

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kyle M. Denlinger	:	
	:	
v.	:	C-2018-3005721
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Kyle M. Denlinger for his failure to comply with an Order Granting Motion to Compel issued July 1, 2019, compelling Complainant to serve full and complete responses to Respondent’s discovery requests upon Respondent with full responses to PPL Set I Interrogatories and Requests for Production of Documents Questions 1-7 no later than July 15, 2019. The Complaint is also being dismissed for Complainant’s failure to comply with a Prehearing Order issued on February 1, 2019, as he did not provide a list of witnesses, any proposed expert witness’ written testimony or exhibits by March 29, 2019.

**HISTORY OF THE PROCEEDING**

On October 27, 2018, Kyle M. Denlinger (Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Respondent) seeking to prevent installation of a smart meter, at his home in Lancaster County. Complainant alleges: 1) that radiofrequency fields from smart meters have adverse health effects; 2) that the meters are a fire hazard; 3) that

the meters reduce the longevity of household appliances; 4) that the meters increase costs to consumers; and 5) that there are data privacy issues with the meters.

On October 31, 2018, PPL was served with the Complaint. On November 20, 2018, PPL filed a timely Answer admitting it had attempted to install a new AMI meter at Complainant's property and had sent Complainant a termination notice for failure to provide access to the premises to replace the meter. However, PPL denied the termination notice was unlawful and denied the AMI meter is a health hazard. PPL responded that it is legally required to install AMI meters. On November 21, 2018, a Notice was issued scheduling a telephonic evidentiary hearing for June 4, 2019. On February 1, 2019, a Prehearing Order was issued establishing procedural rules as well as a deadline for Complainant to serve PPL his expert witness' written testimony and exhibits by March 29, 2019.

PPL served its Set I Interrogatories and Requests for Production of Documents (Set I) upon the Complainant on March 7, 2019. Responses were due on or before April 1, 2019. Complainant never served responses or objections to PPL. On May 23, 2019, PPL filed a Motion to Compel. Complainant did not respond to the Motion.

On May 30, 2019, PPL filed a letter requesting that the June 4, 2019 hearing be continued because one of its witnesses could no longer attend the hearing on that date. Complainant did not oppose the request and the hearing was cancelled on May 31, 2019 by the issuance of a Notice of Cancellation. The hearing was not rescheduled.

On July 1, 2019, I issued an Order Granting Motion to Compel finding that information requested in PPL Interrogatories 1-7 may be admissible or lead to discovery of admissible evidence at the hearing and is discoverable under the broad terms of 52 Pa. Code § 5.321.

In the event no response was filed on or before July 15, 2019, Respondent PPL Electric Utilities Corporation was invited to file a motion for sanctions pursuant to 52 Pa. Code § 5.371.

On July 16, 2019, Respondent filed a Motion to Dismiss the Formal Complaint of Kyle M. Denlinger with a notice to plead instructing Complainant to reply within five days from the date of service of the motion pursuant to 52 Pa. Code § 5.371(b)(relating to sanctions – general). As of the date of this Initial Decision, Complainant has not filed a certificate of service regarding his service of discovery responses upon Respondent. Complainant has not filed a response to the Motion to Dismiss. The record closed on July 22, 2019, the day a response was due to the Motion to Dismiss. The Motion to Dismiss is ripe for a decision.

### FINDINGS OF FACT

1. Complainant is Kyle M. Denlinger.
2. Respondent is PPL Electric Corporation, a jurisdictional electric distribution company.
3. The service location is 14 Susquaw Place, Lancaster, Pennsylvania.
4. On October 27, 2018, Complainant filed a Complaint against Respondent, challenging the planned installation of PPL’s new automated metering infrastructure (AMI) meter at the service location.
5. On October 31, 2018, the Complaint was served upon Respondent.
6. On November 21, 2018, PPL timely filed its Answer and New Matter to the Complaint responding that Respondent was required to install an AMI meter.
7. PPL served its Set I Interrogatories and Requests for Production of Documents (Set I) upon the Complainant on March 7, 2019.
8. Answers to Interrogatories were due on or before April 1, 2019.

