

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eldon Kibler	:	
	:	
v.	:	C-2018-3003158
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Eldon Kibler for his failure to serve his witness information upon Respondent by January 10, 2019, in violation of an Interim Order dated October 16, 2018; failure to serve responses to the discovery requests upon Respondent and file a certificate of service by February 20, 2019, in violation of an Interim Order issued February 8, 2019; and failure to appear at a prehearing conference on March 26, 2019, in violation of Interim Orders dated March 12, 2019 and March 25, 2019.

**HISTORY OF THE PROCEEDING**

Eldon Kibler (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on June 29, 2018, averring Respondent was threatening to terminate his electric service unless Complainant agreed to the installation of a smart meter, and he does not want a smart meter installed on his property due to health and privacy concerns. As relief, Complainant requested the Commission allow him to keep his analog meter.

On July 23, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting it provides residential electric service to Complainant at 420 Snyder Road, Reading, Pennsylvania (service location), and averring that Complainant refused the installation of a smart meter at the service location; Respondent averred it is required by Act 129 of 2008<sup>1</sup> (Act 129) to install a smart meter at the service location; 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 23, 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.

On August 8, 2018, Complainant filed a letter dated August 7, 2018, referencing a "Notice to Plead dated July 23, 2018."

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

On August 30, 2018, I issued an Interim Order, denying Respondent's 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

---

<sup>1</sup> 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 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 October 25, 2018, Respondent filed a Motion to Compel responses to the discovery requests, averring that it had not received any response to its discovery requests. 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 January 10, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

On February 8, 2019, I issued an Interim Order, granting Respondent's Motion to Compel and ordering Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel and file a certificate of service with the Secretary's Bureau no later than February 20, 2019.

On February 26, 2019, Respondent filed a Motion to Dismiss Complaint of Eldon Kibler for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide his witness information to Respondent in violation of the October 16, 2018 Interim Order, and failed to provide responses to Respondent's discovery requests in violation of the February 8, 2019 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.

On March 5, 2019, Complainant filed a response to the Motion to Dismiss, explaining that his response was late because he did not get his copy of the Motion to Dismiss until the afternoon of March 4, 2019. Complainant admitted he did not comply with Respondent's "earlier request for information," because he could not provide responses within the ten-day deadline. He also asked for clarification of the meaning of a "discovery deadline," and "reaffirm[ed] his right to a public hearing." Upon reviewing Complainant's March 5, 2019 filing, I determined it would be beneficial to schedule a prehearing conference in order to provide Complainant, who is *pro se*, an opportunity to address his questions about the formal hearing process, the Commission's discovery regulations, and any other issue regarding this matter.

Therefore, on March 12, 2019, I issued an Interim Order, directing the Parties to attend and fully participate in a prehearing conference scheduled for March 26, 2019, at 11:00 a.m. The Interim Order included instructions on how to call into the conference bridge, and provided the toll-free bridge number and PIN number. The Interim Order advised the parties that the case would be dismissed for failure to attend the proceeding.

The March 12, 2019 Interim Order directed the parties to, *inter alia*, review the Commission's regulations pertaining to prehearing conferences and discovery; be fully prepared for a useful discussion of all the problems involved in the proceeding; be prepared to address a litigation schedule, the presently identified issues, and any outstanding issues; and prepare for the prehearing conference by studying all relevant materials. The Interim Order contained citations to and quotes from Title 52 of the Pennsylvania Code to assist the parties in identifying the relevant portions of the Code so they may be better prepared for the prehearing conference.

On March 12, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a prehearing conference for March 26, 2019 at 11:00 a.m. The

Notice provided the toll-free bridge number and PIN number and included instructions on how to connect to the conference bridge. The Notice advised the Parties that they must call into the proceeding and that the failure to do so would result in the dismissal of the case.

The March 12, 2019 Interim Order and the March 12, 2019 Notice were mailed via first-class mail to the address listed for Complainant in the Complaint and were not returned as undeliverable.

