

Legal Department
2301 Market Street / S23-1
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Philadelphia, PA 19101-8699

Direct Dial: 215-841-6863

August 5, 2016

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

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

Dear Ms. Chiavetta:

Enclosed for filing is PECO's Energy Company's Motion to Compel Answers to Discovery.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Christopher P. Pell, ALJ
Darlene D. Heep, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAURA SUNSTEIN MURPHY
Complainants

v.

PECO ENERGY COMPANY
Respondent

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:
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Docket No. C-2015-2475726

NOTICE TO PLEAD

Pursuant to the discovery modifications in this case, you are hereby notified that you must reply to this Motion to Compel within 3 days. You must provide a full copy of answer to counsel for PECO and to the Commission and the Administrative Law Judges.

File with:

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

With a copy to:

Ward L. Smith
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, August 5, 2016



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Ward.Smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------------|---|-----------------------|
| Laura Sunstein Murphy | : | |
| | : | |
| v. | : | C-2015-2475726 |
| | : | |
| PECO Energy Company | : | |

**PECO Energy Company's
Motion to Compel Answers to Discovery**

On Tuesday, May 27, 2016, PECO posed its Set III and Set IV interrogatories to Complainant Laura Sunstein-Murphy. Under the modified discovery rules of this proceeding, objections were required to be lodged within three days, and answers were due within ten days. No objections were lodged, and no answers have been provided.

Seventy days have now passed. PECO has made repeated requests for status updates as to when these discovery questions will be answered. As of today, PECO has not even been able to elicit a status update from Complainant.

PECO therefore moves to compel answers to its Set III and Set IV Interrogatories, within five days, and in support thereof states as follows:

1. On May 27, 2016, PECO served its Set III and Set IV interrogatories on Complainant. A copy of the transmitting email and the Set III and Set IV discovery questions are attached to this Motion as Exhibit 1. Set III is comprised of seven questions tied to the written prefiled Direct testimony of Complainant Ms. Murphy; Set IV is comprised of two

questions tied to the written prefiled Direct testimony of her treating physician Dr. Peter Prociuk.

2. On Monday, May 30, 2016 the period for lodging objections expired. No objections were lodged.

3. On May 31, 2016, PECO filed and served a transmittal letter and certificate of service for Sets III and IV. A copy of the transmittal email and certificate are attached as Exhibit 2.

4. On Monday, June 6, the 10-day return date expired. No answers were provided.

5. On June 16, 2016, Mr. Harvey entered an appearance in this docket as co-counsel.

6. On June 28, 2016, PECO sent a request for an update to Complainant's counsel. The email re-transmitted the discovery requests and asked, in relevant part: "I recognize that these questions were sent during a very busy time [during preparation for the Povacz hearing], but it has now been 32 days since these questions were asked. May I please have an update on when we can expect answers to them?" A copy of the June 28 email is attached as Exhibit 3.

7. On June 28, 2016, Mr. Harvey replied by email: "Let me discuss with Ed and we will get back to you soon, although probably not today, on this." A copy of Mr. Harvey's June 28 email is attached as Exhibit 4.¹

8. On July 8, 2016, Mr. Lanza replied by email: "I received your emails regarding outstanding discovery responses in the different smart meter cases. I'm on vacation this week,

¹ Mr. Harvey's June 28 email has a reference line to the *Povacz* matter, rather than the *Murphy* matter. PECO sent update requests in all of the AMI cases in which Mr. Lanza or Mr. Harvey represent the Complainants; Mr. Harvey provided a single omnibus response in the email chain related to *Povacz*.

but I will get you those answers when I return.” A copy of Mr. Lanza’s July 8 email is attached as Exhibit 5.

9. On July 19, 2016, PECO sent Complainant’s counsel an email proposal for a joint schedule in the *Van Schoyck* matter.

10. On July 19, 2016, Mr. Lanza replied by email: “We would like to discuss the schedule for these cases and other issues with you soon. I will confer with Steve and we will circle back to you shortly.” A copy of Mr. Lanza’s July 19, 2016 email is attached as Exhibit 6.

