

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimberly Beckmann	:	
	:	
v.	:	C-2017-2613702
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This Initial Decision dismisses the Formal Complaint filed by Kimberly Beckmann for her failure to comply with the Interim Orders entered on August 28, 2018, December 6, 2018, and December 7, 2018, requiring Complainant to provide discovery responses and witness identification information to Respondent.

HISTORY OF THE PROCEEDING

Kimberly Beckmann (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) on July 7, 2017, alleging, *inter alia*, Respondent's representatives were rude and failed to accept documentation from Complainant's physician via postal service; the installation of a smart meter at Complainant's home would exacerbate the health problems suffered by Complainant and her daughter; and smart meters are unsafe and present health, fire, and safety concerns. As relief, Complainant requested, *inter alia*, the Commission order Respondent to delay installation of a smart meter at her home.

On July 31, 2017, Respondent filed an Answer and New Matter to the Complaint, admitting Respondent provides residential retail electric service to Complainant; Complainant refused to allow Respondent to install a smart meter at Complainant's residence; and Respondent issued a service termination notice to Complainant. Respondent denied the remaining material allegations set forth in the Complaint and averred it is required by Act 129 of 2008¹ to install a smart meter.

On July 31, 2017, Respondent also filed preliminary objections to the Complaint. Respondent averred, *inter alia*, that it is required to install a smart meter at the service location; the prayer for relief to opt out of the installation of a smart meter is not legally recoverable; and the health problems suffered by Complainant and her daughter that could potentially be exacerbated by the installation of a smart meter are not sufficient to state a cause of action against Respondent. Respondent averred that the Complaint did not allege Respondent committed or omitted any action in violation of a Commission statute, regulation, or order. Respondent averred the Complaint failed to state a claim upon which the Commission can grant relief, and therefore, should be dismissed as being legally insufficient under 52 Pa.Code § 5.101(a)(4).

On September 6, 2017, the Commission issued a Motion Judge Assignment Notice, assigning Administrative Law Judge (ALJ) Joel Cheskis to this proceeding.

On September 11, 2017, the Commission issued a Motion Judge Assignment Notice, reassigning this proceeding to the undersigned.

On September 26, 2017, the undersigned issued an Interim Order, denying Respondent's Preliminary Objections.

On February 5, 2018, Respondent forwarded to Complainant interrogatories and document requests (discovery requests). In its discovery requests, Respondent sought

¹ 66 Pa.C.S. § 2806.1 *et seq.*

information and documents related to Complainant's allegations regarding Respondent's smart meters. Objections to the discovery requests, if any, were due on or before February 15, 2018, and responses to the discovery requests were due on or before February 25, 2018.

Complainant did not file any objections or responses to the discovery requests by the respective due dates.

On August 9, 2018, Respondent filed a motion to compel responses to the discovery requests. Complainant did not file any response to the motion to compel.

On August 28, 2018, the undersigned issued an Interim Order, granting Respondent's motion to compel and ordering Complainant to provide full and complete responses, or objections where appropriate, to Respondent's discovery requests and serve a certificate of service no later than September 14, 2018.

On August 29, 2018, the undersigned issued a Prehearing Conference Order, scheduling a prehearing conference for October 16, 2018.

On October 16, 2018, Respondent filed a motion to dismiss Complainant's complaint due to Complainant's failure to comply with the August 28, 2018 Interim Order, requiring Complainant to provide full and complete responses, or objections where appropriate, to Respondent's discovery requests and serve a certificate of service no later than September 14, 2018.

On October 16, 2018, the undersigned convened a prehearing conference via telephone pursuant to the August 29, 2018 Prehearing Conference Order. During the prehearing conference, the Parties agreed upon a litigation schedule for this proceeding. On December 6, 2018, the undersigned issued an Interim Order, detailing the litigation schedule to which the Parties agreed during the October 16, 2018 prehearing conference. The December 6, 2018 Interim Order, *inter alia*, directed the Parties to provide to the other Party, on or before

December 31, 2018, the names and addresses of each fact and expert witness as well as written summaries of the expected testimony for each witness.

