

Legal Department  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 215.841.6863

November 26, 2018

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

**Re: Nancy and James Colbert v. PECO Energy Company**  
**Docket No. C-2016-2561993**

Dear Secretary Chiavetta:

PECO's *Motion to Compel Answers to Interrogatories and Requests for Production of Documents*, is attached for filing.

Very truly yours,



Ward L. Smith  
Counsel for PECO Energy Company

WS/adz  
Enclosures

c: Honorable Darlene D. Heep, ALJ  
Certificate of Service

**NANCY AND JAMES COLBERT** :  
**Complainant** :  
**v.** : **DOCKET NO. C-2016-2561993**  
: :  
**PECO ENERGY COMPANY** :  
**Respondent** :

**NOTICE TO PLEAD**

*To: Nancy and James Colbert*

Pursuant to 52 Pa. Code §1.22 and 5.61 you may file an Answer to this Motion. Said Answer is due within 20 calendar days of service of this Motion (In this case, by Monday, December 17, 2018), unless the Presiding Officer sets a different time for your reply.

If you do not file an Answer, this Motion may be granted without further input from you.

You must provide a full copy of any Answer to counsel for PECO, the Commission, and the Presiding Officer.

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

With a copy to:

Administrative Law Judge Darlene Heep  
Suite 4063  
801 Market Street  
Philadelphia, PA 19107

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

Dated at Philadelphia, PA, November 26, 2018.

A handwritten signature in black ink, appearing to read "Ward L. Smith", written in a cursive style.

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Ward L. Smith  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street S23-1  
Philadelphia, PA 19103

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Nancy and James Colbert :  
 :  
 v. : Docket No. C-2016-2561993  
 :  
 :  
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on November 26, 2018, I served a copy of PECO Energy Company's *Motion to Compel Answers to Interrogatories and Requests for Production of Documents*, upon all interested parties via overnight delivery to:

Nancy Colbert  
142 Pennsylvania Avenue  
Phoenixville, PA 19460

Dated: November 26, 2018



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Ward L. Smith  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Phone: (215) 841-6863  
Fax: 215.568.3389  
[Ward.Smith@exeloncorp.com](mailto:Ward.Smith@exeloncorp.com)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NANCY AND JAMES COLBERT</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2016-2561993</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**MOTION OF PECO ENERGY COMPANY  
TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

Pursuant to 52 Pa. Code § 5.342(g), PECO Energy Company (“PECO”) hereby requests that Your Honor compel full and complete answers to PECO’s Interrogatories and Requests for Production of Documents Set I (“Set I Discovery”), which was served on October 23, 2018. PECO’s Set I Discovery is comprised of nine questions, without subparts, that request further information regarding any medical conditions that the Colberts claims were or will be caused, contributed to, or exacerbated by PECO’s AMI meters. (PECO’s Set I Discovery is attached as Exhibit A.)

Complainants were served with PECO’s Set I Discovery by overnight mail on October 23, 2018, with an objection date of November 2, 2018 and a return date of November 12, 2018. No objections were lodged. No answers were provided.<sup>1</sup>

As demonstrated below, PECO’s questions are relevant and reasonable. PECO therefore requests that Your Honor issue a ruling that the Colberts are required to provide full and

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<sup>1</sup> PECO’s documentary service on that date included its Discovery, a Notice of Appearance, and a *Pro Hac Vice* Motion. By an *ex parte* filing with the Commission, the Colberts verified that they had received PECO’s documentary service of October 23, 2018. (The Commission later cured the *ex parte* nature of the communication by serving it on PECO by Secretarial Letter dated November 1, 2018.)

complete answers to PECO’s Set I Discovery by no later than 10 days after Your Honor issues an Order granting this Motion to Compel.

**I. BACKGROUND**

On August 17, 2016, PECO was served with a formal complaint in this matter. After substantial motions practice, on October 4, 2018, the Commission issued an Order assigning this matter to the Office of Administrative Law Judge for evidentiary hearings. In that Order (p. 9), the Commission stated that the “Complainants alleged, *inter alia*, smart meters . . . cause adverse health effects.”

PECO’s Set I Discovery asks the Colberts to identify with greater specificity these claimed adverse health effects, inquire whether Mrs. Colbert or any member of her household has any of those health effects or if she claims that installation of a PECO AMI meter will cause her or a family member to have such adverse health effects, and further inquires whether she has any documentary proof (medical records or otherwise) in support of such claims.

**II. LEGAL STANDARD FOR DISCOVERY QUESTIONS**

The Commonwealth Court of Pennsylvania has stated that “[d]iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” *See Pittsburgh Bd. of Public Educ. V. M.J.N. by N.J.*, 105 Pa. Cmwlth. Ct. 397, 403, 524 A.2d 1385, 1388 (Pa. Commw. Ct. 1987).

Under the Commission’s regulations, the scope of discovery is broad. Section 5.321 outlines the cope of discovery as follows:

- (c) **Scope.** 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 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).

