

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alexandre Foursevitch	:	
	:	
v.	:	C-2017-2623270
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

This Initial Decision dismisses the Formal Complaint filed by Alexandre Foursevitch for her failure to comply with the interim orders entered on January 3, 2018, January 10, 2018, and April 2, 2018, requiring Complainant to provide discovery responses and witness identification information to Respondent.

**HISTORY OF THE PROCEEDING**

Alexandre Foursevitch (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) on August 29, 2017, alleging, *inter alia*, that Complainant and her family members have suffered health problems subsequent to the installation of a smart meter at her residence on July 14, 2017. As relief, Complainant requested that the Commission order Respondent to replace the smart meter with an analog meter. On September 27, 2017, Respondent filed an Answer to the Complaint, admitting that a smart meter was installed at Complainant's residence but denying the remaining material allegations set forth in the Complaint.

On November 14, 2017, Respondent served interrogatories and requests for production of documents upon Complainant. Pursuant to 52 Pa.Code §§ 5.341 and 5.349, answers to the discovery requests were due within twenty days and objections were due within ten days of service. A certificate of service was filed on November 14, 2017, certifying that Respondent served interrogatories and requests for production of documents upon Complainant on November 14, 2017.

On November 16, 2017, a hearing notice was issued, scheduling the telephonic hearing in this matter on January 24, 2018, in Harrisburg, Pennsylvania and assigning this matter to Administrative Law Judge Andrew M. Calvelli.

On December 12, 2017, Respondent filed a motion to compel responses to interrogatories and document requests (motion to compel). The motion to compel included a notice to plead, directing Complainant to file a written response to the motion within five days from the service of the notice dated December 12, 2017. The motion to compel averred that interrogatories and requests for production of documents were served upon Complainant on November 14, 2017. The motion to compel further averred that Complainant did not file any objections or responses to the discovery requests.

On January 2, 2018, a Judge Change/Cancellation Notice was issued transferring this proceeding from Administrative Law Judge Andrew M. Calvelli to the undersigned presiding officer and cancelling the hearing scheduled for January 24, 2018.

On January 3, 2018, an interim order was entered which scheduled a prehearing conference for January 9, 2018 which was convened as scheduled. On January 3, 2018, an interim order was also entered granting the Respondent's motion to compel and directing Complainant to provide full, complete objections and/or responses to the Company's discovery requests on or before January 23, 2018.

On January 9, 2018, a Call-In Telephonic Hearing Notice was issued which scheduled a telephonic hearing for April 30, 2018 and May 1, 2018.

On January 10, 2018, an interim order was entered which, *inter alia*, directed the parties to provide each other with the name, business address and written summary of the expected testimony of any expert and fact witnesses that may testify, no later than March 9, 2018, and to serve each other with a copy of proposed exhibits for the evidentiary hearings no later than April 13, 2018.

On March 22, 2018, Respondent filed a Motion of Metropolitan Edison Company to Dismiss Complaint of Alexandre Foursevitch for Failure to Comply with Order (first motion to dismiss). In the motion, Respondent averred that Complainant did not provide any objections or responses as ordered on January 3, 2018. Respondent further averred that Complainant failed to provide the witness identification information as ordered on January 10, 2018. Respondent requested that the Complaint be dismissed for failure of Complainant to comply with the orders entered on January 3, 2018 and January 10, 2018.

Complainant did not file a response to the first motion to dismiss.

On April 2, 2018, an interim order was entered granting in part and denying in part, without prejudice, the motion to dismiss filed by Respondent. Complainant was directed to serve upon counsel for Respondent full and complete responses to the interrogatories and requests for production of documents on or before April 9, 2018, as previously ordered on January 3, 2018. Complainant was also directed, on or before April 9, 2018, to serve upon counsel for Respondent all information and documentation as previously ordered on January 10, 2018. The interim order also provided that, should Complainant fail to comply with the terms of the order, Respondent may file a motion for sanctions, motion to dismiss or any other appropriate request for relief.

On April 16, 2018, Respondent filed its Motion Of Metropolitan Edison Company To Dismiss Complaint Of Alexandre Foursevitch For Failure To Comply With Order (second motion to dismiss). In the motion, Respondent averred that Complainant, in violation of the April 2, 2018 order, has not provided responses to the discovery requests as ordered on

January 3, 2018, and has failed to provide the expert and fact witness information as ordered on January 10, 2018.

Complainant did not file a response to Respondent's second motion to dismiss filed on April 16, 2018.

An interim order was entered on April 26, 2018, closing the record and cancelling the hearing scheduled for April 30, 2018 and May 1, 2018.

### FINDINGS OF FACT

1. Complainant, Alexandre Foursevitch, filed a Formal Complaint with the Commission against Respondent, Metropolitan Edison Company, on August 29, 2017.

2. Complainant averred that she and her family members are suffering from health problems subsequent to the installation of a smart meter at her residence on July 14, 2017. As relief, Complainant requested that the Commission order Respondent to replace her smart meter with an analog meter.

