

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tina Skillan	:	
	:	
v.	:	C-2018-3001472
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Tina Skillan due to her failure to provide discovery responses to Respondent; comply with an Interim Order entered on October 18, 2018, requiring her to exchange witness information with Respondent by January 18, 2019; comply with an Interim Order entered on October 19, 2018, requiring her to communicate with Respondent’s counsel to coordinate dates for the rescheduling of a prehearing conference; and appear at prehearing conferences held on December 20, 2018 and January 30, 2019.

HISTORY OF THE PROCEEDING

Tina Skillan (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on April 27, 2018, docket number C-2018-3001472, alleging Respondent was threatening to shut off her electric service; Complainant objects to the installation of a smart

meter at her residence due to her concerns regarding health, safety, and privacy; and Complainant has been unable to contact Respondent to discuss her concerns.

On May 17, 2018, Respondent filed an Answer and New Matter to the Complaint, averring that Complainant refused access to her property for the installation of a smart meter; Act 129 of 2008¹ (Act 129) requires the installation of a smart meter at the service location; and the Commission is without authority to grant the relief requested by the Complainant. Respondent denied the remaining material allegations in the Complaint.

On May 17, 2018, Respondent also filed Preliminary Objections, averring Complainant failed to state a claim upon which the Commission can grant relief because the Commission does not have the authority to order Respondent not to install a smart meter at the service location. Respondent also averred Complainant failed to allege a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, and therefore the Complaint should be dismissed as legally insufficient under 52 Pa.Code § 5.101(a)(4).

On June 22, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On June 27, 2018, Complainant filed an answer to the Preliminary Objections, averring, *inter alia*, Act 129 permits the installation of a smart meter only with a homeowner's consent and that the installation of a smart meter would violate Respondent's obligation to provide safe and reliable service.

On September 14, 2018, the Commission issued a Call-In Telephone Notice, scheduling a telephone hearing for 10:00 a.m. on October 22, 2018. On October 10, 2018, I issued a Prehearing Order, and on October 18, 2018, I issued an Interim Order converting the October 22, 2018 hearing to a prehearing conference.

¹ 66 Pa.C.S. § 2807 *et seq.*

On October 18, 2018, I issued an Interim Order, establishing an initial litigation schedule and directing the Parties, in part, to exchange the names, addresses, and written summaries of their witnesses (witness information) by January 18, 2019.

On October 18, 2018, I received correspondence from Complainant indicating she was not available for the prehearing conference on October 22, 2018 due to work obligations. Counsel for Respondent advised my office that Respondent had no objection to the request to reschedule the prehearing conference.

On October 19, 2018, I issued an Interim Order, continuing the prehearing conference and ordering the Parties to confer with each other and provide me with mutually convenient dates in November or December 2018 to reschedule the prehearing conference.

On October 19, 2018, Respondent filed a certificate of service regarding its service of Interrogatories and Requests for Production of Documents (discovery requests) upon Complainant. Objections were due by October 29, 2018, and responses were due by November 8, 2018.

On November 29, 2018, the Commission issued a Notice, rescheduling the prehearing conference for December 20, 2018 at 10:00 a.m. The Notice provided instructions on how to call into the conference bridge using a toll-free number and PIN number. The Notice reads, “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original).

On November 30, 2018, I issued a Prehearing Order. The Prehearing Order provided instructions on how to call into the telephone conference and advised the Parties that the failure to call into the conference would result in the case being dismissed.

On December 20, 2018 at 10:07 a.m., I convened a prehearing conference. Counsel for Respondent was present, but Complainant was not. I recessed the conference at

10:09 a.m., and my legal assistant called Complainant and left a voicemail message requesting that she call into the prehearing conference and advising her that I would reconvene the conference at 10:20 a.m. I reconvened the conference at 10:21 a.m., and Complainant had not yet called into the conference bridge. The conference proceeded in Complainant's absence. Respondent's counsel addressed outstanding discovery issues and modifications to the litigation schedule. The conference concluded at 10:28 a.m.

On December 26, 2018, I issued an Interim Order denying Respondent's Preliminary Objections.

On January 10, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a second prehearing conference for January 30, 2019 at 10:00 a.m. The Notice provided instructions on how to call into the conference bridge using a toll-free number and PIN number. The Notice reads, "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original)

On January 18, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

On January 30, 2019 at 10:04 a.m., I convened a prehearing conference. Counsel for Respondent was present, but Complainant was not. I recessed the conference at 10:09 a.m., and my legal assistant called Complainant and left a voicemail message requesting that she call into the prehearing conference and advising her that I would reconvene the conference at 10:20 a.m. I reconvened the conference at 10:24 a.m., and Complainant had not yet called into the conference bridge. The conference proceeded in Complainant's absence.

