

COMMONWEALTH OF PENNSYLVANIA



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January 29, 2019

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

Re: Non-Bypassable Transmission
Service Charge (NBT) Semiannual
Adjustment, PECO Energy Electric Tariff
No. 5, Supplement No. 76 Effective
December 1, 2018
Docket No. M-2018-3005860

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to PECO's Motion to Dismiss Objections and Compel Answers to Interrogatories (Set I) in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Harrison W. Breitman".

Harrison W Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
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Enclosures:

cc: The Honorable Martha Guhl
Administrative Law Judge
Certificate of Service
*265713

CERTIFICATE OF SERVICE

Non-Bypassable Transmission Service Charge (NBT) :
Semiannual Adjustment, PECO Energy Electric Tariff : Docket No. M-2018-3005860
No. 5, Supplement No. 76 Effective December 1, 2018 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to the Motion Of PECO Energy Company to Dismiss Objections and Compel Answers to Interrogatories (Set I), upon parties of record in this processing in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 29th day of January 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Non-Bypassable Transmission Service Charge :
(NBT) Semiannual Adjustment, PECO Energy :
Electric Tariff No. 5, Supplement No. 76 : Docket No. M-2018-3005860
Effective December 1, 2018 :

**ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE MOTION OF PECO ENERGY COMPANY
TO DISMISS OBJECTIONS AND COMPEL
ANSWERS TO INTERROGATORIES (SET I)**

Pursuant to 52 Pa. Code Section 5.342(g), the Office of Consumer Advocate (OCA) submits this Answer to the Motion of PECO Energy Company (PECO or the Company) to Dismiss Objections and Compel Answers to PECO’s first set of Interrogatories (PECO’s Set I), Questions 1 through 9. For the reasons set forth below, the Company’s Motion should be denied.

I. INTRODUCTION

On January 4, 2019, PECO served PECO’s Set I on the OCA. PECO’s Set I consists of nine questions directed to the OCA. The OCA submits that, at this stage of the proceeding, PECO’s interrogatories are unreasonable, oppressive and burdensome, and would require responses that are protected by the attorney work product privilege. See, 52 Pa. Code § 5.361(a); see also, 52 Pa. Code § 5.323(a); Pa. R.C.P. 4003.3. The OCA reviewed PECO’s filing, conducted preliminary investigation and research, and concluded that more facts were needed in order to understand whether PECO’s proposal is, in fact, consistent with the Public Utility Code, sound ratemaking principles, and public policy. Thus, exercising its statutory authority, the OCA filed a Complaint in order to more fully investigate and analyze PECO’s proposed NBT adjustment and

its decision to retain \$5.5 million in FERC-ordered credits. The OCA's Complaint, as in all complaints filed when a utility files to change its rates, alleged that the rate change is, *or may be*, unjust, unreasonable, or otherwise in violation of the Public Utility Code, sound ratemaking principles, and public policy. In this case, PECO has provided no testimony in support of its rate change at this time, and the OCA Complaint requested an investigation and denial of any rate change that is found not to be just, reasonable, or in accordance with sound ratemaking principles and public policy. A recent decision issued by Deputy Chief Judge Cheskis and Administrative Law Judge Barnes on a similar issue regarding an EGS' attempt to request every fact supporting an allegation or claim that the EGS violated any Pennsylvania law, regulation, or rule of the Commission is on point and states as follows:

Joint Complainants contend this interrogatory is impermissible as it seeks a mental impression, conclusion, or legal theory of Joint Complainants. Much of this case has already been litigated as the consumer testimonies together with consumer exhibits were already entered into the record subject to cross-examination on March 30 -- April 1, 2015. Blue Pilot appears to be seeking an organization of this evidence into findings of facts prior to the briefing stage in this proceeding, which goes beyond permissible discovery.

The Joint Complainants have pre-served written direct testimony of their expert witnesses as of October 20, 2015. Blue Pilot will be given opportunities to seek clarification and cross-examine expert witnesses as part of the procedural schedules. The identities of Joint Complainants' expert witnesses have been revealed to Blue Pilot. The request is overly broad, vague, and asks for attorney work product; accordingly, it will be denied.

Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC, C-2014-2427655, Order Granting in Part and Denying in Part Motion to Compel Responses to Blue Pilot Energy, LLC's Interrogatories Set IV (entered on October 28, 2015) (Blue Pilot Order) at 5.

The OCA orally communicated its objections to Set I to PECO on January 9, 2019. The OCA and PECO were not able to resolve these issues. With respect to relief, the OCA requests that the Commission sustain the OCA's objections and find that PECO Set I seeks responses that

are attorney work product in addition to being overly burdensome, oppressive, and unreasonably annoying at this stage of the proceeding. As such, the OCA submits the following objections pursuant to 52 Pa. Code Sections 5.342(e).

II. PROCEDURAL HISTORY

On November 7, 2018, PECO filed its proposed semiannual adjustment to its Non-Bypassable Transmission Service Charge (NBT) to PECO Energy Electric Tariff No. 5, Supplement No. 76. As a part of this filing, PECO submitted a one-page explanation to the Commission regarding its reasoning for the NBT adjustment and the Company's decision to retain \$5.5 million in FERC-ordered credits. On November 29, 2018, the OCA filed a Formal Complaint with the Commission. The Complaint alleges that a preliminary examination of PECO's proposed semiannual adjustment to its NBT to PECO Energy Electric Tariff No. 5, Supplement No. 76, specifically the proposal to retain \$5.5 million of FERC-ordered credits, is or may be unjust, unreasonable, in violation of the Pennsylvania Public Utility Code, and otherwise may be contrary to sound ratemaking principles and public policy. See gen'ly, OCA Complaint. On December 19, 2018, PECO filed Preliminary Objections (P.O.s) to the OCA's Formal Complaint. See gen'ly, PECO P.O.s. PECO objected to the OCA's formal complaint based on an alleged insufficiency of the pleading. PECO P.O. ¶¶ 4-5, citing 52 Pa. Code § 5.101(a)(3). On December 31, 2018, the OCA provided its Answer to PECO's P.O.s. The OCA's Answer argues that PECO's P.O.s are unsupported and that the OCA's Complaint is sufficient. See gen'ly, OCA Answer to the P.O.s of PECO. On January 4, 2019, PECO served PECO's Set I interrogatories on the OCA. On January 8, 2019, Administrative Law Judge Marta Guhl was assigned to the proceeding in order to resolve any issues which may arise during the preliminary phase of the proceeding. On January 9, 2019, the OCA orally communicated their objections to PECO Set I interrogatories to PECO's Counsel.

No resolution of the OCA's objections could be reached. The OCA served its Written Objections to PECO's Interrogatories Set I on January 14, 2019. On January, 24, 2019, PECO filed a Motion to Dismiss Objections and Compel Answers to Interrogatories, Set I. Currently, there is no testimony filed by PECO in support of its proposed NBT adjustment and no procedural schedule has been issued in this matter. Moreover, a decision regarding PECO's P.O.s alleging that the OCA's complaint is insufficient and the OCA's Answer to PECO's P.O.s has not been issued.

III. THE OCA'S OBJECTIONS SHOULD BE SUSTAINED

The OCA objected to PECO's Set I interrogatories because the requests seek information that is overly burdensome, oppressive, and would cause unreasonable annoyance at this stage of the proceeding. Further, the interrogatories seek information that is protected by the attorney work product privilege. In the following subsections, the OCA will directly respond to each of the arguments raised in PECO's Motion to Compel.

A. PECO's Set I Interrogatories are Unreasonably Annoying, Oppressive, and Burdensome.

PECO states that its Set I interrogatories are narrowly tailored in order to prepare a defense and that the OCA's objection that the information is burdensome, annoying, and oppressive is not a proper basis to object. Pursuant to the Commission's regulation, discovery which would cause unreasonable annoyance or burden is not permitted. See, 52 Pa. Code § 5.361(a).