11. On July 19, 2016, PECO replied with a request for a date for such discussion, inquiring and stating: “When can we expect that discussion to occur? I realize that you likely have matters other than discovery that you want to roll into the discussion, but you are now deeply overdue on discovery answers – and even on updates on the status of discovery matters We need to hear from you this week [that is, by July 22] on discovery, even if the other agenda items need more time to ripen.” A copy of PECO’s July 19 email is attached as Exhibit 7.

12. PECO received no response to this request. On July 28, 2016 PECO sent Complainant’s counsel an email with the subject line: “pls call me.” It stated: “Ed: Pls call me. I’m going to have to start filing motions in the next day or so unless I hear something substantive from you ASAP. Please call me. 267-324-8426.” A copy of PECO’s July 28 email is attached as Exhibit 8. The number provided in the email was to Mr. Smith’s cell phone.

13. On July 28, 2016, Mr. Lanza replied by email: “Ward, no need to file the motions. I’ll call you tomorrow. Thanks.” A copy of Mr. Lanza’s July 28, 2016 email is attached as Exhibit 9.

14. On Friday, July 29, 2016 at 4:00 p.m., Mr. Lanza called Mr. Smith's office phone and left a message with PECO administrative staff that he had called.

15. On Friday, July 29, 2016 at 4:30 p.m., Mr. Smith returned Mr. Lanza's call. There was no answer, and Mr. Lanza's voice mail box was full. PECO therefore sent the following email to Complainant's counsel: "Ed: I see that I missed your call at 4:00. I just tried to leave you a voice message – you voice mail is full. Please call me back on my cell phone – 267-324-8426. I really need to talk today or this weekend." A copy of PECO's July 29 email is attached as Exhibit 10.

16. As of the date of the filing of the instant Motion, an additional seven days have passed since PECO's most recent request for a status update on discovery. Complainant's counsel has not contacted Mr. Smith to discuss the discovery matters at issue through email or phone.²

17. Answers to these discovery questions were due 10 days after service.

18. PECO's Set III and Set IV discovery were served 70 days ago today.

19. PECO respectfully submits that it has exhausted all reasonable efforts to resolve this discovery dispute informally between the parties.

² Mr. Lanza did communicate with Ms. Lee by email on several occasions during that week to coordinate the relocation of the Tucker meter.

WHEREFORE:

PECO respectfully requests that Your Honors issue an Order requiring Complainant to provide full and complete answers to PECO's Set III and Set IV discovery within five calendar days of the issuance of such Order.

Respectfully submitted,



Ward Smith
Assistant General Counsel
PECO Energy Company
215-841-6863
ward.smith@exeloncorp.com

August 5, 2016

Exhibit 1

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Friday, May 27, 2016 11:01 AM
To: 'Edward Lanza'
Cc: 'Tom Watson'; Lee, Shawane L.:(PECO)
Subject: Murphy v PECO -- PECO Discovery Set III (Qs 1-7) and Set IV (Qs
Attachments: 2015-05-27 Murphy v PECO Discovery Set III.pdf; 2016-05-27 Murphy Set IV.pdf

Ed:

PECO Set III and Set IV discovery are attached. I'll file the transmittal letter and certificate of service shortly.

Ward

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Sunstein Murphy

v.

PECO Energy Company

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C-2015-2475726

**PECO Energy Company's
Interrogatories and Requests for Production of Documents
Set III**

Respondent PECO Energy Company ("PECO") hereby submits the following Interrogatories and Requests for Production of Documents, Set III, upon Complainant Laura Sunstein Murphy, to be answered separately and fully in writing and in accordance with 52 Pa. Code §§ 5.341 and 5.349 of the rules and regulations of the Pennsylvania Public Utility Commission. The questions in this set relate to Murphy Statement No. 2, the written Direct Testimony of Complainant Laura Sunstein Murphy.

