

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ann H. Swartz	:	
	:	
v.	:	C-2017-2626756
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Ann H. Swartz for her failure to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service, in violation of Interim Orders issued February 8, 2019 and April 19, 2019.

**HISTORY OF THE PROCEEDING**

Ann H. Swartz (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on September 28, 2017, averring that Respondent was threatening to terminate her electric service at her residence at 532 Fauth Lane, York, PA 17406 (service location) unless Complainant agreed to the installation of a smart meter; she objects to the installation of a smart meter at the service location; and legislation has been introduced to Pennsylvania lawmakers to allow citizens to “opt out” of smart meter installation. As relief, Complainant requests she be allowed to opt out of smart meter installation.

On October 18, 2017, 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 2008<sup>1</sup> (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 October 18, 2017, 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.

On October 30, 2017, Complainant submitted an Answer to the Preliminary Objections, averring that the facts as alleged in the Preliminary Objections were not correct; and she was still waiting for a reply from the utility company, the Commission, and the manufacturer regarding the safety of smart meters.

On November 3, 2017, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On November 7, 2017, Complainant filed a Reply to the Answer and New Matter, averring that the facts as alleged in the Answer and New Matter were not correct; the Answer

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

and New Matter omitted other facts; and she had questions concerning the safety of smart meters.

On November 21, 2017, I issued an Interim Order, denying the Preliminary Objections.

On December 21, 2017, the Commission issued a Call-In Telephonic Hearing Notice, scheduling a hearing for April 10, 2018 and April 11, 2018. That same day, I issued a Prehearing Order.

On December 28, 2017, 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 January 8, 2018, and responses were due by January 18, 2018.

On January 2, 2018, the Commission issued a Cancellation Notice, cancelling the hearing scheduled for April 10, 2018 and April 11, 2018. On January 5, 2018, I issued an Interim Order, cancelling the hearing scheduled for April 10, 2018 and April 11, 2018, and explaining that the hearing had been scheduled in error.

On June 22, 2018, 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 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 Commission's Secretary no later than February 25, 2019.

On February 8, 2019, 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 April 8, 2019; and to conclude discovery by June 14, 2019.

On February 25, 2019, Complainant filed a letter averring, *inter alia*, she was a “qualified individual with a medical condition as defined by the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act, and Section 504, Title 10, as well as other related state and federal discrimination laws,” her residence “is being forced to accept an RF radiation meter that does not meet safety standards as required by law;” and Respondent has threatened her with loss of electric service because of her medical conditions.

On March 5, 2019, Respondent filed a Motion to Dismiss Complaint of Ann Swartz for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, that on February 25, 2019, Respondent received a packet of medical information and a list of references from Complainant, and the packet had no explanation or cover letter. Respondent argued that if the information received on February 25, 2019 was intended to be a response to the discovery requests, the response was incomplete, in contradiction to the Interim Order entered February 8, 2019, which ordered Complainant to provide full and complete responses to all the discovery requests. Respondent also averred that at no time did Complainant contact Respondent to discuss the discovery requests. Respondent argued the Complaint should be dismissed in its entirety due to Complainant’s failure to provide full and complete responses to the discovery requests by February 25, 2019, in violation of the February 8, 2019 Interim Order.

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 March 27, 2019, I issued an Interim Order and the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a prehearing conference for April 17, 2019 at 9:00 a.m.

A prehearing conference was convened on April 17, 2019 at 9:00 a.m. Lauren Lepkoski, Esq., and Tori Geisler, Esq., were present on behalf of Respondent. Complainant also participated at the prehearing conference. During the prehearing conference, Complainant stated that she had not submitted her witness information to Respondent as required by the February 8, 2019 Interim Order that established the initial litigation schedule. She advised, however, that she would be the only witness to testify at a hearing and that she planned on testifying about information she found during her research. I encouraged Complainant to review the rules of evidence regarding hearsay and admissibility, and advised her of Respondent's right to object to any evidence she offered during the hearing.

Respondent's counsel stated that they had not yet received full and complete responses to their discovery requests. Complainant advised that she "answered them as necessary" and argued that some of the requests were not relevant. I reviewed my February 8, 2019 Interim Order, granting Respondent's Motion to Compel, with Complainant, and explained her obligation to provide full and complete responses to the discovery requests. In order to give Complainant an additional opportunity to comply with my Order, I advised Complainant that I would extend the deadline for Complainant to provide full and complete responses to the discovery requests to April 26, 2019.

Complainant responded that the extension was "not necessary" and that she was "not going to comply." Complainant advised she was going to file her complaints formally with the US Department of Justice and that the Commission would be hearing from them. She advised that the "stress" of the proceeding was too much, and she could "no longer tolerate being treated so inhumanely as to not being recognized." She expressed her frustration with Respondent for not looking at the evidence showing that smart meters are not safe. I assured Complainant that I was attempting to alleviate her stress and accommodate her concerns. I offered to provide additional time past April 26, 2019, if she needed, but Complainant declined. She stated, "I asked for a reasonable accommodation. I didn't get it, so now I'll just go a different route and we'll all be watching what happens on the floor of the legislature because they're going to fix this atrocity." I advised Complainant that I hoped she would reconsider,

choose to present her case at a hearing, and take advantage of her day to be heard. The conference concluded at 10:05 a.m.

On April 17, 2019, I issued an Interim Order, extending the deadline for Complainant to provide full and complete responses to the discovery requests and file a certificate of service to April 26, 2019.

