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February 13, 2019

VIA ELECTRONIC FILING

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

Re: Michael W. Chattin v. Pennsylvania Electric Company
Docket No. C-2017-2630649

Dear Secretary Chiavetta:

Enclosed please find the Motion to Dismiss of Pennsylvania Electric Company with regard to the above-captioned matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

krak
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL W. CHATTIN

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2017-2630649

NOTICE TO PLEAD

TO: Michael W. Chattin

Pursuant to 52 Pa. Code § 5.371(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Dismiss of Pennsylvania Electric Company within **five (5) days** from the service of the Notice, the facts set forth by Pennsylvania Electric Company in the Motion may be deemed to be true, thereby requiring no other proof. All pleading, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Lauren M. Lepkoski
Tori L. Giesler
Pennsylvania Electric Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: February 13, 2019



Tori L. Giesler, Esquire
Lauren M. Lepkoski, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL W. CHATTIN

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2017-2630649

**MOTION OF PENNSYLVANIA ELECTRIC COMPANY TO DISMISS COMPLAINT
OF MICHAEL W. CHATTIN FOR FAILURE TO COMPLY WITH ORDER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Electric Company (“Penelec” or the “Company”) by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code §§ 5.371-5.372, hereby files this Motion to Dismiss the complaint of Michael W. Chattin (“Complainant”) for his failure to comply with the Interim Order of Administrative Law Judge Jeffrey A. Watson. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On October 17, 2017, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 58 Rocky Top Lane, Rome, Pennsylvania 18837 (“Service Location”) under Account No. 100066272095 (“Account”) which was electronically served on the Company on October 24, 2017.

2. On November 13, 2017, the Company filed its Answer and New Matter denying the material allegations. On the same day, the Company also filed Preliminary Objections to the Formal Complaint.

3. On January 4, 2018, a Motion Judge Assignment Notice was issued where the parties were informed that Administrative Law Judge (“ALJ”) Jeffrey A. Watson was assigned to rule on the Company’s Preliminary Objections.

4. On January 8, 2018, ALJ Watson issued an Interim Order which denied the Company's Preliminary Objections and referred the matter to mediation.

5. On January 18, 2018, an Interim Order Setting Resolution Conference was issued directing the parties to participate in mediation.

6. On January 19, 2018, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests ("Discovery Requests") via first class mail. In its Discovery Requests, the Company sought information and documents related to Complainant's allegations regarding the Company's smart meters.

7. A full copy of the Company's Discovery Requests was attached to the Company's prior Motion to Compel and is attached hereto as Exhibit A.

8. On October 18, 2018, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding. Relevant to this Motion, ALJ Watson issued a discovery deadline of February 25, 2019.

9. Throughout the mediation process, the Company's Discovery Requests were held in abeyance. After the parties were unable to resolve the Formal Complaint through mediation, the Company issued a letter to the Complainant on October 29, 2018 indicating that the Company planned to move forward with discovery and extending the time for responses to November 26, 2018.

10. On November 12, 2018, the Complainant responded to the Company, indicating that he would not be providing responses to the Discovery Requests.

11. On December 19, 2018, the Company filed a Motion to Compel responses to the Company's Discovery Requests pursuant to 52 Pa. Code §§ 5.371-5.372. At the time the Motion

to Compel was filed, the Complainant had not filed any other objections to the Discovery Requests and had not provided any responses or requested documents.

12. On January 7, 2019, ALJ Watson issued an Interim Order granting the Company's Motion to Compel and ordering Complainant to "serve upon counsel for Respondent, full and complete responses to all of the Interrogatories and Requests for Production of Documents served upon Complainant by Respondent and file a certificate of service with the Commission's Secretary not later than February 1, 2019."

13. In a letter to ALJ Watson dated January 24, 2019, Complainant submitted an "objection" to the Company's Discovery Requests. Specifically, the Complainant alleged that the Company (and the Commission too, according to Complainant) was attempting to obtain the information sought in the Discovery Requests in "bad faith." In support of this allegation, Complainant cited eleven "examples" of circumstances he believed indicated the Company was acting in bad faith. These "examples" included: (1) complaints regarding the Company's actions related to the notice of disconnection of Complainant's electric service; (2) assertions that the Company and the Commission have refused to "provide a CORRECT interpretation of the Act 129" (emphasis in original) and that the Commission has acted "fraudulently;" (3) demands that ALJ Watson recuse himself from this proceeding because he has a conflict of interest – due to being employed by the Commission – that "violates the ethics standards of Administrative Law Judges, the American Bar Association, and common sense;" and (4) allegations that the Company and the Commission have misrepresented to Complainant how data collected from smart meters will be used and have "engaged in systematic misrepresentation of the facts of [the] complaint and seek to strip [Complainant] of [his] rights under Constitutional law by mis-applying Admiralty Law to [his] case." Notably, none of the Complainant's "examples" of bad faith relate to the

information sought by the Company in the Discovery Requests, the manner in which those Discovery Requests were sought, or the reason for which the Company sought the requested information.

14. Finally, Complainant asserts in his letter that “because of the bad faith you (and your employers) [presumably referring to ALJ Watson and the Commission] have exhibited towards us, [he] must invoke 52 Pa. Code thereby limiting the scope of your discovery and deposition.” As set forth below, Complainant’s untimely “objection” lacks merit and should be ignored by the Commission. Further, the Commission should dismiss the Formal Complaint because of Complainant’s refusal to comply with ALJ Watson’s Interim Order compelling him to respond to the Company’s Discovery Requests.

II. MOTION TO DISMISS

A. Complainant’s “Objection” Is Untimely.

15. Complainant’s “objection” that the Company (and the Commission) has acted in bad faith is untimely and without merit and, accordingly, should be disregarded by the Commission.

16. In his letter dated January 24, 2019, Complainant for the first time attempts to invoke the provisions of 52 Pa. Code § 5.361, “Limitation of scope of discovery and deposition,” to resist the Commission’s order compelling him to provide responses to the Company’s Discovery Requests. Such an objection is inappropriate after the Commission has already granted the Company’s Motion to Compel and is untimely under the Commission’s regulations.

17. The Commission’s regulations set forth the time-period for objections to Discovery Requests and responses to Motions to Compel in 52 Pa. Code § 5.342(e) and (g), respectively. The first provision requires that an objecting party serve its objections within ten days of having

received the Discovery Requests. In this case, as set forth in the Company's Motion to Compel, Complainant did not serve any objections on the Company – instead choosing to merely indicate that he was refusing to respond. Subsection (g) of § 5.342 further provides that responses to a Motion to Compel be filed within five days of service of the motion. Not surprisingly, Complainant failed to respond or raise any objection to the Complainant's Motion to Compel either. As Complainant failed to timely raise his "objection" in response to either the Company's Discovery Requests or its Motion to Compel, the "objection" should be deemed waived.¹

18. This result makes sense. To allow Complainant to move forward with his "objection" at this stage in the proceeding means that the Company must essentially move to compel responses to its Discovery Requests a second time. The Complainant should not get this second bite at the apple, especially considering ALJ Watson has already thoroughly considered the Company's Discovery Requests in the context of the order granting the Company's Motion to Compel and concluded that "[t]he Company's Discovery Requests seek relevant information and fall within the permissible scope of discovery." There is no need to reconsider that decision just because Complainant has now decided to untimely raise spurious allegations of bad faith. Accordingly, Complainant's "objection" should be deemed waived and disregarded by the Commission.

