

October 2, 2013

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA 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
Motion for Sanctions**

Dear Secretary Chiavetta:

Attached for filing is the Motion of PECO Energy Company for Sanctions in the above referenced proceeding.

A copy of the attached Motion has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris

MAM/jmm
Enclosures

cc: The Hon. Elizabeth Barnes, Pennsylvania Public Utility Commission [w/enc.]
Mark Mazza [w/enc.]
Ward Smith, Exelon Business Services [w/enc.]

**Re: Docket No. C-2012-2318472
Mark Mazza v. PECO Energy Company
Motion for Sanctions**

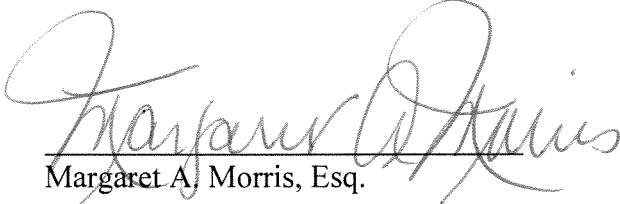
CERTIFICATE OF SERVICE

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

Via First Class and Electronic Mail

Mr. Mark Mazza
1271 Farm Road
Berwyn, PA 19312
mdmjob@verizon.net

Dated: October 2, 2013


Margaret A. Morris, Esq.

**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 § 5.371, you are hereby notified that, if you do not file a written response answering or objecting to the enclosed Motion for Sanctions of PECO Energy Company within five (5) days from service of this notice, the facts set forth by PECO Energy Company in the Motion for Sanctions may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Motion, 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: October 2, 2013



Margaret A. Morris, Esq.
Reger Rizzo & Darnall, LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (voice)
(215) 495-6600 (fax)
mmorris@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 FOR SANCTIONS
AGAINST COMPLAINANT MARK MAZZA**

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 §§ 5.371- 5.372, respectfully files this Motion for Sanctions requesting dismissal with prejudice of the Formal Complaint filed by Mark Mazza (Mr. Mazza or Complainant) for failure to respond to PECO’s discovery requests in violation of Your Honor’s August 28, 2013 Procedural Order which, *inter alia*, granted PECO’s Motion to Compel and directed that Mr. Mazza supply the answers and documents to PECO on or before September 9, 2013. In support of its Motion, PECO states the following:

1. 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.

2. On June 17, 2013, Complainant filed with the Commission “Objections to PECO Energy Company’s Interrogatories and Request for Documents” (Objections); he failed to provide a copy to PECO as required by 52 Pa. Code § 5.342(e).

3. On July 2, 2013, PECO filed and served a Motion to Compel, in which it addressed both the merits of the discovery issue as well as Mr. Mazza's continuing pattern of misbehavior and abuse of the Commission's complaint process.

4. After consideration of oral argument presented by both parties at a telephonic prehearing conference held on August 15, 2013 Administrative Law Judge Barnes, issued a Procedural Order, dated August 28, 2013, that: (1) lifted the stay that she had imposed by Order, dated July 30, 2013, as the result of the dismissal of the bankruptcy petition filed by Mr. Mazza;¹ (2) granted PECO's Motion to Compel; (3) directed Complainant to "... deliver through regular mail answers to PECO Energy Company's Interrogatories Nos. 1 – 3 and the documents requested at 4 and 5 within ten (10) days from the date of entry of this Order," accompanied by a signed verification statement; and (5) scheduled a further telephonic hearing to be held on October 24, 2013.

5. Pursuant to the August 28, 2013 Procedural Order, Mr. Mazza's response should have been "delivered" to PECO on or before September 9, 2013.

6. To date, PECO has received no answer to its Discovery Requests, in violation of Your Honor's Procedural Order, despite numerous requests by e-mail and regular mail. See, various emails and letter dated September 16, 2013, appended as Attachment 1.

