

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wes Good and	:	
Tabitha Good	:	
	:	
v.	:	C-2017-2631009
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

This Initial Decision grants the motion to dismiss filed by Respondent and dismisses the Formal Complaint filed by Wes Good and Tabitha Good for their failure to comply with orders of the Commission requiring Complainants to provide discovery responses and witness identification information to Respondent.

**HISTORY OF THE PROCEEDING**

On October 24, 2017, Wes Good and Tabitha Good (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) alleging, *inter alia*, that Respondent threatened to shut off their service, that smart meters present health and safety concerns and that they object to the installation of a smart meter at their residence.

On November 16, 2017, Respondent filed an Answer and New Matter to the Complaint, essentially admitting that Complainants' service was subject to termination for refusing to permit the installation of a smart meter at their home and denying the material

allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008,<sup>1</sup> to install a smart meter at Complainants' residence. Respondent's Answer and New Matter included a request for mediation.

On November 16, 2017, Respondent also filed preliminary objections to the Complaint. Respondent essentially averred that holding a hearing in this proceeding is not in the public interest. Respondent averred that the Commission does not have the power to order the Company to forego the installation of a smart meter at the service location and that Complainants have failed to allege that Respondent has violated the Code, Commission regulations or orders that can be the basis of any finding against the Company. Respondent requested that the complaint be dismissed as being legally insufficient pursuant to 52 Pa.Code Section 5.101(a)(4).

On November 25, 2017, Complainants filed a response to the preliminary objections.

On December 6, 2017, Complainants filed a response to the answer and new matter.

A Motion Judge Assignment Notice was issued on January 4, 2018, and assigned the undersigned presiding officer to this proceeding.

On January 8, 2018, an interim order was entered denying the Preliminary Objections filed by Respondent and referring the Complaint to the Commission's Mediation Unit for mediation review. It was further ordered that, should the parties be unsuccessful in resolving the matter with the aid of the Mediator, the Complaint shall be promptly rescheduled for hearing.

Upon a request for the scheduling of a prehearing conference, a notice was issued scheduling a prehearing conference for April 18, 2018.

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<sup>1</sup> 66 Pa.C.S. § 2806.1 *et seq.*

On April 16, 2018, the undersigned presiding officer received an email from Counsel for Respondent advising that Complainants had requested that the prehearing conference be continued and that Respondent had no objection to the request. Under the circumstances, an interim order was entered on April 17, 2018, continuing the prehearing conference.

The prehearing conference was rescheduled for June 26, 2018.

On June 18, 2018, the undersigned presiding officer received letters from Wes Good and Tabitha Good, both of which were undated. No certificate of service was attached to the letters. The letters stated, *inter alia*, that it was not the intent of Complainants to participate in a prehearing conference. Under the circumstances, the prehearing conference was cancelled by interim order entered on June 22, 2018.

On June 26, 2018, Respondent filed a motion to compel responses to interrogatories and requests for production of documents (motion to compel). The motion to compel included a notice to plead, requiring Complainants to file a written response to the motion within five (5) days from the service of the notice dated June 26, 2018. The motion to compel averred that interrogatories and requests for production of documents (discovery requests) were served upon Complainants on January 23, 2018. The motion to compel further set forth that Complainants did not file any objections or responses to the discovery requests. Respondent asserted it received a letter dated February 6, 2018, wherein Complainants stated, in part, that their letter was in reply to the Company's discovery requests and that Complainants were not accepting the "offer" made to complete the discovery requests.

On August 24, 2018, an interim order was entered granting the motion to compel filed by Respondent on June 26, 2018. The order further directed Complainants to serve Respondent with objections where appropriate to any specific discovery requests, serve full and complete responses to the interrogatories and requests for production of documents and file and serve a certificate of service on or before September 10, 2018.

On August 24, 2018, an interim order setting a litigation schedule was also entered in this proceeding. The order directed the parties to exchange the names and business addresses of their proposed fact and expert witnesses and a written summary of any proposed testimony by October 26, 2018.

On September 10, 2018, Complainants' undated letters were received by the undersigned presiding officer each stating, among other things, that they received the order granting Respondent's motion to compel and that they are not accepting any orders at this time.

On November 2, 2018, Respondent filed a motion of Metropolitan Edison Company to Dismiss Complaint of Wes and Tabitha Good for failure to comply with the order entered on August 24, 2018 requiring Complainants to respond to the discovery requests and the order entered on August 24, 2018, requiring Complainants to provide the name, business address and a summary of any proposed testimony by October 26, 2018.

