

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Rama Construction, Inc.	:	
t/a Ramada Inn International Airport	:	
	:	C-2009-2089694
v.	:	
	:	
Celeren Corporation	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaints because it failed to meet its burden of proof that its billing from PECO Energy Company contained incorrect charges. This Decision also denies the Complaint against Celeren Corporation because the Commission does not have jurisdiction over private contract matters.

HISTORY OF THE PROCEEDING

On August 7, 2008, Rama Construction, Inc. t/a Ramada Inn International Airport (“Rama” or Complainant) filed complaints with the Pennsylvania Public Utility Commission

(“Commission”) against PECO Energy Company/Exelon Corporation (“PECO”), Hess Corporation (“Hess”) and Celeren Corporation (“Celeren”).

The Commission’s Secretary’s Bureau docketed the cases as follows: *Rama v. PECO*, C-2008-2058320; *Rama v. Hess*, C-2008-2058200; and *Rama v. Celeren Corporation*, C-2009-2089694.

On September 10, 2008, Hess filed an Answer with New Matter and Preliminary Objections.

On September 22, 2008, Rama filed a reply to Hess’ New Matter and an answer to Hess’ Preliminary Objections.

On November 7, 2008, the Commission served Administrative Law Judge David A. Salapa’s Initial Decision dismissing the Hess complaint.

The PECO and Celeren complaints were assigned to Administrative Law Judge (“ALJ”) Guy M. Koster.

An evidentiary hearing was scheduled for November 21, 2008, in the PECO and Celeren cases. At the request of Complainant, the evidentiary hearing was converted into a prehearing conference.

On February 19, 2009, the Commission adopted ALJ Salapa’s Initial Decision dismissing the Hess complaint.

By notice dated March 12, 2009, an evidentiary hearing was scheduled for June 4, 2009.

On April 6, 2009, the Celeren bankruptcy trustee contacted ALJ Koster and invoked the automatic stay provisions of the United States Bankruptcy Code.

On April 7, 2009, ALJ Koster issued an Order consolidating the PECO and Celeren proceedings and staying further action in the consolidated proceeding because Celeren had filed for bankruptcy.

Consequently, the instant consolidated proceeding was stayed on April 7, 2009, with no further activity in this matter to occur pending closure of the Celeren bankruptcy proceeding.

On February 18, 2014, the Bankruptcy Court issued a Final Decree closing the Celeren bankruptcy proceeding. Celeren ceased operations and the Company was dissolved.

On March 12, 2014, the Commission issued a Judge Change Notice assigning this matter to Administrative Law Judge Cynthia Fordham.

On March 18, 2014, counsel for the Bankruptcy Trustee¹ informed the Commission and the parties, by letter addressed to the presiding officer, of the Bankruptcy Court Final Decree.

On April 22, 2014, PECO, through its counsel, filed a Motion to Lift Stay and Re-Activate the Proceeding with a notice to plead. PECO noted that since the Celeren bankruptcy proceeding that was the basis for the existing stay was completed, the stay should be lifted.

On April 24, 2014, PECO's counsel filed PECO Energy Company's Motion to Require the Filing of an Amended and More Specific Complaint with a notice to plead.

On May 7, 2014, ALJ Fordham sent an Order to the parties setting forth the procedural order for responding to the Motions.

¹ The Bankruptcy Trustee also requested that they be removed from the service list in this matter as the bankruptcy proceedings were complete and Celeren no longer existed as a corporate entity.

Rama and Celeren did not respond to PECO Motion to Lift Stay and Re-Activate the Proceeding.

By Order dated June 5, 2014, ALJ Fordham granted PECO Energy Company's Motion to Lift Stay and Re-Activate the Proceeding. In addition, the parties were notified that the answers to PECO Energy Company's Motion to Require the Filing of an Amended and More Specific Complaint were due on Friday, June 20, 2014.

Rama did not file an answer to PECO Energy Company's Motion to Require the Filing of an Amended and More Specific Complaint.

On June 20, 2014, Rama filed an Amended Complaint.

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

Rama did not file an answer to PECO Energy Company's Preliminary Objections.

On July 23, 2014, Rama filed a Second Amended Complaint.

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

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

On September 9, 2014, Rama served PECO with a Request for Production of Documents. On October 9, 2014, PECO objected to the Request for Production on the ground that, until the presiding officer ruled on its Preliminary Objections, it was not possible to determine whether the questions asked by Rama were within the scope of this proceeding.

On August 27, 2015, ALJ Fordham issued Order #4, in which she ordered Rama to file a more specific complaint in which it must set forth the tariff rule, Commission regulation, or Commission order that Rama claimed PECO had violated. She also dismissed the fraud claim because it was time-barred and for other reasons.

On September 17, 2015, Rama filed its Third Amended Complaint.

On October 5, 2015, PECO filed Preliminary Objections to the Third Amended Complaint, in which it argued that the Third Amended Complaint added no new additional information or specificity to identify the tariff rule, Commission regulation, or Commission order that Rama claimed PECO had violated, and that the Third Amended Complaint still included the stricken fraud claim. On that same date, PECO filed a Motion to Dismiss and for Sanctions on the ground that, by filing a Third Amended Complaint with the noted deficiencies, Rama had flagrantly ignored the ruling of Order #4.

On October 23, 2015, Rama filed its Fourth Amended Complaint.

On November 9, 2015, Rama filed its Fifth Amended Complaint.

On November 30, 2015, PECO filed its Preliminary Objections to the Fifth Amended Complaint, in which it argued that the Fifth Amended Complaint added no new additional information or specificity to identify the tariff rule, Commission regulation, or order that Rama claimed PECO had violated, and that the Fifth Amended Complaint still included the stricken fraud claim. On that same date, PECO filed an Updated Motion to Dismiss and for Sanctions on the ground that, by filing a Fourth and Fifth Amended Complaint that continued to suffer the same deficiencies as had existed in the Second and Third Amended Complaints, Rama had continued to flagrantly ignore the ruling of Order #4.

On December 12, 2015, Rama filed its Answer to PECO's Preliminary Objections and its Answer to PECO's Motion to Dismiss.

In early 2017, the matter was reassigned to ALJ Marta Guhl.

On March 2, 2017, PECO filed a Praecipe in which it requested rulings on its open Preliminary Objections and Motion.

Throughout August – October 2017, the parties engaged in discovery efforts.

On September 22, 2017, PECO filed a Praecipe requesting that its open Preliminary Objections and Motions be held in abeyance, and that the matter be set for hearing as soon as possible.

On February 1, 2018, a Hearing Notice was issued, setting a February 20, 2018 date for a prehearing conference.

After several continuances, the prehearing conference was held on April 5, 2018.

On July 10, 2018, Rama served its prefiled written testimony, comprised of Rama Statement No. 1, Direct Testimony of Tom Wolf, and associated exhibits.

On July 30, 2018, PECO served its prefiled written testimony, comprised of PECO Statement No. 1, Direct Testimony of Michele Lebron and associated exhibits, and PECO Statement No. 2, Direct Testimony of Joe Bisti.

On August 3, 2018, PECO filed a Motion in Limine to strike or limit the admissibility of certain exhibits attached to Mr. Wolf's Direct Testimony, including Rama Exh. C-2 (Deposition of Gary Dean) and Rama Exh. C-5 (Proofs of Claim).

On August 23, 2018, Rama filed two separate Answers to PECO's Motion in Limine.

In August and September 2018, the parties again engaged in discovery, this time regarding their respective prefiled written testimony.

On September 11, 2018, the evidentiary hearing was held. Rama appeared and was represented by counsel John Dorsey, Esq., and presented the testimony and exhibits of Tom Wolf. PECO appeared and was represented by counsel Ward Smith, Esq., and presented the testimony and exhibits of Michele Lebron and Joe Bisti. A 142-page transcript was produced.

At the evidentiary hearing, I stated that I would deal with PECO's Motion in Limine at a later date. Tr. 129. The Motion in Limine is denied through this Initial Decision.

On September 25, 2018, the parties provided ALJ Guhl with a common briefing outline.

The filing date for Main Briefs was ultimately set for November 19, 2018, with Reply Briefs due on December 19, 2018.

The record closed on December 19, 2018, when I received the Reply Briefs of the parties.

FINDINGS OF FACT

1. The Complainant is Rama Construction, Inc. t/a Ramada Inn International Airport.
2. The Respondents are PECO Energy Company and Celeren Corporation.
3. Rama is the owner of the building located at 76 Industrial Highway in Essington, Delaware County, Pennsylvania, commonly known as the Ramada Inn Philadelphia International Airport (Service Address), which is a hotel facility.

4. On or about October 1, 2005, Rama and Celeren entered into a written Utility Outsource Service Agreement (“Agreement”). Exh. C-1.

5. In accordance with the Agreement, Celeren was to act as Rama’s “sole energy consultant, broker, aggregator, supplier, and/or energy marketer as such terms are defined by applicable federal and state law.” Exh. C-1.

6. In accordance with the Agreement, Rama was to pay Celeren a fixed monthly payment of \$35,515, which subsequently increased to approximately \$41,000 based upon Celeren’s analysis of Rama’s usage. Rama Exh. 1, D.T. Wolf at 1-2; Exh. C-1.

7. From October 1, 2005 through July 2008, Rama complied with the Agreement by paying the monthly payment, resulting in total payments over this period of approximately \$1.2 million for electricity supply. D.T. Wolf at 2; Exh. C-1; Exh. C-3.

8. Despite these payments to Celeren, PECO informed Rama that as of August 4, 2008, the amount of delinquencies on its account totaled \$137,400.79, and served Rama with a 72-Hour Shut-Off Notice stating that the electric service to the building was to be shut off after 8:00 a.m. on August 7, 2008. Exh. C-4 Shut off notice.

9. When PECO contacted Rama in April 2007 about a two-month arrearage, PECO claimed \$58,177 was outstanding representing approximately \$26,000-\$27,000 due for each month, which was less than the \$35,000 and subsequent \$41,000 Rama was paying to Celeren each month. Tr. 79.

10. Under the agreement with Celeren, Rama paid Celeren approximately \$35,000 a month for its utilities. These payments were made to Celeren, not PECO. D.T. Wolf at 3-4; Rama Exh. C-3.

11. Rama’s primary contact at Celeren was Mike Kelly. D.T. Wolf at 5, Tr. 21-22.

12. Mr. Kelly never informed Rama that Celeren was not making full and timely payments to PECO. D.T. Wolf at 5, Tr. 21-22.

13. Between April 2007 and August 2008, PECO was in regular contact with both Rama personnel and Celeren personnel regarding Rama's recurring delinquent account balance. D.T. Lebron at 2.

14. PECO's first contact with Rama regarding Celeren's payment of Rama's bills was on April 17, 2007, when Ms. Lebron called Shalena Everett of Rama to inform her that Rama's account for utility service had not been paid for two months and was delinquent for \$58,177.01. D.T. Lebron at 5.

15. At Ms. Everett's request, Ms. Lebron subsequently spoke to Celeren, which on May 2, 2007 made payments to bring the past due balance on the Rama account to \$0. D.T. Lebron at 5.

16. PECO's second contact with Rama regarding Celeren's payment of Rama's bills was on August 1, 2007, when Ms. Lebron met with previous Controller Elise Lansbury of Rama at the Ramada Hotel site. D.T. Lebron at 5-6; PECO Exh. ML-2.

17. The next day, on August 2, 2007, PECO processed a payment for \$46,847.09, which was enough to pay the past due balance and all accumulated late fees. PECO D.T. Lebron at 5-6; PECO Exh. ML-2.

18. PECO's third contact with Rama regarding Celeren's payment of Rama's bills was on November 15, 2007, when Ms. Lebron called Shalena Everett of Rama and brought the past due balance to her attention, informing her that PECO had not received a payment on the Rama account since September 13, 2007. D.T. Lebron at 7-8.

19. In early December 2007, Celeren made payments that reduced the past due balance on the account to a few hundred dollars. D.T. Lebron at 7-8.

20. PECO's fourth contact with Rama regarding Celeren's payment of Rama's bills was on February 20, 2008, when Ms. Lebron called Ms. Lansbury of Rama to inform her that the Rama account was delinquent. D.T. Lebron at 8-9.

21. The next day, Celeren personnel contacted Ms. Lebron and stated that payments sufficient to eliminate the past due balance would be made on February 29 and March 7, 2008. D.T. Lebron at 8-9.

22. PECO's fifth contact with Rama regarding Celeren's payment of Rama's bills was on March 4, 2008, when Ms. Lebron called Ms. Lansbury of Rama to inform her that the February 29 payment had not been made in the amount promised. D.T. Lebron at 9.

23. On March 13, 2008, Celeren made payments sufficient to eliminate the past due balance and accumulated late fees. D.T. Lebron at 9.

24. PECO's sixth contact with Rama regarding Celeren's payment of Rama's bills was on April 14, 2008, when Ms. Lebron called Ms. Lansbury of Rama to inquire about the past due balance on the account. D.T. Lebron at 9-10.

25. PECO's seventh contact with Rama regarding Celeren's payment of Rama's bills was on May 22, 2008, when Ms. Lebron called Mr. Lansbury of Rama to discuss the delinquency on the Rama account. D.T. Lebron at 10.

26. PECO's eighth contact with Rama regarding Celeren's payment of Rama's bills was on May 29, 2008, when Ms. Lebron met with Ms. Lansbury of Rama at the Ramada Hotel site, where they discussed that Rama's bills were mailed directly to Celeren and that the bills were past due. D.T. Lebron at 10-11; PECO Exh. ML-2.

27. Ms. Lansbury asked for copies of the two most recent bills and a full account statement, which Ms. Lebron provided to Ms. Lansbury on June 9, 2008. D.T. Lebron at 10-11; PECO Exh. ML-2.

28. On June 9, 2008, PECO processed a payment on the Rama account for \$42,308.77. D.T. Lebron at 10-11; PECO Exh. ML-2.

29. The June 9, 2008 payment brought the Rama account balance to \$45,444.28, all of which was past due. D.T. Lebron at 10-11; PECO Exh. ML-2.

30. PECO's ninth contact with Rama regarding Celeren's payment of Rama's bills was on July 9, 2008, when Ms. Lebron called Ms. Lansbury of Rama to inform her that the recent check from Celeren had been returned by the bank for insufficient funds, and to discuss the delinquency on the account. D.T. Lebron at 11.

31. PECO's tenth contact with Rama regarding Celeren's payment of Rama's bills was on July 10, 2008, when PECO's Credit Department called Ms. Lansbury of Rama regarding the delinquency on the Rama account. D.T. Lebron at 12.

32. PECO's eleventh contact with Rama regarding Celeren's payment of Rama's bills was on July 11, 2008, when PECO's Credit Department called Ms. Lansbury of Rama regarding the delinquency on the Rama account. D.T. Lebron at 12.

33. During that call, Ms. Lansbury inquired about the Celeren check that had been returned for insufficient funds. D.T. Lebron at 12.

34. PECO's twelfth contact with Rama regarding Celeren's payment of Rama's bills was on July 17, 2008, when Ms. Lebron called Ms. Lansbury of Rama about the account delinquency and informed her that written termination notices had been issued. On that date Ms. Lebron also removed Celeren as a contact for the Rama account. D.T. Lebron at 12.

35. PECO's thirteenth contact with Rama regarding Celeren's payment of Rama's bills was on August 4, 2008, when Mr. Jason Bloom of Rama spoke to PECO's Call Center regarding delinquencies on the Rama account. D.T. Lebron at 13; PECO Exh. ML-3.

36. Since filing its Complaint, Rama has paid its current bills on time, but has not made any payment to PECO of the past due amount; for a decade the account has thus carried, and still carries, a past due balance of \$124,126.80. D.T. Lebron at 13.

37. Celeren did not obtain an Electric Generation Supplier (EGS) license from the Commission. D.T. Bisti at 4; Tr. 96, 99, 113-14.

38. PECO did not have a separate agreement with Celeren. D.T. Bisti at 6.

39. PECO provided service directly to Rama, and Celeren was Rama's designated billing agent. D.T. Bisti at 6.

40. At no time did PECO have an agreement with Celeren for the supply of generation, transmission, or distribution services to Rama. D.T. Bisti at 6.

41. PECO billed Rama as its customer for all services rendered. Rama chose to have PECO send its bills to its designated billing agent, Celeren. D.T. Bisti at 6-7.

42. If Celeren obtained generation and transmission services from any EGS, it did so under a contract to which PECO was not privy. D.T. Bisti at 6-7.

43. PECO had no contract with any other party to "distribute its product" to Rama. D.T. Bisti at 7.

44. PECO does not contract with others to provide electric distribution service. D.T. Bisti at 7.

45. PECO sent Rama's bills to Celeren, rather than Rama, because Rama designated Celeren as its billing agent for receipt and payment of those bills. D.T. Bisti at 7; Tr. 111.

46. Celeren was granted wholesale energy license from the Federal Energy Regulatory Commission (FERC). Tr. 104-05, 115.

47. Celeren filed for bankruptcy in 2008, and approximately 200 Proofs of Claim, totaling approximately \$9 million, were filed against Celeren. D.T. Wolf at 5; Rama Exh. C-5.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence

of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Additionally, public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa.Cmwlth. 1995).

PECO's Motion in Limine

Gary Dean Deposition

PECO argues that the Dean deposition should be excluded as an exhibit to the direct testimony of Tom Wolf, because the Dean deposition is hearsay and cannot be offered to prove the truth of the matters asserted.

'Hearsay' means a statement that (1) the declarant does not make while testifying at the current hearing; and (2) the party offers in evidence to prove the truth of the matters asserted in the statement." Pa. R.E. 801.

Under *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (*Walker*), the Commonwealth Court stated:

Hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency...Hearsay evidence, admitted

without objection, will be given its natural probative effect and may support a finding of an agency if it is corroborated by any competent evidence in the record . . . a finding of fact based solely on hearsay will not stand.

Walker, 367 A.2d at 370.

The Commission recently confirmed that hearsay evidence which is properly objected to cannot be used to support a factual finding of the Commission. In *Frompovich v. PECO*, Docket No. C-2015-2474602, pp. 16-18 (Opinion and Order entered May 3, 2018), the Commission addressed the role of hearsay evidence in Commission proceedings and stated that if properly objected to, hearsay may not be used to support a factual determination of the Commission.

However, Rule 4020 of the Pennsylvania Rules of Civil Procedure provides, in pertinent part, that deposition testimony may be entered into evidence when:

(a) At the trial, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with any one of the following provisions:

* * *

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(a) that the witness is dead, or

(b) that the witness is at a greater distance than one hundred miles from the place of trial or is outside the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition, or

(c) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment, or

(d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or

(e) upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

See, Pa.R.C.P. 4020(a)(3); *See also*, *Missett v. Hub Int'l Pa., LLC*, 6 A.3d 530, 542-43 (Pa.Super. 2010).

Mr. Gary Dean was the corporate designee of a now defunct company, Celeren. Without even reaching his willingness to submit as a witness in this matter or appear under subpoena, his deposition testimony is admissible because he is outside of the Commonwealth. It is a known fact that Mr. Dean is in Hammonton, New Jersey employed by South Jersey Energy. This last known location was more than 50 miles away outside of the Commonwealth. Therefore, Mr. Dean is “unavailable” pursuant to Rule 4020(a)(3)(b). Since the Dean deposition is admissible under Rule 4020, it is hearsay evidence not properly objected to and should not be stricken from the record.

Based on the above, PECO’s Motion in Limine related to the Dean deposition is denied.

Proof of Claims

PECO also argues that the Proof of Claims and Mr. Wolf’s testimony regarding that issue should be stricken from the record. Rama argues that it is relevant to the case.

Mr. Wolf’s Direct Testimony, p. 5, lines 20-25, contains the following colloquy:

Q. Do you know, or did you discover the extent of their debt after they filed bankruptcy?

A. Yes. I believe there were about 200 Proof of Claims filed against them.

Q. Please identify C-5.

A. It is a list of creditors of Celeren totaling approximately \$9 million.

Q. Do you think it likely that some were PECO customers?

A. Yes.

The Proof of Claims were also attached to Mr. Wolf's direct testimony as Exhibit C-5, which was a list of creditors for Celeren.

PECO argues that these Proof of Claims and any testimony related to them should be excluded because they deal with a fraud claim that had been previously dismissed in this matter. Further, PECO notes that I precluded Rama from conducting extensive discovery regarding the Proof of Claims because it would have been unduly burdensome.

Rama asserts that the Proof of Claims are useful in establishing a pattern of behavior by Celeren which PECO should have been aware of and monitoring. Rama alleges that Celeren was an electric generation supplier (EGS) and PECO had a duty to monitor its activity under PECO's Tariff.

I believe that there may be some probative value in Mr. Wolf's testimony regarding the Proof of Claims. There are a number of creditors that Celeren had and could have been customers of PECO. A pattern of delinquent payments by Celeren could show that PECO may have been aware of issues with this particular party. The testimony and evidence is relevant to the behavior at issue in this case. PECO's Motion in Limine is denied in this respect. Based on all of the above, PECO's Motion in Limine is denied and the Proofs of Claim are admissible in this proceeding.

Claims Against Celeren

Rama filed a Complaint against Celeren regarding its action in this matter in 2009. However, Celeren entered bankruptcy proceedings in April 2009. The proceedings before

the Commission were stayed pending the outcome in the bankruptcy case. Proceedings were completed in February 2014. Celeren ceased operations and was dissolved. Celeren, as a corporate entity, no longer exists.

After 2014, Celeren did not participate in the litigation that is pending before the Commission. Celeren did not participate in the hearing that was held or submit any evidence in this matter.

Further, it appears that Celeren was a third party intermediary between Rama and PECO in this particular case. Contrary to Rama's assertions, Celeren was not authorized to act as an Electric Generation Supplier (EGS) by the Commission², nor did it constructively do so through its actions. There is no evidence in the record to support a finding that Celeren was an EGS. It appears that Rama and Celeren had a private contract establishing their relationship. Moreover, it appears that Celeren acted as a placeholder for Rama and paid bills issued by PECO in Rama's stead.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Public Utility Code simply does not give the Commission the authority to entertain an action for breach of contract or to award damages or any other form of relief in an action for a breach of contract. There is no question that the Commission lacks authority to award damages or any other form of relief in an action for a breach of contract. *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa.Super. 1991); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995). As the Commission lacks authority to entertain an action for breach of contract or to award damages or any other form of relief, Rama's Complainant against Celeren at Docket No. C-2009-2089694 should be dismissed.

² See Discussion in Claims Against PECO below.

Claims Against PECO

Violations of PECO's Tariff Provisions

Rama contends that PECO violated provisions of its tariff in its dealing with Rama and Celeren in this matter. Specifically, Rama alleges that PECO violated Sections 23, 17 and 15 of its Tariff, related to the relationship between Rama and Celeren. Rama contends that Celeren acted as an EGS for all intents and purposes and that PECO owed a duty under its Tariff provisions related to EGSs to protect Rama from Celeren's actions.

PECO asserts that Celeren was not an EGS and PECO did not violate its Tariff provisions with respect to Celeren.

Rule 23 of PECO's Electric Service Tariff states as follows:

23. EGS SWITCHING

23.1 PECO Energy will accommodate requests by customers to switch EGSs on active accounts and pending active (Instant Connect) accounts in accordance with this Rule 23, Commission Order M-2014-2401085, and other applicable Commission Orders.

23.2 To switch to a new EGS, a customer must inform the new EGS. Customers that wish to switch are not required to contact PECO Energy to initiate a switch; PECO Energy will only switch a customer in accordance with Rule 23.

23.3 To enable a new EGS to complete a switch, a customer must provide to the new EGS the customer's PECO Energy account number as it appears on the customer's PECO Energy monthly bill.

23.4 If a Customer contacts the Company to discontinue electric service and indicates that the Customer will be relocating outside of the Company's service territory, the Company will notify the current EGS of the Customer's discontinuance of service for the account at the Customer's location. If relocating within the Company's service territory the Company will seamlessly move the current EGS to the new location if all qualifications are met in accordance with PUC Order M-2014-2401085.

23.5 A switch to an EGS will be effective 3 business days after the enrollment is processed, provided the enrollment request includes valid customer information as required by the controlling providing of the Supplier Tariff. Upon receiving valid notice to switch and EGS, the Company shall notify the customer's existing EGS that such a request has been made.

23.6 If and when a customer's EGS discontinues its supply in the event of bankruptcy, loss of license, or similar occurrence, or if the Customer is dropped by its EGS for non-payment or other reason then the customer may select a new EGS. The customer will receive its energy supply from PECO Energy until the switch becomes effective.

23.7 Nothing in this Rule 23 shall be interpreted to preclude EGSs from entering into agreements for supply with a term of service of one month. EGSs may enter into agreements for longer.

Rule 17.3 of PECO's Electric Service Tariff states as follows:

17.3 PAYMENT.

(a) The Company's bills to customers are payable upon presentation. Payment for service received must be made on or before the due date shown on the bill. The due date shall be determined by the Company and shall be not less than twenty days from the date of transmittal of the bill for Rates R, R-H, RS-2, POL and GS (excluding Summary Billing Accounts). The due date shall be not less than 15 days from the date of transmittal of the bill for all other rates, including Summary Billing Accounts. Notwithstanding the foregoing, the due date may be up to thirty days for accounts (including Summary Billing Accounts) with the United States of America, the Commonwealth of Pennsylvania, or any of their departments, political subdivisions, or instrumentalities. The Company may allow a reasonable amount of additional time for payment of bills on industrial and commercial accounts of creditworthy customers. If the due date that appears on a customer's bill falls on a Saturday, Sunday, bank holiday, or any other day when the offices of the Company which regularly receive payments are not open to the general public, the due date shall be extended to the next business day. The payment period will not be extended because of the customer's failure to receive a bill unless said failure is due to the fault of the Company.

(b) Payment may be made at any commercial office of the Company or at any authorized payment agency. The customer bears the risk of delivery of payment tendered on or after the date contained in any termination notice sent to the customer.

(c) The Company may require that a customer that is not creditworthy tender payment by means of a certified, cashier's, teller's, or bank check, or by wire transfer, or in cash or other immediately available funds.

(d) A customer must pay the undisputed portion of disputed bills under investigation. The Company will apply this rule to the disputed portion of disputed bills, if, and only if: (1) the Company has made diligent and reasonable efforts to investigate and resolve the dispute; (2) the result of the investigation is that the Company determines that the customer's claims are unwarranted or invalid; (3) the Commission and/or the Bureau of Consumer Services has decided a formal or informal complaint in the Company's favor and no timely appeal is filed, and (4) the customer nevertheless continues to dispute the same manner in bad faith.

Rule 15.1 of PECO's Tariff provides the following with regard to the liability of PECO:

The Company shall have no duty or liability with respect to electric energy before it is delivered by an EGS to a point of delivery on the Company's distribution system. After its receipt of electric energy and capacity at the point of delivery, the Company shall have the same duty and liability for distribution services to its customers receiving Competitive Energy Supply as to those receiving electric energy and capacity from the Company.

Further, the term EGS is a defined term in Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2803, where an EGS is defined, in material part, as:

A person or corporation, including . . . brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission and distribution facilities of an electric distribution company, or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company.

Section 2809(a) of the Public Utility Code provides, in material part, that an entity may not operate as an EGS unless and until it obtains a license from the Commission:

No person or corporation, including . . . brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the commission.

These requirements are similar to the Commission’s regulations. The definition of an EGS is at 52 Pa.Code § 54.31³; the requirement to obtain a license from the Commission before operating as an EGS is at 52 Pa.Code § 54.32(a) (“An EGS may not engage in marketing, or may not offer to provide, or provide retail electricity generation service until it is granted a license by the Commission.”).

PECO’s Electric Generation Supplier Tariff incorporates the licensure requirement into its definition of an EGS, stating that an EGS is “a supplier of electric generation that has been certified or licensed by the Pennsylvania Public Utility Commission to sell electricity to retail Customers within the Commonwealth of Pennsylvania in accordance with the Competition Act.”⁴ For entities that meet the licensure requirement and otherwise meet the standards to perform as an EGS in PECO’s service territory, they must then register with PECO (EGS Tariff Rule 3). Upon acceptance of the entity’s completed registration, PECO arranges to provide “Coordination Services” to that entity as outlined within the Supplier Tariff. *See* PECO

³ *EGS—Electric generation supplier—*

(i) A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter [*Editor’s Note:* The reference to “this chapter” refers to the code.], brokers and marketers, aggregators or any other entities, that sell to end-use customers electricity or related services utilizing the jurisdictional transmission and distribution facilities of an EDC, or that purchase, broker, arrange or market electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an EDC.

52 Pa. Code § 54.31

⁴ *See also* EGS Tariff Rule 4.4 Coordination Obligations: “An EGS must have and maintain in good standing a license from the [Commission] as an authorized EGS;” and EGS Tariff Rule 16.2(b), which establishes that “an EGS’s failure to maintain license or certification as an electric generation supplier or electricity supplier from the [Commission]” is a material breach of the EGS’s obligations under the EGS Tariff.

EGS Tariff Rule 3; Tr. 91 (“[W]e have a supply coordination tariff that outlines the relationship between EGSs and PECO. Essentially, EGSs come to us and we have them sign an agreement that permits us to provide them with coordination services.”)

In the EGS Tariff (Definitions), Coordination Services are defined as:

Coordination Services -those services that permit the type of interface and coordination between EGSs and the Company in connection with the delivery of Competitive Energy Supply to serve Customers located within the Company’s service territory, including: load backcasting, certain scheduling-related functions and reconciliation.

According to the statute and the Commission’s regulations, a license to be an EGS must be issued by the Commission. 66 Pa. C.S. § 2809(c); 52 Pa. Code § 54.32(a).

While Rama argues that Celeren is an EGS, there is no evidence in the record to support such a finding. Rama did not present any evidence to establish that Celeren was licensed by the Commission as an EGS. To the contrary, PECO presented credible evidence that there was no indication that Celeren was an EGS licensed by the Commission or that it ever came to PECO expressing the wish to become an EGS within PECO’s territory. PECO presented the testimony of Joe Bisti, who is employed by PECO as a Senior Rate Administrator. For nine years previously, he was a Senior Analyst in PECO’s Energy Acquisition Department. D.T. Bisti at 1. Mr. Bisti testified that Celeren did not ever obtain an EGS license from the Commission. D.T. Bisti at 4; Tr. 96, 99, 113-14. He also indicated that PECO did not have a separate agreement with Celeren. D.T. Bisti at 6. Instead, Mr. Bisti noted that PECO provided service directly to Rama, and Celeren was Rama’s designated billing agent. D.T. Bisti at 6. Mr. Bisti also testified that at no time did PECO have an agreement with Celeren for the supply of generation, transmission, or distribution services to Rama. D.T. Bisti at 6. Mr. Bisti also noted that Celeren was granted wholesale energy license from the FERC. Tr. 104-05, 115. While Rama has argued consistently that Celeren was an EGS, it is well established that “[m]ere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000); see also, *Steffy’s Pattern Shop v.*

Frontier Communications of Pennsylvania, Inc., Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

Rama argues that Celeren could have been operating as an unlicensed EGS in the Commonwealth and that PECO was in a better position to make such a determination. However, this is simply not the case. PECO billed Rama as its customer for all services rendered. Rama chose to have PECO send its bills to its Rama's designated billing agent, Celeren. D.T. Bisti at 6-7. If Celeren obtained generation and transmission services from any EGS, it did so under a contract to which PECO was not privy. D.T. Bisti at 6-7. PECO had no contract with any other party to "distribute its product" to Rama. D.T. Bisti at 7. PECO did not contract with others to provide electric distribution service. D.T. Bisti at 7. PECO sent Rama's bills to Celeren, rather than Rama, because Rama designated Celeren as its billing agent for receipt and payment of those bills. D.T. Bisti at 7; Tr. 111. Further, PECO was not privy to the agreement between Celeren and Rama.

It is clear that even if Celeren could have been considered an unlicensed EGS in the Commonwealth, under PECO's Electric Generation Supplier Coordination Tariff Rule 5.4.1, PECO does not have access to agreements between customers and EGSs, and is not responsible for monitoring, reviewing, or enforcing agreements between EGSs and customers. D.T. Bisti at 5. Moreover, under PECO's Electric Generation Supplier Coordination Tariff Rule 5.4.2, even if a customer makes an arrangement with an EGS to shift cost obligations between them, such agreement does not limit the right of the Electric Distribution Company (EDC), such as PECO, to seek recourse directly from the EGS's customer for any charges owed to the Company. D.T. Bisti at 5.

The Sections of PECO's Tariff which Rama alleges were violated in this case do not apply, because Celeren was not an EGS. Moreover, even if these sections were applicable, Rama wouldn't have met its burden to establish that PECO violated any of the aforementioned sections. Rule 23 of PECO's Tariff deals with EGS switching, which is not the case in this matter because Celeren was not an EGS, as was noted above, nor did it operate as one.

Rule 17.3 of PECO's Tariff deals with payments. There is nothing in the record to indicate there were issues with the payment or that PECO was making extra demands on Rama related to the issuance of bills or request for payments.

Rule 15.1 of PECO's Tariff is related to PECO's liability in dealing with EGSs and consumers. There is no evidence in the record that PECO violated this provision as Celeren was not an EGS nor did it act as such in this case.

Based on all of the above, Rama has failed to meet its burden of demonstrating that PECO has violated any provisions of its Tariff with respect to the relationship between Celeren and Rama. As such, its Complaint in this regard must be denied and dismissed.

Alleged PECO Violation of a Non-Tariff Duty

Rama contends that PECO failed to deal with it in good faith when it came to the relationship between Celeren and Rama. Specifically, Rama asserts that PECO owed it a duty to investigate the actions of Celeren as it was in a better position to know the market and actors.

PECO denies that it owed Rama this type of duty and indicates that it provided Rama with adequate and reasonable service, which is required under the Public Utility Code, when it contacted Rama on multiple occasions to notify it that Celeren was failing to make full and timely payments on its account.

The concept of "good faith and fair dealing" is a contractual claim that falls outside of the Commission's jurisdiction. Pennsylvania law does not recognize a claim for breach of covenant of good faith and fair dealing as an independent cause of action separate from a breach of contract claim since the actions forming the basis of the breach of contract claim are essentially the same as the actions forming the basis of the bad faith claim. *LSI Title Agency, Inc. v. Evaluation Servs., Inc.*, 951 A.2d 384, 392 (Pa.Super. 2008) (stating that "the claim for breach of the implied covenant of good faith and fair dealing is subsumed in a breach of contract claim"). For that reason, a claim based on breach of the covenant of good faith and fair dealing,

when embedded within a complaint that also alleges breach of contract, will be regarded by the courts as nothing more than a carbon copy of the breach of contract claim. As was noted above, the Commission does not have authority to award relief for breach of contract. See *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa.Super. 1991); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995).

However, the Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . . .

66 Pa.C.S. § 1501.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.

Id. at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by

motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them .

...

66 Pa.C.S. § 102.

Any offense alleged by the Complainant must be a violation of the Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. The Commission has dealt with this issue in *Digital 833 Chestnut, LLC v. PECO Energy Company*, Docket No. C-2008-2076610 (Opinion and Order entered March 26, 2010) (*Digital 833*). In *Digital 833*, the Commission determined that the Administrative Law Judge had erred in dismissing the matter regarding PECO's obligations to the customer related to the actions of its agent, Celeren. Specifically, the Commission noted that PECO had an obligation to its customers under Section 1501 of the Public Utility Code to provide adequate and reasonable service and that the matter should not have been dismissed on preliminary objections. See *Digital 833*.

While there is no obligation under the good faith and fair dealing doctrine in this matter, PECO does have an obligation to meet the requirements of Section 1501 of the Public Utility Code. See *Digital 833*. As such, the record must be reviewed regarding PECO's attempts to inform Rama of the issues that Celeren had in the payment of Rama's bills to PECO.

Related to the issues in this matter, Rama presented the testimony of its current Controller, Tom Wolf. On or about October 1, 2005, Rama and Celeren entered into a written Utility Outsource Service Agreement. Exh. C-1. Celeren was to act as Rama's "sole energy consultant, broker, aggregator, supplier, and/or energy marketer as such terms are defined by applicable federal and state law." Exh. C-1. Mr. Wolf testified that Rama was to pay Celeren a fixed monthly payment of \$35,515, which subsequently increased to approximately \$41,000 based upon Celeren's analysis of Rama's usage. Rama Exh. 1, D.T. Wolf at 1-2; Exh. C-1. Further, Mr. Wolf indicated that from October 1, 2005 through the July 2008, Rama complied with the Agreement by paying the monthly payment, resulting in total payments over this period of approximately \$1.2 million for electricity supply. D.T. Wolf at 2; Exh. C-1; Exh. C-3.

Despite these payments to Celeren, PECO informed Rama that as of August 4, 2008, the amount of delinquencies was \$137,400.79, and served Rama with a 72-Hour Shut-Off Notice stating that the electric service to the building was to be shut off after 8:00 a.m. on August 7, 2008. Exh. C 4 Shut off notice. Mr. Wolf noted that when PECO contacted Rama in April 2007 about a two-month arrearage, PECO claimed \$58,177 was outstanding representing approximately \$26,000-\$27,000 due for each month, which was less than the \$35,000 and subsequent \$41,000 Rama was paying to Celeren each month. Tr. 79. Again, Mr. Wolf reiterated that under the arrangement with Celeren, Rama paid Celeren approximately \$35,000 a month for its utilities. These payments were made to Celeren, not PECO. D.T. Wolf at 3-4; Rama Exh. C-3. Mr. Wolf also noted that Rama's primary contact at Celeren was Mike Kelly, and Mr. Kelly never informed Rama that Celeren was not making full and timely payments to PECO. D.T. Wolf at 5, Tr. 21-22.

In response to Rama's allegations, PECO presented the testimony of Michele Lebron, who is employed by PECO as a Senior Account Representative. She has been employed by PECO for 30 years, including eleven years as an account representative. During 2007-2008, she was responsible for PECO's customer interaction with Rama. D.T. Lebron at 1.

Ms. Lebron testified regarding her communications with Rama regarding its account with PECO. Between April 2007 and August 2008, PECO was in regular contact with both Rama personnel and Celeren personnel regarding Rama's recurring delinquent account balance. D.T. Lebron at 2. PECO's first contact with Rama regarding Celeren's payment of Rama's bills was on April 17, 2007, when Ms. Lebron called Shalena Everett of Rama to inform her that Rama's account for utility service had not been paid for two months and was delinquent for \$58,177.01. D.T. Lebron at 5. At Ms. Everett's request, Ms. Lebron subsequently spoke to Celeren, which on May 2, 2007 made payments to bring the past due balance on the Rama account to \$0. D.T. Lebron at 5.

On August 1, 2007, PECO contacted Rama when Ms. Lebron met with previous Controller Elise Lansbury of Rama at the Ramada Hotel site. D.T. Lebron at 5-6; PECO Exh. ML-2. The next day, on August 2, 2007, PECO processed a payment for \$46,847.09, which was

enough to pay the past due balance and all accumulated late fees. PECO D.T. Lebron at 5-6; PECO Exh. ML-2.

On November 15, 2007, Ms. Lebron called Shalena Everett of Rama and brought the past due balance to her attention, informing her that PECO had not received a payment on the Rama account since September 13, 2007. D.T. Lebron at 7-8. In early December 2007, Celeren made payments that reduced the past due balance on the account to “a few hundred dollars.” D.T. Lebron at 7-8.

On February 20, 2008, Ms. Lebron called Ms. Lansbury of Rama to inform her that the Rama account was delinquent. D.T. Lebron at 8-9. The next day, Celeren personnel contacted Ms. Lebron and stated that payments sufficient to eliminate the past due balance would be made on February 29 and March 7, 2008. D.T. Lebron at 8-9.

On March 4, 2008, Ms. Lebron called Ms. Lansbury of Rama to inform her that the February 29 payment had not been made in the amount promised. D.T. Lebron at 9. On March 13, 2008, Celeren made payments sufficient to eliminate the past due balance and accumulated late fees. D.T. Lebron at 9.

On April 14, 2008, Ms. Lebron called Ms. Lansbury of Rama to inquire about the past due balance on the account. D.T. Lebron at 9-10. PECO’s seventh contact with Rama regarding Celeren’s payment of Rama’s bills occurred on May 22, 2008, when Ms. Lebron called Mr. Lansbury of Rama to discuss the delinquency on the Rama account. D.T. Lebron at 10.

On May 29, 2008, Ms. Lebron met with Ms. Lansbury of Rama at the Ramada Hotel site, where they discussed that Rama’s bills were mailed directly to Celeren and that the bills were past due. D.T. Lebron at 10-11; PECO Exh. ML-2. Ms. Lansbury asked for copies of the two most recent bills and a full account statement, which Ms. Lebron provided to Ms. Lansbury on June 9, 2008. D.T. Lebron at 10-11; PECO Exh. ML-2. On June 9, 2008, PECO processed a payment on the Rama account for \$42,308.77. D.T. Lebron at 10-11; PECO Exh.

ML-2. This brought the Rama account balance to \$45,444.28, all of which was past due. D.T. Lebron at 10-11; PECO Exh. ML-2.

On July 9, 2008, Ms. Lebron called Ms. Lansbury of Rama to inform her that the recent check from Celeren had been returned by the bank for insufficient funds, and to discuss the delinquency on the account. D.T. Lebron at 11. On July 10, 2008, PECO's Credit Department called Ms. Lansbury of Rama regarding the delinquency on the Rama account. D.T. Lebron at 12.

On July 11, 2008, PECO's Credit Department called Ms. Lansbury of Rama regarding the delinquency on the Rama account. D.T. Lebron at 12. During that call, Ms. Lansbury inquired about the Celeren check that had been returned for insufficient funds. D.T. Lebron at 12.

On July 17, 2008, Ms. Lebron called Ms. Lansbury of Rama about the account delinquency and informed her that written termination notices had been issued. On that date Ms. Lebron also removed Celeren as a contact for the Rama account. D.T. Lebron at 12. The final contact with Rama regarding Celeren's payment of Rama's bills occurred on August 4, 2008, when Mr. Jason Bloom of Rama spoke to PECO's Call Center regarding delinquencies on the Rama account. D.T. Lebron at 13; PECO Exh. ML-3. Ms. Lebron noted that since filing its Complaint, Rama has paid its current bills on time, but has not made any payment to PECO of the past due amount; for a decade the account has thus carried, and still carries, a past due balance of \$124,126.80. D.T. Lebron at 13.

PECO provided Rama with adequate and reasonable service in this matter. PECO made multiple contacts with Rama to alert them to the problems with the payment of their bills by Celeren. PECO had multiple communications with parties at Rama from April 2007 until August 2008. PECO provided the bills to Celeren, Rama's designated billing agent. At no time did Rama request that PECO send its bills directly to it, instead of Celeren. Through its regular communications with Rama concerning its account delinquencies, PECO put Rama on notice of its billing agent's shortcomings, yet it continued to use Celeren for many more months. Rama

has not established that PECO failed to provide reasonable service in this matter as required under Section 1501 of the Public Utility Code. *See* 66 Pa.C.S. § 1501. Given that there is no basis upon which to find that PECO committed an offense in violation of the Code, the Commission's regulations, or an outstanding order of the Commission, the Complainant cannot prevail here. 66 Pa.C.S. § 701. As such, the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over PECO Energy Company and Rama Construction, Inc. t/a Ramada Inn International Airport and the claims against PECO alleged by Rama. 66 Pa.C.S. § 701.

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant.

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. The Commission does not have authority to award relief for breach of contract. *See Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa.Super. 1991); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwlth. 1995).

5. The term EGS is a defined term in Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2803, where an EGS is defined, in material part, as:

A person or corporation, including . . . brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional

transmission and distribution facilities of an electric distribution company, or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company.

6. Section 2809(a) of the Public Utility Code provides that an entity may not operate as an EGS unless and until it obtains a license from the Commission. 66 Pa. C.S. § 2809(a).

7. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

8. Pennsylvania law does not recognize a claim for breach of covenant of good faith and fair dealing as an independent cause of action separate from a breach of contract claim since the actions forming the basis of the breach of contract claim are essentially the same as the actions forming the basis of the bad faith claim. *LSI Title Agency, Inc. v. Evaluation Servs., Inc.*, 951 A.2d 384, 392 (Pa.Super. 2008).

9. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities. Such service and facilities shall be in conformity with the regulations and orders of the commission. 66 Pa.C.S. § 1501.

10. The Complainant did not meet its burden of demonstrating that its claims against Celeren Corporation are under the jurisdiction of the Commission.

11. The Complainant has failed to meet its burden of establishing that PECO Energy Company violated its tariff provisions.

12. The Complainant has also failed to meet its burden of demonstrating that PECO Energy Company did not provide adequate and reasonable service with respect to Celeren's actions.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company's Motion in Limine is denied;
2. That the Complaint of Rama Construction, Inc. t/a Ramada Inn International Airport against Celeren Corporation at Docket No. C-2009-2089694 is denied and dismissed;
3. That the Complaint of Rama Construction, Inc. t/a Ramada Inn International Airport against PECO Energy Company at Docket No. C-2008-2058320 is denied and dismissed;
4. That the docket at Docket No. C-2009-2089694 be marked closed; and
5. That the docket at Docket No. C-2008-2058320 be marked closed.

Date: March 7, 2019

/s/
Marta Guhl
Administrative Law Judge