Respondent's counsel advised, *inter alia*, it had not received discovery responses or witness information from Complainant; Complainant failed to respond to Respondent's requests to coordinate dates for the rescheduling of the prehearing conference; and none of the materials Respondent mailed to Complainant were returned as undeliverable. Respondent's

counsel also advised the last communication they had with Complainant was a letter received on October 22, 2018, requesting an extension to provide discovery responses. Respondent's counsel advised they made numerous attempts to contact Complainant to discuss a possible extension, but they never received any response from Complainant. Respondent argued it was unable to prepare its case for a hearing without Complainant's participation in the discovery process, and it was unclear whether Complainant still wanted to prosecute the Complaint. Respondent orally moved on the record for dismissal of the Complaint due to Complainant's failure to appear at the two prehearing conferences and her failure to comply with my Interim Orders. I granted Respondent's motion to dismiss on the record and advised I would issue this Initial Decision dismissing the Complaint. The conference concluded at 10:49 a.m.

All the Interim Orders and notices were mailed to Complainant's address of record, and none of them were returned as undeliverable. As of the date of this Initial Decision, Complainant has not had any communication with my office regarding her failure to appear at the December 20, 2018 and January 30, 2019 prehearing conferences, nor has Complainant filed a certificate of service regarding her service of discovery responses or witness information upon Respondent's counsel.

The record closed on January 30, 2019.

FINDINGS OF FACT

1. Complainant is Tina Skillan.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 622 Kenyon Drive, Red Lion, PA 17356.

4. On April 27, 2018, Complainant filed a Complaint against Respondent, alleging that Respondent was threatening to shut off her electric service if she did not allow Respondent to install a smart meter at her residence.

5. On May 17, 2018, Respondent filed an Answer and New Matter to the Complaint, averring, *inter alia*, that Respondent was required to install a smart meter at the service location.

6. On May 17, 2018, Respondent filed Preliminary Objections, arguing, *inter alia*, Complainant failed to state a claim upon which the Commission can grant relief and failed to allege a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.

7. On June 27, 2018, Complainant filed a response to the Preliminary Objections, arguing, *inter alia*, Act 129 permits the installation of a smart meter only with a home owner's consent and that the installation of a smart meter would violate Respondent's obligation to provide safe and reliable service.

8. On December 26, 2018, an Interim Order was issued denying Respondent's Preliminary Objections.

9. On September 14, 2018, the Commission issued a Call-In Telephone Hearing Notice, scheduling this matter for an initial telephone hearing for 10:00 a.m. on October 22, 2018.

10. On October 10, 2018, a Prehearing Order was issued.

11. On October 18, 2018, an Interim Order was issued, converting the October 22, 2018 hearing to a prehearing conference.

12. The Commission sent copies of the September 14, 2018 Notice; the October 10, 2018 Prehearing Order; and the October 18, 2018 Interim Order to Complainant by regular first-class mail to the address Complainant provided on the Complaint.

13. Complainant's copies of the September 14, 2018 Notice; the October 10, 2018 Prehearing Order; and the October 18, 2018 Interim Order were not returned as undeliverable.

14. On October 18, 2018, an Interim Order was issued, establishing an initial litigation schedule and ordering the Parties to, *inter alia*, exchange witness information by January 18, 2019.

15. On October 18, 2018, Complainant filed a request to reschedule the October 22, 2018 prehearing conference due to her work obligations.

16. On October 19, 2018, an Interim Order was issued, continuing the prehearing conference and ordering the Parties to confer with each other and provide me with mutually agreeable dates to reschedule the prehearing conference.

17. On October 19, 2018, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant. Objections were due by October 29, 2018, and responses were due by November 8, 2018.

18. On November 29, 2018, the Commission issued a Notice rescheduling the prehearing conference for 10:00 a.m. on December 20, 2018.

19. On November 30, 2018, a Prehearing Order was issued.

20. The Commission sent copies of the October 19, 2018 Interim Order; November 29, 2018 Notice; and the November 30, 2018 Prehearing Order to Complainant by regular first-class mail to the address Complainant provided on the Complaint.

21. Complainant's copies of the October 19, 2018 Interim Order; November 29, 2018 Notice; and the November 30, 2018 Prehearing Order were not returned as undeliverable.

22. The November 29, 2018 Notice and the November 30, 2018 Prehearing Order advised the Parties that they must call into the prehearing conference on the scheduled date and time using the toll-free bridge number and PIN number provided; the ALJ would not call them for the December 20, 2018 prehearing conference; and they may lose their case if they did not call into the December 20, 2018 prehearing conference.