The motion to dismiss further provided that no responses to the Company's discovery requests have been provided to the Company by Complainants and that Complainants have failed to comply with the interim order dated August 24, 2018 requiring the parties to identify their witnesses and provide a summary of any testimony expected to be provided in the proceeding by October 26, 2018.

In its motion to dismiss, Respondent further averred that Complainants have made numerous filings at this docket indicating their unwillingness and lack of intent to participate in the procedural process for this case. Specifically, on June 18, 2018, Complainants each filed a letter with the Commission indicating that it was "not [their] intent to participate in a pre-hearing conference because there is no case before the court," resulting in the cancellation of the prehearing conference in this proceeding. Complainants each filed similar letters on October 22, 2018, in response to the interim order setting a litigation schedule, indicating that it is "not [their] intent to submit items for litigation as there is no case before the court."

On November 19, 2018, Complainants filed undated letters directed to counsel for Respondent, in response to the motion to compel. The letters stated, among other things, that counsel erroneously believed that Complainants are operating in counsel's jurisdiction, and that they are not required to give a response to the arbitrary time frame demanded by counsel for Respondent.

Respondent requested that the Complaint in this proceeding be dismissed in its entirety.

In order to provide Complainants with a final opportunity to comply with the order requiring the exchange of information and documentation entered on August 24, 2018, and the order granting Respondent's motion to compel entered on August 24, 2018, an interim order was entered on November 21, 2018, holding the motion to dismiss in abeyance. Complainants were directed to serve upon counsel for Respondent, objections to any specific discovery requests served upon Complainants on January 23, 2018, and file a certificate of service with the Commission, and full and complete responses to the interrogatories and requests for production of documents not specifically objected to, as well as a certificate of service with the Commission, by December 3, 2018. The interim order further directed Complainants to identify their proposed witnesses and provide a summary of the proposed testimony of the witnesses, in writing, not later than December 3, 2018. The interim order further advised Complainants that the failure to fully comply with the terms of the interim order would result in an order granting Respondent's motion to dismiss.

Complainants did not comply with the interim order entered on November 21, 2018. On December 3, 2018, the undersigned presiding officer received undated letters from Complainants acknowledging that on November 24, 2018, they received a copy of the interim order entered on November 21, 2018. The letters explained that Complainants believe the order was not lawful.

An interim order was entered on December 10, 2018, closing the record in this proceeding.

## FINDINGS OF FACT

1. Complainants are Wes Good and Tabitha Good.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. On October 24, 2017, Complainants filed a Complaint against Respondent, alleging, *inter alia*, that Respondent threatened to terminate their electric service as a result of their objection to the installation of a smart meter at their residence.
4. On November 16, 2017, Respondent filed an Answer and New Matter to the Complaint, essentially averring that Complainants refused access to permit Respondent to install a smart meter at their residence.
5. On November 16, 2017, Respondent also filed preliminary objections to the Complaint.
6. On January 8, 2018, an interim order was entered denying the Preliminary Objections filed by Respondent.
7. On August 24, 2018, an interim order was entered setting an initial litigation schedule, directing the Parties to exchange the identity and summaries of the expected testimony from fact and expert witnesses not later than October 26, 2018.
8. Complainants did not comply with the order entered on August 24, 2018, requiring witness identification and information to be provided to Respondent not later than October 26, 2018.

9. On January 23, 2018, Respondent forwarded discovery requests to Complainants seeking information and documents related to the Complainant's allegations regarding the Company's smart meters.

10. Complainants did not file objections to the discovery requests and did not provide any responses or the requested documents.

11. On June 26, 2018, the Company filed a motion to compel responses to the discovery requests.

12. On August 24, 2018, an interim order was entered granting the Company's motion to compel and ordering Complainants to provide full and complete responses to the discovery requests to the Company not later than September 10, 2018.

13. On November 2, 2018, Respondent filed a motion to dismiss the Complaint for failure of Complainants to comply with the orders entered on August 24, 2018 requiring witness identification and information not later than October 26, 2018, and for failing to comply with the order to compel Complainants to respond to the discovery requests by September 10, 2018, which was entered on August 24, 2018.

14. Complainants did not provide the information and documentation required by the interim orders entered on August 24, 2018.

15. An interim order was entered on November 21, 2018, holding the motion to dismiss in abeyance.

16. The interim order entered on November 21, 2018 directed Complainants to serve upon counsel for Respondent, objections to any specific discovery requests served upon Complainants on January 23, 2018, and file a certificate of service with the Commission, and full and complete responses to the interrogatories and requests for production of documents not

specifically objected to, as well as a certificate of service with the Commission, by December 3, 2018. The interim order further directed Complainants to identify their proposed witnesses and provide a summary of the proposed testimony of the witnesses, in writing, not later than December 3, 2018.

