

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                         |   |                |
|-------------------------|---|----------------|
| Robert Redinger, Jr.    | : |                |
|                         | : |                |
| v.                      | : | C-2018-3000938 |
|                         | : |                |
| West Penn Power Company | : |                |

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Robert Redinger, Jr., for his failure to provide witness information to Respondent by January 25, 2019, in violation of an Interim Order dated November 6, 2018; and his failure to serve responses to the discovery requests upon Respondent and file a certificate of service by July 1, 2019, in violation of an Interim Order dated June 10, 2019.

**HISTORY OF THE PROCEEDING**

Robert Redinger, Jr. (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent) on March 26, 2018, averring that Respondent was threatening to terminate his electric service at his residence at 1881 Painters Run Road, Pittsburgh, PA 15241 (service location) unless Complainant agreed to the installation of a smart meter; and he objects to the installation of a smart meter at the service location due to health and safety concerns, and concerns regarding Respondent's ability to control his electricity usage. As relief, Complainant requested he be allowed to opt-out of smart meter installation.

On April 24, 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 2008 (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 denied the remaining material allegations set forth in the Complaint.

On April 24, 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 May 29, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On June 7, 2018, I issued an Interim Order, denying the Preliminary Objections.

On November 6, 2018, I issued an Interim Order, establishing an initial litigation schedule. 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 25, 2019; conclude discovery by March 22, 2019; and file a status report by April 10, 2019. The Interim Order consisted of seven pages and advised the parties that this matter is a formal proceeding and will be conducted in accordance with the Commission's Rules of Practice and Procedure. The parties were also directed to attempt to resolve any discovery disputes amicably and if they fail, to follow the Commission's procedures pursuant to 52 Pa.Code §§ 5.321, *et seq.*

On November 15, 2018, 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 November 25, 2018, and responses were due by December 5, 2018.

On January 16, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring that Complainant contacted Respondent's counsel on December 5, 2018 seeking an extension to provide responses or to file objections to the discovery requests. Respondent advised it agreed to provide an extension of time such that Complainant would file objections no later than December 31, 2018 and Complainant would provide complete responses no later than January 10, 2019. Respondent averred that Complainant did not file any objection and did not provide any response to the discovery requests by the extended deadlines. The Motion to Compel contained a Notice to Plead, requiring Complainant to file a response within five days of service.

On January 25, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

On January 28, 2019, Complainant filed a response to the Motion to Compel, advising, *inter alia*, he "objects" to the discovery requests because they include "extremely numerous and irrelevant questions." He advised, "I will present what I have at a potential hearing and not before."

On April 10, 2019, Respondent submitted a status report, advising it had not yet received Complainant's witness information and that its Motion to Compel was outstanding. Complainant did not submit a status report.

I issued an Interim Order dated June 10, 2019, 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 July 1, 2019.

On July 26, 2019, Respondent filed a Motion to Dismiss Complaint of Robert Redinger, Jr., 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 6, 2018 Interim Order, and he failed to provide responses to Respondent's discovery requests in violation of the June 10, 2019 Interim Order.

The Motion to Dismiss contained a Notice to Plead, requiring Complainant to file a response within five days of service. On a copy of the Notice to Plead, Complainant wrote, "I dispute the 'Motion to Dismiss.' Any evidence and/or witnesses will be provided at any potential hearing." The notation was dated July 29, 2019, was signed by Complainant and was filed on August 1, 2019. Complainant further noted that he previously objected to the discovery requests served upon Complainant. The filing by Complainant did not contain a Certificate of Service indicating that it was served upon counsel for Respondent. In addition, a copy was not provided to the undersigned presiding officer.

The record closed on July 31, 2019, the due date for Complainant to submit a response to the Motion to Dismiss.

#### FINDINGS OF FACT

1. Complainant is Robert Redinger, Jr.
2. Respondent is West Penn Power Company, a jurisdictional public utility.

3. The service location is 1881 Painters Run Road, Pittsburgh, PA 15241.
4. On March 26, 2018, Complainant filed a Complaint against Respondent, alleging Respondent was threatening to terminate his electric service unless he agreed to the installation of a smart meter at his residence.
5. On April 24, 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 April 24, 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 June 7, 2018, an Interim Order was issued, denying the Preliminary Objections.
8. On November 6, 2018, an Interim Order was issued, establishing an initial litigation schedule and ordering the parties to, *inter alia*, exchange witness information by January 25, 2019.
9. On November 15, 2018, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant.
10. On January 16, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had requested, and Respondent had agreed to, an extension of time for Complainant to file objections and submit responses to the discovery requests, such that the deadline for Complainant to file objections was December 31, 2018 and the deadline for Complainant to submit responses was January 10, 2019.

