

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia and Michael Rowley	:	
	:	
v.	:	C-2019-3008815
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Emily I. DeVoe  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Patricia and Michael Rowley for their failure to provide their witness information to Respondent, in violation of an Interim Order dated June 6, 2019; serve discovery responses upon Respondent, in violation of the Commission’s rules; and appear at a prehearing conference on July 30, 2019, in violation of an Interim Order dated June 6, 2019.

**HISTORY OF THE PROCEEDING**

On March 21, 2019, Patricia and Michael Rowley (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent), objecting to the installation of a smart meter at their residence at 1305 East 41<sup>st</sup> Street, Erie, PA 16504 (service location). Complainants aver, *inter alia*, Respondent installed a smart meter at their home; the smart meter “comes with known and unknown health and safety issues;” the smart meter is a violation of privacy; and utility companies are engaging in “widespread...billing overcharges” related to smart meters. As relief,

they requested that the smart meter be removed and replaced with an analog meter like the one they had prior to the installation of the smart meter.

On April 16, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent admits that it provides residential electric service to Complainants at the service location. Respondent avers, *inter alia*, that, on July 30, 2015, Respondent removed the previously installed analog meter from the service location due to zero consumption being recorded on the meter and installed a smart meter. Respondent also avers that installation of the smart meter was required by Act 129 of 2008<sup>1</sup> (Act 129). Respondent essentially denies the remaining material averments set forth in the Complaint.

In its New Matter, Respondent avers Complainants did not contact Respondent about their Complaint prior to filing the Formal Complaint, and therefore, the Complainant should be dismissed pursuant to 66 Pa.C.S. § 1410(1), which provides,

The Commission shall accept formal or informal complaints only from customers or applicants who affirm that they have first contacted the public utility for the purpose of resolving the problem about which the customer wishes to file a complaint. If the customer has not contacted the public utility, the Commission shall direct the customer to the public utility.

Respondent also argues the Complaint should be dismissed for legal insufficiency, because it was required by Act 129 and its Commission-approved Smart Meter Deployment Plan (SMP) to install a smart meter and the Commission is unable to grant the relief requested by Complainants.

On April 16, 2019, Respondent also filed Preliminary Objections to the Complaint. Respondent avers that the request for relief for an exemption from the installation of a smart meter is not legally recoverable and Complainants failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the installation of the smart meter at service location. Respondent further avers it is required by

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

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. Finally, Respondent avers that Complainants failed to contact Respondent prior to filing the Complaint, and the Complaint should be dismissed pursuant to 66 Pa.C.S. § 1410(1). Respondent argues 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 contained a Notice to Plead, requiring Complainants to file a response within ten days of service. Complainants did not file a response to the Preliminary Objections.

On May 16, 2019, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On June 5, 2019, I issued an Interim Order, denying Respondent's Preliminary Objections.

On June 5, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a prehearing conference for July 30, 2019, at 10:00 a.m.

The June 5, 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).

On June 6, 2019, I issued an Interim Order, scheduling the prehearing conference for July 30, 2019. This Interim Order directed the Parties to, *inter alia*, "fully participate" in a prehearing conference scheduled for July 30, 2019, at 10:00 a.m. It 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<sup>2</sup> 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 June 5, 2019 Notice and the June 6, 2019 Interim Order were mailed via first-class mail to the address listed for Complainants in the Complaint and were not returned as undeliverable.

On June 6, 2019, I issued a second Interim Order, which established an initial litigation schedule. This 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 24, 2019.

On July 12, 2019, Respondent filed a certificate of service regarding its service of Interrogatories and Requests for Production of Documents (discovery requests) upon Complainants. Objections were due by July 22, 2019, and responses were due by August 1, 2019.

On July 24, 2019, Respondent submitted a certificate of service regarding its service of its witness information upon Complainants.

On July 30, 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 Complainants had not. Although the June 5, 2019 Notice and the June 6, 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 Complainants every opportunity to participate in the prehearing conference, I had my legal assistant call Complainants to request that they join the conference bridge. My legal assistant called the phone number Complainants listed on their Complaint and spoke to Ms. Rowley.

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<sup>2</sup> The Interim Order inadvertently referred to the July 30, 2019 proceeding as a hearing rather than a conference.

Per my direction, my legal assistant identified himself as my legal assistant, reminded Ms. Rowley of the prehearing conference, and requested that they call into the conference bridge. He also advised her that if they did not call in by 10:10 a.m., I would convene the prehearing conference in their absence.

Complainants did not call into the conference bridge, and, at 10:10 a.m., the prehearing conference proceeded in their absence.

Respondent's counsel advised she had not yet received Complainants' witness information or discovery responses, and she made an oral motion on the record to dismiss the Complaint due to Complainants' failure to appear at the prehearing conference. In order to give Complainants 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 10:16 a.m., and at no point did Complainants call into the conference bridge.

On August 8, 2019, Respondent filed a Motion to Dismiss Complaint of Patricia and Michael Rowley for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainants failed to provide their 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 30, 2019 prehearing conference. Respondent argued the Complaint should be dismissed in its entirety, because Complainants' 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 Complainants to file a response within five days of service. Complainants did not file a response to the Motion to Dismiss.

