

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sondra Kansky	:	
	:	
v.	:	C-2018-3005587
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Sondra Kansky because she does not want a smart meter installed at her residence for her failure to provide her witness information to Respondent, in violation of an Interim Order dated February 4, 2019; and her failure to serve discovery responses upon Respondent and file a certificate of service by May 20, 2019, in violation of an Interim Order issued May 1, 2019.

HISTORY OF THE PROCEEDING

Sondra Kansky (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent) on October 22, 2018, averring that Respondent was threatening to terminate her electric service at her residence at 226 J.K. Lane, Irwin, PA 15642 (service location) unless Complainant agreed to the installation of a smart meter; and Complainant does not want a smart meter due to health concerns. As relief, Complainant requested that she be allowed to opt out of smart meter installation.

On November 13, 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 of 2008¹ (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.

On November 13, 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 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.

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 December 19, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On January 9, 2019, I issued two Interim Orders, one denying the Preliminary Objections and one establishing an initial litigation schedule. In the Interim Order establishing the initial litigation schedule, I ordered the parties to, *inter alia*, provide the names, addresses,

¹ 66 Pa.C.S. § 2806.1 *et seq.*

and written summaries of the expected testimony for each witness (witness information) to the other party by March 1, 2019; conclude discovery by April 19, 2019; and file a status report by May 3, 2019.

On January 11, 2019, I issued an Interim Order and the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a telephone prehearing conference for February 4, 2019 at 9:00 a.m.

On January 18, 2019, I received correspondence from Joseph Kansky, advising he was Complainant's son; Complainant "has heard stories, poor at best, about the smart meter and the adverse conditions the smart meter can have on healthy people;" and "[Complainant's] wish is to be the last home in the United States to receive a [smart meter]."

On January 22, 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 February 1, 2019, and responses were due by February 11, 2019.

On February 4, 2019, I convened a telephone prehearing conference. Tori Giesler, Esq., and Lauren Lepkoski, Esq., were present on behalf of Respondent. Complainant was present on her own behalf. During the conference, Complainant advised she was going into the hospital on February 20, 2019 for a medical procedure and she anticipated a recovery period of approximately six weeks. I proposed revisions to the initial litigation schedule, and Complainant agreed to a deadline of April 1, 2019 for her to provide her witness information to Respondent; a deadline of May 3, 2019 for the parties to conclude discovery; and a deadline of May 10, 2019 for the parties to submit a status report. The parties addressed outstanding discovery issues, and I encouraged the parties to work together to resolve them.

On February 4, 2019, I issued an Interim Order, revising the litigation schedule. I ordered the parties to, *inter alia*, exchange their witness information by April 1, 2019; conclude discovery by May 3, 2019; and submit a status report by May 10, 2019.

On March 5, 2019, the undersigned presiding officer received the transcript of the prehearing conference held on February 4, 2019. The transcript consisted of 28 pages and was filed with the Commission's Secretary on February 26, 2019.

On April 23, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring that although the parties agreed to extend the deadline for Complainant to submit objections to the discovery requests to February 20, 2019, and extend the deadline for Complainant to submit responses to the discovery requests to March 29, 2019, 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 May 1, 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 May 20, 2019.

On May 13, 2019, I received a status report from Respondent dated May 10, 2019, advising that it had not yet received Complainant's witness information or discovery responses. I did not receive a status report from Complainant.

On May 31, 2019, Respondent filed a Motion to Dismiss Complaint of Sondra Kansky for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide her witness information to Respondent in violation of the February 4, 2019 Interim Order, and failed to provide responses to Respondent's discovery requests in violation of the May 1, 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.

The record closed on June 5, 2019, the deadline for the Complainant to submit a response to the Respondent's Motion to Dismiss.

FINDINGS OF FACT

1. Complainant is Sondra Kansky.
2. Respondent is West Penn Power Company, a jurisdictional public utility.
3. The service location is 226 J.K. Lane, Irwin, PA 15642.
4. On October 22, 2018, 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 November 13, 2018, 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 November 13, 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. On January 9, 2019, an Interim Order was issued, denying the Preliminary Objections.
8. On January 9, 2019, an Interim Order was issued, establishing an initial litigation schedule and ordering the parties to, *inter alia*, exchange witness information by March 1, 2019; conclude discovery by April 19, 2019; and submit a status report by May 3, 2019.

