

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Sunstein Murphy	:	
	:	
v.	:	Docket No. C-2015-2475726
	:	
PECO Energy Company	:	

**MOTION OF COMPLAINANT LAURA SUNSTEIN MURPHY
TO DISMISS OBJECTIONS AND
TO COMPEL ANSWERS TO INTERROGATORIES
DIRECTED TO PECO ENERGY COMPANY**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.342(g), and Prehearing Order No. 1 in this matter, Complainant Laura Sunstein Murphy (“Complainant”) hereby requests that the Commission dismiss the objections (“Objections”) filed by PECO Energy Company (“PECO” or “Respondent”) on April 11, 2016, and compel full and complete answers to Complainant’s Interrogatories Set I (“Set I Interrogatories”), which were served on April 7, 2016. PECO’s Objections, which include the interrogatories and the objections thereto, are attached as Exhibit A.

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 dismissing the objections and 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.

PECO's Objections fall into two (2) general categories. First, PECO objects on the ground that the objected-to questions are "beyond the scope of the proceeding." Secondly, PECO objects on the ground that certain questions are "beyond the standing of the Complainant." Complainant respectfully submits that the objected-to interrogatories are well

within the scope of the proceeding and are not beyond the standing of the Complainant. As set forth in more detail below, the Objections are misplaced and should, therefore, be overruled.

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

The interrogatories propounded by Complainant go directly to the main issue in this case, namely, whether PECO is abiding by the statutory requirement in Section 1501 of the Public Utility Code to provide safe and reasonable service. Complainant's interrogatories are reasonably calculated to lead to the discovery of admissible, relevant evidence regarding safe and reasonable service.¹

In her Amended Complaint, Complainant specifically alleged that she suffers from medical conditions that make her particularly susceptible to EMF and RF emissions from smart meters. Amended Complaint at ¶¶ 7-10. At hearing, Complainant intends to show that these emissions from PECO's meters are harmful to Complainant's health. It is Complainant's position that some of the harmful emissions from PECO's smart meters travel into the living areas of Complainant's home through the inside wiring and appliances in the home. Question Nos. 27, 52 and 58 seek information regarding the inside wiring and how the wiring is affected by the emissions coming from PECO's smart meters. These questions are exceedingly relevant to the issue of whether PECO is doing everything it can to ensure that harmful emissions from its smart meters are not reaching the living areas of customers in its territory. Whether PECO is aware of and/or has studied and sought to ameliorate the impact of smart meter emissions of the inside wiring of customers' homes is an important question in the context of the Company's obligation to provide safe and reasonable service. If PECO has not considered the effect of its smart meters on customers' wiring, this would tend to show that PECO needs to take action to

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

address the issue in order to fulfill its obligations under Section 1501. If PECO has studied the issue and addressed it, it would tend to show that the Company may be meeting its obligations under the statute. In either event, answers to the questions would provide information that may help the Commission in adjudicating the claims made by Complainant in her Amended Complaint. These questions are relevant and PECO should answer them.

B. Complainant's Interrogatories Are Within Her Standing in the Case

PECO objects to Questions Nos. 35, 58 and 59 on the basis that they are beyond the scope of the Complainant's standing. It is unclear, and PECO does not explain, how the issue of standing limits the ability of a complainant to propound interrogatories regarding her own case.² Presumably, PECO objects to these questions because they seek information about complaints that PECO has received regarding health effects of smart meters and how the Company has handled such complaints. If so, these objections are misplaced and should be overruled.

As stated above, the main issue in this case is whether PECO is in violation of Section 1501 of the Public Utility Code. If PECO has received complaints from a number of customers regarding the adverse health effects of smart meters and the Company has continued to install harmful smart meters on customers' homes, this would tend to show that PECO is flouting its obligations under Section 1501. It is well known at this stage in the process that there are a number of formal complaints pending before the Commission alleging adverse health effects from smart meters. Some of these cases are being heard by the Presiding Officers in this matter. However, we also know that many complaints filed with the Commission have been dismissed even in cases where adverse health effects were alleged. Furthermore, it is reasonable to

² In PUC case, the complainant "must have a direct, immediate, and substantial interest in the subject matter of the controversy" in order to satisfy the standing requirement. *Waddington v. Pennsylvania Pub. Util. Comm'n*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995) (emphasis added), appeal denied, 678 A.2d 368 (1996). PECO has not (and cannot) argue that Complainant lacks standing in this matter.

conclude that many other customers have complained to PECO but have not filed formal complaints with the Commission. Information about all such complaints of adverse health effects of smart meters is very relevant to this proceeding because it would tend to show a pattern of behavior on the part of PECO with regard to these complaints. If PECO is ignoring customers concerns regarding the health effects of smart meters, this would tend to show that PECO may be in violation of Section 1501 of the Public Utility Code. On the other hand, if PECO is addressing these health concerns in a manner that is satisfactory to customers, this would tend to show that PECO is attempting to comply with its obligations to provide safe and reasonable service. In both instances, information about how PECO handles health complaints related to smart meters from customers will be important in the presentation of a case alleging violations of Section 1501.

These questions deal with PECO's smart meter program and the health effects of smart meters on individuals because Complainant needs to find out if the compulsory installation of smart meters on the premises of customers who have experienced adverse medical symptoms constitutes safe and reasonable service under Section 1501. For instance, Interrogatory No. 35 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. Interrogatory No. 58 deals with health effects that a customer may suffer from nearby smart meters, even where no smart meter has been installed in that person's home. Again, this would tend to show how PECO has handled such complaints and whether the Company is ignoring or addressing these types of complaints. Interrogatory No. 59 deals with issues that a customer may experience in her home, which would lead to possible

adverse health effects, such as hearing issues, headaches and difficulty sleeping. Answers to the questions in Set I are absolutely necessary for Complainant to meet her burden to show unreasonable service by PECO in violation of Section 1501.

