

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Ponzetto	:	
	:	
v.	:	C-2018-3002145
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This Initial Decision dismisses the Formal Complaint filed by Robert Ponzetto for his failure to comply with Interim Orders entered on October 16, 2018 and November 7, 2018, requiring Complainant to provide discovery responses and witness information to Respondent.

HISTORY OF THE PROCEEDING

Robert Ponzetto (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent) on May 21, 2018, alleging, *inter alia*, Respondent was threatening to terminate his electric service unless he allowed Respondent to install a smart meter; Complainant has “many electric powered medical devices” in his home; it has been scientifically proven that smart meters are health hazards; if a smart meter were to be installed in Complainant’s home, it could cause his body to go into shock; and Respondent has “bullied” Complainant by not offering him any options and requiring him to have a smart meter despite “scientifically proven facts.” As relief, Complainant requested, *inter alia*, the Commission allow Complainant to keep his old analog meter.

On June 12, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting, *inter alia*, Respondent provides residential retail electric service to Complainant, Complainant refused to allow Respondent to install a smart meter at Complainant's residence, and Respondent issued a service termination notice to Complainant. Respondent averred it is required by Act 129 of 2008¹ to install a smart meter at the service location, and Complainant, by refusing to allow Respondent to install a smart meter, is in violation of Rules 9 and 20 of the Respondent's Commission-approved Tariff and is lawfully subject to termination of his electric service. Respondent denied the remaining material allegations set forth in the Complaint.

On June 12, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent averred, *inter alia*, that the Commission does not have the power to restrict the Company from installing a smart meter at the service location, the prayer for relief to opt out of the installation of a smart meter is not legally recoverable, and the health problems that may be suffered by Complainant as the result of the installation of a smart meter are not sufficient to state a cause of action against Respondent. Respondent averred that the Complainant did not allege Respondent committed or omitted any action in violation of a Commission statute, regulation, or order. Respondent averred the Complainant failed to state a claim upon which the Commission can grant relief, and therefore, the Complaint should be dismissed as being legally insufficient under 52 Pa. Code § 5.101(a)(4).

Complainant did not file a response to the Preliminary Objections.

On July 24, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On August 7, 2018, I issued an Interim Order, denying Respondent's Preliminary Objections.

On August 20, 2018, Respondent forwarded interrogatories and document requests (discovery requests) to Complainant. In its discovery requests, Respondent sought

¹ 66 Pa.C.S. § 2806.1, *et seq.*

information and documents related to Complainant's allegations regarding Respondent's smart meters. Objections to the discovery requests, if any, were due on or before August 30, 2018, and responses to the discovery requests were due on or before September 10, 2018.

Complainant did not file any objections or responses to the discovery requests by the respective due dates.

On September 17, 2018, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests. Complainant did not file any 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, *inter alia*, directed the Parties to provide to the other Party, on or before January 10, 2019, the names and addresses of each fact and expert witness, as well as written summaries of the expected testimony for each witness (witness information).

On November 7, 2018, I issued an Interim Order, granting Respondent's Motion to Compel and ordering Complainant to provide full and complete responses to Respondent's discovery requests by November 30, 2018.

On December 26, 2018, Respondent filed a Motion to Dismiss Complainant's Complaint, arguing, *inter alia*, Complainant failed to provide responses to Respondent's discovery requests in violation of the November 7, 2018 Interim Order. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's failure to respond to the discovery requests demonstrates Complainant's lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations.

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

On January 30, 2019, Respondent filed an Amended Motion to Dismiss Complainant's Complaint, advising, *inter alia*, it had not received Complainant's witness information as required by the October 16, 2018 Interim Order nor responses to the discovery requests as required by the November 7, 2018 Interim Order.

As of the date of this Initial Decision, Complainant has not provided any response to Respondent's December 26, 2018 Motion to Dismiss or Respondent's January 30, 2019 Amended Motion to Dismiss. Furthermore, Complainant has not filed a certificate of service regarding his service of his witness information or his responses to the discovery requests.

Complainant failed to comply with the Interim Order issued November 7, 2018, ordering Complainant to provide full and complete responses to Respondent's discovery requests no later than November 30, 2018. Complainant also failed to comply with the Interim Order issued October 16, 2018, ordering Complainant to provide his witness information to Respondent no later than January 10, 2019.

The interim order entered on October 16, 2018 also required the parties to submit a status report to the undersigned presiding officer on or before April 12, 2019. On April 12, 2019, Respondent filed a status report with the Commission stating that Complainant has not provided responses to the discovery requests propounded by Respondent on August 20, 2018, despite the November 7, 2018 order compelling Complainant to respond by November 30, 2018. Complainant did not file a status report on or before the deadline of April 12, 2019.