On March 25, 2019, I received a letter from Complainant dated March 18, 2019. In his letter, Complainant advised, “I shall not participate in a prehearing conference which has unilaterally been scheduled for March 26, 2019.” Complainant quoted the October 15, 2018 Interim Order, which provided “Any party may request a prehearing conference, after conferring with the opposing Party and requesting consent to the scheduling of such a conference.” Complainant argued, *inter alia*, the March 26, 2019 prehearing conference was invalid as Respondent had “not conferred with him nor requested consent to the scheduling of such a conference.”

Complainant also advised, *inter alia*, he was unfamiliar with Title 52 of the Code, to which the March 12, 2019 Interim Order referred, and he did not know how to obtain a copy of it to review. He advised he was not aware of any problems with the proceeding and could not find a listing of the issues in the case. He also indicated he was confused by some of the language in the March 12, 2019 Interim Order and did not understand what some of the words meant. Finally, Complainant advised he felt unprepared for a prehearing conference, and he reiterated his request for a public hearing.

Upon reviewing Complainant’s March 25, 2019 letter, I determined it was even more imperative that Complainant participate in a prehearing conference so that he would have an opportunity to raise any questions or issues and so that any such issues could be addressed, and in order to explain the formal hearing process, and give him the opportunity to address any concerns he had about the proceeding, the relevant issues, or my Interim Orders. Therefore, on March 25, 2019, I issued an Interim Order, again ordering the parties to, *inter alia*, “attend and

participate by telephone at a prehearing conference on Tuesday, March 26, 2019, at 11:00 a.m.” and be “fully prepared for the conference.” The Interim Order advised the parties, “**You must call into the conference on the scheduled day and time and participate at the conference. If you fail to do so, your case may be dismissed or other appropriate sanctions may be imposed against you. You will not be called by the Administrative Law Judge.**” (emphasis in original). The Interim Order included instructions on how to call into the conference bridge and provided the toll-free bridge number and PIN number. Finally, the Interim Order extended the deadline for Complainant to respond to the Motion to Dismiss to April 4, 2019.

Due to the fact the March 25, 2019 Interim Order was issued the day prior to the scheduled prehearing conference, I had my legal assistant email Complainant a copy of the March 25, 2019 Interim Order and call Complainant to advise him that the Order had been sent by email. My office did not receive any communication from Complainant after the issuance of the March 25, 2019 Interim Order.

On March 26, 2019, I convened a telephone prehearing conference at 11:00 a.m. Counsel for Respondent had called into the conference bridge, but Complainant had not. Although the March 12, 2019 Notice, the March 12, 2019 Interim Order, and the March 25, 2019 Interim Order advised that I would not call the Parties and it was their responsibility to call into the conference bridge, out of an abundance of caution and in an attempt to give Complainant every opportunity to participate in the prehearing conference and address his questions and concerns, I recessed the conference at 11:05 a.m. and had my legal assistant call Complainant to request that Complainant join the conference bridge. My legal assistant called Complainant and left a voicemail message reminding Complainant of the prehearing conference, asking him to call into the conference bridge, and advising him that the prehearing conference would proceed without him if he did not call into the conference.

I reconvened the hearing at 11:17 a.m. Complainant had not yet called into the conference bridge, and the conference proceeded in Complainant’s absence. Respondent’s counsel advised, *inter alia*, Respondent had not yet received any response to its discovery requests nor had it received Complainant’s witness information, and, as such, it was unable to

prepare for a hearing. Respondent's counsel agreed to submit a status report by April 8, 2019. I adjourned the hearing at 11:55 a.m., and at no time did Complainant join the conference bridge.

On April 12, 2019, Respondent filed a status report indicating that its position on the Motion to Dismiss had not changed.

On April 29, 2019, the undersigned presiding officer received correspondence from Complainant dated April 24, 2019 advising that "I do not know what the status of the proceeding is because I am under the impression that the PA-PUC determines and sets the timelines for a proceeding."

As of the date of this Initial Decision, Complainant has not filed certificates of service regarding his service of responses to the discovery requests or his witness information upon Respondent. Nor has Complainant filed a response to the Motion to Dismiss.

The record closed by Interim Order entered on April 30, 2019.

