

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Craig Jackson	:	
	:	
v.	:	C-2016-2565262
	:	
Metropolitan Edison Company	:	

INITIAL DECISION GRANTING MOTION TO DISMISS

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision grants a Motion to Dismiss the Complaint of Craig Jackson (Complainant) with prejudice. That Motion was filed by Metropolitan Edison Company (Met-Ed). Complainant has not filed an Answer to the Motion. The Motion is granted because Complainant has failed to comply with or objected to Met-Ed’s discovery requests, and because Complainant has not complied with the Orders of the presiding officer.

HISTORY

On August 28, 2016, Complainant filed a formal Complaint against Met-Ed, alleging in sum that Met-Ed had not provided reasonable service in a dispute concerning vegetation management on Complainant’s property. On September 26, 2016, Met-Ed filed an Answer and New Matter denying any violation of the Public Utility Code (Code) or the rules and regulations of the Commission.

Met-Ed filed a Preliminary Objection on September 26, 2016, and Complainant filed an Answer on October 4, 2016.¹

A standard form prehearing Order was issued on December 29, 2016.

By Telephonic Hearing Notice dated December 19, 2016, the Pennsylvania Public Utility Commission (Commission) scheduled a Telephonic Hearing for this matter for February 7, 2017, at 10:00 a.m. and assigned me as the Presiding Officer.

On that date and at that time, I called the parties. Complainant was present as was Margaret A. Morris, Esquire, counsel for Met-Ed. Due to an administrative error, a court reporter was not available. However, an informal prehearing conference was held, and it was clear that the case was not ready to be heard.

A Second Prehearing Order was issued on February 9, 2017, clarifying in part that the Commission does not have the authority to order the payment of damages, nor does the Commission have the jurisdiction or authority to resolve allegations of harassment due to race, to discipline utility personnel for alleged harassment due to racial profiling, to direct the discipline or termination of utility employees, or to make any determination save whether the utility has violated specific provisions of the Code or the rules and regulations of the Commission. The Second Prehearing Order also directed the Complainant to amend and augment his original Complaint with a written filing with the Secretary of the Commission stating, with specificity, which of his properties were affected by Met-Ed's alleged conduct, because up to that point Complainant had refused to do so despite repeated requests from Met-Ed. Complainant was encouraged to supply any additional relevant factual statements in the amended Complaint that would allow the presiding officer and the Commission to understand the case and for Met-Ed to present its defense.

¹ That Preliminary Objection, based on a jurisdictional issue, I held in abeyance due to the unclear Answer filed by the *pro se* Complainant.

On March 20, 2017, a further hearing Notice was issued setting April 18, 2017, as the date for an evidentiary hearing in this case.

On April 11, 2017, having been apprised by counsel for Met-Ed that Complainant had failed to comply with Met-Ed's discovery requests, and being aware that no Amended Complaint had been filed, I set forth in a Third Prehearing Order the potential consequences for failure to respond to discovery and for failure to comply with the Orders of a presiding officer.

Also on April 11, 2017, a hearing Notice was issued setting April 13, 2017 as the date for another telephonic prehearing conference in this case. The purpose of the hearing was to address Complainant's failure to reply to Met-Ed's discovery requests, to object to those requests, or to comply with the requirements of the Second Prehearing Order. That prehearing conference was held on April 13, 2017. After an extended but ultimately unproductive discussion, counsel for Met-Ed, moved to dismiss the Complaint. I took that under advisement and advised the parties that a written Motion to Dismiss would be required with an opportunity for Complainant to file an Answer to the same.

On April 14, 2017, a Fourth Prehearing Order was issued continuing the hearing set for April 18, 2017, and directing Met-Ed to file its Motion to Dismiss no later than the close of business on April 28, 2017, properly endorsed with a Notice to Plead indicating to Complainant the date that an Answer to the Motion would be due consistent with the provision of 52 Pa. Code 5.102(b).