Referring to the OCA's Complaint, PECO requests the factual bases for the OCA's underlying allegations beyond what is set forth in the Complaint. See, PECO Set I-1 through I-4. PECO states that the OCA alleges that PECO's NBT adjustment **is** in violation of specific sections of the Public Utility Code, sound ratemaking principles and public policy. Id. The OCA's Complaint, however, states that PECO's NBT adjustment, specifically the proposal to retain \$5.5

million of the FERC-ordered credits, is **or may be unjust, unreasonable, and in violation** of the Pennsylvania Public Utility Code, 66 Pa. C.S. Section 1301 *et seq.*, 66 Pa. C.S. Section 2804, and otherwise **may** be contrary to sound ratemaking principles and public policy. See, OCA Complaint at ¶ 4.G (emphasis added). At this stage of the proceeding, requiring the OCA to prove that PECO's proposed NBT adjustment is, in fact, in violation of specific sections of the Public Utility Code, sound ratemaking principles, and public policy, is overly burdensome since the OCA has not yet performed a full investigation of PECO's proposed NBT adjustment. Moreover, PECO's allegations regarding the supposed legal and factual insufficiency of the OCA's Complaint have already been raised in its P.O.s, which have been answered by the OCA and are currently pending before Administrative Law Judge Guhl. See, PECO P.O.s; see also, OCA Answer to PECO's P.O.s. Since the instant proceeding is in its early stages, and no testimony has been filed, the OCA intends to investigate the legality of PECO's NBT adjustment through testimony and discovery. See, Blue Pilot Order at 5. The facts supporting the OCA's complaint will be established through the discovery process and testimony as in all cases involving rate changes by utilities.

The remaining interrogatories in PECO's Set I reference the OCA's Answer to PECO's P.O.s. See, PECO Set I-4 through I-9. As the OCA's Answer to PECO's P.O.s was recently filed with the Commission, the OCA is currently awaiting an ALJ decision. Instead of waiting for ALJ Guhl's decision regarding PECO's preliminary objections, PECO seeks additional explanation of the OCA's answers to PECO's preliminary objections beyond what is reasonable at this stage of the proceeding. The OCA's governing statute authorizes the OCA to represent the interests of Pennsylvania consumers. The OCA filed its Complaint to further investigate PECO's claim that retaining \$5.5 million in FERC-ordered credits is lawful and in accordance with sound ratemaking principles and public policy. See gen'ly, OCA Complaint. PECO's NBT adjustment to PECO's

tariff, and PECO's decision to retain \$5.5 million in credits, is within the knowledge of PECO. Requesting the OCA to provide further factual explanation and legal opinions at this stage of the proceeding is inappropriate, annoying, overly burdensome, and unreasonable. As such, the OCA's objections should be sustained.

B. The OCA's Objections are Consistent with the OCA's Response to PECO's Preliminary Objection

PECO states that the OCA's objections cannot be reconciled with the OCA's argument in response to PECO's Preliminary Objection in which the OCA states that PECO should use the discovery process to seek information needed to prepare the Company's answer to the Complaint. The OCA noted in the OCA's Answer to PECO's P.O.s that the Complaint is sufficiently clear to enable PECO to prepare its defense as the Complaint informs PECO accurately and completely of the specific basis on which recovery is sought and PECO is aware of the OCA's position regarding PECO's proposal to retain \$5.5 million in FERC-ordered credits. See gen'ly, OCA Answer to the P.O.s of PECO. The OCA noted in its Answer to PECO's P.O.s that when a respondent files a preliminary objection alleging "insufficient specificity of a pleading," an answer is not required until further directed by the presiding officer or the Commission. 52 Pa. Code § 5.101(e)(1). See, OCA Answer to the P.O.s of PECO at 4. Instead of waiting for a determination from the presiding officer regarding PECO's Preliminary Objections, PECO propounded its Set I Interrogatories to elicit further support for the OCA's Complaint in response to, and partially based on, the OCA's answers to PECO's P.O.s. See, PECO Motion to Compel at C. PECO is thus simultaneously preliminarily objecting to the OCA's Complaint due to alleged factual insufficiency and requesting additional factual basis beyond what is already set forth in the OCA's Complaint via discovery before the presiding officer determines whether the OCA's Complaint is factually sufficient. This is unreasonably annoying, burdensome, and overly oppressive.