#### FINDINGS OF FACT

1. Complainant is Eldon Kibler.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 420 Snyder Road, Reading, Pennsylvania.
4. On June 29, 2018, Complainant filed a Complaint against Respondent, alleging that Respondent was threatening to terminate his electric service unless he agreed to the installation of a smart meter at his residence.

5. On July 23, 2018, Respondent filed an Answer and New Matter to the Complaint, averring that Respondent was required to install a smart meter at the service location.

6. On July 23, 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. On August 30, 2018, an Interim Order was issued, denying Respondent's Preliminary Objections.

8. On September 13, 2018, Respondent filed a certificate of service regarding its service of discovery requests upon 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.

9. On October 16, 2018, an Interim Order was issued, establishing an initial litigation schedule and ordering the Parties to, *inter alia*, exchange witness information by January 10, 2019.

10. On October 25, 2018, Respondent filed a Motion to Compel responses to the discovery requests, averring Complainant had not served any response to the discovery requests.

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

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

13. On February 8, 2019, 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 and file a certificate of service no later than February 20, 2019.

14. On February 26, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve his witness information upon Respondent by January 10, 2019, in violation of the Interim Order dated October 16, 2018; and failed to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service by February 20, 2019, in violation of the Interim Order dated February 8, 2019.

15. On March 5, 2019, Complainant filed a response to the Motion to Dismiss, averring that he had not provided responses to the discovery requests because he was unable to meet the ten-day deadline, reaffirming his desire for a public hearing, and asking "what is a discovery deadline of March 29, 2019?"

16. On March 4, 2019, Complainant submitted a letter requesting additional time to respond to the Motion to Compel and raising questions regarding the procedural schedule.

17. On March 12, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling this matter for a prehearing conference for 11:00 a.m. on March 26, 2019.

18. On March 12, 2019, an Interim Order was issued, directing the Parties to participate in the prehearing conference scheduled for March 26, 2019.

19. The Commission sent copies of the March 12, 2019 Notice and the March 12, 2019 Interim Order to Complainant by regular first-class mail to the address Complainant provided on the Complaint.

20. Complainant's copies of the March 12, 2019 Notice and the March 12, 2019 Interim Order were not returned as undeliverable.

21. The March 12, 2019 Notice and the March 12, 2019 Interim 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; the ALJ would not call them for the March 26, 2019 prehearing conference; and they may lose their case if they did not call in to the March 26, 2019 prehearing conference.

22. On March 25, 2019, Complainant filed a letter advising, *inter alia*, he would not participate in the prehearing conference.

23. On March 25, 2019, an Interim Order was issued, directing the Parties to, *inter alia*, attend and participate in the prehearing conference, and advising the Parties that, if they did not call into the conference, their case may be dismissed.

24. Complainant did not call into the conference on March 26, 2019.

25. Complainant has not filed a certificate of service regarding his service of responses to the discovery requests upon Respondent.

26. Complainant has not filed a certificate of service regarding his service of his witness information upon Respondent.

27. Complainant did not settle or withdraw this matter.

### DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant's failure to respond to the discovery requests, exchange witness information, and appear at the March 26, 2019 prehearing conference.

Respondent argues Complainant's actions demonstrate his 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.

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 25, 2018, averring, *inter alia*, Complainant had not served any response to the discovery requests. The Motion to Compel contained a notice to plead, requiring Complainant to file a response within five days of service. Complainant filed no response. The Motion to Compel was granted by an Interim Order dated February 8, 2019. The February 8, 2019 Interim Order directed Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel and file a certificate of service no later than February 20, 2019.

Respondent filed its Motion to Dismiss on February 26, 2019.

In his March 5, 2019 filing, Complainant admitted he had not provided responses to Respondent's discovery requests because he could not meet the original ten-day deadline. Instead of seeking an extension of the deadlines with either myself or Respondent's counsel prior to the October 3, 2018 deadline, Complainant simply failed to submit any response at all, and did not raise his inability to meet the original deadlines as an issue until March 5, 2019, nearly five months after the expiration of the original deadline and after the filing of the Motion to Dismiss. As of the date of this Initial Decision, Complainant has not filed a certificate of service regarding his service of responses to the discovery requests upon Respondent.