In order to provide Complainant with a final opportunity to comply with the August 28, 2018 Interim Order granting Respondent's August 9, 2018 motion to compel, the undersigned issued an Interim Order on December 7, 2018, holding Respondent's motion to dismiss in abeyance. The December 7, 2018 Interim Order also directed Complainant to serve upon Respondent's counsel full and complete responses to Respondent's discovery requests served on Complainant on February 5, 2018 and file with the Commission a certificate of service regarding said service by December 27, 2018. The December 7, 2018 Interim Order also directed the Parties to file a status update with the Commission by January 4, 2019.

On January 3, 2019, Respondent filed a certificate of service advising it had served upon Complainant the names, addresses, and written summaries of its three witnesses.

On January 4, 2019, Respondent filed a status report advising it had not received notice of any of Complainant's witnesses nor responses to the discovery requests initially served upon Complainant on February 5, 2018.

As of the date of this Initial Decision, Complainant has not provided any response to Respondent's August 9, 2018 motion to compel or Respondent's October 16, 2018 motion to dismiss. Furthermore, Complainant has not filed a certificate of service regarding Complainant's service of responses to Respondent's discovery requests or Complainant's service of a list of her witnesses, their addresses, and their written summaries.

Complainant failed to comply with the Interim Order issued August 28, 2018, ordering Complainant to provide full and complete responses, or objections where appropriate, to Respondent's discovery requests and serve a certificate of service no later than September 14, 2018. Complainant also failed to comply with the Interim Order issued December 6, 2018, ordering Complainant to provide to Respondent the names, addresses, and written summaries of each of her fact and expert witnesses by December 31, 2018. Finally, Complainant failed to

comply with the Interim Order dated December 7, 2018, ordering Complainant to serve upon Respondent's counsel full and complete responses to Respondent's discovery requests initially served on Complainant on February 5, 2018 and file with the Commission a certificate of service regarding said service by December 27, 2018.

The record closed on January 4, 2019.

FINDINGS OF FACT

1. Complainant is Kimberly Beckmann.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. On July 7, 2017, Complainant filed a Complaint against Respondent, alleging, *inter alia*, that Respondent threatened to terminate her electric service as a result of her objection to the installation of a smart meter at her residence.
4. On July 31, 2017, Respondent filed an Answer and New Matter to the Complaint, essentially averring that Respondent issued a service termination notice because Complainant refused access to permit Respondent to install a smart meter at her residence.
5. On February 5, 2018, Respondent forwarded discovery requests to Complainant seeking information and documents related to Complainant's allegations. Objections to the discovery requests were due on or before February 15, 2018, and responses to the discovery requests were due on or before February 25, 2018.
6. Complainant did not file objections or responses to the discovery requests by the respective due dates.

7. On August 9, 2018, Respondent filed a motion to compel responses to the discovery requests.

8. On August 28, 2018, the undersigned issued an Interim Order, granting Respondent's motion to compel and ordering Complainant to provide full and complete responses, or objections where appropriate, to the discovery requests to Respondent no later than September 14, 2018.

9. On October 16, 2018, Respondent filed a motion to dismiss Complainant's Complaint due to Complainant's failure to comply with the order entered on August 28, 2018, requiring Complainant to provide full and complete responses, or objections where appropriate, to Respondent's discovery requests no later than September 14, 2018.

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

11. On October 16, 2018, the undersigned convened a prehearing conference via telephone. During the prehearing conference, the Parties agreed upon a litigation schedule for this proceeding.

12. On December 6, 2018, the undersigned issued an Interim Order detailing the litigation schedule to which the parties agreed during the October 16, 2018 prehearing conference. The Interim Order directed the Parties, *inter alia*, to provide to the other Party, on or before December 31, 2018, the names and addresses of each fact and expert witness as well as written summaries of the expected testimony for each witness.

13. In order to provide Complainant with a final opportunity to comply with the order granting Respondent's motion to compel entered on August 28, 2018, the undersigned issued an Interim Order on December 7, 2018, holding Respondent's motion to dismiss in abeyance.

14. The December 7, 2018 Interim Order directed Complainant to serve upon Respondent's counsel full and complete responses to Respondent's discovery requests served on Complainant on February 5, 2018 and file with the Commission a certificate of service regarding said service by December 27, 2018.