B. Complainant's "Objection" Asserting That The Company (And The Commission) Has Acted In Bad Faith Is Without Merit.

19. Even if the Commission considers the Complainant's "objection" (which it should not), it is clear that Complainant's allegation of bad faith lacks merit. As discussed above,

¹ See *King v. Verizon Pennsylvania Inc.*, 2006 Pa. PUC LEXIS 26 (Mar. 21, 2006 Final Order adopting Jan. 18, 2005 Initial Decision) (concluding that a Complainant who did not respond to discovery or the opposing party's motions to compel "has waived any possible objection to the interrogatories") (enclosed as Exhibit B); see also, *Shank v. Flemens*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 63 (Chester Cty. Common Pleas, Mar. 8, 2007) (holding that objections made after the granting of a motion to compel are waived) (enclosed as Exhibit C).

Complainant alleges generally that the Company (and the Commission) has acted in “bad faith” and provides what he describes as “examples” of bad faith actions taken by the Company and the Commission. These “examples” may demonstrate Complainant’s misunderstanding of the Company’s and Commission’s procedures as well as a misunderstanding of the applicable laws and regulations, but they do not demonstrate that either the Company or the Commission has acted in bad faith as it relates to the Discovery Requests or this matter generally.

i. The Company’s procedures for disconnections and disconnection notices related to a customer’s refusal to allow for smart meter installation do not demonstrate “bad faith” under 52 Pa. Code § 5.361.

20. Complainant first alleges that the Company exhibited “bad faith” when it disconnected his electric service in July-July 2017 “without cause.” As an initial matter, it should be noted that the Company’s disconnection of Complainant’s electric service had nothing to do with this proceeding or the Company’s Discovery Requests and, accordingly, has no bearing on whether the Company is acting in bad faith seeking this discovery. Regardless of this fact, Complainant’s allegation that the disconnection was “without cause” is still factually incorrect. As explained in the Company’s Preliminary Objections and Answer and New Matter, the Company lawfully disconnected Complainant’s service on June 26, 2017, after proper notice, for Complainant’s repeated refusal to allow a smart meter to be installed on his home.² The Company’s disconnection of Complainant’s electric service was consistent with rules 9 and 20 of the Company’s Commission-approved Tariff³ and the uniform Commission precedent refusing to allow customers to “opt-out” of smart meter installation.⁴ In short, Complainant’s allegation that

² See Pennsylvania Electric Company’s Preliminary Objection to the Formal Complaint of Michael W. Chattin (“Preliminary Objections”) at ¶ 3; Pennsylvania Electric Company’s Answer and New Matter (“Answer and New Matter”) at ¶ 4.

³ *Metropolitan Edison Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

⁴ See, e.g., *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision dated Jan. 3, 2011 became final without Commission action closed Mar. 3, 2011); *Lutherschmidt v. Metropolitan Edison Company*,

the Company's disconnection of his electric service in June 2017 was "without cause" and therefore demonstrates "bad faith" by the Company is factually incorrect and without merit. The Company's actions in June 2017 do not demonstrate that it has acted in bad faith in seeking these Discovery Requests. Complainant's reliance on this "example" as a demonstration of bad faith on the Company's part is misguided and should be disregarded by the Commission.

21. Complainant similarly alleges that the Company demonstrated "bad faith" by sending him disconnection notices because of his refusal to allow the installation of a smart meter. Again, as an initial matter, these disconnection notices were not sent in conjunction with this proceeding and had nothing to do with the information sought here by the Company. Accordingly, they have no bearing on whether the Company acted in bad faith when it comes to seeking its discovery from Complainant. Moreover, as explained above, the Company acted in accordance with its Tariff and Commission precedent in providing disconnection notices to Complainant because of his refusal to allow the smart meter installation. Complainant's allegation of bad faith because of these disconnection notices is unfounded and should be disregarded by the Commission.

ii. Complainant's broad allegations that the Company and Commission have failed to provide the "CORRECT" interpretation of Act 129 and that the Commission has acted "fraudulently" are unfounded.

22. Complainant next asserts that the Company (and the Commission) have acted in bad faith by failing to provide a "CORRECT" interpretation of Act 129. In conjunction with this accusation, Complainant claims that the Commission's website "fraudulently declares smart meters to be mandatory" and demands that it be pointed out to him where in Act 129 it states that

Docket No. C-2010-2200353 (Final Order entered Mar. 25, 2011); *McElwain v. Pennsylvania Power Company*, Docket No. C-2014-2451478 (Initial Decision issued Dec. 3, 2015); *Art Larson v. PECO Energy Company*, Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015); *Catherine J. Frompovitch v. PECO Energy Company*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018)..

smart meters are mandatory. Yet again, as has been stated previously, none of these accusations have anything to do with the Company's issuance of the Discovery Requests or the content of the Discovery Requests themselves and therefore have no bearing on whether the Company has acted in bad faith as it relates to them. Indeed, these assertions have nothing to do with the Discovery Requests and everything to do with Complainant's displeasure with the law pertaining to smart meters in Pennsylvania. It goes without saying that what Complainant means when he says that the Company and Commission have refused to provide the "CORRECT" interpretation of Act 129 is that such interpretations have not aligned with his interpretation of Act 129. While Complainant is entitled to disagree with the Company and Commission's consistent interpretation of the law, such a disagreement is not proper grounds to object to the Company's Discovery Requests and certainly does not demonstrate bad faith on the part of either the Company or the Commission. Thus, Complainant's accusation of bad faith is unfounded and should be disregarded by the Commission.

iii. ALJ Watson's employment by the Commission does not create a conflict of interest requiring recusal and does not demonstrate bad faith as it relates to the Company's Discovery Requests.

23. In his attempts to justify his refusal to follow the Commission's orders, Complainant next turns his focus to ALJ Watson, accusing him of having a conflict of interest due to his employment by the Commission. Again, it must be noted that this accusation has nothing to do with the Company's Discovery Requests and has no bearing on whether they were sought in bad faith. More importantly, however, Complainant's allegation is fallacious and insupportable. Complainant reasons that ALJ Watson must have a conflict of interest because he is employed by the Commission and the Commission disagrees with Complainant regarding the proper interpretation of Act 129. Indeed, Complainant goes so far as to state that ALJ Watson's continued

participation in this case would violate “the ethics standards of Administrative Law Judges, the American Bar Association, and common sense.” Complainant is incorrect.

24. The Pennsylvania Administrative Code outlines the basis for disqualification of a presiding officer in 52 Pa. Code § 5.482. That provision provides, in part, that a presiding officer, like ALJ Watson here, may either disqualify him or herself or withdraw on the basis of a motion for disqualification accompanied by affidavits alleging personal bias or other disqualification. Contrary to Complainant’s assertion, ALJ Watson’s employment by the Commission does not indicate personal bias or other disqualification requiring he recuse himself or be removed from this proceeding. The suggestion that this employment relationship creates a personal bias for ALJ Watson is plainly insupportable. There is no evidence indicating that ALJ Watson has been biased in any way against the Complainant and to imply otherwise is indefensible. Moreover, Complainant’s reasoning is based on a fundamental misunderstanding of administrative law in Pennsylvania – which requires that either the head of the Commission or one or more of the Commission’s members, examiners, or other representatives preside over the hearing in this proceeding.⁵ In other words, the Commission employs all the ALJs that could have been assigned to this case. For all these reasons, Complainant’s accusation that ALJ Watson has a conflict of interest that requires removal and demonstrates bad faith are unfounded and should be disregarded by the Commission.

iv. Complainant’s allegations regarding “misrepresentation” of the facts about smart meters and his case, and his accusation that the Commission is applying admiralty law, are baseless and without merit.