9. Complainant never served responses or objections to PPL.
10. On May 23, 2019, PPL filed a Motion to Compel.
11. Complainant did not respond to the Motion to Compel.
12. On May 30, 2019, PPL filed a letter requesting that the June 4, 2019 hearing be continued because one of its witnesses could no longer attend the hearing on that date.
13. The unopposed request for continuance was granted and the hearing was cancelled on May 31, 2019 by the issuance of a Notice of Cancellation.
14. On July 1, 2019, an Order Granting Motion to Compel was issued compelling full discovery responses on or before July 15, 2019.
15. On July 16, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint due to Complainant's failure to comply with the Order issued on July 1, 2019.
16. Complainant did not file a response to the Motion to Dismiss.
17. Complainant did not file a certificate of service showing any service of discovery responses upon Respondent.

#### DISCUSSION

To date, Complainant has not complied with Ordering Paragraph No. 9 of the Prehearing Order dated February 1, 2019, which stated: "On or before March 29, 2019, Complainant is directed to serve copies of statements, reports, and any direct written testimony of any expert witnesses he intends to call at the hearing upon Respondent pursuant to 52 Pa. Code § 5.412(a)."

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety as a sanction pursuant to 52 Pa. Code § 5.371(a)(3) due to Complainant's failure to comply with the Order Granting Motion to Compel issued on July 1, 2019, requiring Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel no later than July 15, 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 March 7, 2019.

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 its Motion to Compel, PPL sought an order compelling full responses to Set I, Questions 1-7. Specifically, PPL requested information about Complainant's above-mentioned allegations. PPL sought the identification of all wireless phones, cellphones, microwave ovens, wireless routers, wi-fi networks, tablets, computers, Bluetooth speakers, wireless security systems, smart speakers, garage door openers, baby monitors, and walkie talkies in the service property. PPL requested the amount of cell phone usage and 12 months of phone bills showing usage. PPL requested medical records, medical diagnoses and/or prescribed treatment of therapy associated with the medical conditions Complainant alleges result from exposure to meters. PPL requested the identification of every witness Complainant intended to call at the hearing, the curriculum vitae of the witness, subject matter and sources of information relied upon or referenced in the witness' testimony. Finally, PPL requested copies of all exhibits Complainant intended to present at the evidentiary hearing.

52 Pa. Code § 5.342(a)(4) provides that a party must answer fully and completely unless an objection is made. This includes the production of documents and information sought through Set I. *See* § 5.341(c). Objections must be served within ten days of service of the interrogatories. § 5.342(e).

Respondent filed a Motion to Compel on May 23, 2019, which was granted by Order dated July 1, 2019, which directed Complainant to serve full and complete responses to the discovery requests upon Respondent's counsel no later than July 15, 2019. As of the date of this Initial Decision, Complainant has not filed a certificate of service showing his service of discovery responses upon Respondent in violation of the July 1, 2019 Order.

On July 1, 2019, I issued an Order Granting Motion to Compel finding that information requested in PPL Interrogatories 1-7 may be admissible or lead to discovery of admissible evidence at the hearing and is discoverable under the broad terms of 52 Pa. Code Section 5.321.

In the event no response was filed on or before July 15, 2019, Respondent PPL Electric Utilities Corporation was invited to file a motion for sanctions pursuant to 52 Pa. Code §5.371. Complainant was notified that failure to comply with an Order issued by an Administrative Law Judge [ALJ] constitutes grounds for dismissal of a case.

The Commission has held that parties must comply with the orders of an ALJ, 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); motion for sanctions pursuant to 52 Pa. Code §5.371. Complainant was notified that failure to comply with an Order issued by an ALJ constitutes grounds for dismissal of a case.

