

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

B. Susanne Spohn	:	
	:	
v.	:	C-2018-3001725
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by B. Susanne Spohn for her failure to provide witness information to Respondent and to file a certificate of service regarding service of her witness information by January 18, 2019, in violation of an Interim Order dated November 9, 2018; and her failure to serve responses to the discovery requests upon Respondent and file a certificate of service by March 1, 2019, in violation of an Interim Order issued February 12, 2019.

HISTORY OF THE PROCEEDING

B. Susanne Spohn (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on May 5, 2018, averring that Respondent was threatening to terminate her electric service at her residence at 529 Sell Road, Mohnton, PA 19540 (service location) unless Complainant agreed to the installation of a smart meter; she has a Constitutional right to refuse

the installation of a smart meter; and she will consider the removal of her analog meter to be trespass. As relief, Complainant requested that she be allowed to keep her analog meter.

On May 29, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting that it provides residential electric service to Complainant at the service location, and averring that Complainant has refused the installation of a smart meter at the service location; Respondent is required by Act 129 of 2008¹ (Act 129) and its Commission-approved Smart Meter Deployment Plan (SMP) 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 May 29, 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 and its SMP 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.

The Preliminary Objections included a Notice to Plead, requiring Complainant to file a response within ten days of service. Complainant did not file a response to the Preliminary Objections.

On July 3, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On July 26, 2018, I issued an Interim Order, denying the Preliminary Objections.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On November 9, 2018, I issued an Interim Order, establishing an initial litigation schedule. I ordered the parties to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other party by January 18, 2019; conclude discovery by April 5, 2019; and file a status report by May 3, 2019.

On November 15, 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 November 25, 2018, and responses were due by December 5, 2018.

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

On January 31, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), 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 February 12, 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 Commission's Secretary no later than March 1, 2019.

On April 4, 2019, Respondent filed a Motion to Dismiss Complaint of B. Susanne Spohn for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide her witness information to Respondent in violation of the November 9, 2018 Interim Order, and she failed to provide responses to Respondent's discovery requests in violation of the February 12, 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. Complainant did not file a response to the Motion to Dismiss.

On May 6, 2019, Respondent filed a status report dated May 3, 2019, averring, *inter alia*, Complainant had not yet provided her witness information or responded to the discovery requests. Complainant did not file a status report.

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

The record closed on May 6, 2019, the deadline for filing status reports by the Parties.

FINDINGS OF FACT

1. Complainant is B. Susanne Spohn.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 529 Sell Road, Mohnton, PA 19540.
4. On May 5, 2018, Complainant filed a Complaint against Respondent, alleging that Respondent was threatening to terminate her electric service unless she agreed to the installation of a smart meter at her residence.

5. On May 29, 2018, Respondent filed an Answer and New Matter to the Complaint, averring that by Commission statute, Respondent was required to install a smart meter at the service location.

6. On May 29, 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 July 26, 2018, an Interim Order was issued, denying the Preliminary Objections.

8. On November 9, 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.

9. On November 15, 2018, Respondent filed a certificate of service regarding service of discovery requests upon Complainant.

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

11. On January 31, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had not served any response to the discovery requests.

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

13. On February 12, 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 March 1, 2019.

14. On April 4, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve her witness information upon Respondent by January 18, 2019, in violation of the Interim Order dated November 9, 2018; and failed to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service by March 1, 2019, in violation of the Interim Order dated February 12, 2019.

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

16. On May 6, 2019, Respondent filed a status report dated May 3, 2019, averring, *inter alia*, it still had not received Complainant's witness information or her responses to the discovery requests.

17. Complainant did not file a status report.

18. Complainant has not filed a certificate of service regarding her service of discovery responses upon Respondent, in violation of the Interim Order dated February 12, 2019.

19. Complainant has not filed a certificate of service regarding her service of her witness information upon Respondent, in violation of the Interim Order dated November 9, 2018.

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, in violation of the February 12, 2019 Interim Order and exchange witness information, in violation

of the November 9, 2018 Interim Order. Respondent argues Complainant's actions demonstrate her lack of willingness to prosecute her Complaint.

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 November 15, 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 January 31, 2019, averring that Complainant had not provided any response to the discovery requests. Complainant did not file a response to the Motion to Compel. The Motion to Compel was granted by an Interim Order dated February 12, 2019. The February 12, 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 March 1, 2019.

On November 9, 2018, I issued an Interim Order, directing the parties to, *inter alia*, exchange witness information by January 18, 2019. On January 18, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant. In its Motion to Dismiss, Respondent averred it had not yet received Complainant's witness information.

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 two Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not exchanged witness information with Respondent and has not filed a certificate of service showing her service of her witness information, in violation of the Interim Order issued November 9, 2018. Additionally, Complainant has not provided its discovery responses and has not filed a certificate of service showing her service of full and complete responses to the discovery requests, in violation of the Interim Order issued February 12, 2019.

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 attempted to gather information about Complainant's claims through discovery. Complainant's actions have denied Respondent the opportunity to prepare a defense to Complainant's claims. 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 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. 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 Metropolitan Edison Company to Dismiss the Complaint of B. Susanne Spohn filed on May 5, 2018 at Docket No. C-2018-3001725, is granted.

2. That the Complaint filed by B. Susanne Spohn against Metropolitan Edison Company at Docket No. C-2018-3001725 is hereby dismissed with prejudice due to Complainant’s failure to file a certificate of service regarding her service of her witness information, in violation of an Interim Order dated November 9, 2018, and her failure to serve responses to the discovery requests upon Respondent and file a certificate of service by March 1, 2019, in violation of an Interim Order issued February 12, 2019.

3. That the Secretary’s Bureau shall mark Docket No. C-2018-3001725 as closed.

Date: June 20, 2019

/s/
Jeffrey A. Watson
Administrative Law Judge