Later in the day on April 14, 2017, Met-Ed filed a request for an extension of time in which to file its Motion until May 5, 2017, averring that its counsel had been injured in a traffic accident. Complainant indicated by e-mail on April 15, 2017, that he opposed the request, stating without explanation that he, "... will not have time in May."

On April 17, 2017, an Amended Fourth Prehearing Order was issued granting an extension of time to Met-Ed in which to file its Motion to Dismiss until May 5, 2017.

Complainant was advised that failure to file a timely Answer to the Motion could result in the facts stated therein being admitted.

On May 5, 2017, Met-Ed filed a Motion to Dismiss properly endorsed with a Notice to Plead indicating to Complainant that he had twenty days from the date of service in which to file an Answer to the Motion. As of May 25, 2017, Complainant had not filed an Answer nor a request for an extension of time in which to file an Answer. To date, Complainant has not filed an Answer nor a request for an extension of time in which to file an Answer. Met-Ed's Motion is now ready for decision.

FINDINGS OF FACT

1. The Complainant in this case is Craig Jackson.
2. The Respondent is Metropolitan Edison Company.
3. The service address is 275 Frutchey Ct., Mount Bethel, Pennsylvania.
4. On August 28, 2016, Complainant filed a formal Complaint against Met-Ed, alleging in sum that Met-Ed had not provided reasonable service in a dispute concerning vegetation management on Complainant's property.
5. In his Complaint, Complainant asked for relief that was beyond the authority of the Commission to grant.
6. On February 7, 2017, an informal, telephonic prehearing conference was held at which point it was clear that the case was not ready for hearing as Complainant had not responded to Met-Ed's informal requests for clarification with respect to the facts of the Complaint.

7. On February 9, 2017, a Second Prehearing Order was issued clarifying the authority and jurisdiction of the Commission and directing the Complainant to amend and augment his original Complaint with a written filing with the Secretary of the Commission stating, with specificity, which of his properties were affected by Met-Ed's alleged misconduct.

8. Complainant has not complied with the presiding officer's directive set forth in the Second Prehearing Order.

9. On April 11, 2017, a Third Prehearing Order was issued stating the potential consequences of failure to respond to discovery and for failure to comply with the Orders of a presiding officer.

10. On April 13, 2017, a further telephonic prehearing conference was held to address Complainant's ongoing failure to respond to Met-Ed's discovery requests or to comply with the directives in the Second Prehearing Order. That prehearing conference was not productive.

11. On May 5, 2017, counsel for Met-Ed filed a Motion to Dismiss the Complaint based on Complainant's ongoing failure to respond to Met-Ed's discovery requests or to comply with the directives in the Second Prehearing Order.

12. To date, Complainant has not filed an Answer to the Motion to Dismiss.

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, Complainant filed a formal Complaint stating in sum that Met-Ed had provided unreasonable service in its vegetation management on Complainant's property. Thus it is clear that Complainant is seeking affirmative relief from the Commission, and therefore Complainant has the burden of proof. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The Complainant has failed to prosecute his case. On December 29, 2016, I issued a standard form Prehearing Order which required, among other matters, that the Commission's procedural rules with respect to discovery be adhered to. On February 9, 2017, a Second Prehearing Order was issued clarifying the authority and jurisdiction of the Commission and directing the Complainant to amend and augment his original Complaint with a written filing with the Secretary of the Commission stating, with specificity, which of his properties were affected by Met-Ed's alleged misconduct.² Complainant has not complied with the presiding officer's directive set forth in the Second Prehearing Order. Complainant's lack of cooperation and lack of compliance was manifest at the prehearing conference of April 13, 2017, a summary of which is offered, below.

The Prehearing Conference of April 13, 2017

Complainant's failure to comply with the directives in the Second Prehearing Order, particularly Complainant's failure to respond to Met-Ed's discovery requests, necessitated a prehearing conference on April 13, 2017.³ At that prehearing conference, Complainant appeared and represented himself. Met-Ed was represented by Margaret A. Morris, Esquire. While this was not an evidentiary hearing, given the prior difficulties at the informal prehearing conference on December 19, 2016, a 46 page verbatim transcript of the April 13, 2017 prehearing conference was compiled.

