

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Povacz	:	
	:	
v.	:	Docket No. C-2015-2475023
	:	
PECO Energy Company	:	

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**NOTICE TO PLEAD**

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Maria Povacz, Complainant in the above-captioned proceeding, has filed a Motion for Modification of Hearing Procedures, which you may answer in accordance with 52 Pa. Code § 5.103(c), unless otherwise provided by the applicable rules. You are hereby notified to file a written response to the enclosed Motion within twenty (20) days from service of this pleading, unless the period of time for an answer or objection is otherwise fixed by the Commission or the Presiding Officers. If you fail to answer the motion, a judgment may be entered against you.

Respectfully submitted,



Edward G. Lanza, Esq.  
THE LANZA FIRM, LLC  
P.O. Box 61336  
Harrisburg, PA 17106  
(717) 576-2696  
(717) 798-9897 [fax]  
[ed@lanzafirm.com](mailto:ed@lanzafirm.com)

Date: June 3, 2016

Counsel for Complainant

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Povacz	:	
	:	
v.	:	Docket No. C-2015-2475023
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PECO Energy Company	:	

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**MOTION FOR MODIFICATION  
OF HEARING PROCEDURES**

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Pursuant to Section 5.103 of the Commission’s Formal Proceeding Regulations, 52 Pa. Code § 5.103, Complainant Maria Povacz respectfully submits this Motion to modify the hearing procedures in this matter. Complainant seeks a modification to the hearing procedures in this case to permit Dr. Hanoch Talmor, one of her witnesses, to testify remotely. In support of her Motion, Complainant sets forth the following.

1. By Prehearing Order issued on April 6, 2016, the Presiding Officers set this matter for hearing on June 7 and 8, 2016 in Philadelphia.
2. The Prehearing Order of April 6, 2016 does not mandate that all witnesses appear in person for the hearing.
3. Based on discussions had at the Prehearing Conference on March 15, 2016, it is the understanding of the parties that all witnesses in the proceeding are to appear in person to present testimony.
4. Complainant Maria Povacz and one of her witnesses, Dr. Martin Pall intend to appear in person to present testimony and will make themselves available for cross-examination at the time and place set for the hearing.

5. A third witness for Complainant, Dr. Hanoch Talmor, is unable to appear in person at the hearing scheduled in Philadelphia.

6. Dr. Talmor is a resident of Gainesville, Florida.

7. Dr. Talmor suffers from a medical disability that prevents him from traveling long distances. The affidavit of Dr. Talmor setting forth the relevant facts regarding his condition is attached as Exhibit A.

8. Due to his medical condition, Dr. Talmor is unable to travel from Gainesville, Florida to Philadelphia, Pennsylvania to testify in person at the hearing in this matter.

9. Dr. Talmor is available to testify via telephone, video conference or any other feasible and available method that would allow him to testify remotely on the dates set for hearing.

10. Dr. Talmor submitted pre-served written testimony (Povacz Statement No. 3) on April 27, 2016.

11. Oral examination is not required of an expert witness who has submitted testimony in prepared written form. 52 Pa. Code § 5.411.

12. The Commission's regulations do not require witnesses to appear in person to offer testimony.

13. It is common practice in Commission Complaint proceedings to allow witnesses to present testimony by phone.

14. In fact, the evidentiary hearing in this matter was originally scheduled as a telephonic hearing to take place on October 5, 2015 before Administrative Law Judge Elizabeth Barnes.

15. It is important to note that when counsel for Complainant requested an in-person hearing in Philadelphia, counsel for Respondent objected. *See*, Correspondence of September 29, 2015, attached hereto as Exhibit B.

16. Undersigned counsel discussed the issue of Dr. Talmor's inability to travel for the hearing with counsel for Respondent. PECO does not agree that Dr. Talmor should be permitted to testify remotely.

17. The expectation that witnesses would testify in person at the hearing in this matter was established to accommodate PECO's preference for live testimony, and it is not a regulatory requirement of the Commission.