PECO Interrogatory III-1:

In Murphy Statement No. 2, page 13, lines 15-18, you state that: "Dr. Pall has pointed me to a study of EMF hypersensitive individuals who may or may not have been consciously aware when they were irradiated with low level EMF, but their EKGs showed clear indications of changes when they were exposed to EMFs."

Please provide a full citation to, or copy of, the study referred to in this testimony.

PECO Interrogatory III-2:

In Murphy Statement No. 2, page 24, lines 3-5, you state that: "In May 2002, PECO removed my analog meter and replaced it with a constant emitting AMR meter, which I measured recently to be emitting far more EMF than even PECO's interrogatory answers indicate."

- a. Please describe the method used to perform these measurements.
- d. Please provide the results of all such measurements taken.

PECO Interrogatory III-3:

In Murphy Statement No. 2, page 43, lines 11-13, you state that Dr. Prociuk wrote a letter on your behalf to PECO.

- a. Did Dr. Prociuk recommend that you take any steps to reduce or protect yourself from exposure to radio frequency fields from PECO's meters?**
- b. If so, what steps did he recommend?**
- c. Of the steps that were recommended, which did you implement?**
- d. Of the steps that you did not implement, why did you not implement them?**

PECO Interrogatory III-4:

In Murphy Statement No. 2, page 43, lines 11-13, you state that Dr. Prociuk wrote a letter on your behalf to PECO.

- a. Did Dr. Prociuk recommend that you take any steps to reduce or protect yourself from exposure to radio frequency fields from sources other than PECO's meters?**
- b. If so, what steps did he recommend?**
- c. Of the steps that were recommended, which did you implement?**
- d. Of the steps that you did not implement, why did you not implement them?**

PECO Interrogatory III-5:

In Murphy Statement No. 2, pages 50-51, you discuss the Americans with Disabilities Act ("ADA").

- a. Is it your contention that the ADA requires PECO to install a non-AMI meter at your residence?**
- b. If so, please identify the specific section of the ADA or its implementing regulations that is the basis for that requirement.**

PECO Interrogatory III-6:

In Murphy Statement No. 2, pages 50-51, you discuss the Americans with Disabilities Act ("ADA").

- a. Have you sought any ADA accommodations related to your electrical hypersensitivity from your employer?
- b. If so, what accommodations did you seek?
- c. If so, what accommodations, if any, were granted?
- d. If accommodations were sought but denied, what was the stated basis for denial?
- e. If accommodations were sought but denied, have you continued to pursue those ADA claims with the Equal Employment Opportunity Commission, a court, or other regulatory agency?

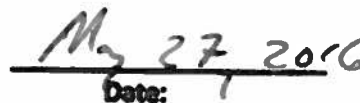
PECO Interrogatory III-7:

In Murphy Statement No. 2, pages 50-51, you discuss the Americans with Disabilities Act ("ADA").

- a. Have you sought any ADA accommodations related to your electrical hypersensitivity from any entity responsible for radio frequency exposure other than PECO or your employer, including the owners of cell towers and antennas in West Chester, PA?
- b. If so, what accommodations did you seek?
- c. If so, what accommodations, if any, were granted?
- d. If accommodations were sought but denied, what was the stated basis for denial?
- e. If accommodations were sought but denied, have you continued to pursue those ADA claims with the Department of Justice, a court, or other regulatory agency?



Ward Smith
Assistant General Counsel
PECO Energy Company
215-841-6863
ward.smith@exeloncorp.com


Date: May 27, 2016

Shawane Lee
Assistant General Counsel
PECO Energy Company
215-841-6841
shawane.lee@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Laura Sunstein Murphy

v.