17. The interim order provided that in the event Complainants failed to fully and completely comply with the terms of the Order, Respondent's motion to dismiss would be granted.

18. Complainants did not file objections or responses to the discovery requests and did not identify their proposed witnesses.

19. The record closed on December 10, 2018.

#### 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. 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).

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.

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.

Complainants failed to provide the witness identification and information required in the interim order entered on August 24, 2018. In addition, Complainants failed to provide any response to the Company's Discovery Requests and failed to comply with the interim order granting the motion to compel also entered on August 24, 2018.

In addition, Complainants failed to comply with the interim order entered on November 21, 2018, which provided Complainants with a final opportunity to comply with the orders previously entered in this proceeding, on or before December 3, 2018.

Respondent argued that the failure to comply with the Interim Orders demonstrate Complainants' complete lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. Respondent further argued that, under the circumstances, the Complaint in this proceeding should be dismissed in its entirety with prejudice.

The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Complainants' conduct in this proceeding involves not just failing to comply with several orders of the undersigned presiding officer, but involves a failure to provide Respondent with initial responses to discovery requests and an identification of Complainants' expert and fact witnesses, in order to provide Respondent with an opportunity to prepare a defense to the claims advanced by Complainants. Here, Complainants have failed to comply with three orders. In addition, the interim order entered on November 21, 2018, specifically stated that Complainants were being provided one final opportunity to comply with the order granting Respondent's motion to compel and the order

requiring the exchange of witness information and documentation. Complainants failed to comply with any provision of that order.

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record, and cautions against dismissing cases on a preliminary basis. In the often-cited case of Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617 (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. Bell Telephone Company of Pennsylvania, Docket No. C-00923950 (Order entered October 1992) and Schleisher v. 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, the parties were permitted to engage in discovery and were ordered to identify expert and factual witnesses on or before October 26, 2018. Complainants did not respond to Respondent's discovery requests served on January 23, 2018. Respondent's motion to compel was granted, however Complainants failed or refused to provide discovery responses to Respondent. Subsequently, Respondent filed its motion to dismiss the Complaint. Instead of granting the request to dismiss the Complaint, Complainants were given another opportunity to provide discovery responses and witness information to Respondent by interim order entered on November 21, 2018. Again, Complainants failed to respond by providing the requested information to Respondent or by asking for additional time. Instead, Complainants provided Respondent and the undersigned presiding officer with statements that they were not accepting the "offer" made to complete the discovery requests and they were not accepting orders at this time. Complainants initiated this proceeding by filing a Complaint, but have failed to comply with Commission orders since that time.

While every opportunity has been provided to Complainants to comply with Commission regulations and orders, Respondent also has due process rights that must be protected.

Complainants have been afforded sufficient time and opportunity to comply with the orders entered on August 24, 2018 and November 21, 2018, or to request additional time to comply with those orders. Nonetheless, Complainants have refused to comply with the orders and regulations in this proceeding.

To allow the Complaint to go forward would result in the denial of Respondent's due process rights. Complainants were given sufficient opportunities to provide the information requested by Respondent and the undersigned presiding officer but failed to do so. Complainants could have provided the information as requested or they could have requested additional time to comply with the orders. Instead, Complainants chose to ignore the terms of the interim orders. As such, a hearing in this matter is not necessary or appropriate and is not in the public interest. Accordingly, the Complaint will be dismissed with prejudice.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. Motions for dismissal of a complaint are governed by Sections 5.371 and 5.372 of the Commission's regulations, 52 Pa.Code §§ 5.371-5.372.
3. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4).

4. 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 participant's failure to comply with the Commission's discovery regulations and provides that the Commission or the presiding officer may, on motion, make an appropriate order if a party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests. 52 Pa.Code § 5.371.

6. 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. 52 Pa.Code § 5.372.

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

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 failure to comply with three interim orders requiring Complainants to identify and exchange witness information and exhibits and to respond to discovery requests is just.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss Complaint of Wes Good and Tabitha Good filed at Docket No. C-2017-2631009, is granted.

2. That the Complaint filed by Wes Good and Tabitha Good against Metropolitan Edison Company at Docket No. C-2017-2631009 is hereby dismissed with prejudice for Complainant's failure to comply with the interim orders entered on August 24, 2018 and the interim order entered November 21, 2018, requiring Complainants to provide discovery responses and witness identification information to Respondent.

3. That the Secretary's Bureau shall mark Docket No. C-2017-2631009, as closed.

Date: February 21, 2019

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/s/  
Jeffrey A. Watson  
Administrative Law Judge