

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diana Cook	:	
	:	
v.	:	C-2018-3003051
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Diana Cook for her failure to comply with an Interim Order issued October 16, 2018, ordering Complainant to serve her witness information upon Respondent by January 10, 2019; and an Interim Order issued November 8, 2018, ordering Complainant to provide full and complete responses to Respondent’s discovery requests no later than December 14, 2018.

HISTORY OF THE PROCEEDING

Diana Cook (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent) on June 22, 2018, averring that she received a ten-day shut off notice for not agreeing to the installation of a smart meter; her husband suffers from a “rare” and “very dangerous” medical condition; and a smart meter would place her husband “at a high risk for additional complications.” As relief, Complainant requested that she be allowed to keep her analog meter and Respondent be ordered to stop “all harassment.”

On July 17, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting it provides electric service to Complainant at 2788 Martindale Road, Scenery Hill, Pennsylvania (service location), and averring it issued a pre-disconnection warning letter to Complainant due to Complainant's refusal to allow the installation of a smart meter at her residence; Respondent is required by Act 129 of 2008¹ (Act 129) to install a smart meter; and Complainant's refusal to allow the installation of a smart meter constitutes legal grounds to terminate service to the service location. Respondent denied the remaining material allegations set forth in the Complaint.

On July 17, 2018, Respondent also filed Preliminary Objections to the Complaint, averring that the request for relief for an exemption from the installation of a smart meter is not legally recoverable; Complainant failed to allege Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the proposed installation of the smart meter at the service location; and Respondent is required by Act 129 to install a smart meter at the service location. Respondent argued that the Complaint is legally insufficient, because it fails to state a claim upon which the Commission can grant relief; a hearing is not in the public interest; and the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

Complainant did not file a response to the Preliminary Objections.

On August 23, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On August 29, 2018, I issued an Interim Order denying the Preliminary Objections.

On September 13, 2018, Respondent filed a certificate of service regarding its service of Interrogatories and Requests for Production of Documents (discovery requests) upon

¹ 66 Pa.C.S. § 2806.1 *et seq.*

Complainant. Objections were due by September 24, 2018, and responses were due by October 3, 2018.

On October 11, 2018, Respondent filed a Motion to Compel responses to the discovery requests, averring that on October 2, 2018, Respondent received a letter from Complainant reiterating many of the claims in the Formal Complaint, and objecting to all of the discovery requests on the grounds that it would be “impossible” to respond to the discovery requests by the deadlines without “attorney assistance.” Respondent further averred Complainant did not contact Respondent to discuss the discovery requests or to seek an extension of time in which to respond. The Motion to Compel contained a Notice to Plead, requiring Complainant to file a response within five days of service.

Complainant did not file a response to the Motion to Compel.

On October 16, 2018, I issued an Interim Order, establishing an initial litigation schedule. The October 16, 2018 Interim Order directed the Parties to, *inter alia*, provide the names and addresses of each fact and expert witness, as well as written summaries of the expected testimony for each witness (witness information) to the other Party by January 10, 2019.

On November 8, 2018, I issued an Interim Order, granting Respondent’s Motion to Compel and ordering Complainant to serve upon Respondent’s counsel full and complete responses to Respondent’s discovery requests no later than December 14, 2018.

On January 10, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

On February 21, 2019, Respondent filed a Motion to Dismiss Complaint of Diana Cook for Failure to Comply with Orders (Motion to Dismiss), averring that Complainant failed to provide her witness information to Respondent in violation of the October 16, 2018 Interim Order, and she failed to provide responses to Respondent’s discovery requests in violation of the

November 8, 2018 Interim Order. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's failure to respond to the discovery requests and provide witness information demonstrates Complainant's lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations. The Motion to Dismiss contained a Notice to Plead, requiring Complainant to file a response within five days of service.

Complainant did not file a response to the Motion to Dismiss.

As of the date of this Initial Decision, Complainant has not filed certificates of service regarding her service of her witness information or discovery responses upon Respondent.

Complainant failed to comply with the Interim Order issued October 16, 2018, ordering Complainant to serve her witness information upon Respondent by January 10, 2019; and the Interim Order issued November 8, 2018, ordering Complainant to provide full and complete responses to Respondent's discovery requests no later than December 14, 2018.

The record closed on February 26, 2019, the deadline for Complainant to file a response to the Motion to Dismiss.

FINDINGS OF FACT

1. Complainant is Diana Cook.
2. Respondent is West Penn Power Company, a jurisdictional public utility.
3. The service location is 2788 Martindale Road, Scenery Hill, Pennsylvania.
4. On June 22, 2018, Complainant filed a Complaint against Respondent, alleging that Respondent was threatening to shut off her electric service unless she agreed to the installation of a smart meter.

5. On July 17, 2018, Respondent filed an Answer and New Matter to the Complaint, arguing that Respondent was required to install a smart meter.