PECO Energy Company

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:
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:
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C-2015-2475726

**PECO Energy Company's
Interrogatories and Requests for Production of Documents
Set IV**

Respondant PECO Energy Company ("PECO") hereby submits the following Interrogatories and Requests for Production of Documents, Set IV, upon Complainant Laura Sunstein Murphy, to be answered separately and fully in writing and in accordance with 52 Pa. Code §§ 5.341 and 5.349 of the rules and regulations of the Pennsylvania Public Utility Commission. The questions in this set relate to Murphy Statement No. 3, the written Direct Testimony of Dr. Peter Prociuk.

PECO Interrogatory IV-1:

In Murphy Statement No. 3, pages 18-21, you discuss the "Health Effects of PECO's Meter."

a. Did you recommend that Ms. Murphy take steps to reduce her exposure to radio frequency fields from sources other than the PECO meters?

b. If so, what steps did you recommend?

c. To your knowledge, did Ms. Murphy act on those recommendations?

PECO Interrogatory IV-2:

In Murphy Statement No. 3, pages 18-21, you discuss the "Health Effects of PECO's Meter."

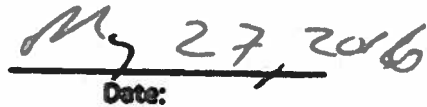
a. Did you recommend that Ms. Murphy utilize personal protection or mitigation measures to reduce the effects of her exposure to radio frequency fields from the PECO meters?

b. If so, what steps did you recommend?

c. To your knowledge, did Ms. Murphy act on those recommendations?



Ward Smith
Assistant General Counsel
PECO Energy Company
215-841-6863
ward.smith@exeloncorp.com


Date:

Shawna Lee
Assistant General Counsel
PECO Energy Company
215-841-6841
shawna.lee@exeloncorp.com

Exhibit 2

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Tuesday, May 31, 2016 3:28 PM
To: 'Heep, Darlene'; 'Pell, Christopher'; 'Edward Lanza'
Cc: 'Tom Watson'; Lee, Shawane L.:(PECO)
Subject: Murphy v PECO C-2015-2475726, PECO Discovery Set III (Qs 1-7) and Set IV (Qs 1-2)
Attachments: C2475726_Cert_Service_Rogs_RPDs_Set_III.PDF

Your Honors and Mr. Lanza:

On Friday, May 27, PECO served its Interrogatories and Requests for Production of Documents, Set III (Qs 1-7) and Set IV (Qs 1-2) on Ms. Murphy by email to Mr. Lanza. Today it filed a transmittal letter and certificate of service evidencing that service, a copy of which is attached.

Ward Smith



**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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| Docket Number: | C-2015-2475726 |
| Description: | Laura Sunstein Murphy - PECO Energy Company Certificate of Service - Interrogatories and Request for Production of Documents - Set IV |
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| Filed On: | 5/31/2016 3:22:44 PM |
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An Exelon Company

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

Direct Dial: 215-941-6863

May 27, 2016

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

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

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are this transmittal letter and a certificate of service demonstrating that on May 27, 2016, PECO Energy Company served its Interrogatories and Requests for Production of Documents, Set III (Qs 1-7) and Set IV (Qs 1-2) on Complainant.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ward L. Smith".

Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Christopher P. Pell, ALJ (transmittal letter and COS only)
Darlene D. Heep, ALJ (transmittal letter and COS only)
Ed Lanza, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Laura Sunstein Murphy

v.

PECO Energy Company

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:
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:
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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's Discovery,
Sets III and IV, via e-mail to:

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

Dated at Philadelphia, Pennsylvania, May 27, 2016



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6863
Fax: 215.568.3389
Ward.Smith@exeloncorp.com

Exhibit 3

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Tuesday, June 28, 2016 3:32 PM
To: 'Edward Lanza'; 'steve@steveharveylaw.com'
Cc: Diaz Jr, Romulo L:(PECO); Lee, Shawane L.:(PECO); 'Tom Watson'
Subject: Murphy v PECO -- Request for Status Update on Discovery Answers
Attachments: 2015-05-27 Murphy v PECO Discovery Set III.PDF; 2016-05-27 Murphy Set IV.PDF

Ed and Steve:

On May 27, 2016, PECO served the attached discovery requests on Ms. Murphy (via email to Ed).

