

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-----------------------------|---|----------------|
| John Grima | : | |
| | : | |
| v. | : | C-2019-3009140 |
| | : | |
| Metropolitan Edison Company | : | |

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by John Grima for his failure to provide his witness information to Respondent by July 17, 2019, in violation of an Interim Order dated June 6, 2019; serve responses to the discovery requests upon Respondent by July 8, 2019, in violation of the Commission’s rules; and appear at a prehearing conference on July 18, 2019, in violation of an Interim Order dated June 5, 2019.

HISTORY OF THE PROCEEDING

John Grima (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on April 12, 2019, averring, *inter alia*, Respondent was threatening to terminate his electric service unless he agreed to the installation of a smart meter at his residence at 228 Ramblewood Drive, Saylorsburg, PA 18353 (service location). As relief, Complainant requested that his electric service not be terminated, he be allowed to opt out of smart meter

installation, he be allowed to keep his analog meter, and Respondent be ordered to “stop the harassing and strong arm tactic letters.”

On May 2, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent admitted that it provides residential electric service to Complainant at the service location. Respondent averred that Complainant has refused to allow Respondent access to the meter in order to install a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent denied the remaining material averments set forth in the Complaint.

In its New Matter, Respondent argued the Complaint should be dismissed for legal insufficiency, because it is required by Act 129 of 2008¹ (Act 129) and its Smart Meter Deployment Plan (SMP) to install a smart meter and the Commission is unable to grant the relief requested by Complainant.

On May 2, 2019, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable and Complainant failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the proposed installation of the smart meter at the service location. Respondent further averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Respondent argued 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 May 15, 2019, Complainant filed a “Letter of Response,” averring, *inter alia*, Respondent has used “extremely unethical” methods to harass him and his family since the Fall of 2018; tried to “force [them] to succumb to their demands and install a dangerous RFR device (a Smart Meter);” and “threat[ened] [them] with an ultimatum to either install said device or have electric power shut off.” Complainant also averred Respondent provided a “fake narrative”

¹ 66 Pa.C.S. § 2806.1 *et seq.*

in claiming that the smart meters are safe; smart meters “pulsate a continuous stream of RFR that cannot be stopped or turned off;” smart meters “are known fire hazards, potentially resulting in home damage, death, and injuries;” and smart meters “collect data on the energy consumed by the homeowner and transmits it to the energy company to do with as they wish,” in violation of the Commission’s privacy laws.

On May 23, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, assigning this proceeding to me and scheduling a prehearing conference for July 18, 2019, at 10:00 a.m.

On June 5, 2019, I issued two Interim Orders, one denying Respondent’s Preliminary Objections and one regarding the prehearing conference for July 18, 2019.

The May 23, 2019 Notice provided the toll-free bridge number and PIN number and included instructions on how to connect to the conference bridge. The Notice advised the Parties, “**At the above date and time, you must call into the conference. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original).

The June 5, 2019 Interim Order related to the prehearing conference, directed the Parties to, *inter alia*, “fully participate” in a prehearing conference scheduled for July 18, 2019, at 10:00 a.m. The Interim Order included instructions on how to call into the conference bridge, and provided the toll-free bridge number and PIN number. I wrote in the Interim Order, “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original).

The May 23, 2019 Notice and the June 5, 2019 Interim Order were mailed via first-class mail to the address listed for Complainant in the Complaint and were not returned as undeliverable.

On June 6, 2019, I issued an Interim Order, establishing an initial litigation schedule. The June 6, 2019 Interim Order directed the Parties to, *inter alia*, provide the names and addresses of each fact and expert witness, as well as written summaries of the expected testimony for each witness (witness information) to the other Party by July 17, 2019.

On June 17, 2019, 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 June 27, 2019, and responses were due by July 8, 2019. Complainant did not file any objections or responses.

On July 17, 2019, Respondent submitted a certificate of service regarding its service of its witness information upon Complainant.

On July 18, 2019, I called into the conference bridge for the telephone prehearing conference at 10:00 a.m. Counsel for Respondent had called into the conference bridge, but Complainant had not. Although the May 23, 2019 Notice and the June 5, 2019 Interim Order advised that I would not call the Parties and it was their responsibility to call into the conference bridge, out of an abundance of caution and in an attempt to give Complainant every opportunity to participate in the prehearing conference, I had my legal assistant call Complainant to request that he join the conference bridge. My legal assistant called the phone number Complainant listed on his Complaint and spoke to an individual who identified himself as Complainant's father. This individual advised that Complainant would not be calling into the conference. Complainant did not call into the conference bridge, and, at 10:10 a.m., the prehearing conference proceeded in his absence.

Respondent's counsel advised it had not yet received Complainant's witness information or discovery responses, and she made an oral motion on the record to dismiss the Complaint due to Complainant's failure to appear. In order to give Complainant an opportunity to respond to Respondent's motion, I directed Respondent's counsel to file her motion in writing accompanied by a notice to plead. The conference adjourned at 10:15 a.m., and at no point did Complainant call into the conference bridge.

On July 22, 2019, Respondent filed a Motion to Dismiss Complaint of John Grima for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide his witness information to Respondent, in violation of the June 6, 2019 Interim Order; failed to provide responses to Respondent's discovery requests, in violation of the Commission's rules; and failed to appear at the July 18, 2019 prehearing conference. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's actions demonstrate a 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 August 1, 2019, I issued an Interim Order closing the hearing record.

