

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Povacz

v.

Docket No. C-2015-2475023

PECO Energy Company

**MOTION OF COMPLAINANT MARIA POVACZ
TO DISMISS OBJECTIONS AND
TO COMPEL ANSWERS TO INTERROGATORIES
DIRECTED TO PECO ENERGY COMPANY**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.432(g), Complainant Maria Povacz (“Complainant” or “Povacz”) hereby requests that the Commission dismiss the objections (“Objections”) filed by PECO Energy Company (“PECO” or “Respondent”) and compel full and complete answers to Complainant’s Interrogatories Set I (“Set I Interrogatories”), which were served on November 24, 2015.

Complainant respectfully submits that PECO’s Objections are baseless and improper and requests that the same be dismissed. Complainant respectfully requests that the Commission issue an Order compelling PECO to answer every one on the questions in the Set I Interrogatories and produce the documents requested in discovery. In support of its Motion to Compel, Complainant sets forth the following.

II. RESPONSE TO PECO'S OBJECTIONS AND MOTION TO COMPEL

The Commission's rules and regulations tend to be interpreted liberally to allow wide latitude to parties engaged in discovery. Section 5.321(c) of the Commission's Rules of Administrative Practice and Procedure specifically provides that "a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant." *Id.* Information may be discoverable, even if it would be inadmissible at a hearing. *Application of Nabil Nasr and Wael Hafez*, Docket No. A-2012-2295813, 2012 Pa. PUC LEXIS 1849 (Order issued Nov. 28, 2012) at 12. "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." *Id.* The Commission has issued a number of decisions interpreting the scope of its discovery rules, and it has consistently allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. P.U.C. 56, 1986 Pa. PUC LEXIS 79 (August 26, 1986); *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. P.U.C. 468, 1986 Pa. PUC LEXIS 110 (May 16, 1986). Based on the standards set forth above, PECO's Objections to Complainant's Interrogatories should be dismissed and PECO should be compelled to answer the questions propounded as part of the discovery process in this matter.

A. Complainant's Interrogatories Go to the Issue of Reasonable Service

In its Objections, PECO argues that the discovery sought by Complainant in Set I is improper because it deals with an issue that was stricken by Administrative Law Judge Elizabeth H. Barnes in an Order issued on June 30, 2015. In that Order, ALJ Barnes ruled that any claims

arguing for an “opt-out” should be stricken because Act 129 mandates the implementation of smart meter installations and there are no opt-out provisions under the legislation or Commission regulations or orders. Order at 7. PECO further argues that the discovery questions at issue go directly to the “opt-out” issue that was stricken. Objections at 2. PECO’s argument is without merit. The discovery questions do not deal with the “opt-out” issue, they deal with the question of whether PECO is providing safe and reasonable service under Section 1501 of the Public Utility Code. 66 Pa. C.S. §1501.

Although ALJ Barnes ruled that the “opt-out” claim was dismissed, she preserved a number of issues for consideration, and did not dismiss the Povacz Complaint outright. More specifically, ALJ Barnes preserved three questions for further review: (a) whether Complainant is entitled to a stay of termination based on a medical certificate, (b) whether PECO followed the medical certificate provisions of Chapter 14, and (c) whether PECO’s service is reasonable in compliance with 66 Pa. C.S. §1501. June 30 Order at 10. The first two issues deal with the medical certificate Complainant produced when PECO threatened to terminate her service for her refusal to accept the installation of a smart meter. More importantly, the third issue preserved by ALJ Barnes deals with whether PECO is providing reasonable service pursuant to Section 1501. The interrogatories propounded by Complainant go directly to these three issues, and to the “reasonable service” requirement in particular.

Complainant’s interrogatories are reasonably calculated to lead to the discovery of admissible, relevant evidence regarding safe and reasonable service.¹ Many of the questions deal with PECO’s smart meter program and the health effects of smart meters on humans because Complainant needs to find out if the compulsory installation of smart meters on the premises of

¹ The relevancy test should be liberally applied when considering discovery requests. *PUC v. Peoples, supra*.

customers who have experienced adverse medical symptoms constitutes safe and reasonable service under Section 1501. For instance, Interrogatory No. 17 asks whether PECO has received customer complaints of adverse health effects from smart meters. This is important to know because if PECO is installing smart meters despite customer protestations of resulting illness, PECO may be in violation of its obligations under Section 1501 to provide safe and reasonable service. Answers to the questions in Set I are absolutely necessary for Complainant adduce to meet her burden to show unreasonable service by PECO in violation of Section 1501. For this reason, PECO should be compelled to provide answers to Complainant's Interrogatories, Set I.

B. Discovery Should Proceed Even If the Hearing in this Case Is Delayed

In its objections, PECO argues that it is premature to use the parties' resources to answer discovery because the Commission is reconsidering its decision in the matter of *Kreider v. PECO* (Docket No. P-2015-2495064). Objections at 3. According to PECO, the Commission has ruled for the first time in *Kreider* that a Complainant can litigate a smart meter "opt-out" claim before the Commission. Objections at 2. Based on this misreading of the *Kreider* case, PECO argues that no discovery should be had until the Commission issues a final order in the *Kreider* case.

Neither the *Kreider* case nor the instant matter are "opt-out" cases as PECO claims. Both the *Kreider* and *Povacz* cases are Section 1501 complaints where the main question for the Commission to answer is whether PECO is providing safe and reasonable service by installing smart meters that Complainants claim are making the sick. In fact, the Commission explicitly distinguished *Kreider* from a host of other "opt-out" cases that had been dismissed because the Complainant in that matter alleged specific adverse health effects. *Kreider v. PECO*, Docket No.

P-2015-2495064 (Order issued Sept. 3, 2015) at 15-16. In the *Kreider* case, the Commission went on to rule that “the law does not prohibit us from considering or holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1501 of the Code, when a legally sufficient claim is present.” *Id.* at 17. Further, the Commission commented that each of these cases will be decided individually based on the particular facts in each proceeding. *Id.* at 12. The Commission did not deem *Kreider’s* Section 1501 complaint to be an “opt-out” case, and neither should the Presiding Office in this matter.

In spite of this disagreement of the parties on the meaning of the *Kreider* Order, there may be some agreement among the parties with regard to the effect of the proceeding on this matter. Complainant respectfully submits that the hearing in this case could be held in abeyance until the Commission issues a final order in the *Kreider* reconsideration petition proceeding. There is no question that the final *Kreider* ruling will have an effect on the instant complaint as they are both similar Section 1501 claims. Complainant could agree to a postponement of the hearing until such time as the Commission issues a final order in *Kreider*.

However, Complainant believes that PECO should answer its interrogatories in order to help narrow the issues in the case and to explore the possibility of a settlement. It is important for Complainant to know the answers to the questions in Set I in order to understand the facts of the case and the options she might have to address the issues she has raised in her complaint. Responses to the interrogatories may help the parties reach a resolution without having to have an evidentiary hearing.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, Complainant respectfully requests the Presiding Officer and Pennsylvania Public Utility Commission:

1. Grant this Motion to Compel;
2. Overrule the Objections of PECO; and
3. Compel PECO to answer Complainant's Set I Interrogatories in full at a time established by the Commission;
4. Grant any other relief deemed appropriate under the circumstances.

Respectfully submitted,

THE LANZA FIRM, LLC



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December 14, 2015

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Povacz	:	
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	:	
PECO Energy Company	:	

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Motion to Compel of Complainant upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.


Via Email and/or First Class Mail

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Date: December 14, 2015



Edward G. Lanza, Esq.