Moreover, PECO claims that “the OCA will not have to provide the factual basis for its Complaint at this time, and presumably will not provide the factual basis for its Complaint until the OCA files its testimony or at some other time later in this proceeding not yet defined by the OCA.” PECO Motion to Compel at 7. PECO has provided no testimony in support of its rate change at this time, and the OCA Complaint requested an investigation and denial of any rate change that is found not to be just, reasonable, or in accordance with sound ratemaking principles and public policy. Further facts supporting the OCA’s Complaint will be established through the discovery process as in all cases involving rate changes by utilities. At this stage of the proceeding, given the lack of information provided by PECO justifying their rate adjustment, the OCA’s Complaint specifically stated that PECO’s proposal to retain \$5.5 million of the FERC-ordered credits, is or may be unjust, unreasonable, and in violation of the Pennsylvania Public Utility Code, 66 Pa. C.S. Section 1301 et seq., 66 Pa. C.S. Section 2804, and otherwise may be contrary to sound ratemaking principles and public policy is sufficient. See, OCA Complaint at ¶ 4.G. PECO’s argument that it is being denied due process and that it is unaware of the OCA’s claims in this matter is without merit.

C. PECO Mischaracterizes the OCA’s Grounds for Objections

PECO contends that “the OCA’s preference on when to time its answers to discovery is not a valid basis for objecting to discovery.” PECO Motion to Compel at D.5. The OCA, however, objected to PECO’s Set I interrogatories as they are unreasonably burdensome, annoying, oppressive and seek attorney work product. The OCA noted in its Answer to PECO’s P.O.s that when a respondent files a preliminary objection alleging “insufficient specificity of a pleading,” an answer is not required until further directed by the presiding officer or the Commission. 52 Pa. Code § 5.101(e)(1). See, OCA Answer to the P.O.s of PECO at 4. PECO bears the burden to

justify PECO's rate adjustment. Thus far, the OCA has received a one-page explanation regarding PECO's proposed NBT adjustment. Requiring the OCA to provide further facts at this stage of the proceeding, before the presiding officer makes a determination regarding the sufficiency of the OCA's Complaint and before any information is provided by PECO, is unreasonable.

D. PECO's Set I interrogatories are beyond the permissible scope of discovery because it seeks attorney work product.

PECO claims that the OCA is withholding the factual basis for the allegations in the OCA's Complaint by objecting to PECO Set I as attorney client work product. The OCA objected to PECO Set I-1 through I-9 insofar as the interrogatories require the OCA to disclose attorneys' mental impressions, conclusions, opinions, or legal theories. Such information is attorney work product, which is beyond the permissible scope of discovery. Section 5.323(a) of the Pennsylvania Code is consistent with Pa. R.C.P. 4003.3 which codifies the attorney work product privilege and states the following:

The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

Pa. R.C.P. 4003.3.

PECO is asking the OCA to disclose legal and factual research and reasoning regarding PECO's proposal to adjust its NBT. In the Commonwealth of Pennsylvania, the existence of the attorney work product privilege when attorneys act in their professional capacity for governmental agencies is well established. Sedat, Inc. v. Dep't of Env'tl. Res., 163 Pa. Commw. 29, 33, 614 A.2d 1243, 1244 (1994), citing Okum v. Unemployment Compensation Board of Review, 77 Pa.

Commw. 386, 465 A.2d 1324 (1983). To allow the defendant access to such privileged information, would allow him to “. . . get the benefit of the agency’s legal and factual research and reasoning, enabling him to litigate ‘on wits borrowed from the adversary.’ Worse yet, he could gain insight into the agency’s general strategic and tactical approach to deciding when suits are brought, how they are conducted, and on what terms they may be settled.” Sedat, 163 Pa. Commw. At 34, 641 A.2d at 1245, quoting F.T.C. v. Grolier, 462 U.S. 19, 30-31, 103 S.Ct. 2209, 2216, 76 L.Ed.2d 387, 397-98 (1983)(J. Brennan, concurring). Moreover, when a representative employee of the attorney who is acting as the agent of the attorney and is directed by the attorney to do the desired preparatory work in the investigation of a case and its preparation for trial, the product of that work becomes a part of the hiring attorney’s work product, just as if the work had been done by the attorney in person or by an employee of his office. 35 ALR 3d 412, 429; See also Brant v. Turnamian, 9 Pa. D. & C. 4th 216, 219 (Com. Pl. 1991).