18. The Presiding Officers have all necessary authority and discretion to control the presentation of witnesses and the receipt of evidence. *See*, 52 Pa. Code § 5.403.

19. Complainant respectfully requests that the Presiding Officers exercise their authority and discretion to permit that Dr. Talmor to present his testimony remotely.

WHEREFORE, based on the foregoing, Complainant respectfully request that the Presiding Officers grant this Motion and permit a modification of the hearing procedures as requested herein.

Respectfully submitted,



Edward G. Lanza, Esq.  
THE LANZA FIRM, LLC  
P.O. Box 61336  
Harrisburg, PA 17106  
(717) 576-2696  
(717) 798-9897 [fax]  
[ed@lanzafirm.com](mailto:ed@lanzafirm.com)

Date: June 3, 2016

Counsel for Complainant

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Povacz :  
 :  
 v. : Docket No. C-2015-2475023  
 :  
 PECO Energy Company :

**AFFIDAVIT OF HANOCH TALMOR, M.D.**

1. My name is Hanoch Talmor. I am a medical doctor and the Director of the Gainesville Holistic Center. My business address is 4140-C NW 27<sup>th</sup> Lane, Gainesville, FL 32606.
2. I am a witness in the case of Maria Povacz v. PECO Energy Company, which is pending before the Pennsylvania Public Utility Commission at Docket No. C-2015-2475023.
3. I submitted Povacz Statement No. 3, my direct testimony in the case, on April 27, 2016.
4. I am scheduled to appear and present testimony in the Povacz case on June 7-8, 2016. The hearings in the matter as set to take place in Philadelphia, PA.
5. I am unable to travel to Philadelphia for the Povacz hearing due to a disabling medical condition that prevents me from traveling.
6. I am a disabled veteran of the Israeli Army.
7. In 1976, I suffered a serious leg injury as a result of stepping on a mine.
8. As a result of that injury, I developed a slow progressing hematoma, which impairs my ability to ambulate unassisted.
9. As a result of the injury, I developed a benign tissue growth on my leg that makes it difficult for me to get around.

10. Since 2014, I have suffered from severe inflammation and bleeding, which requires changes of my wound dressing at least twice a day.


11. Attempting to walk exacerbates my injury and causes bleeding and great discomfort.

12. I am wheel-chair bound most of the time, and I am unable to travel long distances.

13. Based on the above, I am requesting that I be allowed to testify in the Povacz hearing via telephone, video conference or other method that would permit me to testify remotely.

14. The facts set forth above are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: June 2, 2016

  
\_\_\_\_\_  
Hanoeh Talmor, MD



THE  
LANZA  
FIRM

*Experience & Value*

September 29, 2015

*Via electronic mail*

Hon. Elizabeth H. Barnes  
Administrative Law Judge  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**RE: Maria Povacz v. PECO Energy Company  
Docket No. C-2015-2475023**

Your Honor:

On behalf of Complainant, and in accordance with your Prehearing Order in this matter, issued on July 30, 2015, I am writing to request a change to the hearing scheduled for Monday, October 5, 2015 at 10:00 a.m.

As you are aware, undersigned counsel was retained recently to represent Complainant and more time is needed to prepare the matter for hearing. It is my understanding that there has been no discovery in the case, and the same may be necessary to fully prepare for hearing and to present the case properly to Your Honor. Also, the Complainant's medical witness is not available to testify on October 5<sup>th</sup>.

Complainant has alleged harmful health effects attributable to the smart meter PECO is installing in its service territory, and Complainant respectfully requests a change to an in-person hearing in order for the Presiding Officer to appreciate the health complications that Complainant is experiencing. If the request to hold an in-person hearing is granted, Complainant would request that the hearing be held in Philadelphia for the convenience of the parties.

Based on the foregoing, Complainant respectfully requests that the hearing in this matter be continued to a date at least ninety (90) days following the issuance date of Your Honor's Order granting a continuance. In addition, Complainant requests that the hearing be held in Philadelphia, the closest site to where the parties and witnesses are located.

