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March 28, 2018

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 Dismiss of Pennsylvania Electric Company with regard to the above-captioned matter. 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,


Lauren M. Lepkoski

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Enclosures

c: 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 § 5.371(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Dismiss 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 pleading, 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:

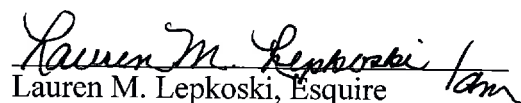
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

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

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

Date: March 28, 2018


Lauren M. Lepkoski, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE LAMAGNA	:	
	:	
v.	:	Docket No. C-2017-2608014
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**MOTION OF PENNSYLVANIA ELECTRIC COMPANY TO DISMISS COMPLAINT
OF CATHERINE LAMAGNA FOR FAILURE TO COMPLY WITH ORDER**

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 Dismiss the complaint of Catherine Lamagna (“Complainant”) for her failure to comply with the Interim Order of Administrative Law Judge Jeffrey A. Watson. 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 as well as Preliminary Objections.
3. On July 17, 2017, Complainant filed a letter with the Commission requesting an extension of time, for a period of thirty (30) days or more, to file a response to the preliminary objections and to seek legal advice.
4. On July 18, 2017, a Secretarial letter was issued indicating that the record did not include a certificate of service evidencing that Respondent was served with a copy of the

Complainant's letter, and accordingly, a copy of the letter was provided to all parties by the Commission's Secretary on July 18, 2017. No response was filed by any party.

5. On July 24, 2017, ALJ Watson issued a hearing notice which scheduled a telephonic hearing in this matter for August 28, 2017.

6. On July 25, 2017, a Prehearing Order was issued by ALJ Watson which set forth the procedural schedule for the parties.

7. On August 14, 2017, an Interim Order was entered permitting Complainant to file a response to the Company's Preliminary Objections on or before September 4, 2017. In addition, it was ordered that the parties comply with all terms of the Prehearing Order issued on July 25, 2017 and that the hearing scheduled for August 28, 2017 was cancelled.

8. On August 31, 2017, the Complainant filed an Answer to the Company's Preliminary Objections.

9. On October 3, 2017, an Interim Order was issued by ALJ Watson denying the Company's Preliminary Objections and referring the matter to mediation.

10. On October 17, 2017, an Interim Order Setting Conference Between the Parties was issued 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.

11. 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.

12. On October 26, 2017, a Call-In Telephonic Hearing Notice was issued which scheduled a telephonic hearing for January 8, 2018 before ALJ Watson.

13. 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.

14. Objections to the Company’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.

15. The Complainant did not file any objection to the Discovery Request and has not provided any responses or the requested documents by the due date. Accordingly, and prior to filing this Motion to Dismiss, counsel for the Company attempted to contact the Complainant via telephone inquiring about the Discovery Responses. To date, no response to the Discovery Requests or telephone call has been received from Complainant.

16. On November 22, 2017, in accordance with 52 Pa. Code §§ 5.371-5.372, the Company filed a Motion to Compel followed by an errata to that Motion on November 27, 2017, to compel the Complainant to provide full and complete responses to the Discovery Requests issued by the Company on October 26, 2017.

17. On December 29, 2018, ALJ Watson issued an Interim Order granting the Company’s Motion to Compel and ordering the Complainant to provide full, complete objections and/or responses to the Company’s Discovery Requests on or before January 30, 2018. The hearing scheduled for January 8, 2018 was also canceled.

18. On January 3, 2018, a Prehearing Order was issued by ALJ Watson which sets forth the procedural schedule for the parties. In the Prehearing Order, ALJ Watson directed the parties to provide each other with the name, business address, and a written summary of the expected testimony of any expert and factual witnesses that may be testifying by February 9, 2018 and to serve each other with a copy of proposed Exhibits for the evidentiary hearings by April 27, 2018.

19. On January 10, 2018, a Hearing Cancellation/Reschedule Notice was issued which scheduled a telephonic hearing for May 22 and 23, 2018 before ALJ Watson.

20. To date, no responses to the Company's Discovery Requests have been provided to the Company by the Complainant, nor has any communication from the Complainant been received by the Company. Not only did the Complainant ignore ALJ Watson's Interim Order granting the company's Motion to Compel, but the Complainant also ignored his January 3, 2018, Prehearing Order requiring the exchange expert and factual witness information by February 9, 2018.

II. MOTION TO DISMISS

21. 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).

22. 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. It is not grounds 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. 52 Pa. Code § 5.321(c).

23. 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 in 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*, 461 Pa. 274, 336 A.2d 282 (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.

24. 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. The Company is entitled to the requested information to enable it to fully investigate and defend against the Complainant’s allegations.

25. 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 and provides that the Commission or the presiding officer may, on motion, make an appropriate order if a party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests.


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

27. As a result of the Complainant’s failure to provide any response to the Company’s Discovery Requests, which demonstrates her lack of cooperation and willingness to participate in this proceeding as required under the Commission’s regulations, the Formal Complaint in this proceeding should be dismissed in its entirety.

WHEREFORE, Pennsylvania Electric Company respectfully requests that the Commission dismiss in its entirety the Complaint of Catherine Lamagna.

Respectfully submitted,

Dated: March 28, 2018


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Counsel for Pennsylvania Electric Company

**BEFORE THE
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CATHERINE LAMAGNA

v.

PENNSYLVANIA ELECTRIC COMPANY

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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 Dismiss 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 First Class Mail, postage prepaid, as follows:

Catherine Lamagna
616 Main Street
Thompson, PA 18465

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

Dated: March 28, 2018


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