The Murphy matter is under discovery modifications, so these questions had a 10-day reply, and thus were due on June 6.

I recognize that these questions were sent during a very busy time, but it has now been 32 days since these questions were posed. May I please have an update on when we can expect answers to them?

Thanks.

Ward

Exhibit 4

Smith, Ward L:(PECO)

From: Steve Harvey <steve@steveharveylaw.com>
Sent: Tuesday, June 28, 2016 3:34 PM
To: Smith, Ward L:(PECO); Edward Lanza
Cc: Diaz Jr, Romulo L:(PECO); Lee, Shawane L.:(PECO); Tom Watson
Subject: RE: Povacz v PECO -- Request for Status Update on Discovery Answers

Thank you, Ward. Let me discuss with Ed and we will get back to you soon, although probably not today, on this.

Stephen G. Harvey
Steve Harvey Law LLC
1880 John F. Kennedy Blvd.
Suite 1715
Philadelphia, PA 19103
215.438.6600
vCard

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From: Smith, Ward L:(PECO) [<mailto:ward.smith@exeloncorp.com>]
Sent: Tuesday, June 28, 2016 3:32 PM
To: Edward Lanza <ed@lanzafirm.com>; Steve Harvey <steve@steveharveylaw.com>
Cc: Diaz Jr, Romulo L:(PECO) <Romulo.Diaz@exeloncorp.com>; Lee, Shawane L.:(PECO) <Shawane.Lee@exeloncorp.com>; Tom Watson <tw@w-r.com>
Subject: RE: Povacz v PECO -- Request for Status Update on Discovery Answers

Typo below -- these were originally sent on May 23, 2016.

W

From: Smith, Ward L:(PECO)
Sent: Tuesday, June 28, 2016 3:29 PM
To: 'Edward Lanza'; 'steve@steveharveylaw.com'
Cc: Diaz Jr, Romulo L:(PECO); Lee, Shawane L.:(PECO); 'Tom Watson'
Subject: Povacz v PECO -- Request for Status Update on Discovery Answers

Ed and Steve:

On May 23, 2015, PECO served the attached discovery requests on Ms. Povacz (via email to Ed).

The Povacz matter is under discovery modifications, so these questions had a 10-day reply, and thus were due on June 2.

I recognize that these questions were sent during a very busy time, but it has now been 36 days since these questions were posed. May I please have an update on when we can expect answers to them?

Thanks.

Ward

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Exhibit 5

Smith, Ward L:(PECO)

From: Edward Lanza <ed@lanzafirm.com>
Sent: Wednesday, July 06, 2016 3:37 PM
To: Smith, Ward L:(PECO)
Cc: Steve Harvey
Subject: [EXTERNAL] Outstanding Discovery - Smart Meter Cases

Ward,

I received your emails regarding outstanding discovery responses in the different smart meter cases. I'm on vacation this week, but I will get those answers to you when I return.

Thanks,

Ed

The Lanza Firm, LLC
P.O. Box 61336
Harrisburg, PA 17106
(717) 653-1200
www.lanzafirm.com

Exhibit 6

Smith, Ward L:(PECO)

From: Edward Lanza <ed@lanzafirm.com>
Sent: Tuesday, July 19, 2016 5:58 PM
To: Steve Harvey; Smith, Ward L:(PECO)
Cc: Lee, Shawane L:(PECO); Tom Watson; Curt Renner
Subject: RE: Van Schoyck v PECO C-2015-2478239

Thanks, Ward.

We would like to discuss the schedule for these cases and other issues with you soon. I will confer with Steve and we will circle back shortly.

Ed

THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696

----- Smith, Ward L:(PECO) wrote -----

Counsel:

The purpose of this email is to discuss interim scheduling issues in the *Van Schoyck* matter.