**III. THE INFORMATION PECO SEEKS IN ITS DISCOVERY REQUESTS IS RELEVANT TO PECO'S DEFENSE OF THE CLAIMS MADE IN THE FORMAL COMPLAINT**

Each question in PECO's Set I Discovery is specifically tied to the Colbert's claim of adverse health effects, as that claim was recognized and articulated by the Commission on page 9 of its October 4, 2018. The Set I Discovery thus clearly meets the standard of relating to "the claim or defense of another party . . . "

**IV. CONCLUSION**

WHEREFORE, for the reasons set forth above, PECO respectfully requests that Your Honor (a) grant this Motion; and (b) compel Complainant to answer PECO's Set I Discovery in full no later than 10 days of the issuance of Your Honor's Order granting this Motion.

Respectfully submitted,



Ward Smith, Assistant General Counsel  
Shawane Lee, Assistant General Counsel  
2301 Market Street, S-23  
Philadelphia, PA 19103  
215-841-6863  
[ward.smith@exeloncorp.com](mailto:ward.smith@exeloncorp.com)  
Counsel for PECO Energy

November 26, 2018

**EXHIBIT A**

**PECO Discovery Set I**





An Exelon Company

Legal Department  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 215.841.6863

October 23, 2018

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

**Re: Nancy Colbert v. PECO Energy Company**  
**Docket No. C-2016-2561993**

Dear Secretary Chiavetta:

Today PECO served its *Discovery, Set One*, in the above referenced case.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ward L. Smith".

Ward L. Smith  
Counsel for PECO Energy Company

WS/adz  
Enclosures

c: Honorable Darlene D. Heep, ALJ  
Certificate of Service

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**NANCY COLBERT** :  
    **Complainant** :  
    **v.** :                   **DOCKET NO. C-2016-2561993**  
                                  :  
**PECO ENERGY COMPANY** :  
    **Respondent** :

**NOTICE TO PLEAD**

*To: Nancy Colbert*

Pursuant to 52 Pa. Code §5.342, you are hereby notified that if you have any objections to these Questions you must serve those objections, within writing, within 10 days of receipt of this discovery (in this case, by Friday, November 2, 2018). If you do not object, then you must answer these questions, in full and in writing, within 20 days from service of this notice. (In this case, by Monday, November 12, 2018).

You must provide a full copy of any objection or answers to counsel for PECO. If you serve an objection or answers, you may not file the substance of such objection or answer with the Commission or the Administrative Law Judge; however, you must file a certificate of service with the Secretary of the Pennsylvania Public Utility Commission with the Administrative Law Judge, evidencing the service of such objection or answer on PECO.

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, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, October 23, 2018.



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Ward L. Smith  
Assistant General Counsel  
PECO Energy Company  
2301 Market Street S23-1  
Philadelphia, PA 19103

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Nancy Colbert :  
 :  
 v. : Docket No. C-2016-2561993  
 :  
 :  
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on October 23, 2018, I served a copy of PECO Energy Company's *Discovery, Set 1*, in the above matter, upon all interested parties via overnight delivery to:

Nancy Colbert  
142 Pennsylvania Avenue  
Phoenixville, PA 19460

Dated: October 23, 2018



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Ward L. Smith  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Phone: (215) 841-6863  
Fax: 215.568.3389  
[Ward.Smith@exeloncorp.com](mailto:Ward.Smith@exeloncorp.com)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Nancy Colbert**

v.

**PECO Energy Company**

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**Docket No. C-2016-2561993**

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**PECO ENERGY COMPANY'S  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS,  
SET I**

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PECO Energy Company, pursuant to 52 Pa. Code Subchapter D, hereby propounds the following Interrogatories and Requests for Production of Documents, Set I.

1. Reference the October 4, 2018 Opinion and Order, p. 9, where the Commission states that you allege that PECO's AMI meter "cause adverse health effects." Please *identify each health effect* referenced in the above statement.
2. For each health effect identified in response to Question 1, please *state whether Ms. Colbert or any member of her household currently has such health effect.*
3. For each health effect identified in response to Question 2 for which you affirmatively answered that Ms. Colbert or any member of her household currently has such health effect, *please provide copies of all available medical records that demonstrate that the patient has been diagnosed* with such health effect.
4. Stated separately for each health effect identified in response to Question 2 for which you affirmatively answered that Ms. Colbert or a member of her household currently has such

health, *is it Ms. Colbert's contention that installation of a PECO AMI meter will exacerbate that existing health effect?*

5. For each health effect for which you affirmed the contention in response to Question 4, provide *all medical records that you rely upon for that contention.*
6. For each health effect for which you affirmed the contention in response to Question 4, provide *all documents other than medical records that you rely upon for that contention.*
7. For each health effect identified in response to Question 1 that Ms. Colbert or a member of her household *does not currently claim to have*, please state whether it is your *contention that installation of a PECO AMI meter would cause or contribute to such health effect in Ms. Colbert or a member of her household.*
8. For each health effect for which you affirmed the contention in response to Question 7, provide *all medical records that you rely upon for that contention.*
9. For each health effect for which you affirmed the contention in response to Question 8, provide *all documents other than medical records that you rely upon for that contention.*