



August 7, 2017

Via Electronic Filing

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

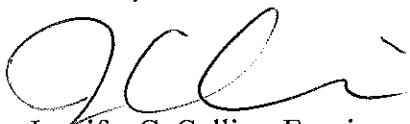
Re: Kathie Johns v. PECO Energy Company  
Docket No: F-2017- 2605058  
**Motion to Compel**

Dear Secretary Chiavetta:

Please find the enclosed for filing the Motion to Compel the Response of PECO Energy Company to Complainant Kathie Johns's Interrogatories and Requests for Production of Documents, Set I, in the above-captioned matter.

A copy is being served upon counsel for PECO, pursuant to the attached Certificate of Service. Please contact me with any questions or concerns.

Sincerely,



Jennifer C. Collins, Esquire  
Attorney for Kathie Johns

Enclosure

Cc: Service List

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Kathie Johns,</b>	:	
<b>Complainant</b>	:	
v.	:	<b>Docket No. F-2017- 2605058</b>
<b>PECO Energy Company,</b>	:	
<b>Respondent</b>	:	

**NOTICE TO PLEAD**


*To: Shawane Lee, Esq. Counsel for PECO*

You are hereby notified to file a written response to the attached Motion to Compel of Complainant Kathie Johns within five (5) days from the date of service of this notice. If you do not file a written response denying the enclosed Motion to Compel within five (5) days of service, the presiding officer may rule in favor of Complainant on the attached Motion without a hearing. Failure to respond to this Motion could result in an order directing responses to Complainant's Interrogatories and Requests for Production of Documents.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

You must also serve a copy of your response on the undersigned counsel for Complainant.

  
Jennifer C. Collins, Esq.  
PA Attorney ID No: 312108  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

Dated: August 7, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Kathie Johns,</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>Docket No. F-2017- 2605058</b>
<b>PECO Energy Company,</b>	:	
<b>Respondent</b>	:	

**MOTION TO COMPEL THE RESPONSE OF PECO ENERGY COMPANY  
TO COMPLAINANT KATHIE JOHNS'  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET I**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.342(g), Kathie Johns, Complainant in the above-docketed matter, by and through her attorneys, hereby requests that the presiding Administrative Law Judge dismiss the objections to discovery by PECO Energy Company (PECO or Respondent) and direct PECO to provide the information requested in Complainant’s Interrogatories and Requests for Production of Documents, Set I. In support thereof, Complainant avers as follows:

**Background**

1. On May 16, 2017, Complainant submitted her Formal Complaint (Complaint) by mail, appealing the Informal Complaint Decision of the Pennsylvania Public Utility Commission, dated April 12, 2017, BCS No. 3503966. A copy of the Complaint was served on PECO by the Commission on May 19, 2017.

2. Complainant avers that she is and has been a tenant at 5017 Griscom Street since February 2016. PUC Formal Complaint of Kathie Johns (Johns Complaint) at ¶ 4.

3. Complainant avers that, during her tenancy at 5017 Griscom Street her PECO bill showed a significant increase in usage in winter 2017 over winter 2016. Johns Complaint at ¶ 4.

4. Complainant avers that, during her tenancy at 5017 Griscom Street the usage reported on her PECO bills remained high even after taking measures to significantly reduce her personal usage. Johns Complaint at ¶ 4.

5. Complainant avers that PECO has not performed a complete or satisfactory investigation of her complaints of possible foreign load or foreign wiring affecting her PECO service and charges. Johns' Complaint at ¶ 5.

6. The Complaint requests the Commission enter an order providing the following relief:

- a. PECO must perform a proper and complete investigation into the alleged foreign load or foreign wiring effecting Complainants PECO bills;
- b. Reduce Complainant's bills consistent with any finding of foreign load or foreign wiring;
- c. Granting such other relief as may be just and appropriate.

7. On July 18, 2017 counsel for Complainant issued the Interrogatories and Requests for Production of Documents, Set I, attached hereto as Exhibit I (Discovery Requests).