Request for Sanctions

7. The Commission's procedural regulations provide for the imposition of sanctions when a party fails or refuses to answer interrogatories. See, 52 Pa. Code §§ 5.371, 5.372. The listed sanctions include the entry of orders that designated facts shall be taken as established, that refuse to allow the disobedient party to support or oppose designated claims or defenses, that prohibit the disobedient party from

¹ PECO avers that Mr. Mazza filed his bankruptcy petition in bad faith so as to prevent the hearing scheduled for July 23, 2013 from being held. Mr. Mazza never submitted any documents to the Bankruptcy Court to perfect his petition, despite being granted an extension.

introducing into evidence designated documents or testimony, that strike out pleadings or that enter a judgment against the disobedient party as well as the entry of an order “. . . as is just.”

8. The Courts have interpreted the “catch-all” provision in Pa. R.C.P. 4019(c)(5), which is essentially identical to 52 Pa. Code §5.372(a)(4), as including the dismissal of a complaint with prejudice. See, *Pride Contracting, Inc. v. Biehm Construction, Inc.*, 381 Pa. Super. 155, 553 A.2d 82 (1989), *app. den.*, 523 Pa. 643, 565 A.2d 1167 (1989).

9. In addition, Section 332(f) of the Public Utility Code, 66 Pa. C.S. § 332(f), provides in pertinent part, relating to actions by parties and counsel, that, “. . . if the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel, and, with respect to counsel, may bar further participation by him in any proceedings before the commission.” See also, 52 Pa. Code § 5.245(f): “[i]f the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner.”

10. Your Honor in granting PECO’s Motion to Compel ruled in the Procedural Order that the requested discovery “may lead to admissible evidence,” “is relevant,” and not “unduly burdensome.” PECO followed the Commission’s discovery procedures in an attempt to obtain specific information regarding the issues raised by the Complainant. The requested discovery goes directly to the allegations set forth in the

Complaint². This information cannot be obtained from any other source, and is necessary not only so PECO can prepare to defend itself in a meaningful manner, but to sustain its burden of proof with respect to the assertions pled in the new matter and to develop the remand record as directed by the Commission.

11. It is axiomatic that parties appearing before the Commission must at least make a good faith effort to comply with its procedures. Complainant has not done that here. In fact, Complainant despite being contacted via emails and letter has not responded or acknowledged the request to advise when the discovery will be sent to PECO. See, Attachment 1.

12. The refusal of a complainant to answer reasonable and relevant discovery questions, as directed in an express order, is prejudicial to a respondent's due process rights and is appropriately sanctioned. *Gaudenzia, Inc. v. Zoning Board of Adjustment of City of Philadelphia*, 4 Pa. Commw. 355, 287 A.2d 698 (1972).

13. Complainant's actions, if permitted to stand, would sanction a disregard of the Commission's litigation process as set forth in its regulations. As discussed in detail in the Initial Decision rendered by Administrative Law Judge Kandace Mellilo in *Dizes v. Verizon Pennsylvania Inc.*, Docket No. C-2008-2033638, Opinion and Order entered June 10, 2009:

The Court of Common Pleas of Allegheny County addressed a similar challenge to the litigation process as follows:

Confronted with the outright refusal of defendants to answer interrogatories which this court directed to be answered, this court had two alternatives available: either to allow defendants to defy an order of court without any

² PECO's Motion to Compel successfully argued that since the Complainant requested a "revised PAR or reduction of his arrears" based on "financial circumstances and unemployment", Complaint at ¶5, the household income was critical to determine if his PAR should be revised or his arrearage reduced. The requested information is necessary to ensure that any PAR is consistent with the requirements of Section 1405, 66 Pa. C.S. § 1405.

adverse results, or to apply the provisions of Pa. R.C.P. 4019(c) and impose an appropriate sanction. To permit defendants to disregard an order of court is unthinkable, as it would totally destroy the effectiveness of the discovery procedure of our courts. Obviously, then, the court was forced to take the second alternative.

See, *Isenberger v. Schumann*, 34 Pa. D.& C. 2d 315 (C.P. Allegheny 1964), *aff'd* on opinion of the court below, 415 Pa. 217, 203 A.2d 136 (1964).