It should be noted that Complainant is not seeking general information about “PECO’s service to other customers” as PECO claims. The objected-to questions are designed to elicit information about how PECO handles known health-related issues with its meters. Again, how PECO deals with these types of complaints may be determinative of whether Section 1501 is being followed. For these reasons, PECO should be compelled to provide full answers to Complainant’s Interrogatories, Set I.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, Complainant respectfully requests the Presiding Officer and Pennsylvania Public Utility Commission (a) grant this Motion to Compel; (b) overrule the Objections of PECO; (c) Compel PECO to answer Complainant’s Set I Interrogatories in full at a time established by the Commission; and (d) grant any other relief deemed appropriate under the circumstances.

Respectfully submitted,

THE LANZA FIRM, LLC



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Counsel for Complainant

April 14, 2016

**BEFORE THE
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**PECO ENERGY COMPANY’S OBJECTIONS TO
COMPLAINANTS’ INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS, SET I**

On April 7, 2016, PECO was served with Complainant’s Interrogatories and Requests for Production of Documents, Set I, comprised of 65 separate questions with subparts. PECO hereby objects to five of those interrogatories, as specified below.

Objection to Interrogatory Murphy I-27:

Murphy I-27 inquires as follows:

Murphy I-27: Has PECO studied the impact of Smart Meter technology on residence wiring and on each of the appliances found in the home of PECO residents? If yes, please provide copies of any and all such studies.

Objection: Beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure (“AMI”) Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. There is no allegation that PECO’s installation of an AMI Meter will “impact residence wiring” or “impact appliances.” Questions regarding those issues therefore are beyond the scope of the Amended Complaint and cannot lead to the discovery of admissible evidence.

Objection to Interrogatory Murphy I-35:

Murphy I-35 inquires as follows:

Murphy I-35: Has PECO received any complaints from customers who claim adverse health effects from exposure to emissions from AMI Wireless Smart Meters? If so, please provide:

- a. The number of customer complaints;
- b. How many of the complaints received were resolved to the satisfaction of the customer;
- c. How each complaint was resolved.

Objection: Beyond the scope of the proceeding and the standing of the Complainant.

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure (“AMI”) Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. Questions regarding PECO’s service to customers other than Ms. Murphy are therefore outside of the scope of this proceeding. Moreover, Ms. Murphy does not have standing to pursue complaints on behalf of other customers.

Objection to Interrogatory Murphy I-52:

Murphy I-52 inquires as follows:

Murphy I-52: How does PECO’s installation policy in Interrogatory No. 51 above protect the homeowner’s inside wiring when the AMI Smart Meter is attached to the customer’s residence?

Objection: Beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure (“AMI”) Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. There is no allegation that PECO’s installation of an AMI Meter will harm or “fail to protect the homeowner’s inside wiring.” Questions regarding those issues therefore are beyond the scope of the Amended Complaint and cannot lead to the discovery of admissible evidence.

Objection to Interrogatory Murphy I-58:

Murphy I-58 inquires as follows:

Murphy I-58: How many customer complaints has PECO received regarding electrical disturbances in customer homes (a) who have received an AMI Smart Meter, and (b) who have not yet received an AMI Smart Meter, but are located near homes that have received a Smart Meter?

Objection 1: Beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure ("AMI") Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. There is no allegation that PECO's installation of an AMI Meter will result in "electrical disturbances." Questions regarding those issues therefore are beyond the scope of the Amended Complaint and cannot lead to the discovery of admissible evidence.

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

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure ("AMI") Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. Questions regarding PECO's service to customers other than Ms. Murphy are therefore outside of the scope of this proceeding. Moreover, Ms. Murphy does not have standing to pursue complaints on behalf of other customers.

Objection to Interrogatory Murphy I-59:

Murphy I-59 inquires as follows:

Murphy I-59: How many customer complaints has PECO received from customers regarding buzzing or radio signals or music emanating, i.e., harmonics or so-called "dirty electricity" from household wiring before and after receiving an AMI Smart Meter?

Objection 1: Beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure ("AMI") Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. There is no allegation that PECO's installation of an AMI Meter will result in "buzzing or radio signals or music emanating, i.e., harmonics or so called 'dirty electricity'." Questions regarding those issues therefore are beyond the scope of the Amended Complaint and cannot lead to the discovery of admissible evidence.

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

This proceeding, as described in the Amended Complaint, is limited to an examination of the claims of Complainant that the Automated Meter Infrastructure (“AMI”) Meter to be installed at her residence will cause adverse human health effects to Ms. Murphy. Questions regarding PECO’s service to customers other than Ms. Murphy are therefore outside of the scope of this proceeding. Moreover, Ms. Murphy does not have standing to pursue complaints on behalf of other customers.

Respectfully submitted,



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April 11, 2016

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Laura Sunstein Murphy

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Docket No. C-2015-2475726

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of PECO Energy Company's Objections to Discovery, parties via e-mail to:

Ed Lanza, Esquire
The Lanza Firm, LLC
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Dated at Philadelphia, Pennsylvania, April 11, 2016



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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: April 14, 2016



Edward G. Lanza, Esq.