6. On July 17, 2018, Respondent filed Preliminary Objections, arguing that 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. Complainant did not file a response to the Preliminary Objections.

8. On August 29, 2018, an Interim Order was issued, denying Respondent's Preliminary Objections.

9. On September 13, 2018, Respondent forwarded discovery requests to Complainant. Objections to the discovery requests were due on or before September 24, 2018, and responses to the discovery requests were due on or before October 3, 2018.

10. On October 11, 2018, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had objected to the discovery requests on the grounds that it would be "impossible" for her to respond to the discovery requests by the deadlines without "attorney assistance."

11. Complainant did not file a response to the Motion to Compel.

12. On October 16, 2018, an Interim Order was issued, establishing an initial litigation schedule. The Interim Order directed the Parties to, *inter alia*, exchange witness information on or before January 10, 2019.

13. On November 8, 2018, an Interim Order was issued, granting Respondent's Motion to Compel and ordering Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel no later than December 14, 2018.

14. On January 10, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

15. On February 21, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint due to Complainant's failure to comply with the Interim Order entered on October 16, 2018, requiring Complainant to serve her witness information upon Respondent by January 10, 2019; and her failure to comply with the Interim Order entered November 8, 2018, ordering Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel by December 14, 2018.

16. Complainant did not file a response to the Motion to Dismiss.

17. Complainant did not file a certificate of service regarding her service of her witness information upon Respondent, as directed by the October 16, 2018 Interim Order; nor did Complainant file a certificate of service regarding her service of discovery responses upon Respondent, as directed by the November 8, 2018 Interim Order.

DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant's failure to exchange witness information by January 10, 2019, as ordered by the October 16, 2018 Interim Order; and respond to the discovery requests by December 14, 2018, as ordered by the November 8, 2018 Interim Order. Respondent argues Complainant's actions demonstrate her lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations.

The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa.Code § 5.321(c). Generally speaking, the Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. As long as the information sought in a discovery request appears reasonably calculated to lead to the

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

In this proceeding, Respondent is entitled to engage in discovery in order to obtain information that is relevant and material to the issues raised by Complainant, and it filed a certificate of service showing its service of discovery requests upon Complainant on September 13, 2018.

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 case, Complainant failed to file a certificate of service showing her service of responses to the discovery requests, in violation of the Commission's regulations.

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

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

In this case, Respondent filed a Motion to Compel on October 11, 2018, which was granted by Interim Order dated November 8, 2018. The November 8, 2018 Interim Order directed Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel no later than December 14, 2018. As of the date of this Initial Decision,

Complainant has not yet filed a certificate of service showing her service of discovery responses upon Respondent, in violation of the November 8, 2018 Interim Order.

On October 16, 2018, I issued an Interim Order, directing the Parties to, *inter alia*, exchange witness information by January 10, 2019. Respondent filed a certificate of service showing service of its witness information on January 10, 2019. As of the date of this Initial Decision, Complainant has not yet filed a certificate of service showing her service of her witness information upon Respondent, in violation of the October 16, 2018 Interim Order.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Complainant failed to comply with two Interim Orders: one dated October 16, 2018, requiring Complainant to serve her witness information upon Respondent no later than January 10, 2019; and one dated November 8, 2018, ordering Complainant to serve full and complete responses to the discovery requests upon Respondent by December 14, 2018.

If Complainant was unable or unwilling to provide witness information or responses to the discovery requests, Complainant could have filed objections or asked for additional time to respond. Complainant did neither and, in fact, filed no response at all.

Respondent has due process rights that must be protected. Complainant did not file certificates of service showing her service of her witness information or her responses to the discovery requests upon Respondent. 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.

Furthermore, Complainant's failure to exchange witness information by January 10, 2019 is a violation of the October 16, 2018 Interim Order, and her failure to provide

responses to the discovery requests is a violation of the November 8, 2018 Interim Order. 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’s regulations at 52 Pa.Code § 5.371 address the consequences of a party’s failure to comply with the Commission’s discovery regulations and 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.
4. The Commission’s regulations at 52 Pa.Code § 5.372 provide that the presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission’s regulations. 52 Pa.Code § 5.372.
5. 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).
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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of West Penn Power Company to Dismiss the Complaint of Diana Cook filed on June 22, 2018 at Docket No. C-2018-3003051, is granted.

2. That the Complaint filed by Diana Cook against West Penn Power Company at Docket No. C-2018-3003051 is hereby dismissed with prejudice due to Complainant's failure to comply with the Interim Order entered on October 16, 2018, requiring Complainant to serve her witness information upon Respondent by January 10, 2019; and the Interim Order entered November 8, 2018, requiring Complainant to provide discovery responses to Respondent by December 14, 2018.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3003051 as closed.

Date: May 1, 2019

_____/s/
Jeffrey A. Watson
Administrative Law Judge