14. The Commission has not hesitated in the past to dismiss formal complaints – those filed by truly *pro se* complainants – as a sanction for failure to provide discovery when ordered to do so. See, e.g., *Dizes v. Verizon Pennsylvania Inc.*, supra; *Lee v. Verizon Pennsylvania Inc.*, Docket No. C-20054564, Final Order entered February 28, 2006; *Samick v. Pennsylvania Electric Co.*, Docket No. C-20043921, Opinion and Order entered October 20, 2005.

15. This sanction is especially appropriate here. Although he is not appearing in a representative capacity and therefore may be considered to be participating *pro se* since he is representing himself, it is important to remember that Mr. Mazza formerly practiced as a licensed attorney in Pennsylvania. Furthermore, the present Complaint is the seventh formal complaint filed in five years. As such, he should be especially aware of the necessity to comply with regulations and orders, and in fact, has previously been cautioned to do so. His pattern of behavior, however, evinces a willful and contemptuous disregard of the Commission's regulations and orders for the purpose of evading his payment responsibilities and utilizing any means to delay the scheduled hearing.

16. Because of Mr. Mazza's direct violation of Your Honor's Procedural Order and his continuing pattern of abuse of the Commission's complaint process³ for the sole purpose of evading his payment responsibilities and now to delay or

³ As explained in more detail in the previous pleadings submitted in this proceeding, Mr. Mazza has a pattern of filing repeated complaints (none of which have been sustained by the Commission), meritless

prevent the scheduled hearing, PECO requests that, pursuant to 52 Pa. Code §§ 5.371-5.372 and 66 Pa. C.S. § 332(f), the instant Complaint be dismissed in its entirety with prejudice. By withholding the information related to the basis of his Complaint, Mr. Mazza has prevented PECO from preparing for the evidentiary hearing in violation of PECO's due process rights.

17. Taken as a whole, Complainant's conduct clearly must be construed as "obstructive to the orderly conduct of the proceeding and inimical to the public interest." In numerous decisions, both the courts and the Commission have recognized that denial of a party's fundamental due process rights cannot be tolerated.

18. Allowing Mr. Mazza additional time to comply with the Procedural Order, or to proceed with the scheduled hearing without the ordered discovery responses, would be inappropriate as the result will be to reward flagrant disregard of the Commission's discovery regulations and orders and would dishonor the litigation process. Neither notice nor a hearing is a necessary prerequisite to the imposition of discovery sanctions. *Calderaio v. Ross*, 395 Pa. 196, 150 A.2d 110 (1959); *Dizes v. Verizon Pennsylvania Inc.*, *supra*, Initial Decision at 12.

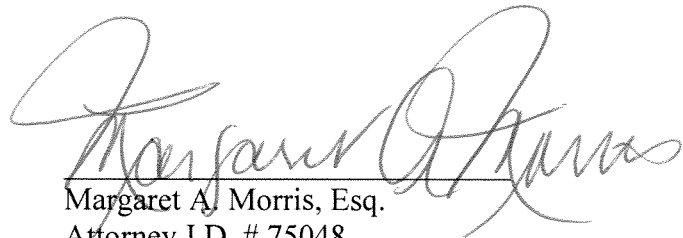
19. The telephonic hearing scheduled for October 24, 2013 should still go forward to address the issues remanded by the Commission as well as the issues properly pled by PECO in its Answer and New Matter, i.e., request to bar future complaints.

appeals of Commission orders (which were not only dismissed on the merits but for which the Commission was awarded costs), as well as a bankruptcy petition which was dismissed for his failure to supply required information. This is a pattern clearly designed to enable Mr. Mazza to evade his payment responsibilities to the detriment not only of PECO and its other customers, but the Commission as well. For a detailed history of Mr. Mazza's various filings and appeals, see the Answer filed by PECO on May 28, 2013 at the instant docket. This pattern is the basis for PECO's request that Mr. Mazza be barred from filing further informal or formal complaints until such time as the current undisputed balance of \$9,600.12 on his account is paid in full.