Undersigned counsel contacted counsel for Respondent and she objects to the Complainant's request on behalf of PECO.

If you have any questions or concerns regarding the above, do not hesitate to contact me.

Very truly yours,



Edward G. Lanza, Esq.  
THE LANZA FIRM, LLC

cc: Shawanee Lee, Esq. (via email)  
Maria Povacz (via email)

Legal Department  
2301 Market Street / S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Direct Dial: 215-841-6841  
Fax: 215-568-3389

September 29, 2015

**VIA EMAIL and FACSIMILE**

Administrative Law Judge Elizabeth H. Barnes  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Maria Povacz v. PECO Energy Company**  
**Docket Number: C-2015-2475023**

Dear Judge Barnes:

This responds to Mr. Lanza's letter of September 29, 2015, in which he requests a delay of the telephonic hearing, currently scheduled for October 5, 2015 at 10:00 a.m., and to change the hearing to an in-person hearing.

The core of Mr. Lanza's request is stated as follows:

Complainant has alleged harmful health effects attributable to the smart meter PECO is installing in its service territory, and Complainant respectfully requests a change to an in-person hearing in order for the Presiding Officer to appreciate the health complications that Complainant is experiencing.

Mr. Lanza also requests an extension in part because "the Complainant's medical witness is not available to testify on October 5<sup>th</sup>."

Mr. Lanza's entire request is thus predicated on the presumption that the Complainant's AMI health claims will proceed to hearing. However, Your Honor has already ruled that Complainant's health claims are dismissed. In your June 30, 2015 Order, you stated that:

In the instant case, Complainant again requests permission to opt out of a smart meter installation at her residence for health, privacy, and safety reasons. The only difference in the instant Complaint is that Complainant offers evidence of a signed medical certificate showing she is sensitive to electromagnetic waves emitted by smart meters.

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September 29, 2015  
Page 2

To the extent that Ms. Povacz desires the ability to opt out of the smart meter installation, she should advocate for such ability before the General Assembly. The Commission simply does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. Similarly, the Respondent would be in violation of law if it did not install a smart meter at the Complainant's residence. The Commission cannot grant the relief of precluding PECO from installing a smart meter upon the service property as requested by the Complainant.

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In accordance with the principles of *res judicata*, the other claims are stricken from the Complaint, and the remaining issue as to whether there was valid medical certification provided to Respondent, and whether Respondent is complying with the provisions of Chapter 14 of the Public Utility Code with regard to notice of termination and medical certification shall be referred to the Mediation Unit for mediation review. There remains a legally sufficient issue of whether Complainant is entitled to a stay of termination based upon a medical certification, which shall be referred to the Mediation Unit for mediation review.

As stated in the above Order, the issues to proceed to hearing are limited to whether the Complainant is entitled to a stay of termination based upon a medical certification and whether PECO complied with the regulations concerning medical certifications. Mr. Lanza has not provided any reason why a medical certificate case should be held in person and why he cannot prepare for a medical certificate case within this timeframe. Based upon this, there is no requirement to move this case to another judge in another forum or to continue this matter to include medical witnesses.

PECO Energy therefore respectfully requests that the request for a transfer of venue to Philadelphia and continuance be denied and the case move forward as scheduled on October 5, 2015.

Very truly yours,



Shawane L. Lee  
Assistant General Counsel, PECO Energy  
Encl.

cc: Edward Lanza, Esquire, *via email*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Complainant's Motion has been served upon the persons listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.55 (relating to service upon an attorney).

### Via Electronic Mail

Ward L. Smith, Esq.  
Shawane Lee, Es.  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699  
[ward.smith@exeloncorp.com](mailto:ward.smith@exeloncorp.com)

June 3, 2016

A handwritten signature in black ink, appearing to read "Edward G. Lanza", with a long horizontal flourish extending to the right.

Edward G. Lanza