25. Complainant’s final “examples” of bad faith pertain to the Company and the Commission’s alleged misrepresentation related to the usage of smart meter data,

⁵ See 1 Pa. Code § 35.185; *see also* 52 Pa. Code § 5.481.

misrepresentation of the facts of his case, and the alleged wrongful application of admiralty law in this proceeding. Once again, these allegations have nothing to do with the Company's Discovery Requests and therefore have no bearing on whether the Company issued the Discovery Requests in bad faith. Regardless, like all of Complainant's other accusations discussed above, they are baseless and without merit. As it pertains to the alleged application of admiralty law, Complainant's claim is simply untrue. The Commission applies Pennsylvania law and has done so in this proceeding. And as it pertains to Complainant's allegations of misrepresentation by the Company and the Commission, Complainant has failed to provide any support for his claims. As with Complainant's other "examples" allegedly demonstrating bad faith, these accusations are unfounded and should be disregarded by the Commission.

C. The Appropriate Remedy For Complainant's Refusal To Follow The Commission's Order Is Dismissal Of His Formal Complaint.

26. As discussed in the Company's Motion to Compel, 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).

27. Generally speaking, this 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).

28. 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 at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence.” *Id.* at 284.

29. The information sought here by the Company is relatively simple and straightforward. It is directly relevant and material to the issues raised by the Complainant. The Company is entitled to the requested information to enable it to fully investigate and defend against the Complainant’s allegations. Indeed, the Commission has already concluded in its order granting the Company’s Motion to Compel that the Company’s Discovery Requests seek relevant information that fall within the scope of discovery and that the Company is entitled to responses to those Discovery Requests.

30. 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.

31. 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.

32. Here, the Complainant’s untimely and unfounded “objection” does not comply with the Commission’s order requiring that Complainant “serve upon counsel for Respondent, full and complete responses to all of the Interrogatories and Requests for Production of Documents served upon Complainant by Respondent and file a certificate of service with the Commission’s Secretary

not later than February 1, 2019.” Instead of providing responses to the Company’s Discovery Requests as ordered, the Complainant has lodged insupportable allegations of bad faith against the Company and the Commission. Complainant’s response is not only without merit but also demonstrates his unwillingness to participate productively in this matter. As a result, the Formal Complaint in this proceeding should be dismissed in its entirety.

WHEREFORE, Pennsylvania Electric Company respectfully requests that the Commission dismiss in its entirety the Complaint of Michael W. Chattin.

Respectfully submitted,

Dated: February 13, 2019



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January 19, 2018

VIA FIRST CLASS MAIL

Michael W. Chattin
58 Rocky Top Lane
Rome, Pennsylvania 18837

Re: Michael W. Chattin v. Pennsylvania Electric Company
Docket No. C-2017-2630649

Dear Michael W. Chattin:

Enclosed please find the Interrogatories and Requests for Production of Documents (Set I) to Michael W. Chattin. Pursuant to 52 Pa. Code §§ 5.341 and 5.349, *et seq.*, your answers are due within twenty days of service of this letter (February 8, 2018). In addition, any objections are due within ten days of service of this letter (January 29, 2018). This document has been served as indicated within the Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "L. M. Lepkoski".

Lauren M. Lepkoski

Enclosures

- c: As Per Certificate of Service
The Honorable Jeffrey A. Watson, Public Utility Commission (Cover Letter and Certificate)
Rosemary Chiavetta, Esq., Public Utility Commission (Cover Letter and Certificate)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL W. CHATTIN :
 :
 v. : **Docket No. C-2017-2630649**
 :
PENNSYLVANIA ELECTRIC COMPANY :
 :

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF
PENNSYLVANIA ELECTRIC COMPANY TO MICHAEL W. CHATTIN, SET I**

Pennsylvania Electric Company hereby propounds these Interrogatories and Requests for Production of Documents (Set I) to Michael W. Chattin (the "Complainant"). Telephone or other contact concerning availability and timing of formal responses is encouraged. The answer to each interrogatory should be started on a new page. The answers should restate the question asked and indicate the person(s) supplying the information.

Pursuant to 52 Pa. Code § 5.342, you must send your answers to me within 20 days (February 8, 2018) and objections within 10 days (January 29, 2018). Your answers and objections should not be filed with the Pennsylvania Public Utility Commission. You should only file the cover letter and certificate of service, with the Commission's Secretary Rosemary Chiavetta and send a copy to Administrative Law Judge Jeffrey A. Watson. If you have any objection to any of the interrogatories or the request for documents, please identify the interrogatory or request and state your objection in full as to why you should not have to answer/produce it. Any objection not raised within the 10-day period provided for by 52 Pa. Code § 5.342(c) will be deemed waived and you will not be permitted to raise the objection at a later time.

Dated: January 19, 2018

INSTRUCTIONS

- A. In answering these Interrogatories and Requests for Production of Documents, please furnish all information available to you, including any such information possessed by others that you can obtain, and not merely such information known of your own personal knowledge. If you cannot answer the Interrogatories and Requests in full after exercising due diligence to secure the information to do so, so state and answer to the extent possible.
- B. Other than for the reasons identified herein, you must provide an answer to all Interrogatories and Requests for Production of Documents. If the answer to the question is “none” or “unknown,” such statement must be written in the answer. If you consider the question to be inapplicable, “N/A” must be written in the answer. If an answer is omitted because of a claim of privilege, the basis of privilege is to be stated.
- C. If the answer to any of the Interrogatories and Requests for Production of Documents is that you lack knowledge of some or all of the requested information, describe all efforts made by you to obtain the information necessary to answer that Interrogatory or Request.
- D. These Interrogatories and Requests for Production of Documents are to be deemed continuing in nature, and you shall promptly supply, by way of supplemental response, any additional responsive information that may become known to you or anyone acting on your behalf after your answers have been prepared or served.
- E. As used herein, the terms “Complainant” and “you” refer to Michael W. Chattin and his attorneys, agents, or representatives.
- F. As used herein, the terms “Company” or “Respondent” refer to Pennsylvania Electric Company, and any agent, agency, or affiliate thereof.

G. As used herein, the term “proceeding” refers to the instant complaint proceeding at the Pennsylvania Public Utility Commission at Docket No. C-2017-2630649.

H. — As used herein, the terms “service location,” “property,” or “home” refer to your service address of 58 Rocky Top Lane Rome Pennsylvania 18837.

I. As used herein, the term “household” refers to you and all other individuals who reside at the service location.

J. As used herein, the terms “document” or “documentation” includes any written, printed, typed, recorded, or graphic matter, whether produced or reproduced or stored on paper, cards, tapes, film, electronic facsimile, computer storage devices or any other devices or media, including, but not limited to papers; books; letters; photographs; objects; tangible things; correspondence; e-mails; websites; webpages; telegrams; cables; telex messages; memoranda; medical records; notes; notations; records; work papers; transcripts; minutes; reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings; affidavits; statements; opinions; proposals; reports; surveys; plans; studies; analyses; audits; evaluations; contracts; agreements; journals; statistical records; invoices; receipts; desk calendars; appointment books; diaries; lists; tabulations; summaries; sound recordings; computer printouts; data processing input and output; microfilms; all records kept by electronic, photographic, or mechanical means; and things similar to any of the foregoing, however denominated. When one or more of the foregoing documents is requested or referred to, the request or reference shall include, but is not limited to, the original and each and every copy and draft thereof having writings, notations, corrections, or markings unique to such copy or draft.

K. As used herein, all other words are to be given their ordinary and usual meanings, according to a current edition of Webster’s Dictionary.