As you know, in their April 8, 2016 Prehearing Order, the ALJs previously set forth a schedule for this proceeding that was predicated on the previously scheduled but now inoperative July 26-27 hearing dates. That schedule was:

May 19: Settlement discussions (we had a couple of discussions, but remain open to more)
May 24: Expert witness identification (we exchanged expert witness identification on this date per the schedule. See attached).
May 31: Dispositive Motions
July 12: Exhibit exchange
July 22: Stipulations

On April 19, we jointly proposed that the above schedule be superceded by the following schedule for the exchange of written testimony:

Van Schoyck Direct -- June 9
PECO Rebuttal -- June 30
Van Schoyck Surrebuttal -- July 18
Hearing -- July 26-27

As you know, that schedule also became inoperative.

On June 21, by email, the ALJs informed us that we would not be using written testimony in *Van Schoyck* and that "Prehearing Orders in *Van Schoyck* and *Randall* will contain deadlines for exchange of expert reports."

We subsequently received a new Prehearing Order in *Randall* (attached), but not *Van Schoyck*. We could just ask the ALJs to issue a template Prehearing Order #2 in *Van Schoyck* based on the *Randall* template, but I would prefer to translate the *Randall* template to a concrete schedule, and then jointly propose those dates.

The *Randall* prehearing has six key deadlines, each designated as "x days before hearing." Based on the *Randall* instructions that we have a ten-day return on discovery and that "the timing of discovery requests must allow time for responses" prior to the end of the discovery period, I've interpolated an additional deadline for the final day to pose discovery. That results in the following:

70 days: expert witness id

50 days: exchange expert reports

40 days: ask final discovery (really, 10 days prior to close of discovery, which itself can vary with weekends; interposed by me)

30 days: discovery closes

20 days: settlement conference

15 days: exhibit exchange

5 days: stipulations

If I make that concrete for *Van Schoyck*, based on the scheduled October 23 start of hearings, and taking into consideration the days on which the deadline falls on a weekend, we get the following:

Expert witness id – complete

Monday, September 5: exchange expert reports

Wednesday, September 16: ask final discovery

Monday, September 26: discovery closes

Tuesday, Oct. 4: settlement conference

Monday, Oct. 10: exchange exhibits

Wednesday, Oct. 19: stipulations

May I have your comments and concurrence at your earliest convenience?

Ward

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Exhibit 7

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Tuesday, July 19, 2016 8:15 PM
To: 'Edward Lanza'; 'Steve Harvey'
Cc: Lee, Shawane L.:(PECO); 'Tom Watson'; 'Curt Renner'
Subject: RE: Van Schoyck v PECO C-2015-2478239

Ed:

Thanks.

When can we expect that discussion to occur?

I realize that you likely have matters other than discovery that you want to roll into the discussion, but you are now deeply overdue on discovery answers – and even on updates on the status of discovery answers -- in *Van Schoyck*, *Murphy*, and *Randall/Albrecht*. We need to hear from you this week on discovery, even if the other agenda items need more time to ripen.

W

From: Edward Lanza [<mailto:ed@lanzafirm.com>]
Sent: Tuesday, July 19, 2016 5:58 PM
To: Steve Harvey; Smith, Ward L:(PECO)
Cc: Lee, Shawane L.:(PECO); Tom Watson; Curt Renner
Subject: RE: Van Schoyck v PECO C-2015-2478239

Thanks, Ward.

We would like to discuss the schedule for these cases and other issues with you soon. I will confer with Steve and we will circle back shortly.

Ed

THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696

----- Smith, Ward L:(PECO) wrote -----

Counsel:

The purpose of this email is to discuss interim scheduling issues in the *Van Schoyck* matter.