8. On July 26, 2017, PECO filed its Objections to Complainant's Discovery, Set I. Each of the Discovery Requests numbered 1-19, and PECO's Objections thereto, are set forth in attached Exhibit II (Objections).

9. As set forth in its Objections, PECO contends that the Discovery Requests numbered 1, 2, 11, 12, 15, 17, and 18 are objectionable because they are beyond the scope of the investigation and:

- a. Pursuant to PECO's confidentiality and privacy policies, the company is unable to disclose private account service information without a subpoena;

- b. They are overly broad and do not have the specificity required under section 5.421(b)(1) and (b)(2);
- c. They are overly broad and unduly burdensome;

10. Complainant agrees to withdraw requests numbered 1, 2, 11, 12, and 18.

11. Counsel for Complainant and Counsel for PECO have communicated regarding the remaining discovery requests and have been unable to resolve the issue. Accordingly, Complainant submits this Motion to Compel Responses to requests 15 and 17.

**PECO Has Not Asserted a Valid Basis for Discovery Objections**

12. Complainant's right to obtain discovery is governed by the Commission's Regulations concerning Formal Proceedings (52 Pa. Code Chapter 5). PECO's assertion with respect to requests 15 and 17 is without merit.

13. As set forth in 52 Pa. Code § 5.321(c) (concerning scope of discovery):

Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. 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.

14. As set forth in 52 Pa. Code § 5.341(a), concerning written interrogatories, a Complainant's right to seek discovery of relevant information is only limited if the discovery:

- a. Is sought in bad faith;
- b. Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party;
- c. Relates to a matter which is privileged; or

- d. Would require the making of an unreasonable investigation by the deponent, a party or a witness.

15. The information Complainant seeks is directly relevant to her Complaint and is reasonably calculated to lead to the discovery of admissible evidence. Complainant seeks records in PECO possession confirming the likely presence of foreign wiring affecting Complainant's PECO bills and explaining the year over year change in Complainant's usage. Complainant must be allowed to obtain information from PECO in pursuit of the relief requested in her Formal Complaint.

16. The potential removal of meters and the usage of those meters is relevant to Complainant's assertion regarding the possible presence of foreign wiring and the reasonableness of PECO's investigations into those claims.

17. The Company's Objections contain multiple unverified new averments of fact, which are inappropriately raised in its Objections.

18. In the Company's objection to request 15 the Company states: "A determination of whether Ms. Johns has foreign wiring can be determined by a technician gaining access to her meter...A foreign wiring analysis is limited to whether Ms. Johns' meter stops registering usage when the breakers are shut off." PECO objections at 5.

- a. These new, unverified averments of fact stated in PECO's objection to request 15 are not a valid basis for an objection.
- b. Moreover, PECO's averment that "A foreign wiring analysis is limited to whether Ms. Johns' meter stops registering usage when the breakers are shut off" **is demonstrably false**, as it would unlawfully preclude a finding of foreign load

required by 66 Pa. C.S. § 1529.1 when wiring to a common space or other dwelling unit is connected to a breaker box serving a unit that is required to be individually metered.

19. In the Company's objections to requests 15 and 17, the Company states: "Ms. Johns does not obtain service through other meters at the service address, but only her meter." PECO objections at 5 and 6.

- a. This new, unverified averment of fact stated in PECO's objection to requests 15 and 17 is not a valid basis for an objection.
- b. Whether or not Ms. Johns obtains service through other meters at the service address is a question of fact for the Commission.
- c. PECO's objections present unsupported conclusory statements, in a blatant attempt to chill Ms. Johns' lawful pursuit of information from PECO about metering and wiring at 5017 Griscom Street.

20. In its Objection to request 15 the Company states "The company does not require access to every meter at the premises or an analysis of all meters that were ever installed or repairs." PECO objection at 5.