At that prehearing conference, both parties agreed with the presiding officer that the formal Complaint was based on Section 1501 of the Code, 66 Pa. C.S. § 1501, *Character of service and facilities*, in that Complainant's issues centered on Met-Ed's conduct of its vegetation management program on Complainant's property. It was also determined that the property at issue is located at 275 Frutchey Court, Mount Bethel, Pennsylvania. Tr. 5-9. However, Complainant then stated that Met-Ed had failed to follow its own procedures. Tr. at 9-10.

² This Order was intended, in part, to respond to the jurisdictional issues raised in Met-Ed's Preliminary Objection.

³ Though Met-Ed had not filed a Motion to Compel, the Complainant's failure to amend his Complaint also necessitated the prehearing conference.

At the prehearing conference, Complainant agreed that he had failed to reply to Met-Ed's interrogatories. Tr. at 10. Complainant argued that Met-Ed already had the documents/answers. Tr. at 10-11. I then explained the discovery process. I also explained to Complainant that if he attempted to produce evidence at hearing that Met-Ed had requested in discovery, but that Complainant had failed to provide, that Met-Ed would very likely object and ask that the evidence not be received into the record. Tr. 11-12. I then asked Complainant whether he would be offering any evidence at hearing other than his sworn testimony, and Complainant said, "No." Tr. at 12.

We next discussed hearsay testimony generally and its likely inadmissibility. I also explained that an accusation or an allegation is not evidence. Tr. at 12-14. I then asked Complainant some of Met-Ed's discovery questions with respect to Complainant's occupation and experience, to which Complainant provided answers. Tr. 14-16.

Counsel for Met-Ed returned to Complainant's statement that Met-Ed had failed to follow its own procedures. Complainant responded by saying that at hearing he would cite a document entitled, "American National Standards for Tree Care Operations Procedure." Tr. at 19. This ran counter to Complainant's earlier statement that he would present only verbal testimony and was pointed to by counsel for Met-Ed as an example of Complainant's failure to disclose. Tr. at 19. Complainant then referred to another of his proposed exhibits, a document titled, "Tree, Shrub and Other Woody Plant Management Standard Practices,"⁴ and "Integrated Vegetation Management and Utility Right of Way." Tr. at 20. The former is a *proposed* Met-Ed exhibit, but at the prehearing conference Complainant indicated that he would be using the document as an exhibit.

Counsel for Met-Ed next asked for clarification of Complainant's claim that Met-Ed has engaged in a pattern of inconsistencies. Complainant refused to answer, stating that he had already explained that in his Complaint. Tr. at 24. In response to my asking the same question, Complainant stated that Met-Ed is (allegedly) inconsistent in its vegetation

⁴ While it was not clarified, I believe that this is the American National Standards Institute's publication, *ANSI A300 (Part 3) Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices*.

management from, “house to house.” Tr. at 25-26. Counsel for Met-Ed then asked what properties Complainant was specifically referring to, a question that Complainant turned aside by saying that the addresses would be indicated in Met-Ed’s records. Tr. 27-29.

At this point, I attempted once again to explain the importance of discovery process and its role in affording meaningful answers and fundamental fairness to parties in litigation. Tr. at 30-31. I then made an attempt to ascertain what exhibits each party would offer. Met-Ed responded that they had already offered 14 proposed exhibits. Tr. at 32. It was at this point that Complainant stated that he would be using Met-Ed’s exhibits in the presentation of his case. Tr. at 33. There is a critical distinction between using another party’s exhibits to cross-examine that party’s witnesses and using the other party’s exhibits to establish one’s case. This is particularly true in the case of a Complainant. What Complainant in this case proposed to do was to use Met-Ed’s exhibits, which would not even have been received into the record when he opened, to make his case. Thus, Met-Ed’s proposed exhibits would become Complainant’s exhibits which he would then have to offer into evidence. Even at this point, it remained unclear what exhibits Complainant would use, to say nothing of the fact that up to this point he had refused to disclose any of this to Met-Ed.