**INTERROGATORIES OF PENNSYLVANIA ELECTRIC COMPANY TO MICHAEL
W. CHATTIN, SET I**

Health issues (generic and specific):

1. Do you believe the installation of a smart meter at your property would create or worsen health issues for a member of your household?
2. If the answer to question 1 is yes, please provide the following information for each household member:
 - a. Name;
 - b. Age;
 - c. The specific health issues that you believe would be experienced after the smart meter is installed;
 - d. Whether the household member is already experiencing the specific health issues;
 - e. Whether the household member has experienced the specific health issues within the last four years;
 - f. Any medication prescribed to the household member; and
 - g. Whether the household member has visited a medical professional for the specific health issue, and if so, the name, address, and phone number of the medical professional and the date of the visit(s) to the medical professional.

6. Do you believe the installation of a smart meter at your property would have an impact on radio frequency (“RF”) at your home?
7. If yes to question 6, please specifically identify all of the RF impacts associated with the installation of a smart meter.
8. Please provide the following information regarding your position related to the RF impact of a smart meter:
 - a. Please identify each document you rely on in support of this position.
 - b. Do you intend to rely on these documents at the time of the hearing in this proceeding?
 - c. Please describe in detail all information you have to support this position.
 - d. Do you have any relevant educational or work background that qualifies you to assert this position?
 - e. Is yes, please identify relevant educational or work background that qualifies you to assert this position.
9. Are there any cordless phones used in your home?
 - a. Do you use a cellular phone?
 - b. Does anyone in your home use a cellular phone?

- c. How many cellular phones are in use at your home?
10. Is there a microwave oven at the service location?
- a. If yes, where is it located?
11. Is there satellite television at the service location?
- a. If yes, where is it located?
12. Is there a laptop computer at the service location?
- a. If yes, where is it located?
13. In your complaint, you state that under Act 129 of 2008, customers may “opt-out” of smart meter installation. Please provide the following information related to this statement:
- a. Is it your position that a customer has the right to request a smart meter not be installed at his service location?
 - b. Is it your position that a customer must request smart meter installation?
 - c. Is it your position that Act 129 of 2008 does not require the utility to install smart meters throughout its service territory?
14. Is it your position that you would like to opt out completely from smart meter installation?

15. To your knowledge, has a smart meter been installed by the Company at your property?
16. Please describe in detail how you believe a smart meter operates.
17. Please list the specific issues you intend to raise at the hearing in this proceeding.
18. Please identify the legal support, including specific citations, for each issue identified in question 17.
19. Please list the factual support for each issue identified in question 17.
20. Please provide the following information for all witnesses you intend to call to testify at the hearing in this proceeding.
 - a. Provide the full name of the witness.
 - b. Provide the contact information of the witness.
 - c. Provide the title or position held by the witness.
 - d. Provide the educational background of the witness.
 - e. Provide the employment background of the witness.
 - f. Provide the scope of the testimony for the witness.
21. Would any witness identified in question 20 be offered as an expert?
 - a. If yes, provide the curriculum vitae of the witness and state the scope of the testimony of the expert witness.

22. Please describe in detail your educational background.
 - a. Please list any relevant certificates, trainings, or degrees that you obtained.
 - b. Please provide a description of the certificate, training, or degree.
 - c. Please provide the date that any certificate, training, or degree was obtained.
 - d. Please provide the name and address of the institution which provided the certificate, training, or degree.

23. Please describe in detail your employment history.
 - a. Please provide your employer name and address.
 - b. Please provide the title of your position.
 - c. Please provide the dates of your employment.
 - d. Please provide the duties performed in your position.

**REQUESTS FOR PRODUCTION OF DOCUMENTS OF PENNSYLVANIA COMPANY
TO MICHAEL W. CHATTIN, SET I**

24. Please provide copies of all documentation supporting your position that the health issues of your household would be created or worsened by the installation of a smart meter.
25. Please provide copies of all documentation associated with visits by members of your household to a medical professional related to the health issues identified in question 24.
26. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding related to the impact of smart meters on a person's health.
27. Please provide copies of all documentation supporting your position related to the RF impact of smart meters.
28. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding related to the RF impact of smart meters.
29. Please provide copies of all documentation supporting your position that your household may opt out of smart meter installation.
30. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding supporting your position that a household may opt out of smart meter installation.

31. Please provide a copy of all proposed exhibits you intend to submit for the hearing in this proceeding.
32. Please provide copies of all documentation you are relying upon in support of your positions in this proceeding.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL W. CHATTIN

v.

PENNSYLVANIA ELECTRIC COMPANY

:
:
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:
:
:

Docket No. C-2017-2630649

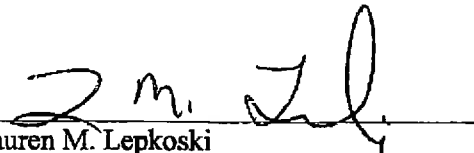
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Interrogatories and Requests for Production of Documents of Pennsylvania Electric Company to Michael W. Chattin upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Michael W. Chattin
58 Rocky Top Lane
Rome, Pennsylvania 18837





Dated: January 19, 2018


Lauren M. Lepkoski
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
llepkoski@firstenergycorp.com

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2006 Pa. PUC LEXIS 26

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Pennsylvania Public Utility Commission

March 21, 2006, Entered

C-20054799

Reporter

2006 Pa. PUC LEXIS 26 *

Dushawn King; v.; Verizon Pennsylvania Inc.


Core Terms

interrogatory, fail to comply

Opinion

[*1]

FINAL ORDER

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. § 332(h), the decision of Administrative Law Judge Marlane R. Chestnut  dated January 17, 2006, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Dushawn King against Verizon Pennsylvania, Inc. at Docket No. C-20054799 is stricken; and
2. That the record at Docket No. C-20054799 be marked closed.

BY THE COMMISSION

ORDER ENTERED: **March 21, 2006**

INITIAL DECISION

Before

Marlane R. Chestnut ▼

Administrative Law Judge

HISTORY OF THE PROCEEDING

On July 25, 2005, Dushawn King (Mr. King or complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against "Verizon," presumably Verizon Pennsylvania, Inc. (Verizon or respondent). The section of the Complaint that requires a complainant to "state the facts of your complaint" says in its entirety, "Erroneous charges/disputing bill. Someone else number & cross calls." The Prayer for Relief says in its entirety, "Suspend termination of service. Stop cross calls and erroneous charges."

On **[*2]** August 19, 2005, respondent Verizon filed a Motion for More Specific Pleading, claiming that the allegations in the Complaint were not specific enough to allow it to respond to or investigate the Complaint since Mr. King did not provide the specific charges or services in dispute, the period over which the alleged billing error occurred or the amount in dispute. This Motion was denied by Chief Administrative Law Judge Veronica Smith by Order dated September 22, 2005, who found that "The Complaint is not so vague and incomplete that respondent is unable to make a meaningful investigation and file an appropriate responsive pleading." In that Order, Chief Administrative Law Judge Smith also directed the parties to participate in a resolution conference, with a report to be filed with the Mediation Unit. According to a memorandum dated November 3, 2005, that report was filed.

On September 30, 2005, respondent Verizon filed an Answer which denied the assertions of the Complaint, noted that complainant's service is suspended for non-payment, and that the company's records do not indicate that complainant contacted the company to discuss billing errors or service problems prior to the filing **[*3]** of the formal Complaint. As New Matter, Verizon asserted that since the account was initiated on February 2, 2005, complainant has made no payments, that basic service was suspended for non-payment on July 22, 2005,

and that the amount owed to the company is \$ 291.40, which includes a final non-basic bill of \$ 105.29 issued on June 10, 2005 after termination of non-basic services for non-payment.

