

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Ann Wallace	:	
	:	
v.	:	C-2018-3001564
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Karen Ann Wallace for her failure to provide her witness information to Respondent, in violation of an Interim Order dated December 19, 2018, and her failure to provide full and complete responses to Respondent’s discovery requests, in violation of Interim Orders dated January 23, 2019; January 29, 2019; and February 19, 2019.

**HISTORY OF THE PROCEEDING**

Karen Ann Wallace (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on April 27, 2018, averring that Respondent was threatening to terminate her electric service at her residence at 9734 Kistler Valley Road, Kempton, PA 19529 (service location) unless Complainant agreed to the installation of a smart meter; she does not want a smart meter due to health and safety concerns; Respondent does not have a right to terminate her electric service for any reason other than non-payment; and she is not behind on

her payments. Attached to the Complaint was a letter dated April 23, 2018, addressed to the President and Chief Executive Officer of FirstEnergy Corporation. In the April 23, 2018 letter, Complainant wrote she is choosing not to “opt-in” to smart meter installation, and argues, *inter alia*, Act 129 of 2008<sup>1</sup> (Act 129) does not allow a utility to terminate power if a customer refuses installation of a smart meter; her husband and son have health issues, and “prolonged and continuous exposure to EMT Radiation might cause them further damages and harm;” and “there is no long term study of evidence smart meters are safe for everyone and they do not pose a health risk to those vulnerable and susceptible to such exposure.” As relief, Complainant requested that she be allowed to keep her digital meter.

On May 21, 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 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 essentially denied the remaining material allegations set forth in the Complaint.

The New Matter included a Notice to Plead, requiring Complainant to file a response within twenty days of service. Complainant did not file a response to the New Matter.

On May 21, 2018, Respondent also filed Preliminary Objections to the Complaint, averring the request for relief to opt-out 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

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<sup>1</sup> 66 Pa.C.S. § 2806.1 *et seq.*

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

On July 20, 2018, I issued an Interim Order, denying the Preliminary Objections.

On November 20, 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 30, 2018, and responses were due by December 10, 2018.

On December 17, 2018, I received correspondence from Complainant dated December 10, 2018, requesting additional time to answer the discovery responses. The letter seemed to be an objection to the discovery requests. Complainant stated, “Without giving up my rights, I petition the court for more time, as much as possible to answer questions I am comfortable answering that I feel are appropriate to the process with time to prepare my own Interrogatories.” On December 19, 2018, I issued an Interim Order extending the deadlines for Complainant to respond to the discovery requests and ordering that she serve objections, if any, by January 4, 2019 and full and complete responses to the remaining discovery requests by January 14, 2019.

In response to Complainant’s letter dated December 10, 2018, requesting time to prepare her own interrogatories, on December 19, 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 February 22, 2019; conclude discovery by May 3, 2019, in part, in order to permit Complainant to serve interrogatories upon Respondent; and file a status report by May 30, 2019. The Interim Order also provided that any Party may request a prehearing conference, a settlement conference, or an expedited litigation hearing schedule and hearing date in writing, and that any of the provisions of the Order may be modified upon motion and good cause shown by a Party.

On January 14, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring, *inter alia*, Complainant submitted objections to Respondent via correspondence dated January 1, 2019; Complainant “generally objects, without explanation,” to various discovery requests; Complainant’s objections do not meet the requirements outlined in the Commission’s rules; and the discovery requests are relevant and within the permissible scope of discovery.

The Motion to Compel contained a Notice to Plead, requiring Complainant to file a response within five days of service. On January 16, 2019, Complainant filed correspondence dated January 14, 2019, requesting additional time to submit responses to the discovery requests. The letter simply stated that Complainant needed more time to respond and answer questions to Respondent’s interrogatory.

On January 23, 2019, I issued an Interim Order, denying Complainant’s objections to the discovery requests and ordering Complainant to serve full and complete responses to all of the discovery requests upon Respondent by February 7, 2019.

On January 29, 2019, I issued an Interim Order, denying Complainant’s January 16, 2019 request for additional time finding that the Interim Order dated January 23, 2019 provided Complainant with additional time to respond to the discovery requests. The January 29, 2019 Interim Order again ordered Complainant to serve full and complete responses upon Respondent by February 7, 2019.

