

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas E. List	:	C-2018-3003090
	:	C-2018-3003091
v.	:	
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaints filed by Thomas E. List for his failure to exchange witness information and file a certificate of service by January 24, 2019, regarding his service of his witness information upon Respondent, in violation of Interim Orders dated November 19, 2018; his failure to serve responses to the discovery requests upon Respondent and file a certificate of service by April 8, 2019, in violation of an Interim Order issued March 15, 2019; and his failure to serve witness information and discovery responses upon Respondent and file certificates of service by June 7, 2019, in violation of an Interim Order issued May 30, 2019.

HISTORY OF THE PROCEEDING

Thomas E. List (Complainant) filed two Formal Complaints (Complaints) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on June 27, 2018. In the Complaint docketed at Docket No. C-2018-3003090 (First Complaint), Complainant averred that Respondent was threatening to

terminate electric service at 920 Imperial Drive, Mohnton, PA 19540, unless Complainant agreed to the installation of a smart meter, and he does not want a smart meter installed due to health and privacy concerns. As relief, Complainant requested that he be allowed to “opt out” of the smart meter program and keep an analog meter with no penalty or additional monthly fees.

In the Complaint docketed at Docket No. C-2018-3003091 (Second Complaint), Complainant averred that Respondent terminated electric service at 843 Imperial Drive, Mohnton, PA 19540, because Complainant refused the installation of a smart meter, and he does not want a smart meter installed due to health and privacy concerns. As relief, Complainant requested that he be allowed to “opt out” of the smart meter program and keep an analog meter at this address with no penalty or additional monthly fees.

On July 19, 2018, Respondent filed an Answer and New Matter to both Complaints, admitting that it provides residential electric service to 920 Imperial Drive, Mohnton, PA 19540 and 843 Imperial Drive, Mohnton, PA 19540 (service locations), and averring that Complainant has refused the installation of a smart meter at the service locations; Respondent is required by Act 129 of 2008¹ (Act 129) and its Commission-approved Smart Meter Deployment Plan (SMP) 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 locations. Respondent denied the remaining material allegations set forth in the Complaints.

On July 19, 2018, Respondent also filed Preliminary Objections to the Complaints, averring the requests 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 locations; and Respondent is required by Act 129 and its SMP to install a smart meter at the service locations. Respondent argued that the Complaints are legally insufficient, because they fail to state a claim upon which the Commission can grant relief; a hearing is not in the public interest; and the Complaints do not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

The Preliminary Objections filed in each case 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 in either case.

On August 22, 2018, the Commission issued Motion Judge Assignment Notices, assigning both proceedings to me.

On November 19, 2018, I issued two Interim Orders, one in each case, denying the Preliminary Objections.

On November 19, 2018, I issued two additional Interim Orders, establishing an initial litigation schedule for each case. I ordered the Parties to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other party by January 24, 2019.

On January 17, 2019, I issued an Interim Order, consolidating the proceedings for Docket Nos. C-2018-3003090 and C-2019-3003091 under Docket No. C-2018-3003090.

On January 24, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

On February 5, 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 15, 2019, and responses were due by February 25, 2019.

On March 5, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring that 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 March 15, 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 April 8, 2019.

On April 23, 2019, Respondent filed a Motion to Dismiss Complaints of Thomas E. List 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 November 19, 2018 Interim Orders, and failed to provide responses to Respondent's discovery requests in violation of the March 15, 2019 Interim Order. Respondent argued the Complaints should be dismissed in their entirety, because Complainant's failure to respond to the discovery requests and provide witness information 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.

On May 13, 2019, Respondent filed a status report dated May 10, 2019, pursuant to the Interim Order entered on November 19, 2019 advising that it had not yet received Complainant's witness information or his discovery responses.

In order to give Complainant one final opportunity to participate in the proceedings, I issued an Interim Order on May 30, 2019, holding the Motion to Dismiss in abeyance and ordering Complainant to submit his witness information to Respondent and file a certificate of service by June 7, 2019, and serve upon Respondent's counsel full and complete responses to the discovery requests and file a certificate of service by June 7, 2019.

On June 17, 2019, Respondent filed a status report dated June 13, 2019, advising, *inter alia*, it had not yet received Complainant's witness information or discovery responses, and the only communication it had received from Complainant since he filed his Complaints was a

letter dated May 2, 2019 in which Complainant noted he believed moving his case forward would be “pointless.” Complainant did not submit a status report.

As of the date of this Initial Decision, Complainant has not filed certificates of service regarding his service of his witness information or his discovery responses upon Respondent.

The record closed on June 17, 2019, the due date for the submission of status reports.