15. Complainant did not file objections or responses to the discovery requests by the deadline of December 27, 2018 (as directed by the December 7, 2018 Interim Order), nor did Complainant exchange witness information by the deadline of December 31, 2018 (as directed by the December 6, 2018 Interim Order).

DISCUSSION

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. As long as the information sought in a discovery request appears reasonably calculated to lead to the discovery of admissible evidence, a party may not object to the discovery request on the basis that the information sought will be inadmissible at a hearing. 52 Pa.Code § 5.321(c).

In this proceeding, 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 Respondent. 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 regulations at 52 Pa.Code § 5.371 address the consequences of a participant's failure to comply with the Commission's discovery regulations and provide 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 failed to comply with the Interim Order issued August 28, 2018, ordering Complainant to provide full and complete responses, or objections where appropriate, to Respondent's discovery requests and serve a certificate of service no later than September 14, 2018. In addition, Complainant failed to comply with the Interim Order issued December 6, 2018, ordering Complainant to provide to Respondent the names, addresses, and written summaries of each of her witnesses by December 31, 2018.

In addition, Complainant failed to comply with the Interim Order issued December 7, 2018, which provided Complainant with a final opportunity to comply with the Interim Order issued August 28, 2018. The December 7, 2018 Interim Order directed Complainant to provide, by December 27, 2018, full and complete responses, or objections where appropriate, to Respondent's discovery requests initially served on Complainant on February 5, 2018.

Respondent argues that Complainant's failure to comply with the August 28, 2018 Interim Order demonstrates her 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.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's 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). Complainant failed to comply with three Interim Orders: one dated August 28, 2018, ordering Complainant to provide full and complete responses, or objections where appropriate, to Respondent's discovery requests and file a certificate of service no later than September 14, 2018; one dated December 6, 2018, ordering Complainant to provide Respondent with the names, addresses, and written

summaries of each of Complainant's witnesses no later than December 31, 2018; and one dated December 7, 2018, ordering Complainant to provide full and complete responses to Respondent's discovery requests and file a certificate of service no later than December 27, 2018. Complainant not only failed to comply with several orders of the ALJ, but she also failed to provide Respondent with initial responses to discovery requests and an identification of her expert and factual witnesses. Complainant's conduct has denied Respondent the opportunity to prepare a defense to the claims advanced by Complainant.

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. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (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 (Order entered October 1992) and *Schleisher v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (Order entered December 17, 1992); see also, *Gera v. PPL Electric Utilities Corporation*, Docket No. C-20054657 (Opinion and Order entered November 2, 2005).

In this case, Complainant did not respond to Respondent's discovery requests served on February 5, 2018. The undersigned granted Respondent's motion to compel; however, Complainant failed to provide discovery responses to Respondent. Subsequently, Respondent filed a motion to dismiss the Complaint, and Complainant did not file a response. Instead of granting Respondent's motion to dismiss the complaint, the undersigned provided Complainant a final opportunity to provide discovery responses to Respondent by Interim Order entered on December 7, 2018. Again, Complainant failed to provide the requested responses to Respondent. If Complainant was unable or unwilling to provide responses to Respondent's

motions or discovery requests, Complainant could have asked for additional time to respond, or she could have filed objections to the discovery requests. Complainant did neither. In fact, Complainant did not provide any response at all.

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.

To allow the Complaint to go forward would result in the denial of Respondent's due process rights. Complainant was given sufficient opportunities to provide the information requested by Respondent and ordered by the undersigned but failed to do so. Complainant could have provided the information as requested, or she could have requested additional time to comply with the Orders. Complainant failed to comply with the terms of the Interim Orders entered on August 28, 2018, December 6, 2018, and December 7, 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. Sections 5.371 and 5.372 of the Commission's regulations govern motions to dismiss a complaint. 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. 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).

5. The Commission's regulations at 52 Pa.Code § 5.371 address the consequences of a party's failure to comply with the Commission's discovery regulations and provide 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.

6. The Commission's regulations at 52 Pa.Code § 5.372 provide 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.

7. The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's 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).

8. 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 Complainant's 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.