3. On September 27, 2017, Respondent filed an Answer and New Matter to the Complaint, admitting that a smart meter was installed at Complainant's residence and denying the remaining material allegations set forth in the Complaint.

4. Respondent served interrogatories and requests for production of documents upon Complainant on November 14, 2017.

5. On November 16, 2017, a hearing notice was issued, scheduling a telephonic hearing for January 24, 2018, in Harrisburg, Pennsylvania.

6. On December 12, 2017, Respondent filed a motion to compel responses to interrogatories and document requests (motion to compel). This motion included a notice to

plead, directing Complainant to file a written response to the motion within five days from the service of the notice on December 12, 2017.

7. In the motion to compel, Respondent averred that interrogatories and requests for production of documents were served upon Complainant on November 14, 2017, and that Complainant did not file any objections or responses to the discovery requests.

8. On January 2, 2018, a Judge Change/Cancellation Notice was issued transferring this proceeding from Administrative Law Judge Andrew M. Calvelli to the undersigned presiding officer and cancelling the hearing scheduled for January 24, 2018.

9. On January 3, 2018, an interim order Scheduling a Prehearing Conference was entered and a Call-In Telephonic Prehearing Conference Notice was issued, scheduling a prehearing conference for January 9, 2018. The prehearing conference was convened as scheduled.

10. On January 3, 2018, an interim order was also entered 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 23, 2018.

11. On January 9, 2018, a Call-In Telephonic Hearing Notice was issued which scheduled a telephonic hearing for April 30, 2018, and May 1, 2018.

12. On January 10, 2018, an interim order was entered which, *inter alia*, directed the parties to provide each other with the name, business address and written summary of the proposed testimony of any expert and fact witnesses that may testify, no later than March 9, 2018 and to serve the opposing party with a copy of all proposed exhibits for the evidentiary hearing by April 13, 2018.

13. On March 22, 2018, Respondent filed its first motion to dismiss the complaint.

14. In the first motion to dismiss, Respondent averred that Complainant did not file any objection to the discovery requests and had not provided any responses or the requested information as ordered on January 3, 2018, and January 10, 2018.

15. Complainant did not file a response to the first motion to dismiss.

16. On April 2, 2018, an interim order was entered granting in part and denying in part, without prejudice, the first motion to dismiss filed by Respondent. The interim order provided as follows:

- a. Complainant was directed to serve upon counsel for Respondent, full and complete responses to the interrogatories and requests for production of documents on or before April 9, 2018, as previously ordered on January 3, 2018.
- b. Complainant was directed, on or before April 9, 2018, to serve upon counsel for Respondent, all information and documentation previously ordered on January 10, 2018.
- c. The interim order also provided that should Complainant fail to fully and completely comply with the terms of the order, Respondent may file a motion for sanctions, motion to dismiss or any other appropriate motion for relief.

17. On April 16, 2018, Respondent filed its second motion to dismiss. In the second motion to dismiss, Respondent averred that Complainant failed to file objections or responses to the discovery requests served on November 14, 2017, and that Complainant had failed to comply with the January 3, 2018, January 10, 2018, and April 2, 2018 orders. The April 2, 2018 order had directed Complainant to provide full and complete responses to discovery on or before April 9, 2018 as previously ordered on January 3, 2018 and that Complainant provide all information and documentation as previously ordered on January 10, 2018.

18. The second motion to dismiss included a notice to plead, requiring Complainant to file a written response to the motion within five (5) days from the service of the notice dated April 16, 2018.

19. Complainant did not file any objections or responses to the discovery requests propounded by Respondent on November 14, 2018.

20. Complainant did not file a response to Respondent's second motion to dismiss filed on April 16, 2018.

21. An interim order was entered on April 26, 2018, closing the record and cancelling the hearing scheduled for April 30, 2018, and May 1, 2018.

### DISCUSSION

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint. A 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 regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa.Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n, 540 A.2d 1006 (Pa.Cmwlth. 1988).

Complainant alleged in her Complaint that Complainant and her family members have suffered from health problems subsequent to the installation of a smart meter at her residence on July 14, 2017. As relief, Complainant requested that the Commission order Respondent to replace the smart meter with an analog meter.

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). Generally speaking, the 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).

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 in issue in the case and, second, whether the evidence ‘renders the desired inference more probable than it would be without the evidence.’” *Id.* at 278, 336 A.2d at 284. (citation omitted).

The averments set forth in the Complaint are vague or fail to set forth a detailed factual basis for the claims. Respondent is entitled to engage in discovery in order to obtain information that is relevant and material to the issues raised by Complainant. Complainant did not object to any discovery requests propounded by the Company. Under the circumstances, Respondent is entitled to the requested information to enable it to fully investigate and defend against Complainant’s allegations.

The Commission’s Regulation at 52 Pa.Code § 5.371 addresses 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.

