

Tori L. Giesler, Esq.
(610) 921-6658
(330) 315-9263 (Fax)

610-929-3601

November 27, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Catherine Lamagna v. Pennsylvania Electric Company
Docket No. C-2017-2608014

Dear Secretary Chiavetta:

Enclosed please find the Motion to Compel of Pennsylvania Electric Company, which is being refiled at the Pennsylvania Public Utility Commission and re-served on the Complainant due to an error within the originally-filed Notice to Plead. As indicated within the Notice to Plead attached hereto, the Complainant, Catherine Lamagna, must file a response to the Motion to Compel within five days of its service (by December 4, 2017), with the Administrative Law Judge assigned to this matter anticipated to rule on this Motion within 15 days of its filing (by December 12, 2017). This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

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Enclosures

c: Administrative Law Judge Jeffrey A. Watson
As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE LAMAGNA

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2017-2608014

NOTICE TO PLEAD

TO: Catherine Lamagna

Pursuant to 52 Pa. Code § 5.342(g)(1), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Compel of Pennsylvania Electric Company within **five (5) days** from the service of the Notice, the facts set forth by Pennsylvania Electric Company in the Motion may be deemed to be true, thereby requirement no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Date: November 27, 2017



Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE LAMAGNA

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Docket No. C-2017-2608014

**MOTION OF PENNSYLVANIA ELECTRIC COMPANY TO COMPEL RESPONSES
TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Electric Company (“Penelec” or the “Company”) by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code §§ 5.371-5.372, hereby files this Motion to compel Catherine Lamagna (“Complainant”) to provide full and complete responses to interrogatories and document requests issued by the Company on October 26, 2017. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On or about June 6, 2017, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 616 Main Street, Thompson, Pennsylvania 18465 (“Service Location”) under Account No.100075075448 (“Account”).

2. On June 26, 2017, the Company filed its Answer denying the material allegations.

3. On October 17, 2017, Administrative Law Judge Jeffrey A. Watson issued an Interim Order Setting Conference Between the Parties requiring that the parties hold a conference to discuss the Formal Complaint filed by the Complainant to determine whether a resolution of the Formal Complaint may be reached.

4. Company representatives as well as counsel for the Company have contacted the Complainant on multiple occasions. After the Interim Order was issued, the Company contacted

the Complainant once again to schedule a mediation conference. The Complainant ultimately declined to participate in a further mediation conference, and notified the mediator that she would like to proceed to hearing.

5. The hearing in this proceeding is scheduled for January 8, 2017.

6. On October 26, 2017, in accordance with 52 Pa. Code §§ 5.341 and 5.349, *et seq.*, the Company forwarded to the Complainant interrogatories and document requests (“Discovery Requests”) via overnight United Parcel Service delivery. In its Discovery Requests, the Company sought information and documents related to the Complainant’s allegations regarding the Company’s smart meters. A copy of the Discovery Requests of the Company is attached as Exhibit A.

7. Objections to Met-Ed’s Discovery Requests were due on or before November 6, 2017 and Answers to the Discovery Requests were due on or before November 16, 2017.

8. The Complainant did not file any objections to the Discovery Requests and has not provided any responses or any requested documents by the due date.

II. MOTION TO COMPEL

9. The Commission’s regulations permit the discovery of “any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa. Code § 5.321(c).

10. Generally speaking, this Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. *Id.*

11. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make an act at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry to some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court

follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 336 A.2d 282 (Pa. 1975), the Court held that “[i]t must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Id.* at 284.

12. The information sought here by the Company is relatively simple and straightforward. It is directly relevant and material to the issues raised by the Complainant. As a matter of due process, the Company is entitled to the requested information to enable it to fully investigate and respond to the Complainant’s allegations. Moreover, failure to respond to the Discovery Requests is “obstructive to the orderly conduct of the proceeding and inimical to the public interest” in contravention of the Public Utility Code. *See* 66 Pa. C.S. § 332(f).

13. The Commission’s regulations at 52 Pa. Code § 5.371 address the consequences of a participant’s failure to comply with the Commission’s discovery regulations. Section 5.371 provides that:

- (a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:
 - (1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

14. Further, 52 Pa. Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission’s Regulations.

15. The Company requests that the Complainant be directed to provide full and complete responses to the Discovery Requests to be received by the undersigned counsel for the Company within five business days after entry of an Order Granting the Motion to Compel.

16. In the event the Complainant is directed by the Commission, but fails to respond to the Company's Discovery Requests, the Company respectfully requests that the Formal Complaint against the Company be dismissed in its entirety in accordance with prior Commission precedent. *See Julie Smith v. Metropolitan Edison Company*, Docket No. C-2016-2572867 (Final Order entered July 21, 2017).

WHEREFORE, Pennsylvania Electric Company respectfully requests that the Commission issue an Order compelling the Complainant to fully and completely respond to the Discovery Requests such that the responses are received by counsel for the Company no later than five business days after entry of an Order on the Motion to Compel. Further, in the event the Complainant does not comply with the Order directed by the Commission and fails to respond to the Company's Discovery Requests, the Company respectfully requests that the Commission dismiss in its entirety the Complaint of Catherine Lamagna.

Respectfully submitted,

Dated: November 27, 2017



Tori L. Giesler
Attorney No. 207742
Lauren M. Lepkoski
Attorney No. 94800
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
(610) 921-6658
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

Counsel for Pennsylvania Electric Company

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CATHERINE LAMAGNA

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Docket No. C-2017-2608014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Compel of Pennsylvania Electric Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by Overnight United Parcel Service, postage prepaid, as follows:

Catherine Lamagna
616 Main Street
Thompson, PA 18465

Dated: November 27, 2017



Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6658
tgiesler@firstenergycorp.com