- a. This new, unverified averment of fact stated in PECO's objection to request 15 is not a valid basis for an objection.
- b. Whether or not the Company may require access to every meter or an analysis of meters installed or repaired at 5017 Griscom Street in order to conduct an adequate foreign load investigation is a question of fact for the Commission.

- c. PECO's objection presents unsupported conclusory statements, in a blatant attempt to chill Ms. Johns' lawful pursuit of information from PECO about metering and wiring at 5017 Griscom Street.

21. PECO claims in its objection to request 17 "The usage on other customer's meters is not relevant to whether Ms. Johns had high usage on her or meter or possible foreign wiring." Peco Objections at 6.

- a. PECO's objections present unsupported conclusory statements concerning the relevance of other metered usage at 5017 Griscom Street, in a blatant attempt to chill Ms. Johns' lawful pursuit of information from PECO about metering and wiring at 5017 Griscom Street.
- b. A significant increase or decrease in usage on another meter at 5017 Griscom Street could reasonably be expected to assist Complainant in determining if and when an issue with foreign wiring or foreign load may have begun.
- c. A foreign load investigation necessarily relates not only to the usage on Complainant's meter, but also to the usage (or lack thereof) registering on other meters at 5017 Griscom Street.

22. PECO further claims that providing the information in both requests 15 and 17 would be unduly burdensome. PECO's claim of undue burden is wholly unsupported and should be disregarded. Without some showing of the number of meters located at 5017 Griscom Street and the number of times those meters may have been changed during the period in question, PECO simply has not established any significant burden in responding to Complainant's request.<sup>1</sup>

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<sup>1</sup> For example if there are only three meters at the property, and they have only been changed once in the period relevant to the question, PECO could not claim an undue burden associated with responding to the request.

23. PECO further alleges that both requests 15 and 17 are overly broad. Both requests were written as narrowly as possible in order to obtain information that may be relevant to Ms. Johns' complaint and assessing the timeframe during which possible foreign wiring may have been present.


24. Complainant's due process rights are compelling. PECO's objections seek to preclude Complainant from obtaining access to vital information, sought through discovery, to permit her to prove the gravamen of her Complaint. Complainant has a due process right to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved" in her Complaint. 52 Pa. Code § 5.321(c).

25. All of the information requested by Complainant in requests 15 and 17 is relevant, none of it is privileged, and thus PECO has not asserted a valid ground for objection under the Commission's Regulations concerning Formal Proceedings.

26. Granting PECO's Objections would prevent Complainant from obtaining relevant evidence demonstrating the likely presence of foreign wiring and the inadequacy of PECO's investigation into Ms. Johns' complaint.

WHEREFORE, for the reasons set forth above, Complainant respectfully requests that the Objections of PECO be dismissed and PECO be compelled to provide responses to Complainant's Interrogatories and Requests for Production of Documents, Set I, number 15 and 17.

Respectfully submitted,



Jennifer C. Collins, Esq.  
PA Attorney ID No: 312108  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

Dated: August 7, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Kathie Johns,</b>	:	
	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>Docket No. F-2017- 2605058</b>
<b>PECO Energy Company,</b>	:	
<b>Respondent</b>	:	

I hereby certify that I have this day served a copy of the Motion to Compel the Response of PECO Energy Company to Complainant Kathie Johns's Interrogatories and Requests for Production of Documents, Set I, in the above-captioned matter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54.

Via Electronic Filing, First Class Mail & Email (as indicated)

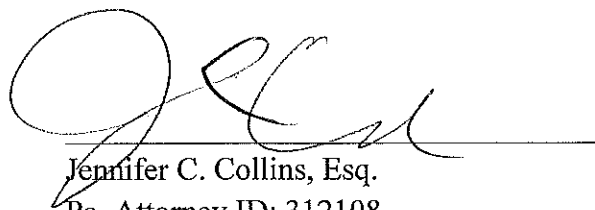
*(Electronic Filing)*

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Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

*(First Class Mail)*

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