FINDINGS OF FACT

1. Complainant is Thomas E. List.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service locations are 920 Imperial Drive, Mohnton, PA 19540 and 843 Imperial Drive, Mohnton, PA 19540.
4. On June 27, 2018, Complainant filed two Complaints against Respondent. The First Complaint, docketed at Docket No. C-2018-3003090, alleged that Respondent was threatening to terminate electric service to 920 Imperial Drive, Mohnton, PA 19540, unless he agreed to the installation of a smart meter. The Second Complaint, docketed at Docket No. C-2018-3003091, alleged that Respondent terminated electric service to 843 Imperial Drive, Mohnton, PA 19540, because he did not agree to the installation of a smart meter.
5. On July 19, 2018, Respondent filed an Answer and New Matter to both the Complaints, averring that Respondent was required to install a smart meter at the service locations.

6. On July 19, 2018, Respondent filed Preliminary Objections to each Complaint, 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 November 19, 2018, Interim Orders were issued in each case, denying the Preliminary Objections.

8. On November 19, 2018, Interim Orders were issued in each case, establishing litigation schedules and ordering the Parties to, *inter alia*, exchange witness information by January 24, 2019.

9. On January 17, 2019, an Interim Order was issued, consolidating the proceedings for C-2018-3003090 and C-2018-3003091 under Docket No. C-2018-3003090.

10. On January 24, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

11. On February 5, 2019, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant. Objections were due by February 15, 2019, and responses were due by February 25, 2019.

12. On March 5, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had not served any response to the discovery requests.

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

14. On March 15, 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 April 8, 2019.

15. On April 23, 2019, Respondent filed a Motion to Dismiss Complainant's Complaints, averring, *inter alia*, Complainant failed to serve his witness information upon Respondent, in violation of the Interim Order dated November 19, 2018; 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 March 15, 2019.

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

17. On May 30, 2019, an Interim Order was issued, holding the Motion to Dismiss in abeyance and ordering Complainant to serve his witness information and discovery responses upon Respondent's counsel and file certificates of service by June 7, 2018.

18. On June 17, 2019, Respondent submitted a status report dated June 13, 2019, advising, *inter alia*, it had not received Complainant's witness information nor any discovery responses.

19. Complainant did not submit a status report.

20. Complainant has not filed a certificate of service regarding his service of responses to the discovery requests upon Respondent.

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

DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaints should be dismissed in their entirety due to Complainant's failure to respond to the discovery requests, in

violation of the March 15, 2019 Interim Order, and exchange witness information, in violation of the November 19, 2018 Interim Order. Respondent argues Complainant's actions demonstrate his lack of willingness to prosecute his Complaints.

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 February 5, 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 March 5, 2019, averring that Complainant had not provided any response to the discovery requests. Complainant did not file a response to the Motion to Compel. The Motion to Compel was granted by an Interim Order dated March 15, 2019. The March 15, 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 April 8, 2019.

On November 19, 2018, I issued Interim Orders, directing the Parties to, *inter alia*, exchange witness information by January 24, 2019. On January 24, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

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

In order to give Complainant one final opportunity to participate in these proceedings, I issued an Interim Order on May 30, 2019, holding the Motion to Dismiss in abeyance and ordering Complainant to, *inter alia*, submit his witness information and full and complete discovery responses to Respondent's counsel and file certificates of service by June 7, 2019.

On June 17, 2019, Respondent filed a status report dated June 13, 2019, advising that it still 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 four Interim Orders issued in these consolidated cases. As of the date of this Initial Decision, Complainant did not file a certificate of service showing his service of his witness information upon Respondent by January 24, 2019, in violation of the Interim Orders issued November 19, 2018. Additionally, Complainant has not filed a certificate of service showing his service of full and complete responses to the discovery requests upon Respondent by April 8, 2019, in violation of the Interim Order issued March 15, 2019. Finally, when given a final opportunity to participate in these proceedings, he failed to submit his witness information and discovery responses and file certificates of service by June 7, 2019, in violation of the Interim Order issued May 30, 2019.

Both parties have due process rights that must be protected. Respondent filed a certificate of service regarding its service of its witness information upon Complainant by the deadline, and 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. Complainant has failed to participate in these proceedings in any way since he filed his Complaints. 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. 52 Pa.Code § 5.21(d). Accordingly, the Complaints will be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of these Complaints. 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).

7. A hearing on the consolidated complaints is not necessary in the public interest. 52 Pa.Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaints of Thomas E. List filed on June 27, 2018 at Docket Nos. C-2018-3003090 and C-2018-3003091, is granted.

2. That the Complaints filed by Thomas E. List against Metropolitan Edison Company at Docket Nos. C-2018-3003090 and C-2018-3003091 are hereby dismissed with prejudice due to Complainant's failure to file a certificate of service regarding his service of his witness information by January 24, 2019, in violation of the Interim Orders dated November 19, 2018; his failure to serve discovery responses upon Respondent and file a certificate of service by April 8, 2019, in violation of an Interim Order issued March 15, 2019; and his failure to serve witness information and discovery responses and file certificates of service by June 7, 2019, in violation of the Interim Order issued May 30, 2019.