In PECO’s Set I, PECO is requesting the OCA to disclose 1) the factual basis for the OCA’s legal opinion that PECO’s proposed NBT adjustment is in violation of Sections 1301 and 2804 of the Public Utility Code; 2) the factual basis for OCA’s legal opinion that PECO’s proposed NBT adjustment is contrary to sound ratemaking principles and public policy; 3) a factual and legal analysis of specific provisions of PECO’s tariffs; 4) the OCA’s legal opinion regarding the settlement entered in Pa. PUC Docket No. R-00973953 and its relationship to the instant proceeding; 5) the OCA’s legal opinion regarding the settlement entered in Pa. PUC Docket No. R-2010-2161575 and its relationship to the instant proceeding; 6) each method, act and practice with consumers that are the subject of the OCA complaint beyond the act of retaining \$5.5 million in FERC-ordered credits already identified in the OCA’s Complaint and the OCA’s answer to PECO’s P.O.s; 7) the OCA’s legal position regarding FERC Docket No. EL05-121-009 and basis

for the OCA's alleged anticipated denial of a FERC schedule of credits, and; 8) the OCA's position regarding Regional Transmission Expansion Plan (RTEP) charges billed to PECO prior to January 1, 2011. See, PECO Set I.

PECO argues that Section 5.342(c)(5) of the Commission's regulations provides that an objection to an interrogatory is not valid if "based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact." PECO Motion to Compel at E *citing* Section 5.342(c). As noted above, however, the OCA did not solely claim that the answer would involve an opinion or contention that is related to fact or the application of law to a fact, but additionally objected that PECO's Interrogatory Set I was unreasonably burdensome, annoying, and oppressive. Discovery seeking further analysis by counsel for the OCA equates to seeking the OCA's preliminary legal analysis, which will be provided by the OCA in their brief in final form in the event that the proceeding reaches the briefing phase. Requiring the OCA to provide further facts and legal analysis in addition to its Complaint and its Answers to Preliminary Objections regarding the OCA's Complaint that are currently pending before the presiding officer is unreasonable.

PECO claims that the OCA's Objections improperly equate a statement of facts supporting its Complaint with attorney work product. PECO Motion to Compel at E.8. The OCA, however, is not required to provide an organized statement of facts to PECO at this stage of the proceeding. Moreover, PECO claims that the information requested by PECO does not call for legal advice or documents reflecting legal advice or prepared in anticipation of litigation. PECO Motion to Compel at E.8. The OCA, however, was asked in PECO Set I to identify "any document upon which the OCA relied or intends to rely to support its position." See, PECO-OCA-I-8 and PECO-OCA-I-9. The documentation that PECO is requesting is documentation that would be prepared

in anticipation of litigation. Requiring the OCA to provide documentation before any testimony has been filed by PECO in support of their proposed rate adjustment is inappropriate.

The OCA's position regarding PECO's proposed adjustment to its NBT is not solely factual data. PECO is essentially seeking an evaluative summary because this is information that would have been included in the overall strategic and tactical approach in the determination of whether to file a Complaint in this matter. In short, PECO's Set I seeks attorney work product. As such, the OCA's objections should be sustained.

E. The *Blue Pilot Order* Supports a Ruling in Favor of the OCA's Objections

PECO claims that an Order issued by ALJs Barnes and Cheskis does not apply to PECO in the instant proceeding. A recent decision issued by Deputy Chief Judge Cheskis and Administrative Law Judge Barnes on a similar issue regarding an EGS' attempt to request every fact supporting an allegation or claim that the EGS violated any Pennsylvania law, regulation, or rule of the Commission states as follows:

Joint Complainants contend this interrogatory is impermissible as it seeks a mental impression, conclusion, or legal theory of Joint Complainants. Much of this case has already been litigated as the consumer testimonies together with consumer exhibits were already entered into the record subject to cross-examination on March 30 -- April 1, 2015. Blue Pilot appears to be seeking an organization of this evidence into findings of facts prior to the briefing stage in this proceeding, which goes beyond permissible discovery.