WHEREFORE, for the reasons set forth above and in accordance with the applicable provisions of the Public Utility Code and the Commission's regulations, PECO Energy Company respectfully requests that Your Honor issue an order that dismisses with prejudice the Formal Complaint, filed at Docket No. C-2012-2318472, in its entirety.

Respectfully submitted,

Dated: October 2, 2013



Margaret A. Morris, Esq.
Attorney I.D. # 75048
Marlane R. Chestnut, Esq.
Attorney I.D. #28793
Cira Centre, 13th Floor
2929 Arch Street
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mmorris@regerlaw.com
mchestnut@regerlaw.com

Counsel for PECO Energy Company

Docket No. C-2012-2318472
Mark Mazza v. PECO Energy

Attachment 1

Margaret A. Morris, Esquire

From: Joan Motz
Sent: Monday, September 16, 2013 12:12 PM
To: 'mdmjob@verizon.net'
Cc: 'ebarnes@pa.gov'; Margaret A. Morris, Esquire
Subject: Docket No. C-2012-2318472 Mazza v. PECO Energy Company
Attachments: MAM ltr to Mazza.PDF

Mr. Mazza:

Please find attached correspondence from Margaret A. Morris, Counsel for PECO Energy Company, in the above referenced matter. A hard copy is being forwarded to your attention via First Class U.S. Mail.

Thank you for your attention to this matter.

REGER RIZZO DARNALL <small>Attorneys at Law</small>	Cira Centre, 13th Floor 2929 Arch Street Philadelphia, Pa 19104 Phone: 215.495.6500 Fax: 215.495.6600 Web: www.regerlaw.com	Joan Motz Paralegal jmotz@regerlaw.com Direct: 215.495.6518
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NEW IRS RULES RESTRICT WRITTEN FEDERAL TAX ADVICE FROM LAWYERS AND ACCOUNTANTS. WE INCLUDE THIS STATEMENT IN ALL OUTBOUND EMAILS BECAUSE EVEN INADVERTENT VIOLATIONS MAY BE PENALIZED. NOTHING IN THIS MESSAGE IS INTENDED TO BE USED, OR MAY BE USED, TO AVOID ANY PENALTY UNDER FEDERAL TAX LAWS. THIS MESSAGE WAS NOT WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF ANY TRANSACTION. CONTACT THE SENDER IF YOU WISH TO ENGAGE US TO PROVIDE FORMAL WRITTEN ADVICE AS TO TAX ISSUES.
THIS E-MAIL MAY CONTAIN PRIVILEGED, CONFIDENTIAL, COPYRIGHTED, OR OTHER LEGALLY PROTECTED INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT (EVEN IF THE E-MAIL ADDRESS ABOVE IS YOURS), YOU MAY NOT USE, COPY, OR RETRANSMIT IT. IF YOU HAVE RECEIVED THIS BY MISTAKE PLEASE NOTIFY US BY RETURN E-MAIL, THEN DELETE. THANK YOU.

September 16, 2013

Via 1st Class Mail and E-mail

Mr. Mark Mazza
1271 Farm Rd.
Berwyn, PA 19312
mdmjob@verizon.net

**Re: Docket No. C-2012-2318472
Mazza v. PECO Energy Company
Response to PECO Discovery Request**

Dear Mr. Mazza:

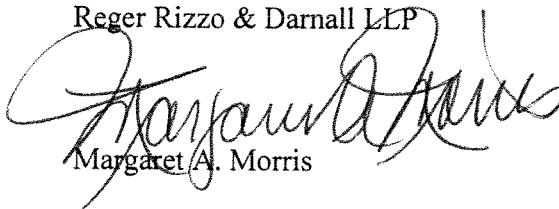
I contacted you via e-mail on September 10, 2013 to inquire as to the status of your responses to PECO Energy Company's (PECO) Discovery Request which was ordered by the Honorable Elizabeth H. Barnes, in the Order dated August 28, 2013. You have not responded.

Please advise as to the status of your response. As you are aware, the hearing is scheduled for October 24, 2013; your response is critical to PECO's preparation for the hearing.