23. Complainant did not call into the December 20, 2018 prehearing conference.

24. On January 10, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a second prehearing conference for 10:00 a.m. on January 30, 2019.

25. The Commission sent a copy of the January 10, 2019 Notice to Complainant by regular first-class mail to the address Complainant provided on the Complaint.

26. Complainant's copy of the January 10, 2019 Notice was not returned as undeliverable.

27. The January 10, 2019 Notice advised the Parties that they must call into the prehearing conference on the scheduled date and time using the toll-free bridge number and PIN number provided; the ALJ would not call them for the January 30, 2019 prehearing conference; and they may lose their case if they did not call into the January 30, 2019 prehearing conference.

28. On January 18, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

29. Complainant did not call into the January 30, 2019 prehearing conference.

30. During the January 30, 2019 prehearing conference, Respondent moved orally on the record that the Complaint be dismissed due to Complainant's failure to provide discovery responses; exchange witness information as directed by the October 18, 2018 Interim Order; communicate with Respondent's counsel as directed by the October 19, 2018 Interim Order; and appear at the December 20, 2018 and January 30, 2019 prehearing conferences.

31. Complainant did not settle or withdraw this matter.

32. Complainant did not request a continuance of either the December 20, 2018 or January 30, 2019 prehearing conferences.

33. Complainant did not file a certificate of service regarding her service of her witness information upon Respondent.

34. Complainant did not file a certificate of service regarding her service of discovery responses upon Respondent.

DISCUSSION

At the January 30, 2019 prehearing conference, Respondent moved orally on the record that the Complaint be dismissed due to Complainant's failure to provide discovery responses to Respondent; comply with an Interim Order entered on October 18, 2018, requiring her to exchange witness information with Respondent by January 18, 2019; comply with an Interim Order entered on October 19, 2018, requiring the Parties to coordinate with each other to reschedule the prehearing conference; and appear at prehearing conferences held on December 20, 2018 and January 30, 2019.

Complainant's Failure to Appear at the Prehearing Conferences and Confer with Respondent's Counsel Regarding Rescheduling the Prehearing Conference

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

However, well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record and cautions against dismissing cases on a preliminary basis. In the often-cited case of *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*), the Commission determined that unrepresented complainants should have an opportunity to be heard orally and not have their case dismissed because of a preliminary pleading. *Id.* at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form, and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority), *citing*, *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (Order entered October 1992) and *Schleisher v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (Order entered December 17, 1992); *see also*, *Gera v. PPL Electric Utilities Corporation*, Docket No. C-20054657 (Opinion and Order entered November 2, 2005).

In this case, an initial prehearing conference was scheduled to be held on October 22, 2018. On October 18, 2018, Complainant filed a request for a continuance due to her work obligations. In an attempt to provide Complainant every opportunity to participate in the prehearing conference, I granted the request and issued an Interim Order on October 19, 2018, directing the Parties to confer with each other and provide me with mutually agreeable dates in November or December 2018 to convene the prehearing conference. At the January 30, 2019 prehearing conference, Respondent's counsel advised they attempted to contact

Complainant multiple times per the October 19, 2018 Interim Order, but Complainant failed to respond.

Despite Complainant's failure to respond to Respondent's attempts to coordinate the rescheduling of the prehearing conference, two prehearing conferences were subsequently convened, one on December 20, 2018 and one on January 30, 2019.

Complainant received notice of the December 20, 2018 prehearing conference through a Notice issued November 29, 2018 and a Prehearing Order issued November 30, 2018. Both the November 29, 2018 Notice and the November 30, 2018 Prehearing Order provided the bridge number, PIN number and instructions on how to call into the conference. They contained clear language, advising Complainant of the potential consequences for not calling into the conference. The Notice read, "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). The Prehearing Order read, "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). Neither the November 29, 2018 Notice nor the November 30, 2018 Prehearing Order were returned as undeliverable.

When I convened the conference on December 20, 2018 at 10:07 a.m., Respondent's counsel had called into the conference, but Complainant had not. Although the November 29, 2018 Notice and the November 30, 2018 Prehearing Order advised Complainant that it was her responsibility to call into the conference and she would not be called by me, out of an abundance of caution and in an attempt to provide Complainant every opportunity to participate, I had my legal assistant call Complainant and leave a message, requesting Complainant call into the conference bridge. I was on the conference bridge until 10:28 a.m., and at no time did Complainant call into the conference.

Again, out of an abundance of caution and in an attempt to provide Complainant every opportunity to orally present her case, I scheduled a second prehearing conference for

January 30, 2019. Complainant received notice of the January 30, 2019 prehearing conference through a Notice issued January 10, 2019, which provided the bridge number and PIN number and provided instructions on how to call into the conference. The Notice contained clear language, advising Complainant of the potential consequences for not calling into the conference. The Notice read, “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original). The January 10, 2019 Notice was not returned as undeliverable.