No Answer was filed to the New Matter.

By Telephone Hearing notice dated November 8, 2005, a telephonic hearing was scheduled for January 11, 2006, and the case was assigned to me. In accordance with my usual practice, on November 14, 2005 I issued a Prehearing Order that directed the parties to comply with various procedural requirements.

On December 7, 2005, a Motion to Compel Responses to Request for Production of Documents and Interrogatories and for Sanctions (Motion to Compel or Motion) was filed by Verizon. In this Motion, Verizon asserted that complainant King had failed to respond to the Request for Document Production and Interrogatories issued by it on November 2, 2005. [1](#)

[*4]

No response to the Motion was filed with the Commission nor was I served with any response.

On December 19, 2005, I issued an Order Granting Motion to Compel which directed complainant Dushawn King to respond to respondent Verizon's interrogatories on or before January 10, 2006. I stated there that the interrogatories "clearly are reasonable, and are intended to identify the charges, issues and relief raised by the Complaint." I also specifically warned Mr. King that failure to answer the interrogatories as directed may result in dismissal of his Complaint, pursuant to [52 Pa. Code § 5.371\(a\)\(1\)](#) and § 5.372.

By Order dated January 3, 2006, I directed that the January 11, 2006 hearing be continued and rescheduled in order to allow Verizon sufficient time to review the answers to interrogatories that Mr. King had been directed to supply. By Hearing Cancellation/Reschedule Notice dated January 3, 2006, the telephonic hearing was rescheduled for January 25, 2006.

On January 12, 2006, Verizon filed a Motion for Sanctions in the Form of Dismissal of the Formal Complaint of Dushawn King (Motion), asserting that Mr. King has failed to comply with my **[*5]** December 19, 2005 Order Granting Motion to Compel and requesting that the Complaint be dismissed pursuant to [52 Pa. Code § 5.371\(a\)\(1\)](#) and § 5.372.

By Order dated January 13, 2006, I continued the January 25, 2006 hearing in order to address the outstanding Motion for Sanctions.

Pursuant to [52 Pa. Code §§ 5.371\(b\)](#) and [1.56\(b\)](#), response to the Motion was due on or before January 20, 2006. [2](#) No response was filed with the Pennsylvania Public Utility Commission (Commission) by that date, nor was I served with any response.

As discussed in more detail below, the Motion should be granted and the Complaint dismissed, consistent with the Commission's regulations and prior decisions.

FINDINGS OF FACT

1. On July 25, 2005, complainant Dushawn King filed the instant [*6] Complaint against Verizon Pennsylvania, Inc.
2. On September 20, 2005, Verizon timely filed its Answer and New Matter.
3. No answer was filed in response to the New Matter.
4. On November 2, 2005, in accordance with 52 Pa. Code § 5.341 and § 5.349, Verizon served on complainant a Request for Document Production and Interrogatories, asking him to identify the disputed charges, to clarify the issues raised by the Complaint and to clarify the relief requested.
5. In violation of 52 Pa. Code § 5.342(c) and (d), complainant failed to either respond or object to the interrogatories.
6. On December 7, 2005 Verizon filed a Motion to Compel pursuant to 52 Pa. Code § 5.342(e).
7. Complainant failed to respond to the Motion within five days after service as required by 52 Pa. Code § 5.342(e)(1).
8. On December 19, 2005 I issued an Order which granted the Motion and directed complainant to respond to the company's Request for Document Production and Interrogatories on or before January 10, 2006; this Order explicitly stated that [*7] January 10, 2006 was the date of receipt, not mailing.
9. On January 12, 2006, Verizon filed a Motion for Sanctions, in which it alleged that complainant has failed to comply with my December 19, 2005 Order.
10. Pursuant to 52 Pa. Code § 5.371(b), an answer to the Motion is due within five days of service. [3] No response to the Motion was served or filed by complainant.
11. Complainant has not applied for a protective order in this proceeding.

DISCUSSION

As complainant Dushawn King failed to comply with my December 19, 2005 Order, sanctions (including dismissal of the Complaint, as authorized by 52 Pa. Code §§ 5.371 and 5.372) clearly are appropriate. It is axiomatic that parties appearing before the Commission must at least make a good faith effort to comply [*8] with its procedures. Mr. King has not done that here.

As set out in the Motion, the unanswered interrogatories include requests for information, such as the disputed charges. Obviously, these are simple, clear interrogatories which merely request basic information which Mr. King should have easily been able to supply. Without this information, it is impossible for Verizon to prepare an adequate defense to the allegations raised in the Complaint, thus violating its due process rights.

Mr. King did not respond at all to Verizon's discovery, or to any of the three Motions filed by Verizon. Obviously, he has waived any possible objection to answering the interrogatories. Similarly, he has failed to comply with the express terms of my December 19, 2005 Order.

The regulations promulgated by the Commission permit the imposition of sanctions, including dismissal of a complaint, in cases such as this. Specifically, 52 Pa. Code § 5.371 provides in relevant part:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occur:

(1) A participant fails to appear, answer, file sufficient answers, file **[*9]** objections, make a designation or otherwise respond to discovery requests as required under this subchapter.

* * *

(d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has filed an appropriate objection or has applied for a protective order.

Here, as Mr. King has failed to object to the interrogatories in the first place, the sanction requested by Verizon clearly is appropriate. Sanctions expressly permitted by 52 Pa. Code § 5.372 include the entry of orders that designated facts shall be taken as established, that refuse to allow the disobedient party to support or oppose designated claims or defenses, that prohibit the disobedient party from introducing into evidence designated documents or testimony, that strike out pleadings or that enter a judgment against the disobedient party. 52 Pa. Code § 5.372(a).

In light of the nature of the unanswered interrogatories, the only sanction that should be applied is to strike the Complaint. If the sanction applied is to take designated facts as **[*10]** established or to refuse to allow Mr. King to support or oppose designated claims or defenses, it will be impossible for complainant to sustain his burden of proof. Therefore it would serve no purpose to hold a meaningless hearing.

Striking complaints for the contemptuous failure to respond to discovery, rather than prohibiting the introduction of evidence at a hearing, is the appropriate sanction to be imposed. Merchant v. The Bell Telephone Company of Pennsylvania, Docket No. C-00935253, Commission Order entered June 20, 1994; Application of Tyrone E. Hartley, t/d/b/a T's Automotive Service, Docket No. A-00112575, Commission Final Order entered August 6, 1996; Application of Karen Lee Miller, Docket No. A-00116067, Commission Final Order entered March 27, 2000; Application of Patrick M. Kelsey, Docket No. A-00116366, Commission Final Order entered May 18, 2000; Application of Besteastern Limousine, Inc., Docket No. A-00118593, Commission Final Order entered November 14, 2002. See also, Samick et al. v. Pennsylvania Electric Company, Docket Nos. C-20043921, C-20043923 and C-20043925, Commission Final Order entered October 25, 2005.

Striking the Complaint for [*11] Mr. King's contemptuous failure to comply with my December 19, 2005 Order is appropriate pursuant to 52 Pa. Code § 5.372(a)(3), which permits entry of an order striking out pleadings or entering judgment against the disobedient party.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this proceeding.
2. Pursuant to 52 Pa. Code §§ 5.371 and 5.372, the Complaint is stricken as a sanction for complainant Dushawn King's failure to supply the responses to interrogatories as directed in the December 19, 2005 Order.
3. By failing to comply with the December 19, 2005 Order, complainant Dushawn King has engaged in contemptuous conduct which is a ground for sanctions pursuant to 52 Pa. Code § 1.26.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Dushawn King against Verizon Pennsylvania, Inc. at Docket No. C-20054799 is stricken; and
2. That the record at Docket No. C-20054799 be marked closed.