The Joint Complainants have pre-served written direct testimony of their expert witnesses as of October 20, 2015. Blue Pilot will be given opportunities to seek clarification and cross-examine expert witnesses as part of the procedural schedules. The identities of Joint Complainants' expert witnesses have been revealed to Blue Pilot. The request is overly broad, vague, and asks for attorney work product; accordingly, it will be denied.

Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC, C-2014-2427655, Order Granting in Part and Denying in Part Motion to Compel Responses to Blue Pilot Energy, LLC's Interrogatories Set IV (entered on October 28, 2015) (*Blue Pilot Order*) at 5. PECO claims that

Blue Pilot did not hold that the OCA is free from answering discovery questions until the filing of its testimony. The OCA, however, does not argue that it is free from answering discovery questions prior to the filing of its testimony. Instead, the OCA is objecting to specific interrogatories that have been served by PECO in this proceeding. PECO attempts to differentiate the instant proceeding from the circumstances in Blue Pilot and the OCA specifically addresses each argument in the following paragraphs:

First, similar to Blue Pilot, PECO already has all of the information regarding its proposed rate adjustment in its possession. While PECO claims that they have no information regarding the legal and factual claims presented by the OCA, the OCA has already sufficiently set forth its factual and legal claims in its Complaint. The dispute regarding the legal or factual sufficiency of the OCA's Complaint has already been addressed in PECO's P.O.s and the OCA's Answers to PECO's P.O.s. Providing further legal opinion or documentation at this stage of the proceeding is objectionable.

Secondly, while PECO correctly claims that they have the right to pursue discovery upon the filing of the OCA's Complaint, the OCA is permitted to object to discovery.

Third, while PECO claims that its due process rights are being violated, the OCA's position is that its Complaint is legally and factually sufficient and that PECO has notice that its proposed NBT may be in violation of the Pennsylvania Public Utility Code, 66 Pa. C.S. Section 1301 *et seq.*, 66 Pa. C.S. Section 2804, and otherwise may be contrary to sound ratemaking principles and public policy. PECO suggests that under the OCA's approach, "PECO would have to proceed with development of its case and testimony without knowing what the OCA thinks that PECO did wrong." PECO Motion to Compel at F.14. It was PECO, however, which engaged in the methods, acts and practices with consumers, which are the subject of the Complaint. PECO proposed the

NBT adjustment to their tariff that proposes to retain \$5.5 million of FERC-ordered credits instead of refunding the total amount of the FERC-ordered credits to its ratepayers. The Complaint is of record in this matter and speaks for itself.

Fourth, PECO claims that the OCA has not yet served PECO with any discovery in furtherance of its investigation. The OCA submits that its submission of discovery is irrelevant in relation to PECO Set I. The OCA is not required to serve discovery before objecting to interrogatories that are unreasonably burdensome and would require responses protected by the attorney work product privilege.

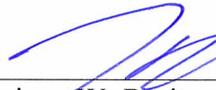
Lastly, PECO claims that if the OCA's Objections are sustained, then it would be reasonable for PECO to respond to yet-to-be served OCA discovery by objecting that the discovery constitutes attorney work product. The OCA does not expect PECO to provide interpretations of statutes, FERC Orders, and Commission Orders in discovery. Threatening that PECO will object to the OCA's discovery before it is served in retaliation to objecting to PECO's discovery set is unreasonable and this argument should be dismissed.

In summation, there is a pending dispute between the OCA and PECO regarding the legal and factual sufficiency of the OCA's Complaint. PECO states that "PECO is simply seeking to understand what the OCA believes that PECO did wrong." PECO Motion to Compel at F.17. The OCA, through its Complaint and re-iterated through the OCA's Answer to PECO's P.O.s, has already provided its legal and factual bases as to why the OCA filed its Complaint. At this stage of the proceeding, similar to *Blue Pilot*, PECO appears to be seeking an organization of this evidence into findings of facts prior to the briefing stage in this proceeding, which goes beyond permissible discovery. As such, the OCA's Objections should be sustained.

V. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that these Objections be sustained, because PECO's Set I seeks information that is unreasonably burdensome at this stage of the proceeding and constitutes attorney work product.

Respectfully Submitted,



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January 29, 2019
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