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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: Keith Lenz v. Pennsylvania Electric Company
Docket No. C-2017-2605065

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**

KEITH LENZ

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2017-2605065

NOTICE TO PLEAD

TO: Keith Lenz

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:

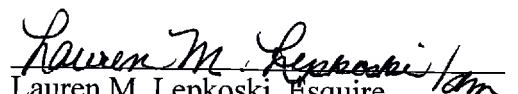
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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**

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Docket No. C-2017-2605065

**MOTION OF PENNSYLVANIA ELECTRIC COMPANY TO DISMISS COMPLAINT
OF KEITH LENZ 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 Keith Lenz (“Complainant”) for his 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 May 18, 2017, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 4281 Dunn Valley Road, McKean, Pennsylvania 16426 (“Service Location”) under Account No. 100003818729 (“Account”) which was electronically served on the Company on May 19, 2017.

2. On June 8, 2017, the Company filed its Answer denying the material allegations as well as Preliminary Objections.

3. On July 3, 2017, a motion judge assignment notice was issued assigning this matter to Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) for disposition.

4. On July 26, 2017, an Interim Order was issued by ALJ Watson denying the Company’s Preliminary Objections.

5. Counsel for the Company attempted to contact the Complainant on several occasions to discuss the Formal Complaint and left messages. No return call was received from the Complainant.

6. On November 13, 2017, a Call-In Telephonic Hearing Notice was issued which scheduled a telephonic hearing for May 8, 2018 and May 9, 2018 before ALJ Watson.

7. On November 28, 2017, 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 20, 2018 and to serve each other with a copy of proposed Exhibits for the evidentiary hearings by April 23, 2018.

8. On December 12, 2017, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests (“Discovery Requests”) via United Parcel Service overnight delivery. Objections to the Discovery Requests were due on December 22, 2017 and answers to the Discovery Requests were due on January 2, 2018. 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.

9. 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.

10. On January 3, 2018, in accordance with 52 Pa. Code §§ 5.371-5.372, the Company filed a Motion to Compel the Complainant to provide full and complete responses to the Discovery Requests issued by the Company on December 12, 2017.

11. On January 25, 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 February 9, 2018.

12. 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 November 28, 2017, Prehearing Order requiring the exchange expert and factual witness information by February 20, 2018.

II. MOTION TO DISMISS

13. 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).

14. 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).

15. 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.

16. 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.

17. 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.


18. 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.

19. As a result of the Complainant’s failure to provide any response to the Company’s Discovery Requests, which demonstrates his 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 Keith Lenz.

Respectfully submitted,

Dated: March 28, 2018


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Counsel for Pennsylvania Electric Company

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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:

Keith Lenz
4281 Dunn Valley Road
McKean, PA 16426

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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