that this proceeding be stayed and that no evidentiary hearings be held until the final disposition of the Company’s Petition for Interlocutory Review and Answer to Material Question.

⁴ The ALJ also found that there is a factual dispute between the parties regarding when notice was given to Crescent Hotel regarding its account delinquencies. See Order, p. 11.

29. UGIES's Motion should be granted because the Commission's ruling on its Petition will directly affect this proceeding. See *AT&T Commc'ns of Pa., LLC v. Verizon N. Inc.*, Docket No. C-20027195, 2008 Pa. PUC LEXIS 570, at *12-14 (Order Entered Sept. 12, 2008) (granting a motion to extend the stay of a Commission proceeding pending the outcome of the Federal Communications Commission's ruling in a separate proceeding); *Core Comm'cns, Inc. v. Choice One Commc'ns of Pa., Inc.*, Docket Nos. C-2009-2130379, *et al.*, 2010 Pa. PUC LEXIS 617, at *2-3 (Mar. 22, 2010) (granting a motion for stay pending the outcome of petitions for interlocutory review in separate Commission proceedings that would "perhaps ultimately make litigation of this case unnecessary").

30. The only remaining count against UGIES is Count II of the Second Amended Complaint, which avers UGIES breached an unspecified duty by allegedly not timely notifying Complainant when Celeren, Complainant's billing agent, did not make timely payments for utility service.

31. In the October 26, 2017 Order, the ALJ recognized that UGIES is an NGS, not a public utility, and confirmed the prior ruling that any breach of contract claim or request for damages is dismissed. Order at 6, 10-11.

32. Nevertheless, the ALJ found that "the notice issues as they relate to Section 1501 of the Public Utility Code should be addressed and heard at hearing." Order at 12.

33. Therefore, whether UGIES, which is not a public utility, is subject to and otherwise violated Section 1501 of the Public Utility Code is the only remaining issue related to the Company in this proceeding.

34. As a result, if the Commission grants interlocutory review and reverses the Order's finding that UGIES is subject to Section 1501, Crescent Hotel's Second Amended

Complaint against UGIES should be dismissed, thus removing UGIES as a party to the proceeding with no need to participate in the hearing.

35. Forcing this proceeding to continue while UGIES's Petition remains pending before the Commission would be a waste of the parties' and Commission's resources. *See Core*, 2010 Pa. PUC LEXIS 617 at *3 (granting a stay because, among other things, it would "conserve the resources of the parties and of the Commission").

36. For example, UGIES and Crescent Hotel would have to incur substantial time and expenses to litigate whether the Company failed to provide notice to Crescent Hotel in a manner that violated Section 1501 of the Public Utility Code. Such litigation would involve preparing for and participating in the evidentiary hearings, briefing, and potential exceptions and appeals.

37. In addition, even if the Company's Petition is granted but the Complaint against UGIES is not dismissed, the Commission's ruling would define proper scope of the issues to be addressed in this proceeding. This would produce a clearer, more complete record that is focused solely on the issues that are held to be within the Commission's jurisdiction. Otherwise, the Commission may need to remand the case to develop a record focused only on those issues.

38. Further, no party would be substantially prejudiced if a stay were granted pending interlocutory review. This matter has been before the Commission since 2008. To the extent that the Second Amended Complaint against UGIES is not dismissed in its entirety by the Commission's ruling on the Petition, Crescent Hotel would still have ample opportunity to litigate the appropriate claims raised in its Complaint.

39. Moreover, hearings could be re-scheduled for as soon as possible after the Commission's ruling on the Petition. In fact, the Company is authorized to represent that although PECO would prefer to hold the currently-scheduled hearings, PECO acknowledges that

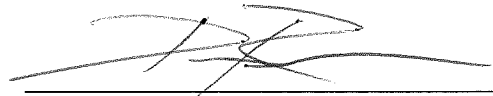
the Commission is unlikely to rule on the Petition by March 19, 2018, which is the first day of the evidentiary hearings. As a result, in the interest of judicial economy, PECO has stated any such hearing should include all parties. Consequently, PECO does not object to a continuance pending a Commission ruling on the material question. However, PECO has requested that if a stay is granted, the matter be re-noticed for hearing as soon as possible after the Commission rules on UGIES's material question.

40. For these reasons, UGIES respectfully requests that the ALJ stay this proceeding, pending the Commission's final disposition of the Company's Petition for Interlocutory Review and Answer to Material Question.

III. CONCLUSION

For the reasons set forth above, UGI Energy Services, LLC respectfully requests that Administrative Law Judge Marta Guhl grant this Motion and stay the above-captioned matter until the final disposition of the Petition for Interlocutory Review and Answer to Material Question pending before the Pennsylvania Public Utility Commission. Further the Company respectfully requests that the due date for any Answer to the instant Motion be due by March 9, 2018, and that the ruling on the instant Motion be issued by March 15, 2018, considering the hearings are to be held on March 19-20, 2018.

Respectfully submitted,



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Date: March 2, 2018

Counsel for UGI Energy Services, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Crescent Hotel – Plymouth Meeting, LP	:	Docket Nos. C-2008-2068258
v.	:	C-2008-2068267
PECO Energy Company,	:	C-2009-2089563
UGI Corporation, and	:	
Celeren Corporation	:	

PROPOSED ORDER

AND NOW, in consideration of the Motion to Stay the Proceeding Pending Interlocutory Review filed on March 2, 2018, by UGI Energy Services, LLC in the above-captioned matters,

IT IS ORDERED:

1. That the Motion to Stay the Proceeding Pending Interlocutory Review filed by UGI Energy Services, LLC is granted, consistent with this Order.
2. That the above-captioned proceeding shall be stayed until the final disposition of UGI Energy Services, LLC's Petition for Interlocutory Review and Answer to Material Question.
3. That upon the final disposition of such Petition, the matter shall be scheduled for two days of evidentiary hearings to be held on the next available consecutive hearing dates in Philadelphia, Pennsylvania.

Date

Marta Guhl
Administrative Law Judge

VERIFICATION

I, Cedric A. Haywood, being the Director of Collections at UGI Energy Services, LLC, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect UGI Energy Services, LLC 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: 3/2/18

Cedric A. Haywood