Complainant’s lack of candor finally compelled me to ask him directly if he would answer Met-Ed’s seventeen interrogatories. Complainant said that he would not as he considered them “irrelevant” and that Met-Ed already had the requested information. Tr. at 34-36. Complainant then reversed himself, saying that he would respond by the close of business on Friday, April 14, 2017. Tr. at 38. It was quickly established that to answer the interrogatories, a continuance would be needed which Met-Ed immediately objected to citing the imminence of the hearing on April 18, 2017, and Complainant’s consistent bad faith. Tr. at 38-40. The Commission’s Rule of Administrative Practice and Procedure at 52 Pa. Code § 1.15(b) states that, “Only for good cause shown will requests for continuance be considered.” In this case, the cause for the requested continuance was Complainant’s failure to abide by the clear directives in the Second Prehearing Order with respect to answering Met-Ed’s discovery. That is not good cause for a continuance.

On the basis of Complainant's ongoing refusal to answer interrogatories, Met-Ed then made a verbal motion to dismiss the Complaint. Tr. at 41. I required that counsel present a written Motion, affording Complainant an opportunity to file an Answer, after which I suspended discovery and concluded the prehearing conference. The Motion to Dismiss is the subject of this Initial Decision.

Metropolitan Edison's Motion to Dismiss

On May 5, 2017, consistent with the directive in the Amended Fourth Prehearing Order, Met-Ed filed a Motion to Dismiss the Complaint. To date, Complainant has filed neither an Objection nor an Answer to the Motion.

In sum, Met-Ed argues that the Complaint should be dismissed because Complainant failed to comply with the directive of the Second Prehearing Order to amend and augment his original Complaint with a written filing with the Secretary of the Commission stating, with specificity, which of his properties were affected by Met-Ed's alleged conduct and to provide any further information relevant to his Complaint. Motion to Dismiss at p. 7.

It is well established that the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa. C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). Before we even reach that stage, however, the formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701; 52 Pa. Code § 5.22(a)(4). The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa. Code § 5.22(a)(5). If a Complainant fails to comply

with these standards, then a Respondent does not know what allegations it is defending itself against—a clear denial of due process of law to the Respondent.

Met-Ed is correct that Complainant failed to comply with the Second Prehearing Order. It required direct questioning from the presiding officer at the prehearing conference on April 13, 2017, to finally get an answer from Complainant as to which property or properties he was referring to in his Complaint. Even with that, Complainant then stated that he would analogize the treatment of his property to other, unspecified properties. When counsel for Met-Ed asked for clarification, Complainant said that the information would be in Met-Ed's records. This is, at best, obfuscation. Similarly, Complainant has not been forthcoming with respect to the exhibits he proposes to offer at hearing. This proceeding cannot go forward under these conditions. As it is Complainant who has failed to comply with the Second Prehearing Order, Complainant has failed to prosecute his own Complaint.

Met-Ed also contends that Complainant has failed to reply or to object to Met-Ed's interrogatories, and that this prejudices Met-Ed's due process right to defend itself at hearing. Motion to Dismiss at 8. Met-Ed is correct on both counts. It required direct questioning by the presiding officer at the April 13, 2017 prehearing conference to get Complainant to respond to even a few of Met-Ed's interrogatories. Complainant's conduct at the informal prehearing conference on December 19, 2016, and his conduct and statements at the prehearing conference on April 13, 2017 convinces me that Complainant has no intention of responding to Met-Ed's interrogatories in any timely or meaningful way.

Section 5.321(c) of the Commission's Rules of Administrative Practice and Procedure (52 Pa. Code § 5.312(c)) specifically provides that "a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant." Information may be discoverable, even if it would be inadmissible at a hearing. "It is not ground 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." The Commission has issued a number of decisions interpreting the scope of its discovery rules. Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. P.U.C. 56 (August 26, 1986); *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. P.U.C. 468 (May 16, 1986).