If there are any questions, please do not hesitate to contact me. I look forward to your prompt response.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

Enclosure

Cc: Honorable Elizabeth H. Barnes via e-mail, ebarnes@pa.gov

Margaret A. Morris, Esquire

From: Joan Motz
Sent: Monday, September 16, 2013 12:13 PM
To: Margaret A. Morris, Esquire
Subject: FW: Delivery Notification: Delivery has been successful

FYI

Joan Motz
Paralegal
jmotz@regerlaw.com
Direct: 215.495.6518

Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, Pa 19104
Phone: 215.495.6500
Fax: 215.495.6600
Web: www.regerlaw.com

NEW IRS RULES RESTRICT WRITTEN FEDERAL TAX ADVICE FROM LAWYERS AND ACCOUNTANTS. WE INCLUDE THIS STATEMENT IN ALL OUTBOUND EMAILS BECAUSE EVEN INADVERTENT VIOLATIONS MAY BE PENALIZED. NOTHING IN THIS MESSAGE IS INTENDED TO BE USED, OR MAY BE USED, TO AVOID ANY PENALTY UNDER FEDERAL TAX LAWS. THIS MESSAGE WAS NOT WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF ANY TRANSACTION. CONTACT THE SENDER IF YOU WISH TO ENGAGE US TO PROVIDE FORMAL WRITTEN ADVICE AS TO TAX ISSUES.

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From: System Administrator
Sent: Monday, September 16, 2013 12:13 PM
To: mdmjob@verizon.net
Subject: Delivered: Delivery Notification: Delivery has been successful

Your message

To: mdmjob@verizon.net
Cc: ebarnes@pa.gov; Margaret A. Morris, Esquire
Subject: Docket No. C-2012-2318472 Mazza v. PECO Energy Company
Sent: 9/16/2013 12:12 PM

was delivered to the following recipient(s):

mdmjob@verizon.net on 9/16/2013 12:12 PM

Margaret A. Morris, Esquire

From: Margaret A. Morris, Esquire
Sent: Tuesday, September 10, 2013 2:19 PM
To: mdmjob@verizon.net
Subject: Mazza v PECO: Discovery responses not received.
Importance: High

Dear Mr. Mazza:

Pursuant to Judge Barnes' Order dated August 28, 2013, you were to respond to PECO's Discovery Request within 10 days of the Order (or by September 9, 2013). To date, I have not received any response from you.

Please advise when the response was sent and by what method (1st class mail, fax, email). If the material has not yet been sent, please advise when you will comply with the Order.

Please acknowledge that you received this email. Thank you.

Margie

REGER, RIZZO, DARNALL LLP
Attorneys at Law

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2929 Arch Street
Philadelphia, Pa 19104
Phone: 215.495.6500
Fax: 215.495.6600
Web: www.regerlaw.com

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mmorris@regerlaw.com
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Cell: 215.870.5785

NEW IRS RULES RESTRICT WRITTEN FEDERAL TAX ADVICE FROM LAWYERS AND ACCOUNTANTS. WE INCLUDE THIS STATEMENT IN ALL OUTBOUND EMAILS BECAUSE EVEN INADVERTENT VIOLATIONS MAY BE PENALIZED. NOTHING IN THIS MESSAGE IS INTENDED TO BE USED, OR MAY BE USED, TO AVOID ANY PENALTY UNDER FEDERAL TAX LAWS. THIS MESSAGE WAS NOT WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF ANY TRANSACTION. CONTACT THE SENDER IF YOU WISH TO ENGAGE US TO PROVIDE FORMAL WRITTEN ADVICE AS TO TAX ISSUES.
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Margaret A. Morris, Esquire

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To: mdmjob@verizon.net
Sent: Tuesday, September 10, 2013 2:19 PM
Subject: Delivered: Delivery Notification: Delivery has been successful

Your message

To: mdmjob@verizon.net
Subject: Mazza v PECO: Discovery responses not received.
Sent: 9/10/2013 2:19 PM

was delivered to the following recipient(s):

mdmjob@verizon.net on 9/10/2013 2:19 PM