When I convened the prehearing conference on January 30, 2019 at 10:04 a.m., Respondent’s counsel had called into the conference bridge, but Complainant had not. Although the January 10, 2019 Notice advised Complainant that it was her responsibility to call into the conference and she would not be called by me, out of an abundance of caution and in an attempt to provide Complainant every opportunity to participate, I had my legal assistant call Complainant and leave a message, requesting Complainant call into the conference bridge. I was on the conference bridge until 10:49 a.m., and at no time did Complainant call into the conference.

Complainant received written notice of these prehearing conferences and was provided adequate opportunity to appear and orally present her case. The prehearing orders and notices sent prior to these conferences provided clear instructions on how to call into the conference bridge and advised Complainant that her case may be dismissed if she failed to do so. Instead of appearing for these prehearing conferences or requesting a continuance (as she did for the prehearing conference scheduled for October 22, 2018), she did not participate. As of the date of this Initial Decision, she has not sent any communication to my office regarding her failure to appear at these prehearing conferences.

Complainant’s Failure to Provide Witness Information and Discovery Responses

During the January 30, 2019 prehearing conference, Respondent’s counsel advised they had not yet received Complainant’s witness information. The October 18, 2018

Interim Order directed the Parties to exchange witness information by January 18, 2019. Respondent filed a certificate of service regarding its service of its witness information upon Complainant on January 18, 2019. As of the date of this Initial Decision, Complainant has not filed a certificate of service regarding her service of her witness information upon Respondent.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Complainant's failure to exchange witness information and file a certificate of service by January 18, 2019 constitutes a violation of the October 18, 2018 Interim Order.

With regard to the discovery requests, the Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa.Code § 5.321(c). Generally speaking, the Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. As long as the information sought in a discovery request appears reasonably calculated to lead to the discovery of admissible evidence, a party may not object to the discovery request on the basis that the information sought will be inadmissible at a hearing. 52 Pa.Code § 5.321(c).

The Commission's regulations at 52 Pa.Code §§ 5.342(d) and (e) provide that a party must serve answers to interrogatories within twenty days of service and objections within ten days of service. The Commission's regulations at 52 Pa.Code §§ 5.371 and 5.372 authorize the presiding officer to make an appropriate order if a party fails to respond to discovery requests and impose appropriate sanctions on a party found to be in violation of the obligations set forth in the Commission's regulations.

In this proceeding, Respondent is entitled to engage in discovery in order to obtain information that is relevant and material to the issues raised by Complainant and did so by serving discovery requests upon Complainant and filing a certificate of service on October 19,

2018. During the January 30, 2019 prehearing conference, Respondent's counsel advised they received a letter from Complainant on October 22, 2018, requesting an extension to provide discovery responses. Respondent's counsel advised they made numerous attempts to contact Complainant to discuss a possible extension, but, since Complainant did not respond, the Parties never agreed to an extension of the original deadlines of October 29, 2018 for objections and November 8, 2018 for responses. As of the date of this Initial Decision, Complainant has not filed a certificate of service regarding her service of discovery responses upon Respondent.

Respondent's Motion to Dismiss

During the January 30, 2019 prehearing conference, Respondent's counsel moved orally on the record that the Complaint be dismissed due to Complainant's failure to communicate with Respondent to coordinate dates for the rescheduling of the prehearing conference as directed by the October 19, 2018 Interim Order; exchange witness information by January 18, 2019 as directed by the October 18, 2018 Interim Order; provide discovery responses as required by the Commission's regulations; and appear at the December 20, 2018 and January 30, 2019 prehearing conferences. Respondent argued it was unable to prepare its case for a hearing without Complainant's participation in the discovery process and it was unclear whether Complainant wanted to continue to prosecute the Complaint considering her failure to communicate with Respondent's counsel and her failure to participate in the prehearing conferences.

Respondent has due process rights that must be protected. Complainant's actions have denied Respondent the opportunity to prepare a defense to Complainant's claims and have demonstrated a lack of intent to prosecute her claims. To proceed with this matter would result in the denial of Respondent's due process rights. Complainant failed to participate in two prehearing conferences; provide discovery responses as required by the Commission's regulations; exchange witness information as ordered by the October 18, 2018 Interim Order; and communicate with Respondent's counsel as ordered by the October 19, 2018 Interim Order. 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. 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).
3. 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(a)(1).
4. 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.
5. Parties must comply with the orders of an administrative law judge, and a complainant’s failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).
6. 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)(4).

