



An Exelon Company

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February 29, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Barbara and Charles Tucker v. PECO Energy Company
Docket No. C-2015-2515592

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Answer to Motion to Compel* in the matter referenced above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ward L. Smith".

Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Administrative Law Judge Darlene P. Heep
Administrative Law Judge Christopher Pell
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BARBARA AND CHARLES TUCKER	:	
Complainant	:	
v.	:	DOCKET NO. C-2015-2515592
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PECO ENERGY COMPANY’S ANSWER
TO
THE TUCKER’S MOTION TO COMPEL**

PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.342(g)(1), hereby responds to the Tucker’s Motion to Compel.

As described below, some of the issues between the parties have been resolved, but a dispute remains as to Questions 1-8 and 18.

1. Background

On Friday, February 5, 2016, the Tuckers (through their counsel) served PECO with 26 interrogatories and requests for production of documents, but did not inform the Commission, by filing a certificate of service, that they had initiated discovery.

On Wednesday, February 10, PECO served its objections to the Tucker discovery, filing a certificate of service for its objections with the Commission and the presiding officers. PECO had two objections. First, the discovery had not been properly served in compliance with the Commission’s rules. PECO objected to the entire set of discovery on this basis. Second, some of the questions asked for data about service, meters and facilities for customers other than the Tuckers. PECO objected to those questions – 1-8, 12 and 18 – on the grounds they sought information on issues that were beyond the scope of the proceeding and the standing of the Complainants.

On Friday, February 12, 2016, the Tuckers re-served their discovery questions, this time fully following the Commission's service rules and regulations. This mooted PECO's first, set-wide, objection, and created a new return date of Monday, March 7.¹

On Monday, February 22, the Tuckers served PECO with the Motion to Compel.

On Thursday, February 25, PECO served its substantive answers to Tucker, Set I, Questions 9-17 and 19-26.² That is, PECO has answered the seventeen questions for which its only objection had been the service failure, but has not yet answered the questions for which it has an outstanding Objection 2. (PECO notes that it answered the seventeen questions by the original return date of February 25, and that it will answer Questions 1-8, as they apply to the Tuckers, on or before March 7.)

2. PECO's First Objection Regarding Service

As noted in the Background section of this Answer, on February 12, the Tuckers re-served their discovery questions, this time in compliance with the Commission's regulations.³ This mooted PECO's first objection and, consequently, on February 25, PECO served answers to the seventeen interrogatories to which this was the sole objection.

Nonetheless, PECO will briefly comment on the Motion to Compel's argument on this issue. At page 4, the Tucker Motion to Compel claims that PECO's objection was baseless in part because: "The

¹ The Tucker's counsel filed his certificate of service with the Commission at 4:10 p.m., but did not serve PECO until 4:58 p.m., by email. Pursuant to Commission Rule 1.56, 52 Pa. Code §1.56, service on PECO by email after 4:30 p.m. does not constitute service on that day. Instead, service is deemed to occur on the next business day, which in this case was Monday, February 15 (or, because Monday was Presidents Day, arguably the service date was Tuesday, February 16). The Commission's rules set the period for answering discovery at the first business day after 20 days from service have elapsed. In this case, that sets a return date of Monday, March 7, regardless of whether service is deemed to have occurred on February 15 or 16.

² Upon further analysis of Question 12, PECO determined that it does not ask for information on service to other customers, as PECO originally believed. PECO therefore answered that interrogatory on February 25.

³ PECO notes that the Motion to Compel states (p. 4) that: "In fact, the rules do not establish a fixed time or a deadline to file the certificate of service with the Secretary." That is incorrect. The Commission's rules, 52 Pa. Code §1.11 (Date of filing) instruct that a document will not be deemed filed until specified actions occur (receipt by the Commission; deposit of the document in the mail, etc.)

interrogatories were served on PECO counsel on February 5, 2016 and PECO does not appear to contest that fact.”

As PECO understands the Commission’s requirements for service of discovery, the point of those rules is to provide line of sight *to the Commission and to the presiding officers* that discovery is underway, and the extent and course of that discovery. That is an important goal that is not met by the act of serving the discovery on PECO as party. PECO recognizes that these rules are not strictly followed by all parties in all Commission litigation. Nonetheless, such discovery line of sight is especially important in a case such as this that will have significant technical, scientific, and medical information exchange; simply, PECO respectfully submits that it is important to keep the Commission and the presiding officers informed of the status of discovery efforts – and to do so by following the Commission’s service and filing rules with respect to discovery. That goal is not accomplished by serving the questions on PECO, but not filing the certificate of service with the Commission. Thus, although the Tuckers later mooted the objection by serving the discovery certificate of service in compliance with the Commission’s rule, the original objection was not baseless.⁴

⁴ PECO notes that the Motion to Compel also claims (pp. 2-3) that PECO’s Objections were themselves procedurally deficient for failure to attach a copy of the interrogatories to which PECO objected. PECO’s normal practice is to include such attachments in the hard copy that is mailed to Mr. Lanza’s post office box. PECO has reviewed its files and cannot determine whether that practice was followed in this case. With that said, PECO did timely file its certificate of service with the Commission and the presiding officers. The line of sight sought by the regulations was therefore preserved by PECO’s filings. As counsel for the Tucker’s notes in the Motion to Compel (p. 4), counsel for each party already have copies of the respective interrogatories – they were originally written and served by counsel for the Tuckers – so any accidental failure to include them as an attachment to a served objection is, as the Tuckers suggest, harmless error as to their ability to analyze the objection and proceed with discovery. As long as the exchange of documents is also accompanied by filing a certificate of service with the Commission and the presiding officers, the required regulatory line of sight is maintained. That line of sight was not accomplished by the Tucker’s first service of its interrogatories, but was accomplished by PECO’s filing of its objections. In other words, PECO’s error (if it occurred) was procedurally harmless; the Tucker’s error was not.

