

**BEFORE THE
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

**ANSWER AND NEW MATTER OF COMPLAINANT TO PETITION OF UGI ENERGY
SERVICES, LLC/UGI ENERGY SERVICES, INC./GASMARK
FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION**

Complainant, Crescent Hotel Plymouth Meeting, L.P. (“Crescent”), hereby files this Answer and New Matter to the Petition for Interlocutory Review and Answer to Material Question (the “Petition”) filed by UGIES, on behalf of UGI Energy Services, Inc. and Gasmark (hereinafter “UGI”). It is respectfully requested that the Petition should be denied for the following reasons:

1. Admitted in part, denied in part. Admitted that Crescent filed Formal Complaints on or about October 1, 2008. Denied to the extent that Crescent lacks sufficient information to either confirm or deny the allegation concerning the transfer of UGI Energy Services, Inc.’s license to UGIES.

2. Denied. The averments in the corresponding paragraph attempt to characterize a writing, Crescent’s Second Amended Complaint, which speaks for itself. Any characterization of the same is specifically denied and strict proof is demanded, if relevant. To the extent a response is deemed necessary, is it denied that the only remaining count against the UGI entities is a breach of an unspecified duty.

3. Denied. The averments in the corresponding paragraph attempt to characterize a

writing, UGI's Motion for Summary Judgment, which speaks for itself. Any characterization of the same is specifically denied and strict proof is demanded, if relevant. Furthermore, the averments in the corresponding paragraph are conclusions of law to which no responsive pleading is required.

4. Denied. The averments in the corresponding paragraph attempt to characterize a writing, ALJ Guhl's Order dated October 26, 2017, which speaks for itself. Any characterization of the same is specifically denied and strict proof is demanded, if relevant.

5. Admitted.

6. Admitted to the extent that this paragraph refers to the "Material Question" posed by UGI.

7. The averments set forth in the corresponding paragraph are conclusions of law to which no responsive pleading is required. To the extent a response is deemed necessary, Crescent denies the same.

8. The averments set forth in the corresponding paragraph are conclusions of law to which no responsive pleading is required. Further, the averments in the corresponding paragraph attempt to characterize writings, which speak for themselves and any characterization of the same is specifically denied and strict proof is demanded, if relevant.

9. Denied. Crescent lacks sufficient information to either confirm or deny the averments in the corresponding paragraph. Further, the averments set forth in the corresponding paragraph are conclusions of law to which no responsive pleading is required. To the extent a response is deemed necessary, UGI is responsible for unjust and/or unreasonable billing practices, and as such, Crescent seeks an Order so stating, not monetary damages in this proceeding, however, Crescent would agree to an Order that directs the parties to a civil court to determine

UGI's legal status and determine if it was an assignor to Celeren in a declaratory judgment action. Furthermore, UGI, as a licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. See: § 62.114.

10. The averments set forth in the corresponding paragraph are conclusions of law to which no responsive pleading is required. To the extent a response is deemed necessary, UGI is responsible for unjust and/or unreasonable billing practices, and as such, Crescent seeks an Order so stating, not monetary damages in this proceeding, however, Crescent would agree to an Order that directs the parties to a civil court to obtain a legal determination as to UGI's status as assignor to Celeren and its' legal status. Furthermore, UGI, as a licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. See: § 62.114.

NEW MATTER

1. Crescent and UGI were parties to an agreement whereby Celeren would accept certain payments from Crescent for services from UGI, and Celeren would make such payments as received from Crescent to UGI.

2. UGI knew that Celeren made habitually late payments.

3. Crescent did not know that Celeren made any late payment, before it was advised that Celeren would be filing for bankruptcy.

4. Crescent made all payments required of it to Celeren, prior to that time.

5. Nevertheless, UGI coerced and/or compelled Crescent to make duplicative payments to it, despite UGI having actual knowledge that such payments owed to it were being received by Celeren from Crescent.

6. UGI willful ignorance of these claims, as a matter of law, precludes its actions, ability, and rights to the double payments, and/or precluding its' retention for payments made to Celeren pursuant applicable agreements between the parties, Crescent and Celeren on the one hand, and UGI and Celeren on the other.

7. UGI and Celeren were entered an assignor and assignee relationship pursuant to Pennsylvania law, with regard to amounts paid to UGI by Crescent and such determination as a matter of law is beyond the jurisdiction of the PUC.

8. Crescent requests that UGI be deemed a public utility.


9. In the alternative, Crescent request that this matter be stayed and Crescent and UGI proceed to a court of common pleas wherein Crescent will file a declaratory judgment action seeking a determination that UGI was an assignor.

WHEREFORE, Crescent seeks an Order that stays this matter and provides that Crescent may file a Declaratory Judgment Action against the UGI entities wherein it will seek a determination that UGI was a legal or equitable assignor to Celeren Corporation.

Respectfully submitted,

DAVIS BUCCO

Dated: 3/5/18

By: 
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VERIFICATION

I, William D. Oleckna, Esquire, hereby state that the facts set forth in Crescent Hotel Plymouth Meeting L.P.'s Answer to UGI's Petition for Interlocutory Review 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:

3/5/08

By:

