

July 2, 2013

Via Electronic Filing

Rosemary Chiavetta, Esq.

Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building, 2 North

P.O. Box 3265

Harrisburg, PA 17105-3265

Re: Docket No. C-2012-2318472
Mark Mazza v. PECO Energy Company
Motion to Compel of PECO Energy Company

Dear Secretary Chiavetta:

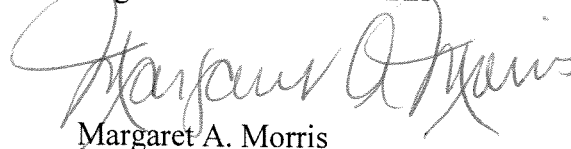
Enclosed for filing is the Motion to Compel of PECO Energy Company to Mark Mazza's Objections to Interrogatories and Request for Documents in the above referenced proceeding.

A copy has been served upon Mr. Mazza in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jf
Enclosures

CC: The Honorable Elizabeth H. Barnes, (via email) [w/enc.]
Mark Mazza (via UPS Overnight) [w/enc.]
Ward L. Smith, Esq., PECO Energy Company [w/enc.]

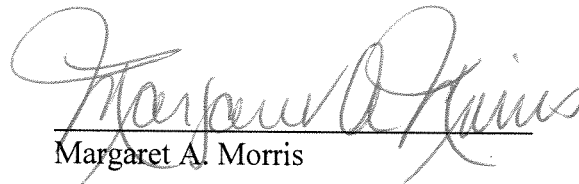
**Re: Docket No. C-2012-2318472
Mark Mazza v. PECO Energy Company
Motion to Compel of PECO Energy Company**

CERTIFICATE OF SERVICE

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

Via UPS Overnight

Mr. Mark Mazza
1271 Farm Road
Berwyn, PA 19312


Margaret A. Morris

Dated: July 2, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA :
 :
 :
v. : Docket No. C-2012-2318472
 :
 :
PECO ENERGY COMPANY :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.342, you are hereby notified that, if you do not file a written response answering the enclosed Motion to Compel of PECO Energy Company within five (5) days from service of this notice absent good cause or, in the alternative, respond orally at the hearing if a timely hearing has been scheduled within the same five (5) day period, the within Motion to Compel filed by PECO Energy Company may be deemed to be true, whereby requiring no other proof. All responsive motions, such as an Answer to a Motion to Compel, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Margaret A. Morris, and Administrative Law Judge Elizabeth H. Barnes.

File with:

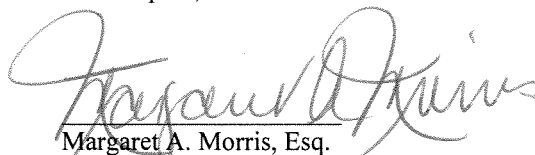
Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Honorable Elizabeth H. Barnes
Office of Administrative Law Judge
Commonwealth Keystone Building-2 West
P.O. Box 3265
Harrisburg, PA 17105-3265

Margaret A. Morris, Esq.
Reger Rizzo & Darnall, LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Dated: July 2, 2013



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mchestnut@regerlaw.com

Counsel for PECO Energy Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARK MAZZA :
 :
 v. : Docket No. C-2012-2318472
 :
 PECO ENERGY COMPANY :

**MOTION OF PECO ENERGY COMPANY TO COMPEL MARK MAZZA
TO RESPOND AND PRODUCE DOCUMENTS**

To Administrative Law Judge Elizabeth H. Barnes:

PECO Energy Company (PECO or respondent), by and through its attorneys, Reger Rizzo & Darnall LLP, and pursuant to the provisions of 52 Pa.Code §§ 5.103 and 5.342(g), respectfully moves that Your Honor grant this Motion and issue an order compelling Mark Mazza (Mr. Mazza or complainant) to provide full and complete answers to PECO's Interrogatories and Request for Documents (Discovery Requests) propounded to him on June 7, 2013.¹ In support of its Motion, PECO states the following:

1. On August 1, 2012, complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO alleging that a 10-day shutoff notice, dated July 26, 2012, was improper because he had two other formal

¹ In filing this Motion to Compel, PECO does not waive its right to receive service of documents as required by 52 Pa.Code § 5.342(e). PECO is responding to complainant's Objections so as not to delay the hearing scheduled for July 18, 2013.

Complaints pending before the Commission. This is the sixth Complaint filed since 2008 concerning termination activity PECO has undertaken on his account.

2. The complainant, *inter alia*, requested “a stay of shutoff/suspension,” “a payment agreement and/or substantial reduction of all bills due to financial circumstances and unemployment.”

3. PECO filed Preliminary Objections on August 14, 2012, in which it averred that the present Complaint should be dismissed under the doctrine of *lis pendens*.

4. By Initial Decision dated December 31, 2012, Administrative Law Judge Barnes granted PECO’s Preliminary Objections and directed that the Complaint be dismissed, finding that the previous five formal Complaints filed by Mr. Mazza encompassed the same issues, parties, rights and relief and that the instant Complaint (No. 6) represented “. . . a further attempt to avoid payment of his electric bills.” I.D. at 8.

On April 18, 2013, the Commission entered an Opinion and Order (Remand Order) sustaining the Initial Decision in part but remanding the Complaint for further hearing. The Commission specifically directed Administrative Law Judge Barnes to (1) consider the applicability of 52 Pa.Code § 56.141(2) when appellate proceedings are pending; (2) investigate complainant’s payment history; and (3) determine how much of the complainant’s outstanding balance to PECO is disputed, in the on-going appellate

litigation or otherwise, how much of the balance is undisputed, and when any such amounts became undisputed.

5. By Hearing Notice dated April 22, 2013, a telephonic hearing has been scheduled before Administrative Law Judge Barnes on July 18, 2013. By Prehearing Order dated April 24, 2013, Administrative Law Judge Barnes directed that any proposed exhibits must be sent to her and the other party at least five business days before the hearing, or July 11, 2013.

6. Pursuant to the Remand Order, PECO filed and served an Answer and New Matter on May 28, 2013.

7. On June 7, 2013, pursuant to 52 Pa.Code § 5.341, PECO served upon complainant Discovery Requests, consisting of three brief interrogatories and two requests for documents. A Certificate of Service was filed with the Commission. A complete copy of PECO's Discovery Requests is provided as Attachment 1.

8. On June 17, 2013, complainant filed "Objections to PECO Energy Company's Interrogatories and Request for Documents" (Objections) but failed to provide a copy to PECO as required by 52 Pa.Code § 5.342(e). Although complainant filed a Certificate of Service attesting service of his Objections to PECO's Discovery Requests, neither PECO nor its counsel have received a copy of these Objections from complainant. PECO's right to due process is compromised by this lack of service; it is

not reasonable to expect PECO to continually monitor the Commission's website for documents that Mr. Mazza may file, or to incur possible limitations on its response periods caused by the Commission's delay in publishing such documents. Given the number of proceedings in which he has been involved, Mr. Mazza certainly is aware of the difference between filing documents with the Commission and serving those documents on the presiding officer and the other party. In addition, Mr. Mazza's failure to serve the document on PECO calls into question the veracity of his statement contained in the Certificate of Service. This appears to be part of a continuing pattern of misbehavior² on Mr. Mazza's part; see, *Mazza v. Pennsylvania Pub. Utility Comm'n*, No. 1418 C.D. 2012 (Pa.Cmwlth. May 3, 2013). A complete copy of the Objections is provided as Attachment 2, which was obtained by PECO from the Commission's website.

9. The Commission's regulations permit a broad scope of discovery. 66 Pa. C.S.A. § 333(d). The Commission's Rules of Administrative Practice and Procedure, 52 Pa.Code § 5.321(c), provide that a party is entitled to obtain discovery of "... any matter not privileged which is relevant to the subject matter involved in the pending action ... It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The Commission has stated that the relevancy test should be liberally applied when considering discovery requests. *Pennsylvania Pub. Utility Comm'n v. Equitable Gas Co. v. Equitable Gas Co.*, 61 Pa. PUC 468, 477 (1986).

² It should be noted that Mr. Mazza's Answer to PECO's New Matter has not been served on the respondent even though the Certificate of Service attested that he did.

10. Specific limitations on the scope of discovery are found at 52 Pa.Code § 5.361(a), which prohibits discovery sought in bad faith, would cause unreasonable burden or expense, relates to privileged material or would require the making of an unreasonable investigation by the answering party.

11. The Commission's regulations further permit the imposition of sanctions when a party either refuses to answer interrogatories or fails to file "sufficient answers." 52 Pa.Code §§ 5.371(a)(1) and 5.372.

12. As explained in more detail below, the answers and responses sought by PECO's carefully limited Discovery Requests are likely to lead to admissible evidence and therefore are essential to the proper functioning of the administrative process by preventing the wasting of the Commission's time and resources, decreasing costs to all parties and preventing trial by ambush. See *Pittsburgh Bd. of Pub. Educ. v. M.J.N.*, 105 Pa.Cmwlth. 397, 403, 524 A.2d 1385, 1388 (Pa.Cmwlth. 1987).

Complainant generally objected to PECO's Discovery Requests on the basis that they are "harassing, overly broad, unduly burdensome," "not likely to lead to information and/or documents admissible at trial," "redundant," "calling for legal conclusions or determinations," "irrelevant," and "beyond the scope of permissible, appropriate and relevant discovery requests." See Attachment 2.

Complainant has not provided any description of the facts or circumstances that would render PECO's Discovery Requests "harassing, overly broad, unduly

burdensome,” “not likely to lead to information and/or documents admissible at trial,” “redundant,” “calling for legal conclusions or determinations,” “irrelevant,” and “beyond the scope of permissible, appropriate and relevant discovery requests,” in violation of 52 Pa.Code § 5.342(c) (“An objection must...[i]nclude a description of the facts and circumstances purporting to justify the objection.”). Complainant’s mere conclusory statements, which lack the factual specificity required by 52 Pa.Code § 5.342(a), clearly are insufficient to support an objection. See Docket No. R-2011-2232243, *et al.*, *Pennsylvania Pub. Utility Comm’n, et al. v. Pennsylvania American Water Co.*, Order on Motion to Compel, entered July 21, 2011, at 8.

13. Examination of the propounded discovery shows that it was carefully limited and narrowly tailored to elicit the information necessary to develop an adequate record by addressing the issues raised by the complainant and identified by the Commission in the Remand Order. The interrogatories at issue are simple and clear, and merely request basic information which complainant can easily supply. The Discovery Requests are not burdensome and should be provided. The documents requested (tax returns and a pay statement) require no preparation on the complainant’s part.

14. PECO’s Interrogatories Nos. 1 through 3 state:

1. *What “2 PUC cases” do you contend were not final when the present complaint was filed on August 1, 2012? Why?*
2. *What dollar amount do you contend was in dispute as of June 26, 2012?*
3. *What is your current occupation?*

15. PECO's Interrogatory No. 1 is not burdensome and is relevant and reasonably calculated to lead to the discovery of admissible evidence because it asks the complainant to simply identify the two cases referenced in his Complaint, and the Remand Order requires inquiry into which two cases complainant alleged were pending at the time the 10-day shut off notice was issued.

16. PECO Interrogatory No. 2 is not burdensome and is relevant and reasonably calculated to lead to the discovery of admissible evidence because it simply requests the dollar amount that complainant contends was in dispute as of June 26, 2012. The Remand Order directs the Administrative Law Judge to "determine how much of the Complainant's outstanding balance to PECO is disputed, in the on-going appellate litigation or otherwise, how much of the balance is undisputed, and when any such amounts became undisputed." The Administrative Law Judge must determine the amount of the disputed (and undisputed) arrearage.

17. PECO Interrogatory No. 3 is not burdensome and is relevant and reasonably calculated to lead to the discovery of admissible evidence because complainant stated he is "unemployed". The financial information for the account was last updated in August 2012 when the complainant provided an affidavit that he is unemployed and has no income. PECO has a right to the most current information because employment status is relevant to complainant's income. The complainant has

requested a payment arrangement; household financial information is relevant to implement a payment arrangement consistent with Chapter 14. 66 Pa. C.S.A. § 1405.

18. PECO's Request for Documents Nos. 4 and 5 state:

4. *Please provide the 2011 and 2012 federal and state tax returns for all adults residing at 1271 Farm Rd., Berwyn, PA 19312.*
5. *Please provide the most recent pay stub for every adult in the household.*

19. Complainant objects because they are "joint returns" and "the issue of income [is] irrelevant." See Attachment 2.

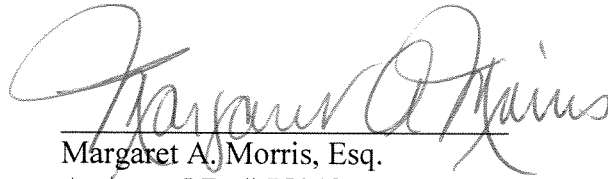
20. Complainant has requested a revised payment arrangement, or reduction of his arrearage based on "financial circumstances and unemployment." The last time the household income was updated was August 2012 when complainant faxed a copy of his wife's pay stub reflecting her income for the period January through August 8, 2012 and his affidavit that he is unemployed and has no income. The amortization period for a payment arrangement is based on the "combined gross income of *all adults* in a residential household who benefit from the public utility service." 66 Pa. C.S.A. § 1403 (emphasis added). The documents are not burdensome and are both relevant and reasonably calculated to lead to the discovery of admissible evidence. They are necessary for the Commission to determine complainant's household income level for the purpose of determining his eligibility and terms for a payment arrangement, and should be readily available to complainant.

The Discovery Requests are essential to the development of an adequate record as required by the Commission in its Remand Order and for the preparation of proposed exhibits which must be served no later than July 11, 2013, as well as the development of effective cross-examination of complainant at the scheduled July 18, 2013 hearing.

WHEREFORE, PECO Energy Company respectfully requests that Your Honor:

1. Grant this Motion to Compel;
2. Order Mark Mazza to provide complete and responsive answers to Interrogatories Nos. 1, 2, and 3 and the documents which are the subject of Request for Documents Nos. 4 and 5 on or before July 9, 2013; and
3. Grant other such relief as deemed appropriate.

Respectfully submitted,



Margaret A. Morris, Esq.
Attorney I.D. # 75048
Marlane R. Chestnut, Esq.
Attorney I.D. #28793
Jennifer L. Fitzgeorge, Esq.
Attorney I.D. #315502
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mchestnut@regerlaw.com
jfitzgeorge@regerlaw.com

Counsel for PECO Energy Company

Dated: July 2, 2013

ATTACHMENT 1

June 7, 2013

VIA UPS Overnight

Mr. Mark Mazza
1271 Farm Rd.
Berwyn, PA 19312

**Re: Docket No. C-2012-2318472
Mazza v. PECO Energy Company
Interrogatories/Request for Documents of PECO Energy Company**

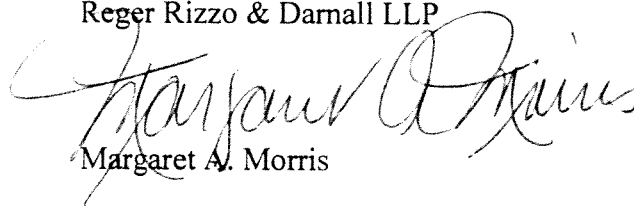
Dear Mr. Mazza:

Enclosed please find the Interrogatories and Request for Production of Documents of PECO Energy Company, in the above referenced proceeding. Pursuant to 52 Pa Code §5.342, answers and documents are due within 20 days of service; objections within 10 days.

Please do not hesitate to contact me if there are any questions.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

Enclosure

Cc: Secretary Rosemary Chiavetta (cover and certificate only) via 1st Class Mail
Honorable Elizabeth H. Barnes(cover and certificate only) via 1st Class Mail

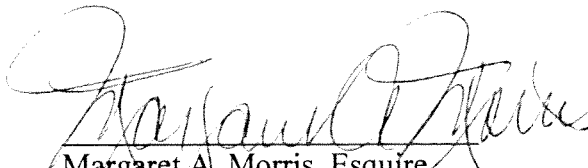
**Re: Docket No. C-2012-2318472
Mazza v. PECO Energy Company
Interrogatories/Request for Documents of PECO Energy Company**

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

Via UPS Overnight

Mr. Mark Mazza
1271 Farm Rd.
Berwyn, PA 19312

Dated: June 7, 2013


Margaret A. Morris, Esquire
Counsel for PECO Energy Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARK MAZZA :
 :
 :
 v. : Docket No. C-2012-2318472
 :
 :
 PECO ENERGY COMPANY :

**PECO ENERGY COMPANY 'S INTERROGATORIES AND REQUEST FOR
DOCUMENTS TO COMPLAINANT, MARK MAZZA**

Now comes PECO Energy Company, by and through its undersigned attorneys, and hereby requests that Mark Mazza answer fully, in writing and under oath, the following interrogatories (questions) and request for documents pursuant to the 52 Pa. Code §§ 5.321 and 5.349 et seq.

Pursuant to 52 Pa. Code § 5.342, you must send your answers to me within 20 days (**July 1, 2013**) and objections within 10 days (**June 20, 2013**). Your answers and objections should not be filed with the Pennsylvania Public Utility Commission. You should file the cover letter and certificate of service, with the Commission's Secretary and send a copy to Administrative Law Judge Elizabeth H. Barnes. If you have any objection to any of the interrogatories or the request for documents, please identify the interrogatory or request and state your objection in full as to why you should not have to answer/produce it. Any objection not raised within the 10-day period provided for by 52 Pa. Code § 5.342(c) will be deemed waived and you will not be permitted to raise the objection at a later time.

INSTRUCTIONS¹

Unless stated otherwise, the following instructions are to be considered to be applicable to all interrogatories:

(a) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known; and then, the approximate date, amount or other computation or figure should be given or the best estimate thereof; and the answer shall state that the date, amount or other computation or figure is an estimate or approximation.

¹ Complainant is not presented by counsel. Therefore, these instructions have been simplified. A good faith effort to completely answer the questions is expected.

(b) No answer is to be left blank. If the answer to an interrogatory or subparagraph of an interrogatory is "none" or "unknown," such statement must be written in the answer. If the question is inapplicable, "N/A" must be written in the answer. If an answer is omitted because of the claim of privilege, the basis of privilege is to be stated.

(c) If additional space is required for an answer, attach supplemental answer sheets which clearly identify the interrogatory number being answered.

(d) These interrogatories are continuing, and any information secured subsequent to the filing of your answers which would have been includable in the answers had it been known or available, are to be supplied by supplemental answers.

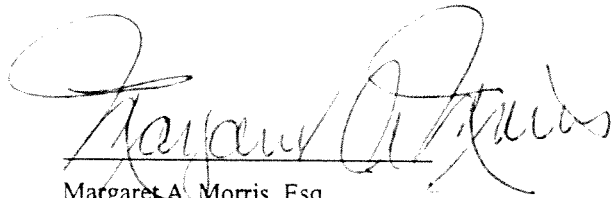
INTERROGATORIES

1. What "2 PUC cases" do you contend were not final when the present complaint was filed on August 1, 2012? Why?
2. What dollar amount do you contend was in dispute as of June 26, 2012?
3. What is your current occupation?

REQUESTS FOR DOCUMENTS

4. Please provide the 2011 and 2012 federal and state tax returns for all adults residing at 1271 Farm Rd., Berwyn, PA 19312.
5. Please provide the most recent pay stub for every adult in the household.

Respectfully submitted,



Margaret A. Morris, Esq.

Attorney I.D. # 75045

Marlane R. Chestnut, Esq.

Attorney I.D. #28793

Reger Rizzo & Darnall, LLP

Cira Centre, 13th Floor

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Dated: June 7, 2013

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(215) 495-6600 (fax)

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mchestnut@regerlaw.com

ATTACHMENT 2

Re: MA 2-2A v. PECCO
C-2012-2318472

Dear Ms. Chiarelli -
Attached please find for filing
more objections to PECCO discovery.

Thank you,
John Magy

PA P.U.C.
SECRETARY'S BUREAU

2013 JUN 17 AM 10:33

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARK MAZZA

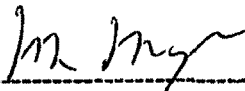
v.

NO. C-2012-2318472

PECO ENERGY COMPANY

OBJECTIONS TO PECO ENERGY COMPANY'S
INTERROGATORIES AND REQUEST FOR DOCUMENTS

Complainant objects to all interrogatories 1-3 ,and document requests 4-5.All said discovery is harrassing ,overly broad and unduly burdensome. Fiurther,objections as to relevance and objections as the discovery requests do not nor are likely to lead to information and/or documents admissable at trial or hearing. Nor is thecdiscovery likely to be admissable evidence at trial or hearing. Further objection to all thediscovery as with the exception of tax returns andmost recent pay stub, the discovery requested was previously provided and /or in the possession of PECO by fascimile transmission,by phone call or mailed to PECO.Further objection as previous pleadings/filings speak for themselves, in cluding PUC and appeal filings. Those filings are incorporated herein. The discovery is objected to as redundant. The discovery is objected to as calling for legal conclusions or determinations. The tax returns are objected tto as theyare joint returns,and further objected to as complainant's ilack of income ,expenses deductions have previously not been accepted and/or considered by Peco as a basis or cause why paymentsare at issue or disputed. P)ECO's policies,procedures and system dealing with customer's has made the issue of income irrelevant. PECO has records in it's possession regarding dollar amounts at issue and in dispute. The discovery requests are objected to as beyond the scope of permissible ,appropriate and relevant discovery requests .



Mark Mazza-Pro se

RECEIVED
2013 JUN 17 AM 10:33
PA P.U.C.
SECRETARY'S BUREAU

Certificate of Service

I hereby certify this day I am serving the attached /Answer to New Matter upon the persons listed below by first class mail :

Margaret Morris, Esq.

Reger Rizzo and Darnall

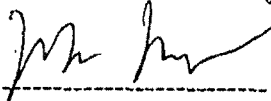
Cira Centre, 13th Floor

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Phila 19104 2899

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Judge Elizabeth H. Bernes
Office of Adm. Law. Judge
Commonwealth Keystone Bldg - 2 West
P.O. Box 3265
Harrisburg, Pa. 17105



Mark Mazza- Pro se

6/13/13

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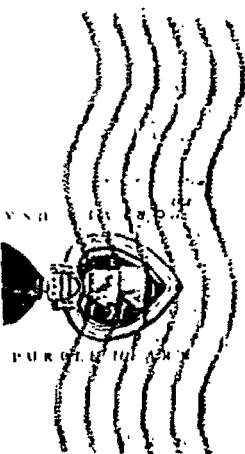
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