Date: January 18, 2005

Marlane R. Chestnut ▼

Administrative Law Judge

Footnotes

1 ¶ The Motion also requests sanctions in the event of noncompliance. This request was premature and disregarded.

2 ¶ 52 Pa. Code § 1.56(d) adds three days to the response period when the motion is served by mail.

3 ¶ Pursuant to 52 Pa. Code § 1.56(d), three days may be added when service is made by mail.



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 Shank v. Flemens, 2007 Pa. Dist. & Cnty. Dec. LEXIS 63

Copy Citation

Common Pleas Court of Chester County, Pennsylvania

March 8, 2007, Decided

NUMBER 06-01914

Reporter

2007 Pa. Dist. & Cnty. Dec. LEXIS 63 *

BARBARA SHANK et al., Plaintiffs VS. NATASHA FLEMENS, M.D. et al.,
Defendants

Core Terms

discovery, discovery request, interrogatories, protective order, answers, waived, motion to compel, documents, days, motion for sanctions, request for production, no objection, cases, file an objection, plaintiffs', responses, provides, matters, serves

Case Summary

Procedural Posture

The trial court (Pennsylvania) entered an order requiring defendants to file full and complete answers, without objection, to plaintiffs' interrogatories

and a full and complete response, without objection, to plaintiffs' requests for production of documents. Defendants' motion for reconsideration was denied. Defendants appealed. The trial court filed its opinion pursuant to [Pa.R.A.P. 1925\(a\)](#) stating its reasons for its order.

Overview

Defendants did not respond to the discovery requests or a motion to compel, and asserted objections to the requests, for the first time, only after the order compelling discovery was entered. The trial court stated that it entered the order due to defendants' failure to respond in any meaningful way in a timely fashion and failure to attempt to assert objections until after the order was entered. The intention of [Pa.R.C.P. No. 4019\(a\)\(2\)](#) was to prevent the situation that occurred here. Defendants waived their right to file objections to the requested discovery. Defendants did not supply any factors in their favor to balance against the lengthy failure to have responded to plaintiffs' discovery requests. The order was issued without opposition and at a time when no discovery responses had been served and no objections asserted. It would be most disruptive to orderly case management and the timely disposition of cases if a party were able to ignore discovery requests, ignore motions to compel, ignore court orders and then, after all that, assert objections to the discovery.

Outcome

The trial court stated its reasons for its decision.

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Civil Procedure > [Discovery & Disclosure](#) ▼ > [Disclosure](#) ▼
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HN1 **Discovery & Disclosure, Disclosure**

An objection to interrogatories or other discovery under [Pa.R.C.P. No. 4006 \(a\)\(2\)](#) or an application for protective order under [Pa.R.C.P. No. 4012](#) must be filed before the party seeking discovery has filed a motion for sanctions or other motion seeking to enforce compliance with the discovery request or else the objection or the grounds upon which the protective order is sought will be waived. This rule is particularly appropriate in Chester County as in this county no motion which would cut off the right to object to discovery may be filed until after the moving party has fulfilled his or her affirmative obligation to confer and discuss discovery matters and make a good faith

effort to resolve such differences as may exist. Chester County, Pa., C.P. Ct. R. Civ. P. 208.2(e)(1). [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Civil Procedure > [Discovery & Disclosure](#) ▼ > [Disclosure](#) ▼

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HN2 [Discovery & Disclosure, Disclosure](#)

[Pa.R.C.P. No. 4019\(a\)\(2\)](#) provides that failure to serve answers, sufficient answers or objections to written interrogatories or to respond to a request for production of documents may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order. [More like this Headnote](#)

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HN3 [Methods of Discovery, Interrogatories](#)

Objections to interrogatories may be considered so long as filed prior to disposition of a motion to compel answers. Although [Pa.R.C.P. No. 4006\(2\)](#) provides that objections to interrogatories shall be filed within 30 days, the rule does not expressly state that any objections not so filed are waived. Although [Pa.R.C.P. No. 4019\(a\)\(2\)](#) provides that failure to answer interrogatories cannot be excused on the ground that the discovery sought is objectionable if a party has not filed objections or applied for a protective order, it does not specifically state when such objections must be filed. Such objections can be considered so long as they are filed at any time prior to the hearing on the motion for sanctions. [More like this Headnote](#)

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HN4 [Discovery & Disclosure, Disclosure](#)

[Pa.R.C.P. No. 4019\(a\)\(2\)](#) is ample basis for disregarding the protections of [Pa.R.C.P. No. 4011](#) and ordering discovery of matters considered to be outside the scope of the discovery rules. [Rule 4011](#) is not self-executing; a party wishing the benefit of the protections of that rule must seek to invoke

them in a timely fashion. And the Pennsylvania Rules of Civil Procedure do not set forth a list of such matters as may be inquired into; rather the general philosophy is that everything is presumed to be discoverable, subject to specific limitations set forth in various rules. Nothing is per se outside the scope of the rules. Much evidence is given in court which would be inadmissible if objected to but which comes in and is fully probative because no objection is made. Just so, any interrogatory is required to be answered unless a timely objection thereto is lodged or protective order sought. Rights, slept on, are lost every day and the appellate court sees nothing to be gained by encouraging dilatory and discourteous behavior. Discovery received is entitled to a response before the party proffering the discovery must seek the court's assistance. [More like this Headnote](#)

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HNS [Discovery & Disclosure, Disclosure](#)

The decision in Hall v. Sears Roebuck & Company gives primacy to the protections of [Pa.R.C.P. No. 4011](#) over the obligations of [Pa.R.C.P. No. 4006 \(2\)](#) and the directive of [Pa.R.C.P. No. 4019\(a\)\(2\)](#), and the court states that its decision is consistent with most cases which consider the issue under the previous rules of discovery. However, all of the cases cited in Hall v. Sears Roebuck & Company have been decided prior to the adoption of [Pa.R.C.P. No. 4019\(a\)\(2\)](#). Under the previous rules, it is stated that a party may file objections within 10 days after service of the interrogatories; the present rule states that objections shall be filed within 30 days. And the previous rules required a willful failure to respond before sanctions can be imposed; under the present rules sanctions may be imposed merely upon the failure to respond, whether willful or not (willfulness being only a factor to be considered in determining whether a sanction is to be imposed and, if it is, what sanction is appropriate). [More like this Headnote](#)

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Permitting objections to be lodged or protective orders to be applied after a motion for sanctions or other motion to enforce discovery has been filed would vitiate [Pa.R.C.P. No. 4019\(a\)\(2\)](#) but requiring such action before the court's assistance is invoked to enforce discovery rights gives effect and a

proper balance both to those rules which limit the scope of discovery as well as to those rules requiring diligence in response to discovery requests received. [More like this Headnote](#)

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Civil Procedure > [Discovery & Disclosure](#) > [Disclosure](#)
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HN7 [Discovery & Disclosure, Disclosure](#)

Consistent with McGovern, the rule set forth in National Railroad Passenger Corp. v. Fowler and Mountain View Condominium Owners' Association v. Mountain View Associates does not hold that the mere failure to file objections within thirty days of the service of discovery requests automatically waives the right to object to those requests or portions thereof as [Pa.R.C.P. Nos. 4006\(a\)\(2\)](#) and [4009.12\(a\)](#) suggest. Indeed, those cases suggest that there is no waiver unless the failure to respond to discovery persists until the party seeking the discovery has been forced to file a motion with the court. McGovern suggests that even if objections are lodged before a motion has been filed but after the date required by the Pennsylvania Rules of Civil Procedure, the right to object might have been waived and that a balancing test and a weighing of various factors, such as the length of the delay and the reasons for the delay, is required. [More like this Headnote](#)

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> [General Overview](#)
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HNS [Methods of Discovery, Interrogatories](#)

[Pa.R.C.P. No. 4006\(a\)\(2\)](#) provides that answers and objections to interrogatories shall be served within thirty days after service of the interrogatories and [Pa.R.C.P. No. 4009.12](#) provides that answers and objections to a request for production of documents shall be served within thirty days after service of the request. Notwithstanding this seemingly mandatory language, appellate cases have held that there is no automatic waiver of the right to file objections. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Counsel: [*1] Stephen M. Karp, Esquire, Attorney for Plaintiffs.