As you know, in their April 8, 2016 Prehearing Order, the ALJs previously set forth a schedule for this proceeding that was predicated on the previously scheduled but now inoperative July 26-27 hearing dates. That schedule was:

May 19: Settlement discussions (we had a couple of discussions, but remain open to more)
May 24: Expert witness identification (we exchanged expert witness identification on this date per the schedule. See attached).
May 31: Dispositive Motions
July 12: Exhibit exchange
July 22: Stipulations

On April 19, we jointly proposed that the above schedule be superceded by the following schedule for the exchange of written testimony:

Van Schoyck Direct -- June 9
PECO Rebuttal -- June 30
Van Schoyck Surrebuttal -- July 18
Hearing -- July 26-27

As you know, that schedule also became inoperative.

On June 21, by email, the ALJs informed us that we would not be using written testimony in *Van Schoyck* and that "Prehearing Orders in *Van Schoyck* and *Randall* will contain deadlines for exchange of expert reports."

We subsequently received a new Prehearing Order in *Randall* (attached), but not *Van Schoyck*. We could just ask the ALJs to issue a template Prehearing Order #2 in *Van Schoyck* based on the *Randall* template, but I would prefer to translate the *Randall* template to a concrete schedule, and then jointly propose those dates.

The *Randall* prehearing has six key deadlines, each designated as "x days before hearing." Based on the *Randall* instructions that we have a ten-day return on discovery and that "the timing of discovery requests must allow time for responses" prior to the end of the discovery period, I've interpolated an additional deadline for the final day to pose discovery. That results in the following:

70 days: expert witness id

50 days: exchange expert reports

40 days: ask final discovery (really, 10 days prior to close of discovery, which itself can vary with weekends; interposed by me)

30 days: discovery closes

20 days: settlement conference

15 days: exhibit exchange

5 days: stipulations

If I make that concrete for *Van Schoyck*, based on the scheduled October 23 start of hearings, and taking into consideration the days on which the deadline falls on a weekend, we get the following:

Expert witness id – complete

Monday, September 5: exchange expert reports

Wednesday, September 16: ask final discovery

Monday, September 26: discovery closes

Tuesday, Oct. 4: settlement conference

Monday, Oct. 10: exchange exhibits

Wednesday, Oct. 19: stipulations

May I have your comments and concurrence at your earliest convenience?

Ward

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Exhibit 8

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Thursday, July 28, 2016 2:21 PM
To: 'Edward Lanza'
Subject: pls call me

Ed:

Pls call me. I'm going to have start filing motions in the next day or so unless I hear something substantive from you ASAP. Please call me.

267-324-8426

W

Exhibit 9

Smith, Ward L:(PECO)

From: Edward Lanza <ed@lanzafirm.com>
Sent: Thursday, July 28, 2016 7:15 PM
To: Smith, Ward L:(PECO)
Subject: RE: pls call me

Ward,
No need to file motions.
I'll call you tomorrow.
Thanks,

Ed

THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696

---- Smith, Ward L:(PECO) wrote ----

Ed:

Pls call me. I'm going to have start filing motions in the next day or so unless I hear something substantive from you ASAP. Please call me.

267-324-8426

W

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Exhibit 10

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Friday, July 29, 2016 4:33 PM
To: 'Edward Lanza'
Subject: Pls call

Ed:

I see that I missed your call at 4:00. I just tried to leave you a voice message – your voice mail is full.

Please call back on my cell phone. 267-324-8426. I really need to talk today or this weekend.

W

Exhibit 11

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-----------------------|---|---------------------------|
| LAURA SUNSTEIN MURPHY | : | |
| COMPLAINANT | : | Docket No. C-2015-2475726 |
| v. | : | |
| | : | |
| PECO ENERGY COMPANY | : | |
| RESPONDENT | : | |

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of PECO'S Energy Company's Motion to Compel Answers to Discovery in the above matter upon all interested parties via e-mail and postage prepaid to:

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

Via Electronic Mail
Stephen G. Harvey
Steve Harvey Law LLC
1880 John F. Kennedy Blvd., Ste 1715
Philadelphia, PA 19103

Dated at Philadelphia, Pennsylvania, August 5, 2016



Ward L. Smith
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