There is no issue, here, that Complainant failed to comply with the Second Prehearing Order directing him to respond Met-Ed's discovery requests.

I understand that the Commission has long recognized the mitigating effect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *Carlock v. The United Telephone Company of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993); *Halpern v. The Bell Telephone Company of Pa.*, Docket No. C-00923950 (Order entered October 1992); and *Schleisher v. The Bell Telephone Company of Pa.*, Docket No. F-00161252 (Order entered December 17, 1992). However, even that mitigating effect has limits, and these are not merely technical violations. Complainant is a well-educated person, clearly of an age to have acquired property and both professional and worldly experience. I must and do conclude that his refusal to abide by the clear directives of the Second Prehearing Order was done knowingly and with the intent of stymieing Met-Ed's defense.

A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Community Development Corp. v. PGW*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 2006). The Commission has, on numerous occasions, dismissed the complaints of *pro se* complainants for failure to answer interrogatories in accordance with the Commission's regulations and as required by Order of the presiding Administrative Law Judge (ALJ). See, e.g., *Joseph M. Kapusnik v. Verizon Pennsylvania, Inc.*, Docket No. C-20031224, (Final Order acknowledging finality of Initial Decision entered April 13, 2004); *Albert Majkowski v. Columbia Gas of Pennsylvania, Inc.*, Docket No. F-01087321, (Order entered March 28, 2003); *Barbara Brown v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957014, (Order entered April 23, 1996);

Thomas Merchant v. The Bell Telephone Company of Pennsylvania, Docket No. C-00935253, (Order entered June 20, 1994). The same result is appropriate in the instant case. The failure of Complainant to comply with the Prehearing Orders in this case and thus to prosecute his Complaint warrants dismissal of the Complaint.

Finally, Met-Ed asks that the Complaint be dismissed with prejudice for refusal to answer properly propounded discovery, citing *Application of Santos E. Pineda*, Docket No. A-2009-2126367 (Final Order issued June 21, 2010), and for failure to comply with the Order of a presiding officer, citing *Weisenberger, et al. v. PECO*, Docket No. C-2010-2182281 (Final Order entered December 22, 2011). I presided in the *Weisenberger* case, and the procedural context of that case is directly analogous to this case in that the complainant in *Weisenberger* did not comply with prehearing Orders to amend his complaint so as to afford the utility a meaningful chance to defend itself consistent with the requirements of due process. I concur with Met-Ed's request and reasoning and would add that given Complainant's failure to prosecute his Complaint, the matter should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Z-00269892 (December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and parties to, this case. 66 Pa. C.S. § 1501.

2. The proponent of a rule or order carries the burden of proof. 66 Pa. C.S. § 332(a). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

3. The failure to comply with the order issued by an Administrative Law Judge constitutes grounds for dismissal of the complaint. *Snyderville Community Development Corporation v. Verizon Pennsylvania, Inc.*, Docket No. C-20055032 (Opinion and Order adopted June 22, 2006, entered July 31, 2006).

4. A complaint may be dismissed with prejudice: for refusal to answer properly propounded discovery, *Application of Santos E. Pineda*, Docket No. A-2009-2126367 (Final Order issued June 21, 2010); for failure to comply with the Order of a presiding officer, *Weisenberger, et al. v. PECO*, Docket No. C-2010-2182281 (Final Order entered December 22, 2011); or for a complainant's failure to prosecute his complaint, *Jefferson v. UGI Utilities, Inc.*, Z-00269892 (Final Order issued December 26, 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss the Complaint of Craig Jackson, filed by Metropolitan Edison Company at Docket No. C-2016-2565262 on May 5, 2017, is granted.
2. That the Complaint filed by Craig Jackson on August 28, 2016, against Metropolitan Edison Company at Docket No. C-2016-2565262, is dismissed, with prejudice.
3. That the Secretary of the Commission mark this case as closed.

Date: June 23, 2017

/s/
Dennis J. Buckley
Administrative Law Judge