Benjamin A. Post, Esquire ▼, Attorney for Defendants.

Judges: Robert J. Shenkin ▼

Opinion by: Robert J. Shenkin ▼

Opinion

CIVIL ACTION

OPINION

Defendants have filed an appeal from our order of January 18, 2007, wherein we ordered defendants to respond to discovery requests. Pursuant to Pa.R.A.P. No. 1925(a), we herewith file this opinion stating the reasons for our order.

Following the filing of the appeal, defendants were directed to file a concise statement of the matters complained of and have done so. Although the statement contains nine (9) separate paragraphs, only one (1) issue is raised: At what point does a party's failure to respond to discovery requests **and** failure to respond to a motion to compel waive that party's right to assert objections to the discovery requests.

In this case the plaintiffs served interrogatories and a request for production of documents on June 14, 2006. Defendants did not serve responses of any kind to those discovery requests. On December 21, 2006, plaintiffs filed a motion to **[*2]** compel answers to the interrogatories and a response to the request for production of documents. **Defendants did not respond to that motion.** Defendants did not file objections to the requested discovery nor seek a protective order. We therefore entered an order requiring defendants to "file full and complete answers, **without objection**, to plaintiffs' interrogatories and a full and complete response, **without objection**, to plaintiffs' requests for production of documents." (emphasis added.) **Defendants did not comply, even partially, with that order.** On January 31, 2007, defendants filed a motion for reconsideration requesting that the prohibition against objections be deleted. **Defendants did not, even at that time, serve responses to at least that portion of the requested discovery to which they have no objection.** Disingenuously enough, defendants asserted in their motion for reconsideration that they "are in full agreement to respond to [the discovery requests]" so long as they are permitted "to assert Peer Review or Attorney-Client privilege," (Paragraph 14, Defendants' Motion for Reconsideration, page 4.) but they did not demonstrate that agreement **[*3]** -- or any good faith at all -- by serving responses to the discovery requests to which they do not object. Further, in their statement of matters complained of, defendants have expanded the

number of privileges which they wish to assert from two (2) to five (5) and have requested that they be permitted to raise objections to the requested discovery on four (4) additional bases as well. I suppose I should be grateful that counsel for defendants has finally decided to pay some attention to these discovery requests. However, I am more of the opinion that counsel should have done so in a timely fashion, which is to say more than eight (8) months ago and, further, that counsel for defendant should have demonstrated at least some modicum of good faith (and we seriously doubt that there ever was any or, if there were, that any remains extant) by at least responding to those portions of the discovery which has been outstanding since June, 2006, to which defendants are asserting no objection. (We note that the word "stonewall" is defined in the American Heritage Dictionary, 3rd Edition as "To refuse to answer or cooperate.")

Thus, the issue raised by this appeal is whether or not a party can [*4] ignore with impunity discovery requests and a motion to compel responses to those discovery requests and then, after an order compelling discovery has been entered, assert **for the first time** objections to the discovery requests. We think not.

HN1 "An objection to interrogatories or other discovery under Pa. R.C.P. 4006 (a)(2) or an application for protective order under Pa. R.C.P. 4012 must be filed before the party seeking discovery has filed a motion for sanctions or other motion seeking to enforce compliance with the discovery request or else the objection or the grounds upon which the protective order is sought will be waived." National Railroad Passenger Corp. v. Fowler, 788 A.2d 1053, 1059 (Pa.Cmwlth. 2001) citing Mountain View Condominium Owners' Association v. Mountain View Associates, 9 D. & C. 4th 81 (1991). **1** This rule is particularly appropriate in Chester County as in this county no motion which would cut off the right to object to discovery may be filed until after the moving party has fulfilled his or her "affirmative obligation to confer and discuss discovery matters and make a good faith [*5] effort to resolve such differences as may exist." C.C.R.C.P. No. 208.2(e)(i).

[*6] We are aware of no appellate case adopting a more lenient rule and even the case of Hall v. Sears Roebuck & Co., 14 Pa. D. & C.3d 231, (Allegheny County 1980), which has been followed by some other Courts of Common Pleas but, so far as our research discloses, not by any appellate court, does not help the defendants in this case. In the Hall case, it was held that objections to discovery filed after a motion to compel had been filed but **prior to the hearing on that motion** are not waived. In this case, defendants did not raise any objections until **after** an order granting the motion to compel had been issued.

This case is not one in which defendants did respond (or even as of this date have responded) to the discovery requests but merely did so a little late as in McGovern v. Hospital Services Association of Northeastern Pennsylvania, 2001 PA Super 304, 785 A.2d 1012 (Pa. Super. 2001). **HN7** Consistent with McGovern, the rule set forth in National Railroad Passenger Corp. v. Fowler, *supra*, and

Mountain View Condominium Owners' Association v. Mountain View Associates, supra, does not hold that the mere failure to file objections [*7] within thirty (30) days of the service of discovery requests automatically waives the right to object to those requests or portions thereof as Pa.R.C.P. Nos. 4006(a)(2) and 4009.12(a) suggest. [2] Indeed, those cases suggest that there is no waiver unless the failure to respond to discovery persists until the party seeking the discovery has been forced to file a motion with the court. *McGovern* suggests that even if objections are lodged before a motion has been filed but after the date required by the Rules of Civil Procedure, the right to object might have been waived and that a balancing test and a weighing of various factors, such as the length of the delay and the reasons for the delay, is required. McGovern, supra, at 1019. Of course in this case the facts are less favorable to defendants as they did not file any response or opposition to plaintiffs' motion or indicate any desire to file objections [3] until **after** our order had been entered. Not having answered plaintiffs' motion, defendants did not give the court any factors in their favor to balance against the lengthy failure to have responded [*8] to plaintiffs' discovery requests [4].

[*9] For the foregoing reasons we entered the order from which this appeal has been taken. We also commend to the attention of the Superior Court Pa.R.A.P. No. 2744.

BY THE COURT:

Robert J. Shenkin ▼, J.

Date: March 8, 2007

Footnotes

[1]

In Mountain View, the Court was faced with the all too common situation -- but even less egregious than the situation in this case -- in which one party serves interrogatories (or initiates some other facially appropriate discovery request) and the other party totally ignores the interrogatories until the party serving them has filed a motion for sanctions. Then the recipient serves answers and/or attempts to lodge objections, actions which should have been taken without requiring the other party to have gone to the time, trouble and expense of filing the additional motion. Here, counsel for defendants followed the unfortunate and unacceptable practice of ignoring legitimate discovery requests until plaintiffs were forced to file a motion to compel and the Court was required to review, consider and rule upon the motion. Here, as in Mountain View, it was not the failure to file answers and produce documents within thirty (30) days of service of those discovery requests which is so objectionable, since a good-faith effort to respond to discovery can indeed take more time than allowed by the Rules of Civil Procedure as of course, but rather the failure to have responded in any

meaningful way in a timely fashion and, in this case, the failure to have attempted to assert objections until **after** an order granting the motion to compel had been issued. Under these circumstances, we believe that any objections to the requested discovery have been waived.