FINDINGS OF FACT

1. Complainant is John Grima.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 228 Ramblewood Drive, Saylorsburg, PA 18353.
4. On April 12, 2019, Complainant filed a Complaint against Respondent, alleging, *inter alia*, he objected to the installation of a smart meter at his residence.
5. On May 2, 2019, 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 2, 2019, 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 May 15, 2019, Complainant filed a “Letter of Response,” averring, *inter alia*, Respondent was using “extremely unethical” methods to harass him and his family and was attempting to force him to agree to the installation of a smart meter.

8. On May 23, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a prehearing conference for 10:00 a.m. on July 18, 2019.

9. On June 5, 2019, two Interim Orders were issued, one denying Respondent’s Preliminary Objections and another scheduling the prehearing conference for July 18, 2019.

10. The Commission sent copies of the May 23, 2019 Notice and June 5, 2019 Interim Orders to Complainant by regular first-class mail to the address Complainant provided in the Complaint.

11. Complainant’s copies of the May 23, 2019 Notice and the June 5, 2019 Interim Orders were not returned as undeliverable.

12. The May 23, 2019 Notice and the June 5, 2019 Interim Order regarding the prehearing conference advised the Parties that they must call into the prehearing conference on the scheduled date and time using the toll-free bridge number and PIN number; the ALJ would not call them for the July 18, 2019 prehearing conference; and they may lose their case if they did not call into the July 18, 2019 prehearing conference.

13. On June 6, 2019, an Interim Order was issued, establishing an initial litigation schedule and ordering the Parties to, *inter alia*, exchange witness information by July 17, 2019.

14. On June 17, 2019, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant. Objections to the discovery requests were due on June 27, 2019, and responses to the discovery requests were due on July 8, 2019. Complainant did not file any objections or responses.

15. On July 17, 2019, Respondent submitted a certificate of service regarding its service of its witness information upon Complainant.

16. Complainant did not call into the conference on July 18, 2019.

17. On July 22, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve his witness information upon Respondent, in violation of the Interim Order dated June 6, 2019; failed to serve responses to the discovery requests upon Respondent, in violation of the Commission's rules; and failed to appear at the prehearing conference on July 18, 2019.

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

19. Complainant has not filed a certificate of service regarding his service of discovery responses upon Respondent.

20. Complainant has not filed a certificate of service regarding his service of his witness information upon Respondent.

21. Complainant did not settle or withdraw this matter.

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, exchange witness information, and appear at the July 18, 2019 prehearing conference. Respondent argues Complainant's actions demonstrate his lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations.

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 June 17, 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. In this case, Complainant's objections, if any, to the discovery requests were due by June 27, 2019, and his responses were due by July 8, 2019.

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.

On June 6, 2019, I issued an Interim Order, directing the Parties to, *inter alia*, exchange witness information by July 17, 2019. On July 17, 2019, Respondent submitted 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 or any response to its discovery requests.

Finally, Complainant failed to appear at the prehearing conference on July 18, 2019. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

In this case, a prehearing conference was scheduled for July 18, 2019. Complainant received notice of the prehearing conference via a Call-In Telephone Prehearing Conference Notice issued May 23, 2019 and an Interim Order issued June 5, 2019. Copies of the Notice and Interim Order were mailed to Complainant via regular first-class mail to the address Complainant provided on the Complaint, and they were not returned as undeliverable. Since the Notice and Interim Order were mailed in the ordinary course of business, I must presume Complainant received them. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa.Super. 1982).

The May 23, 2019 Notice and June 5, 2019 Interim Order advised Complainant of the importance of appearing for the July 18, 2019 prehearing conference, instructed him on how to call in to the conference bridge, and warned him that his case may be dismissed if he did not participate. When Complainant did not call into the conference bridge, my legal assistant called the number Complainant provided on his Complaint and spoke to an individual who identified himself as Complainant's father. The individual advised that Complainant would not be calling into the conference. The conference convened in Complainant's absence, and was adjourned at 10:15 a.m. At no point did Complainant call into the conference bridge.

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 the Commission's discovery rules, as well as two Interim Orders issued in this case. As of the date of the closure of the record on August 1, 2019, Complainant had not filed a certificate of service showing his service of his witness information upon Respondent, in violation of the Interim Order issued June 6, 2019. Additionally, Complainant had not served any response to the discovery requests upon Respondent, in violation of the Commission's rules. Finally, Complainant failed to appear at the prehearing conference on July 18, 2019, in violation of the June 5, 2019 Interim Order.

Both parties have due process rights that must be protected. Respondent submitted a certificate of service regarding its service of its witness information upon Complainant by the deadline and appeared for the prehearing conference that Complainant chose not to attend. Complainant's actions have denied Respondent the opportunity to prepare a defense to Complainant's claims. Complainant has failed to engage in these proceedings in any way since he filed his "Letter of Response" on May 15, 2019. 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).

7. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaint of John Grima filed on April 12, 2019 at Docket No. C-2019-3009140, is granted.

2. That the Complaint filed by John Grima against Metropolitan Edison Company at Docket No. C-2019-3009140 is hereby dismissed with prejudice due to Complainant's failure to provide his witness information to Respondent, in violation of an Interim Order dated June 6, 2019; serve responses to the discovery requests upon Respondent, in violation of the Commission's rules; and appear at a prehearing conference on July 18, 2019, in violation of an Interim Order dated June 5, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3009140 as closed.

Date: August 13, 2019

_____/s/
Emily I. DeVoe
Administrative Law Judge