On February 15, 2019, Complainant filed correspondence dated February 12, 2019, in response to the January 23, 2019 and January 29, 2019 Interim Orders. Complainant again requested additional time to respond to the discovery requests stating, “I need more time for our household to respond and answer questions to the Respondents Interrogatory.”

On February 19, 2019, I issued an Interim Order, granting in part and denying in part Complainant’s request for additional time to respond to the discovery requests. The Interim Order directed Complainant to file full and complete responses to all the discovery requests no later than February 25, 2019, and informed Complainant that no further extensions would be granted.

On April 23, 2019, Respondent filed a Motion to Dismiss Complaint of Karen Ann Wallace for Failure to Comply with Orders (Motion to Dismiss), averring that by letter dated February 19, 2019, Complainant provided incomplete responses to the discovery requests, and included a copy of the objections dated January 1, 2019, which were previously denied by Interim Order dated January 23, 2019. Respondent also averred Complainant objected to Interrogatory No. 9a and failed to provide full and complete responses to many questions. Respondent argued that the incomplete responses and additional objection to the discovery requests is in direct contradiction to the Interim Orders dated January 23, 2019; January 29, 2019; and February 19, 2019, all of which directed Complainant to provide “full and complete responses” to the discovery requests. Respondent also averred Complainant failed to provide her witness information as required by the Interim Order dated December 19, 2018. Respondent argued the Complaint should be dismissed in its entirety, because Complainant’s failure to fully 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 June 3, 2019, Respondent filed a status report dated May 30, 2019, averring that Complainant had not yet provided her witness information or provided full and complete responses to all the discovery requests. Complainant did not file a status report.

The record closed on June 3, 2019, upon the deadline for filing status reports in this proceeding.

### FINDINGS OF FACT

1. Complainant is Karen Ann Wallace.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 9734 Kistler Valley Road, Kempton, PA 19529.
4. On April 27, 2018, Complainant filed a Complaint against Respondent, alleging, *inter alia*, Respondent was threatening to terminate her electric service unless she agreed to the installation of a smart meter at her residence.
5. On May 21, 2018, Respondent filed an Answer and New Matter to the Complaint, averring, *inter alia*, Respondent was required to install a smart meter at the service location.
6. On May 21, 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 July 20, 2018, an Interim Order was issued, denying the Preliminary Objections.

8. On November 20, 2018, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant. Objections were due by November 30, 2018, and responses were due by December 10, 2018.

9. On December 17, 2018, Complainant submitted a request for additional time to answer the discovery requests.

10. On December 19, 2018, an Interim Order was issued, extending the deadlines for Complainant to answer the discovery requests, and ordering that she serve objections, if any, by January 4, 2019, and full and complete responses to the remaining discovery responses by January 14, 2019.

11. On December 19, 2018, an Interim Order was issued, establishing an initial litigation schedule and ordering the parties to, *inter alia*, exchange witness information by February 22, 2019; conclude discovery by May 3, 2019; and file a status report by May 30, 2019.

12. On January 14, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring, *inter alia*, Complainant submitted objections via correspondence dated January 1, 2019, and “generally objects, without explanation” to various discovery requests.

13. On January 16, 2019, Complainant filed correspondence dated January 14, 2019, requesting additional time to submit responses to the discovery requests.

14. On January 23, 2019, an Interim Order was issued, denying Complainant’s objections to the discovery requests and ordering Complainant to serve full and complete responses to all of the discovery requests upon Respondent by February 7, 2019.

15. On January 29, 2019, an Interim Order was issued, denying Complainant’s January 16, 2019 request for additional time and again ordering Complainant to serve full and

complete responses to the discovery requests upon Respondent by February 7, 2019.

16. On February 15, 2019, Complainant filed correspondence dated February 12, 2019, again requesting additional time to respond to the discovery requests.

17. On February 19, 2019, an Interim Order was issued, granting in part and denying in part Complainant's request for additional time to respond to the discovery requests. The Interim Order directed Complainant to serve full and complete responses upon Respondent by February 25, 2019, and informed Complainant that no further extensions would be granted.