HN2 "Pa.R.C.P. 4019(a)(2) provides that failure to serve answers, sufficient answers or objections to written interrogatories or to respond to a request for production of documents 'may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.' Accordingly, we hold that an objection to interrogatories or other discovery or an application for protective order must be filed before the party seeking discovery has filed a motion for sanctions, or other motion seeking to enforce compliance with the discovery request, or else such objection or the grounds upon which the protective order is sought shall be waived. See *Nissley v. Pennsylvania Railroad Company*, 435 Pa. 503, 510, 259 A.2d 451, 455 (1969); *J.J. White Inc. v. Buckley and Company Inc.*, 65 Pa. D. & C.2d 794 (1974); *Bonk v. Block*, 12 Pa. D. & C.3d 749 (1980).

We are not here faced with the situation in which an objection was filed or protective order sought more than 30 days after the discovery request was served but before the party seeking the discovery had taken any action to compel compliance with the discovery request. It may be that the objection or request for protective order will not be required -- upon penalty of waiver -- to be filed within the same time period as is allotted for the response to the discovery request, but we are not here faced with that precise issue. Here we have the situation in which no objection was lodged until after the party promulgating the interrogatories had been forced to file a motion for sanctions in order to get any response at all from opposing counsel, and our decision is limited to that situation.

We recognize that in *Hall v. Sears Roebuck & Company*, 14 Pa. D. & C. 3d 231 (1980) the court held that **HN3** objections to interrogatories may be considered so long as filed prior to disposition of a motion to compel answers. In the *Hall* case, *supra*, the defendant served interrogatories; seven months later the defendant filed a motion for sanctions seeking full and complete answers to the interrogatories; after the motion had been filed but prior to the hearing on the motion, plaintiffs filed general objections to the interrogatories. The court noted that although Pa.R.C.P. 4006(a)(2) provides that objections to interrogatories shall be filed within 30 days, the rule does not expressly state that any objections not so filed are waived. The court also noted that although Pa.R.C.P. 4019

(a)(2) provides that failure to answer interrogatories cannot be excused on the ground that the discovery sought is objectionable if a party has not filed objections or applied for a protective order, it does not specifically state when such objections must be filed. The court then did consider the objections and sustained them in part, ruling that such objections could be considered so long as they were filed at any time prior to the hearing on the motion for sanctions.

In the *Hall* case, the court was concerned that it could find no basis for disregarding the protections of Pa.R.C.P. 4011 and ordering discovery of matters which it considered to be outside the scope of the discovery rules. We find **HN4** Pa.R.C.P. 4019(a)(2) to be ample basis. Pa.R.C.P. 4011 is not self-executing; a party wishing the benefit of the protections of that rule must seek to invoke them in a timely fashion. And we do not find that the Rules of Civil Procedure set forth a list of such matters as may be inquired into; rather the general philosophy is that everything is presumed to be discoverable, subject to specific limitations set forth in various rules. As we perceive the situation, nothing is *per se* outside the scope of the rules. Much evidence is given in court which would be inadmissible if objected to but which comes in and is fully probative because no objection is made. Just so, we find that any interrogatory is required to be answered unless a timely objection thereto is lodged or protective order sought. Rights, slept on, are lost every day and we see nothing to be gained by encouraging dilatory and discourteous behavior. Discovery received is entitled to a response before the party proffering the discovery must seek the court's assistance.

HN5 The decision in *Hall v. Sears Roebuck & Company, supra*, gives primacy to the protections of Pa.R.C.P. 4011 over the obligations of Pa.R.C.P. 4006(a)(2) and the directive of Pa.R.C.P. 4019(a)(2), and the court stated that its decision was consistent with most cases which considered the issue under the previous rules of discovery. However, all of the cases cited in *Hall v. Sears Roebuck & Company, supra*, were decided prior to the adoption of Pa.R.C.P. 4019(a)(2). Also we note that under the previous rules, it was stated that a party may file objections within 10 days after service of the interrogatories; the present rule states that objections shall be filed within 30 days. And the previous rules required a willful failure to respond before sanctions could be imposed; under the present rules sanctions may be imposed merely upon the failure to respond, whether willful or not (willfulness being only a factor to be considered in determining whether a sanction is to be imposed and, if it is, what sanction is appropriate). It is clear to us that the intention of Rule 4019(a)(2) is to

prevent just the situation which occurred in this case. Otherwise the rule would be practically meaningless; its only effect would be to preclude a party from defending against a motion for sanctions on the basis that the discovery is objectionable when no objection had actually been filed or protective order applied for.

HN6 Permitting objections to be lodged or protective orders to be applied for at so late a time (that is, after a motion for sanctions or other motion to enforce discovery has been filed) would vitiate Pa.R.C.P. 4019(a)(2) but requiring such action before the court's assistance is invoked to enforce discovery rights gives effect and a proper balance both to those rules which limit the scope of discovery as well as to those rules requiring diligence in response to discovery requests received. Our ruling in this case does not diminish any limitation imposed upon the scope of discovery; it requires only that such limitations be raised in a timely fashion. Moreover, our ruling will encourage parties to make discovery disputes known to each other before the court becomes involved and will further the policy that parties ought to make a good-faith effort to resolve such disagreements before invoking the assistance of the court. How can one party examine objections to its discovery (and possibly reconsider the propriety thereof in the face of such objections) before coming into court if the other party is not even required to make such objections known?"

Mountain View Condominium Owners' Ass'n v. Mountain View Associates, 9 Pa. D. & C.4th 81, 1991 WL 299494 (Chester County, 1991, Shenkin, J.) Regardless of whether one follows *Mountain View* or *Hall*, defendants in this case have waived the right to file objections to the requested discovery.

2 **HN8** Pa.R.C.P. No. 4006(a)(2) provides that answers and objections to interrogatories **shall** be served within thirty (30) days after service of the interrogatories and Pa.R.C.P. No. 4009.12 provides that answers and objections to a request for production of documents **shall** be served within thirty (30) days after service of the request. Notwithstanding this seemingly mandatory language, appellate cases have held that there is no automatic waiver of the right to file objections.

3 Even as of this date, neither objections nor a motion for protective order have been filed. Defendants have not identified any material which would be protected if they were allowed to file objections.

4 ¶ Interestingly, *McGovern* implies that what happened in this case is virtually automatic. "In the majority of cases where sanctions have been imposed, there almost universally first has been a violation of one or more court orders. Typically, a party makes a request for production of documents or serves interrogatories on the opposing party. If the documents are not produced or the answers are not filed in a timely manner, the party seeking them files a motion to compel. The trial court then enters an order either extending the discovery deadline or **ordering full disclosure**. Only once **that** order is violated, the court imposes a sanction. *McGovern, supra, at 1019* (emphasis partly in original, partly added.) However, in *McGovern*, the sanction at issue was the entry of an order of full disclosure issued in response to a motion to compel filed after the responding party had served its answers and objections. Under that circumstance, the trial court was found to have erred in finding the objections to have been waived without conducting a balancing test. In the present case, the order was issued without opposition and at a time when no discovery responses had been served and no objections asserted. It would be most disruptive to orderly case management and the timely disposition of cases if a party were able to ignore discovery requests, ignore motions to compel, ignore court orders and then, **after all that**, assert objections to the discovery.



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL W. CHATTIN

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2017-2630649

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Dismiss of Pennsylvania Electric Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

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Dated: February 13, 2019



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