9. A prehearing conference was scheduled to be held on February 4, 2019 at 9:00 a.m. by an Interim Order issued January 11, 2019, and a Call-In Telephone Prehearing Conference Notice also issued January 11, 2019.

10. On January 22, 2019, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant.

11. On February 4, 2019, a prehearing conference was convened, and the parties discussed, *inter alia*, outstanding discovery issues, and revisions to the litigation schedule.

12. During the prehearing conference, Complainant agreed to a deadline of April 1, 2019 for her to provide her witness information to Respondent; a deadline of May 3, 2019 for the parties to conclude discovery; and a deadline of May 10, 2019 for the parties to submit a status report.²

13. On February 4, 2019, an Interim Order was issued, revising the litigation schedule and ordering the parties to, *inter alia*, exchange witness information by April 1, 2019; conclude discovery by May 3, 2019; and submit a status report by May 10, 2019.

14. On April 23, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring, *inter alia*, the parties agreed to extend the deadline for Complainant to submit objections to the discovery requests to February 20, 2019, and extend the deadline for Complainant to submit responses to March 29, 2019, but Complainant had not served any response to the discovery requests.

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

² Prehearing Conference Transcript, p. 19.

16. On May 1, 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 May 20, 2019.

17. On May 13, 2019, Respondent submitted a status report, advising, *inter alia*, it had not yet received Complainant's witness information or discovery requests.

18. Complainant did not submit a status report.

19. On May 31, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve her witness information upon Respondent, in violation of the Interim Order dated February 4, 2019; and failed to serve full and complete responses to the discovery requests upon Respondent and file a certificate of service, in violation of the Interim Order dated May 1, 2019.

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

21. Complainant has not filed a certificate of service regarding her service of discovery responses upon Respondent.

22. Complainant has not filed a certificate of service regarding her service of her witness information upon Respondent.

DISCUSSION

In its 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 May 1, 2019 Interim Order, and exchange witness information, in violation of the February 4, 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 January 22, 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, Respondent filed a Motion to Compel on April 23, 2019, averring, *inter alia*, that although Respondent agreed to extend the deadlines for Complainant to submit objections and responses to the discovery requests, Complainant had not provided any response to the discovery requests by the extended deadlines. Complainant did not file a response to the Motion to Compel. The Motion to Compel was granted by an Interim Order dated May 1, 2019. The May 1, 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 May 20, 2019.

On January 9, 2019, I issued an Interim Order, directing the parties to, *inter alia*, exchange witness information by March 1, 2019. Due to Complainant's medical issues

discussed at the February 4, 2019 prehearing conference, I proposed extending the deadline for Complainant to submit her witness information to Respondent to April 1, 2019. Complainant agreed to this deadline at the prehearing conference, and, on February 4, 2019, I issued an Interim Order, directing Complainant to submit her witness information to Respondent by April 1, 2019.

In its Motion to Dismiss, Respondent averred it had not yet received Complainant's witness information or discovery responses.

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 two Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not filed a certificate of service showing her service of her witness information upon Respondent, in violation of the Interim Order issued February 4, 2019. Additionally, Complainant has not filed a certificate of service showing her service of discovery responses upon Respondent, in violation of the Interim Order issued May 1, 2019. Although Complainant requested and received extensions of her deadlines to submit her witness information and her discovery responses, Complainant did not meet the agreed-upon extended deadlines and did not request any additional extensions.

Both parties have due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery. 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.

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 West Penn Power Company to Dismiss the Complaint of Sondra Kansky filed on October 22, 2018 at Docket No. C-2018-3005587, is granted.

2. That the Complaint filed by Sondra Kansky against West Penn Power Company at Docket No. C-2018-3005587 is hereby dismissed with prejudice due to Complainant's failure to provide her witness information to Respondent, in violation of an Interim Order dated February 4, 2019, and her failure to serve responses to the discovery requests upon Respondent and file a certificate of service by May 20, 2019, in violation of an Interim Order issued May 1, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3005587 as closed.

Date: August 30, 2019

/s/
Jeffrey A. Watson
Administrative Law Judge