18. On April 23, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve her witness information upon Respondent by February 22, 2019, in violation of the Interim Order dated December 19, 2018; and failed to serve full and complete responses to the discovery requests upon Respondent, in violation of the Interim Orders dated January 23, 2019; January 29, 2019; and February 19, 2019.

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

20. On June 3, 2019, Respondent filed a status report dated May 30, 2019, averring, *inter alia*, it still had not received Complainant's witness information or full and complete responses to all the discovery requests.

21. Complainant did not file a status report.

### DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant's failure to provide her witness information, in violation of the Interim Order dated December 19, 2019, and her failure to provide full and complete responses to the discovery requests, in violation of the Interim Orders dated

January 23, 2019; January 29, 2019, and February 19, 2019. 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 20, 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 14, 2019, averring, *inter alia*, Complainant, by correspondence dated January 1, 2019, responded to some of the discovery requests, and objected to others. Respondent attached a copy of Complainant's January 1, 2019 correspondence to its Motion to Compel. On January 16, 2019, Complainant filed correspondence dated January 14, 2019, requesting additional time to submit responses to the discovery requests.

The Motion to Compel was granted by an Interim Order dated January 23, 2019. The January 23, 2019 Interim Order denied Complainant's objections to the discovery requests and directed Complainant to serve full and complete responses to the discovery requests upon Respondent no later than February 7, 2019. Complainant's January 16, 2019 request for additional time was denied by Interim Order dated January 29, 2019. The January 29, 2019 Interim Order again ordered Complainant to serve full and complete responses upon Respondent by February 7, 2019.

On February 15, 2019, Complainant filed a request for additional time to respond to the discovery requests. In an attempt to give Complainant one final opportunity to provide full and complete responses to the discovery requests, I extended the deadline to February 25, 2019 by Interim Order dated February 19, 2019.

In its Motion to Dismiss, Respondent averred it received correspondence from Complainant dated February 19, 2019, that provided incomplete responses to the discovery requests, contained an objection to Interrogatory No. 9a, and included a copy of the objections dated January 1, 2019, which were previously denied by Interim Order dated January 23, 2019.

On December 19, 2018, I issued an Interim Order, directing the parties to, *inter alia*, exchange witness information by February 22, 2019. 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 four Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not served her witness information upon Respondent, in violation of the Interim Order issued December 19, 2018. Additionally, Complainant has not served full and complete responses to the discovery requests upon Respondent, in violation of the Interim Orders issued January 23, 2019; January 29, 2019; and February 19, 2019.

Complainant requested and was granted multiple extensions to provide responses to the discovery requests, without providing any specific reasons why extensions were necessary to answer discovery requests that were served upon Complainant on November 20, 2018. The original deadline for objections was November 30, 2018, and the original deadline for responses was December 10, 2018. On December 17, 2018, Complainant filed a request for additional time, and it was granted by Interim Order dated December 19, 2018. The deadlines were extended until January 4, 2019 for objections, and January 14, 2019 for responses. The Interim Order dated January 23, 2019, granting the Motion to Compel, ordered Complainant to serve full and complete responses to the discovery requests, but extended the deadline to February 7, 2019. On February 15, 2019, Complainant again requested an extension of the deadline, which was granted by Interim Order dated February 19, 2019. The February 19, 2019 Interim Order set a deadline of February 25, 2019, and advised Complainant that no additional extensions would be granted. The discovery requests were served on Complainant on November 20, 2018, and Complainant had over three months from the date of service to provide full and complete responses by the final deadline of February 25, 2019.

Respondent has due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery. Respondent has a right to know the individuals who Complainant intends to call as witnesses. 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 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 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 Karen Ann Wallace filed on April 27, 2018 at Docket No. C-2018-3001564, is granted.

2. That the Complaint filed by Karen Ann Wallace against Metropolitan Edison Company at Docket No. C-2018-3001564 is hereby dismissed with prejudice due to Complainant’s failure to provide her witness information to Respondent, in violation of an Interim Order dated December 19, 2018; and her failure to provide full and complete responses to the discovery requests, in violation of Interim Orders dated January 23, 2019; January 29, 2019; and February 19, 2019.

3. That the Secretary’s Bureau shall mark Docket No. C-2018-3001564 as closed.

Date: June 21, 2019

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/s/  
Jeffrey A. Watson  
Administrative Law Judge