On May 15, 2019, Respondent filed an Amended Motion to Dismiss Complaint of Ann Swartz for Failure to Comply with Orders (Amended Motion to Dismiss), averring, *inter alia*, Complainant still had not provided full and complete responses to the discovery requests.

The Amended 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 Amended Motion to Dismiss.

The record closed on June 14, 2019, the date discovery closed in this proceeding.

#### FINDINGS OF FACT

1. Complainant is Ann Swartz.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 532 Fauth Lane, York, PA 17406.
4. On September 28, 2017, 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 October 18, 2017, 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 October 18, 2017, 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 October 30, 2017, Complainant submitted an Answer to the Preliminary Objections, averring that the facts as alleged in the Preliminary Objections were not correct; and she was still waiting for a reply from the utility company, the Commission, and the manufacturer regarding the safety of smart meters.

8. On November 7, 2017, Complainant filed a Reply to the Answer and New Matter, averring that the facts as alleged in the Answer and New Matter were not correct; the Answer and New Matter omitted other facts; and she had questions concerning the safety of smart meters.

9. On November 21, 2017, an Interim Order was issued, denying the Preliminary Objections.

10. On December 28, 2017, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant.

11. On June 22, 2018, Respondent filed a Motion to Compel responses to the discovery requests, averring, *inter alia*, 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 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 25, 2019.

14. On February 25, 2019, Complainant filed a letter averring, *inter alia*, she was a "qualified individual" under federal law; she was being forced to accept a smart meter that did not meet safety standards; and Respondent threatened her with loss of electric service because of her medical conditions.

15. On March 5, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service by February 25, 2019, in violation of the Interim Order dated February 8, 2019.

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

17. On March 27, 2019, an Interim Order and a Call-In Telephone Prehearing Conference Notice were issued, scheduling a prehearing conference for April 17, 2019 at 9:00 a.m.

18. A prehearing conference was convened on April 17, 2019.

19. During the conference, Complainant admitted she had not provided full and complete responses to the discovery requests and answered them as she deemed "necessary."<sup>2</sup>

20. During the conference, the presiding ALJ reviewed the February 8, 2019 Interim Order, granting Respondent's Motion to Compel, with Complainant, and explained her obligation to provide full and complete responses to the discovery requests.

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<sup>2</sup> Prehearing Transcript, p. 34.

21. In order to give Complainant an additional opportunity to provide full and complete responses to the discovery requests, the presiding ALJ advised Complainant that the deadline for Complainant to provide full and complete responses to the discovery requests would be extended to April 26, 2019.

22. During the conference Complainant responded that the extension was “not necessary” and that she was “not going to comply.”

23. On April 17, 2019, an Interim Order was issued, extending the deadline for Complainant to provide full and complete responses to the discovery requests and file a certificate of service to April 26, 2019.

24. On May 15, 2019, Respondent filed an Amended Motion to Dismiss, averring, *inter alia*, Complainant had not yet provided full and complete responses to the discovery requests.

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

26. Complainant has not filed a certificate of service regarding her service of full and complete discovery responses upon Respondent.

### DISCUSSION

In its Amended Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant’s failure to provide full and complete responses to the discovery requests, in violation of the February 8, 2019 Interim Order and the April 17, 2019 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 December 28, 2017.

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 June 22, 2018, 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 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 25, 2019.

At the April 17, 2019 prehearing conference, Complainant admitted she did not comply with the February 8, 2019 Interim Order and provided responses to the discovery requests only as she deemed necessary. I reviewed the February 8, 2019 Interim Order with her and explained that when parties have a discovery dispute, I, not the responding party, decide whether the responding party must respond to a discovery request. I explained that the February 8, 2019 Interim Order obligated her to provide full and complete responses to the discovery requests. In order to give Complainant an additional opportunity to provide full and complete responses to the discovery requests, I advised Complainant I would extend the deadline to April 26, 2019. Complainant responded that the extension was "not necessary" and that she was "not going to comply." In order to give Complainant an opportunity to reconsider, I issued an Interim Order immediately after the prehearing conference, extending the deadline to April 26, 2019.

In its Amended Motion to Dismiss, Respondent averred it had not yet received full and complete responses to the discovery requests. Complainant did not file a response to the Amended Motion to Dismiss. Furthermore, as of the date of this Initial Decision, Complainant has not filed a certificate of service regarding her service of full and complete discovery responses upon Respondent.

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 was ordered to provide full and complete responses to the discovery requests by the February 8, 2019 Interim Order and the April 17, 2019 Interim Order. To the extent that Complainant was confused about her obligation to provide full and complete responses, I discussed it with her during the April 17, 2019 prehearing conference. After

discussing the issue with her and offering to extend the deadline, Complainant advised she would not comply with my Order and would not provide additional discovery responses.

Respondent has due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery, and Complainant chose not to provide full and complete responses as ordered. 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.

Furthermore, Complainant clearly indicated that she no longer desired to participate in this proceeding before the Commission. A hearing in this matter is not necessary or appropriate and is not in the public interest. Accordingly, the Complaint will be dismissed.

#### 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 Amended Motion of Metropolitan Edison Company to Dismiss the Complaint of Ann H. Swartz filed on September 28, 2017 at Docket No. C-2017-2626756, is granted.

2. That the Complaint filed by Ann H. Swartz against Metropolitan Edison Company at Docket No. C-2017-2626756 is hereby dismissed with prejudice due to Complainant's failure to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service, in violation of an Interim Orders issued February 8, 2019 and April 17, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2017-2626756 as closed.

Date: June 25, 2019

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/s/  
Jeffrey A. Watson  
Administrative Law Judge