The record closed on April 12, 2019, the deadline imposed for the filing of a status report, upon conclusion of discovery in this proceeding.

FINDINGS OF FACT

1. Complainant is Robert Ponzetto.
2. Respondent is West Penn Power Company, a jurisdictional public utility.

3. On May 21, 2018, Complainant filed a Complaint against Respondent, alleging that Respondent threatened to terminate his electric service as a result of his objection to the installation of a smart meter at his residence.

4. On June 12, 2018, Respondent filed an Answer and New Matter to the Complaint, averring, *inter alia*, that Respondent issued a service termination notice because Complainant refused Respondent access to his property so it could install a smart meter.

5. On August 20, 2018, Respondent forwarded discovery requests to Complainant seeking information and documents related to Complainant's allegations. Objections to the discovery requests were due on or before August 30, 2018, and responses to the discovery requests were due on or before September 10, 2018.

6. Complainant did not file objections or responses to the discovery requests by the respective due dates.

7. On September 17, 2018, Respondent filed a Motion to Compel responses to the discovery requests.

8. On October 16, 2018, an Interim Order was entered, establishing an initial litigation schedule. The Interim Order, *inter alia*, directed the Parties to exchange witness information on or before January 10, 2019 and required the filing of a status report on or before April 12, 2019.

9. On November 7, 2018, an Interim Order was entered, granting Respondent's Motion to Compel and ordering Complainant to provide full and complete responses to the discovery requests to Respondent no later than November 30, 2018.

10. On December 26, 2018, Respondent filed a Motion to Dismiss Complainant's Complaint due to Complainant's failure to comply with the Interim Order entered on November 7, 2018, requiring Complainant to provide full and complete responses to Respondent's discovery requests no later than November 30, 2018.

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

12. On January 30, 2019, Respondent filed an Amended Motion to Dismiss due to Complainant's failure to comply with the November 7, 2018 Interim Order, as well as Complainant's failure to comply with the October 16, 2018 Interim Order, directing Complainant to provide his witness information to Respondent by January 10, 2019.

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

14. Complainant did not provide responses to the discovery requests by the deadline of November 30, 2018 (as directed by the November 7, 2018 Interim Order), nor did Complainant exchange witness information by the deadline of January 10, 2019 (as directed by the October 16, 2018 Interim Order).

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. 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. Complainant did not object to any discovery requests propounded by Respondent. Under the circumstances, Respondent is entitled to the requested information to enable it to fully investigate and defend against Complainant's allegations.

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.

Complainant failed to comply with the Interim Order issued November 7, 2018, requiring Complainant to provide to Respondent full and complete responses to Respondent's discovery requests no later than November 30, 2018. In addition, Complainant failed to comply with the Interim Order issued October 16, 2018, requiring Complainant to provide his witness information to Respondent by January 10, 2019.

Respondent argues that Complainant's failure to comply with the October 16, 2018 and November 7, 2018 Interim Orders demonstrates Complainant's lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. Respondent argues that, under the circumstances, the Complaint in this proceeding should be dismissed in its entirety.

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 November 7, 2018, requiring Complainant to provide full and complete responses to Respondent's discovery requests no later than November 30, 2018; and one dated October 16, 2018, ordering Complainant to provide Respondent with his witness information no later than January 10, 2019.

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, however, Complainant did not respond to Respondent's discovery requests by the original deadline of September 10, 2018. On November 7, 2018, I granted Respondent's Motion to Compel and ordered Complainant to provide full and complete responses to the discovery requests by November 30, 2018. Complainant again failed to provide discovery responses to Respondent. Subsequently, Respondent filed a Motion to Dismiss the Complaint due to Complainant's failure to comply with the November 7, 2018 Interim Order. On January 30, 2019, Respondent filed an Amended Motion to Dismiss due to Complainant's failure to comply with the November 7, 2018 Interim Order, as well as the October 16, 2018 Interim Order. Complainant did not file a response to either the Motion to Dismiss or the Amended Motion to Dismiss.

While every opportunity has been provided to Complainant to comply with Commission regulations and orders, Respondent also has due process rights that must be protected. Complainant's conduct has denied Respondent the opportunity to prepare a defense to the claims advanced by Complainant. To allow the Complaint to go forward would result in the denial of Respondent's due process rights.

Complainant was given sufficient opportunity to provide the information requested by Respondent and ordered by me. Complainant could have provided the information as ordered, or he could have requested additional time to do so. Complainant did neither and

failed to comply with the terms of the Interim Orders entered on October 16, 2018 and November 7, 2018. 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’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). Under the circumstances, the dismissal of the Complaint for failure to comply with