3. PECO's Second Objection Regarding Scope and Standing

For ten of the interrogatories (1-8, 12⁵ and 18, which were attached to the Motion to Compel and which are set forth in material part below), PECO objected as follows:

Objection 2: Beyond the scope of the proceeding and the standing of the Complainants.

This proceeding, as described in the Complaint, is limited to an examination of the claims of complainants Charles and Barbara Tucker that the Automated Meter Infrastructure ("AMI") Meter to be installed at their residence will cause adverse human health effects to Mrs. Tucker. Questions regarding PECO's service to customers other than the Tuckers are therefore outside of the scope of this proceeding. Moreover, the Tuckers do not have standing to pursue complaints on behalf of other customers. PECO will answer these questions as they relate to equipment used to supply the Tuckers, but objects to answering any questions that are posed as to PECO's equipment as used for customers other than the Tuckers. This objection applies to Interrogatories 1 – 8, 12 and 18 (attached). (emphasis added).

PECO will be using different meters for its residential, commercial, and industrial customers; information regarding meters to be used at locations other than the Tuckers is not within the scope of this proceeding.

The Motion to Compel's primary response is "First, Complainants are not asking questions about PECO's service to other customers"

With all due respect, Questions 1-8 go directly to service to other customers, and are by no means limited to the Tuckers:

- Interrogatory 1: What makes and models of Wireless Smart Meters are you installing for your customers.
- Interrogatory 2: What makes and models of the wireless communications modules are in the Wireless Smart Meters that you are installing for your customers?

⁵ As noted in footnote 2, PECO answered Interrogatory 12 on February 25.

- Interrogatory 3: For each of the Wireless Smart Meters used by PECO, what is peak radiofrequency/microwave output”
- Interrogatory 4: For each of the Wireless Smart Meters used by PECO, what is the gain of the antennas“
- Interrogatory 5: For each of the Wireless Smart Meters used by PECO, how many transmissions“
- Interrogatory 6: : For each of the Wireless Smart Meters used by PECO, what was the average and maximum total“
- Interrogatory 7 : For each of the Wireless Smart Meters used by PECO, what is the peak electric field“
- Interrogatory 8: : For each of the Wireless Smart Meters used by PECO, has the meter been tested“

The Motion to Compel goes on to state (p. 5) that “These questions are not intended to reveal information about customers, but rather, they are designed to elicit information about the different types of meters that PECO could install for the Tuckers.”

In reply, PECO simply notes that, in its Objection 2, it specifically recognized that it has a responsibility to answer these questions as to the equipment that will be used to supply service to the Tuckers, and that it will provide that information in its reply. Since PECO already recognized that responsibility, it is unclear what additional information the Tuckers wish to compel with respect to Questions 1-8 that could possibly be within the scope of this proceeding. PECO therefore respectfully requests that its objection be sustained as applied to Questions 1-8.

Question 18 is a different matter altogether. Question 18 asks as follows:

- Interrogatory 18: Has PECO received any complaints from customers who claim adverse health effects from exposure to emissions from Wireless Smart meters? If so, please provide:
 - a. The number of customer complaints;
 - b. How many of the complaints were resolved by PECO;
 - c. How each complaint was resolved.

This interrogatory clearly does not ask for any information about the Tuckers or service to the Tuckers; it is solely focused on PECO's interactions with other customers. None of the arguments set forth in the Motion to Compel suggest that the Tuckers are entitled to information about service to other customers. PECO therefore respectfully requests that its Objection 2 be sustained in whole as to Interrogatory 18.

4. Conclusion

PECO therefore respectfully requests that its Objection 2 be sustained as to Questions 1-8, subject to PECO's recognized responsibility to provide the requested information as to service to the Tuckers; and that its Objection 2 be sustained in whole as to Question 18.

Respectfully submitted,



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PECO ENERGY COMPANY	:	
Respondent	:	
	:	

VERIFICATION

I, Ward L. Smith, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: February 29, 2016



Ward L. Smith

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

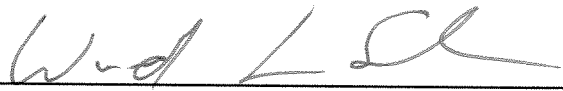
Barbara and Charles Tucker	:	
	:	Docket No. C-2015-2515592
v.	:	
	:	
PECO Energy Company	:	

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of PECO Energy Company's Answer to Motion to Compel parties via e-mail and postage prepaid to:

Ed Lanza, Esquire
The Lanza Firm, LLC
P.O. Box 61336
Harrisburg, PA 17106

Dated at Philadelphia, Pennsylvania, February 29, 2016



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