The Commission has been dismissing complaints similar to the instant one as a sanction for failure of a Complainant to comply with similar prehearing orders compelling service of witness lists and discovery responses to an electric distribution company (EDC) regarding the identification of medical records, witnesses, electronic devices in the service location emitting radio frequency fields, etc. See *B. Susanne Spohn v. Metropolitan Edison Company*, C-2018-3001725 (Final Order entered August 8, 2019); *Kimberly Beckmann v. Metropolitan Edison Company*, C-2017-2613702 (Final Order entered April 11, 2019); *Carol Sojda and Carol Lutzkanin v. Metropolitan Edison Company*, C-2017-2638350 (Final Order entered March 28, 2019); *Darlene Stanton v. Pennsylvania Electric Co.*, C-2018-3001144 (Final Order entered July 11, 2019); *Diana Cook v. West Penn Power Company*, C-2018-3003051 (Final Order entered July 11, 2019); and *Ann H. Swartz v. Metropolitan Edison Company*, C-2017-2626756 (Initial Decision issued June 28, 2019).

The Complainants in these aforementioned cases also requested to opt out of an AMI meter installation for health, safety, and data privacy reasons. These Complainants did not comply with orders compelling the production of witness lists and other discovery responses either. Motions to dismiss the complaints as sanctions were granted by the ALJ through Initial Decisions because these Complainants failed to comply with an ALJ's order compelling discovery responses. Those decisions were allowed to become final by operation of law by the Commission. 66 Pa. C.S. § 332(h). These complaints were dismissed for additional reasons including failure to appear at a prehearing conference and/or failure to provide a status report.

The instant case is similar to caselaw precedent in that the Complainant was warned that failure to comply with an order compelling discovery responses could result in the filing of a motion for sanctions and possible dismissal of his case. Additionally, the Complainant in the instant case violated two interim orders by not only failing to provide discovery responses, but also because he failed to serve any witness list, statements of expert witnesses or exhibits by the March 29, 2019 deadline in the Prehearing Order. In consideration of the prior cases noted above, under the principle of *stare decisis*, I am following this policy for consistency as the facts are more similar than distinguishable. *George Crawford v. National Fuel Gas Distribution Corporation*, C-20066348 (Opinion and Order entered December 6, 2017) at 3-4.

In the instant case, 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. Additionally, Complainant did not serve any written expert testimony, statements or pre-marked exhibits intended for the June 4 hearing by the deadline provided in a Prehearing Order. Whereas Respondent complied with the Prehearing Order in meeting its deadline. I did not hold any prehearing conferences or require status reports.

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 July 1, 2019 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 has dismissed similar complaints to the instant one for failure of a Complainant to comply with prehearing orders and provide discovery responses to an EDC regarding medical records, witness lists, types of equipment in the service location emitting radio frequency fields, etc. See *Kimberly Beckmann v. Metropolitan Edison Company*, C-2017-2613702 (Final Order entered April 11, 2019); *Carol Sojda and Carol Lutzkanin v. Metropolitan Edison Company*, C-2017-2638350 (Final Order entered March 28, 2019); *Darlene Stanton v. Pennsylvania Electric Co.*, C-2018-3001144 (Final Order entered July 11, 2019); *Diana Cook v. West Penn Power Company*, C-2018-3003051 (Final Order entered July 11, 2019); *Ann H. Swartz v. Metropolitan Edison Company*, C-2017-2626756 (Initial Decision issued June 28, 2019).

7. 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 PPL Electric Utilities Corporation to Dismiss the Complaint of Kyle Denlinger, filed on July 16, 2019 at Docket No. C-2018-3005721, is granted.

2. That the Complaint filed by Kyle M. Denlinger is hereby dismissed with prejudice due to Complainant's failure to comply with the Order Granting Motion to Compel issued on July 1, 2019, compelling Complainant to serve full and complete responses to the discovery requests upon Respondent no later than July 15, 2019 and for failure to comply with a Prehearing Order issued on February 1, 2019.