11. In its Motion to Compel, Respondent averred that, despite the extension of the deadlines, Complainant failed to provide any response to the discovery requests.

12. On January 25, 2019, Respondent filed a certificate of service regarding its service of its witness information upon Complainant.

13. On January 28, 2018, Complainant filed a response to the Motion to Compel, averring, *inter alia*, he objected to the discovery requests and would present his evidence at a hearing and not before.

14. On April 10, 2019, Respondent filed a status report, advising it had not received Complainant's witness information or any response to the discovery requests.

15. Complainant did not file a status report.

16. An Interim Order dated June 10, 2019 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 July 1, 2019.

17. On July 26, 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 November 6, 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 June 10, 2019.

18. On August 1, 2019, Complainant filed a copy of the Notice to Plead attached to the Motion to Dismiss.

19. The notation on Complainant's filed copy of the Notice to Plead was dated July 29, 2019 and stated, "I dispute the 'Motion to Dismiss.' Any evidence and/or witnesses will be provided at any potential hearing."

20. The filing by Complainant did not contain a Certificate of Service indicating that it was served upon counsel for Respondent. In addition, a copy was not provided to the undersigned presiding officer.

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

22. 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 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 June 10, 2019 Interim Order, and exchange witness information, in violation of the November 6, 2018 Interim Order. Respondent argues Complainant's actions demonstrate his lack of willingness to prosecute his Complaint.

Respondent's argument is supported by the filing of Complainant. On January 28, 2019, Complainant filed a letter dated January 23, 2019, untimely objecting to the discovery requests and stating, "I will present what I have at a potential hearing and not before."

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 November 15, 2018.

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 January 16, 2019, averring that although the parties agreed to extensions of the deadlines for Complainant to submit responses and file objections, Complainant failed to provide any response to the discovery requests. On January 28, 2019, Complainant filed a response to the Motion to Compel, averring that he objected to the discovery requests and would provide his evidence at a hearing and not before.

The Motion to Compel was granted by an Interim Order dated June 10, 2019. The June 10, 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 July 1, 2019.

On November 6, 2018, I issued an Interim Order, directing the parties to, *inter alia*, exchange witness information by January 25, 2019. On January 25, 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 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).

The Commission recently considered similar cases where a complainant filed a complaint objecting to the installation of a smart meter and subsequently failed to comply with an order requiring the complainant to exchange witness information and failed to comply with an order granting a motion to compel. *See Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019); *Diana Cook v. West Penn Power*, Docket No. C-3003051 (Final Order entered July 11, 2019); *Darlene Stanton v. Pennsylvania Electric Company*, Docket No. C-2018-3001144 (Final Order entered July 11, 2019); *B. Susanne Spohn v. Metropolitan Edison Company*, Docket No. C-2018-3001725 (Final Ordered entered August 8, 2019). In each of these cases, the Commission unanimously upheld the administrative law judge's decision to dismiss the complaint with prejudice. *Id.*

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 his service of his witness information upon Respondent, in violation of the Interim Order issued November 6, 2018. Additionally, Complainant has not filed a certificate of service showing his service of discovery responses upon Respondent, in violation of the Interim Order dated June 10, 2019. Complainant requested an extension of time to initially respond to the discovery requests, but failed to meet those deadlines. He did not request any additional discovery extensions, nor did he ever request an extension of time to provide his witness information.

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 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, because the Complainant has not prosecuted his Complaint by responding to discovery or identifying his witnesses. 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 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 Robert Redinger, Jr., filed on March 26, 2018 at Docket No. C-2018-3000938, is granted.

2. That the Complaint filed by Robert Redinger, Jr., against West Penn Power Company at Docket No. C-2018-3000938 is hereby dismissed with prejudice due to Complainant's failure to provide his witness information to Respondent, in violation of an Interim Order dated November 6, 2018, and his failure to serve responses to the discovery requests upon Respondent and file a certificate of service by July 1, 2019, in violation of an Interim Order dated June 10, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3000938 as closed.

Date: September 11, 2019

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/s/  
Jeffrey A. Watson  
Administrative Law Judge