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

Complainant has failed to provide any response to the Company's Discovery Requests and has failed to provide the information required in the prehearing order entered on January 10, 2018. Respondent argues that the failure to comply with the interim orders dated January 3, 2018, January 10, 2018 and April 2, 2018, demonstrate Complainant's complete lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. Respondent argues that, under the circumstances, the Complaint in this proceeding should be dismissed in its entirety with prejudice.

The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. Snyderville Community Development Corporation v. Philadelphia Gas Works, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). See also Liberty Towers Phillip LP v. Philadelphia Gas Works, Docket No. C-2017-2582869 (Opinion and Order entered April 20, 2018). Complainant's conduct in this proceeding involves not just failing to comply with several orders of the administrative law judge, but failing to provide Respondent with initial responses to discovery requests and an identification of Complainant's expert and fact witnesses, in order to provide Respondent with an opportunity to prepare a defense to the claims advanced by Complainant. Here, Complainant has failed to comply with three orders entered on January 3, 2018, January 10, 2018, and April 2, 2018. In addition, the interim order entered on April 2, 2018, specifically stated that Complainant was being provided one final opportunity to comply with the order granting Respondent's motion to compel entered on January 3, 2018 and the order requiring the exchange of information and documentation entered on January 10, 2018. Complainant failed to comply with any provision of that order and failed to respond to Respondent's second motion to dismiss filed on April 16, 2018.

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record, and cautions against dismissing cases on a preliminary basis. In the often-cited case of Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617 (Opinion and Order entered July 14, 1993) (Carlock), the Commission determined that unrepresented complainants should have an opportunity to be heard orally and not have their case dismissed because of a preliminary

pleading. Id. at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority), *citing*, Halpern v. The Bell Telephone Company of Pennsylvania, Docket No. C-00923950 (Opinion and Order entered October 19, 1992) and William Schleisher v. The Bell Telephone Company of Pennsylvania, Docket No. F-00161252 (Order entered December 17, 1992); *see also*, John M. Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657 (Opinion and Order entered November 2, 2005). The Commission's decision in Carlock was subsequently clarified to allow ALJ's the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557 (Opinion and Order entered June 12, 1996).

In this case, the parties were permitted to engage in discovery and were ordered to identify expert and fact witnesses on or before March 9, 2018 and to serve copies of their proposed exhibits upon the opposing party by April 13, 2018. Complainant did not respond to Respondent's discovery requests served on November 14, 2017, and Complainant did not provide the information to Respondent as directed in the interim orders. Respondent's motion to compel was granted; however, Complainant failed or refused to provide discovery responses to Respondent. Subsequently, Respondent filed its first motion to dismiss the Complaint and Complainant did not provide a response. Instead of granting the request to dismiss the Complaint, Complainant was given another opportunity to provide discovery responses and witness information to Respondent by interim order entered on April 2, 2018. Again, Complainant failed to respond by providing the requested information to Respondent, by asking for additional time, or by filing any response to the numerous motions filed by Respondent.

While every opportunity has been provided to Complainant to comply with Commission regulations and orders, Respondent also has due process rights that must be protected. Complainant provided no specific information that would enable Respondent to prepare a defense to the averments set forth in her Complaint. Complainant averred that she and her family members have suffered from health problems subsequent to the installation of a smart

meter at her residence on July 14, 2017 but failed or refused to provide discovery responses or witness identification information to Respondent, as ordered.

Complainant has been afforded sufficient time and opportunity to comply with the orders entered on January 3, 2018, January 10, 2018, and April 2, 2018, or to request additional time to comply with those orders. Nonetheless, no response has been provided to Respondent by Complainant.

To allow the Complaint to go forward would result in the denial of Respondent's due process rights. Complainant apparently chose to ignore the terms of the interim orders entered on January 3, 2018, January 10, 2018, and April 2, 2018. As such, a hearing in this matter is not necessary or appropriate and is not in the public interest. Accordingly, the Complaint will be dismissed with prejudice.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. Motions for dismissal of a complaint are governed by Section 5.371 and 5.372 of the Commission's regulations. 52 Pa.Code § 5.371-5.372.
3. A 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).
4. A formal complaint must include a clear and concise statement of the act or omission being complained of, including the result of any informal complaint or informal investigation; and a clear and concise statement of the relief sought and a verification executed in accordance with 52 Pa.Code § 1.36. 52 Pa.Code § 5.22(a)(5-6), (b).

5. 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).

6. It is not grounds for objection that the information sought through discovery 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).

7. 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. 52 Pa.Code § 5.371.

8. 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. 52 Pa.Code § 5.372.

9. The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. Snyderville Community Development Corporation v. Philadelphia Gas Works, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

10. The Commission’s regulations specify certain sanctions that are available when a party fails to comply with an order of the Commission “as is just.” 52 Pa.Code § 5.372(a). Under the circumstances, the dismissal of the Complaint for failure to comply with three interim orders requiring Complainant to identify and exchange witness information and exhibits and to respond to discovery requests is just.