On August 20, 2019, I issued an Interim Order closing the hearing record.

## FINDINGS OF FACT

1. Complainants are Patricia and Michael Rowley.
2. Respondent is Pennsylvania Electric Company, a jurisdictional public utility.
3. The service location is 1305 East 41<sup>st</sup> Street, Erie, PA 16504.
4. On March 21, 2019, Complainants filed a Complaint against Respondent, alleging, *inter alia*, they objected to the smart meter Respondent installed at their residence.
5. On April 16, 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 April 16, 2019, Respondent filed Preliminary Objections, arguing, *inter alia*, Complainants 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 June 5, 2019, an Interim Order was issued, denying Respondent's Preliminary Objections.
8. On June 5, 2019, the Commission issued a Call-In Telephone Prehearing Conference Notice, scheduling a prehearing conference for 10:00 a.m. on July 30, 2019.
9. On June 6, 2019, two Interim Orders were issued, one scheduling the prehearing conference for July 30, 2019, and one establishing a litigation schedule.

10. The Commission sent the June 5, 2019 Notice and June 6, 2019 Interim Orders to Complainants by regular first-class mail to the address Complainants provided in the Complaint.

11. Neither the June 5, 2019 Notice nor the June 6, 2019 Interim Orders were returned as undeliverable.

12. The June 5, 2019 Notice and the June 6, 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 30, 2019 prehearing conference; and they may lose their case if they did not call into the July 30, 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 24, 2019.

14. On July 12, 2019, Respondent submitted a certificate of service regarding its service of discovery requests upon Complainants. Objections to the discovery requests were due on July 22, 2019, and responses to the discovery requests were due on August 1, 2019.

15. On July 24, 2019, Respondent submitted a certificate of service regarding its service of its witness information upon Complainants.

16. Complainants did not call into the conference on July 30, 2019.

17. On August 8, 2019, Respondent filed a Motion to Dismiss Complainants' Complaint, averring, *inter alia*, Complainants failed to serve their 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 30, 2019.

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

19. Complainants have not filed a certificate of service regarding their service of discovery responses upon Respondent.

20. Complainants have not filed a certificate of service regarding their service of their witness information upon Respondent.

21. Complainants 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 Complainants' failure to respond to the discovery requests, exchange witness information, and appear at the July 30, 2019 prehearing conference. Respondent argues Complainants' actions demonstrate their 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 Complainants, and it filed a certificate of service showing its service of discovery requests upon Complainants on July 12, 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, Complainants' objections, if any, to the discovery requests were due by July 22, 2019, and their responses were due by August 1, 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 24, 2019. On July 24, 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 Complainants' witness information or discovery responses.

Finally, Complainants failed to appear at the prehearing conference on July 30, 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 30, 2019. Complainants received notice of the prehearing conference via a Call-In Telephone Prehearing Conference Notice issued June 5, 2019 and an Interim Order issued June 6, 2019. Copies of the Notice and Interim Order were mailed to Complainants via regular first-class mail to the address Complainants 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 Complainants 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 June 5, 2019 Notice and June 6, 2019 Interim Order advised Complainants of the importance of appearing for the July 30, 2019 prehearing conference, instructed them on how to call into the conference bridge, and warned them that their case may be dismissed if they did not participate. When Complainants did not call into the conference bridge, my legal assistant called the number Complainants provided on their Complaint and spoke to Ms. Rowley. My legal assistant reminded Ms. Rowley of the conference, encouraged her to call into the conference bridge, and advised her that if she did not call into the conference bridge by 10:10 a.m., I would convene the conference in her absence. The conference convened in Complainants' absence at 10:10 a.m., and was adjourned at 10:16 a.m. At no point did Complainants 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).

Complainants have 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 20, 2019, Complainants had not filed a certificate of service showing their service of their witness information upon Respondent, in violation of the Interim Order issued June 6, 2019. Additionally, Complainants had not served any response to the discovery requests upon Respondent, in violation of the Commission's rules. Finally, Complainants failed to appear at the prehearing conference on July 30, 2019, in violation of the June 6, 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 Complainants by the deadline, and appeared for the prehearing conference that Complainants chose not to attend. Complainants' actions have denied Respondent the opportunity to prepare a

defense to Complainants' claims. Complainants have failed to engage in these proceedings in any way since they filed their Complaint on March 21, 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 Pennsylvania Electric Company to Dismiss the Complaint of Patricia and Michael Rowley filed on March 21, 2019 at Docket No. C-2019-3008815, is granted.

2. That the Complaint filed by Patricia and Michael Rowley against Pennsylvania Electric Company at Docket No. C-2019-3008815 is hereby dismissed with prejudice due to Complainants’ failure to provide their 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 30, 2019, in violation of an Interim Order dated June 6, 2019.

3. That the Secretary’s Bureau shall mark Docket No. C-2019-3008815 as closed.

Date: August 30, 2019

\_\_\_\_\_/s/  
Emily I. DeVoe  
Administrative Law Judge