On October 16, 2018, I issued an Interim Order, directing the Parties to, *inter alia*, exchange witness information by January 10, 2019. On January 10, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant. In its Motion to Dismiss filed February 26, 2019, Respondent averred it had not yet received Complainant's witness information. Complainant did not address his failure to exchange witness information with Respondent in his March 5, 2019 filing. At the March 26, 2019 prehearing conference, Respondent's counsel indicated it had not yet received Complainant's witness

information. As of the date of this Initial Decision, Complainant has not filed a certificate of service regarding his service of his witness information upon Respondent.

Finally, Complainant failed to appear at the prehearing conference on March 26, 2019. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

In this case, a prehearing conference was scheduled for March 26, 2019, in order to address the questions and concerns Complainant raised in his March 5, 2019 filing and to address any outstanding issues or concerns. Complainant received notice of the prehearing conference via a Call-In Telephone Prehearing Conference Notice and an Interim Order issued March 12, 2019. Copies of these documents were mailed to Complainant via first-class mail to the address Complainant provided on the Complaint, and they were not returned as undeliverable. Furthermore, Complainant's March 25, 2019 filing references the March 12, 2019 Interim Order, evidencing the fact Complainant received it.

The March 12, 2019 Notice and Interim Order advised Complainant of the importance of appearing for the March 26, 2019 prehearing conference, instructed him on how to call in to the conference bridge, and warned him that his case may be dismissed if he did not participate. The March 12, 2019 Interim Order explicitly ordered the Parties to "fully participate" in the prehearing conference.

Instead of choosing to appear at the prehearing conference, Complainant filed a letter on March 25, 2019, the day before the conference, advising he would not participate in the conference, while also raising questions and expressing confusion over the formal hearing and discovery process. Since the prehearing conference was scheduled in order to address Complainant's questions and concerns, I issued an Interim Order dated March 25, 2019, reiterating my directive that the Parties attend and participate in the March 26, 2019 prehearing conference. Complainant did not call into the conference on March 26, 2019.

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 has violated four Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not filed a certificate of service showing his service of his witness information upon Respondent, in violation of the Interim Order issued October 16, 2018. Complainant has not filed a certificate of service showing his service of full and complete responses to the discovery requests upon Respondent, in violation of the Interim Order issued February 8, 2019. Finally, Complainant failed to appear at the prehearing conference on March 26, 2019, in violation of the March 12, 2019 and March 25, 2019 Interim Orders.

Respondent has due process rights that must be protected. Respondent filed a certificate of service regarding its service of its witness information upon Complainant by the deadline and appeared for the prehearing conference that Complainant chose not to attend. Complainant's actions have denied Respondent the opportunity to prepare a defense to Complainant's claims. Complainant's choice not to attend the prehearing conference, while simultaneously indicating he had questions and concerns about the formal hearing process, discovery, the relevant issues, etc., indicates Complainant does not have a sincere desire to participate in the hearing process. Although Complainant has repeatedly reaffirmed his desire for a public hearing, he has failed to participate in the prehearing procedures that, if followed, would result in the public hearing he desires. To proceed with this matter in these circumstances would result in the denial of Respondent's due process rights.

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).
7. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaint of Eldon Kibler filed on June 29, 2018 at Docket No. C-2018-3003158, is granted.

2. That the Complaint filed by Eldon Kibler against Metropolitan Edison Company at Docket No. C-2018-3003158 is hereby dismissed with prejudice due to Complainant's failure to file a certificate of service regarding his service of his witness information upon Respondent by January 10, 2019, in violation of an Interim Order dated October 16, 2018; serve responses to the discovery requests upon Respondent and file a certificate of service by February 20, 2019, in violation of an Interim Order issued February 8, 2019; and appear at a prehearing conference on March 26, 2019, in violation of an Interim Orders dated March 12, 2019 and March 25, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3003158 as closed.

Date: May 1, 2019

\_\_\_\_\_  
/s/  
Jeffrey A. Watson  
Administrative Law Judge