

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lewis B. Smith, Jr.	:	
	:	
v.	:	C-2018-3000235
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Lewis B. Smith, Jr., for his failure to comply with an Interim Order issued February 6, 2019, ordering Complainant to serve full and complete responses to Respondent’s discovery requests upon Respondent and file a certificate of service no later than February 19, 2019.

**HISTORY OF THE PROCEEDING**

Lewis B. Smith, Jr. (Complainant), filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on February 16, 2018, averring that there are incorrect charges on his bill as he is being charged for “assessing and deploying smart meter technology” and that he does not have nor does he want a smart meter. Complainant also averred he is experiencing health issues and objects to the installation of a smart meter in order to reduce his exposure to radiation. Complainant further averred that smart meters are subject to outside hacking and the security of the device cannot be guaranteed.

As relief, Complainant requested that he be exempted from having a smart meter installed at his property and that the customer charges for “assessing and deploying smart meter technology” be removed from his bill.

On March 26, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting it provides electric service to Complainant at 2782 Hunterstown Hampton Road, New Oxford, Pennsylvania (service location), and averring that Complainant refused the installation of a smart meter at his residence; Respondent is required by Act 129 of 2008<sup>1</sup> (Act 129) to install a smart meter; and Complainant’s refusal to allow the installation of a smart meter constitutes legal grounds to terminate service to the service location. Respondent denied there are incorrect charges on Complainant’s bill, and denied the remaining material allegations set forth in the Complaint.

On March 26, 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.

Complainant did not file a response to the Preliminary Objections.

On April 27, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On May 4, 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

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

Complainant. Objections were due by November 30, 2018, and responses were due by December 10, 2018.

On January 30, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring, *inter alia*, it had not received any response from Complainant. 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 6, 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 19, 2019.

On February 22, 2019, Respondent filed a Motion to Dismiss Complaint of Lewis B. Smith, Jr., for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide responses to Respondent's discovery requests in violation of the February 6, 2019 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. 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.

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

Complainant failed to comply with the Interim Order issued February 6, 2019, 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 19, 2019.

The record closed by interim order entered on July 1, 2019.

#### FINDINGS OF FACT

1. Complainant is Lewis B. Smith, Jr.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 2782 Hunterstown Hampton Road, New Oxford, Pennsylvania.
4. On February 16, 2018, Complainant filed a Complaint against Respondent, alleging that there were incorrect charges on his bill related to smart meters, and Complainant did not have and does not want a smart meter.
5. On March 26, 2018, Respondent filed an Answer and New Matter to the Complaint, arguing that Respondent was required to install a smart meter and the charges on Complainant's bill were correct.
6. On March 26, 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. Complainant did not file a response to the Preliminary Objections.

8. On May 4, 2018, an Interim Order was issued, denying Respondent's Preliminary Objections.

9. On November 20, 2018, Respondent forwarded discovery requests to Complainant. Objections to the discovery requests were due on or before November 30, 2018, and responses to the discovery requests were due on or before December 10, 2018.

10. On January 30, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring, *inter alia*, Complainant had not provided any response to the discovery requests.

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

12. On February 6, 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 19, 2019.

13. On February 22, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint due to Complainant's failure to comply with the Interim Order entered on February 6, 2019, requiring 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 19, 2019.

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

15. Complainant did not file a certificate of service regarding his service of discovery responses upon Respondent, as directed by the February 6, 2019 Interim Order.

## DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant's failure to comply with the Interim Order entered on February 6, 2019, requiring 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 19, 2019.

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. In this case, Complainant failed to file a certificate of service showing his service of responses to the discovery requests, in violation of 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 30, 2019, which was granted by Interim Order dated February 6, 2019. The February 6, 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 19, 2019. As of the date of this Initial Decision, Complainant has not yet filed a certificate of service showing his service of discovery responses upon Respondent, in violation of the February 6, 2019 Interim Order.

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 the Interim Order issued February 6, 2019, ordering Complainant to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service by February 19, 2019.

If Complainant was unable or unwilling to provide responses to the discovery requests, Complainant could have filed objections or asked for additional time to respond. Complainant did neither and, in fact, filed no response at all.

Respondent has due process rights that must be protected. Complainant did not file a certificate of service showing his responses to the discovery requests upon Respondent. Complainant's actions have denied Respondent the opportunity to prepare a defense to Complainant's claims and have demonstrated a lack of intent to prosecute his claims. To proceed with this matter would result in the denial of Respondent's due process rights.

Furthermore, Complainant's failure to provide responses to the discovery requests is a violation of the February 6, 2019 Interim Order. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaint of Lewis B. Smith, Jr., filed on February 16, 2018 at Docket No. C-2018-3000235, is granted.

2. That the Complaint filed by Lewis B. Smith, Jr., against Metropolitan Edison Company at Docket No. C-2018-3000235 is hereby dismissed with prejudice due to Complainant's failure to comply with the Interim Order entered on February 6, 2019, requiring 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 19, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3000235 as closed.

Date: July 10, 2019

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/s/  
Jeffrey A. Watson  
Administrative Law Judge