

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christine Schomberg	:	
	:	
v.	:	C-2018-3006189
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Christine Schomberg for her failure to serve her witness information upon Respondent by August 20, 2019, in violation of an Interim Order dated June 11, 2019; and her failure to serve her discovery responses upon Respondent and file a certificate of service by August 19, 2019, in violation of an Interim Order issued July 31, 2019.

HISTORY OF THE PROCEEDING

Christine Schomberg (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) on November 26, 2018, objecting to the installation of a smart meter at her residence at 2206 Cherry Court, Stroudsburg, PA 18360 (service location), due to health, safety, privacy, and security concerns. Complainant also averred that Respondent was engaged in bullying tactics and constantly threatened to disconnect her electric service. As relief, Complainant requested she be allowed to keep her current meter.

On December 17, 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 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 denied the remaining material allegations 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 and its SMP to install a smart meter at the service location; neither Act 129 nor the SMP permit Complainant to opt-out of smart meter installation; and the Commission is unable to grant the relief requested by Complainant.

On December 17, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request to opt-out of smart meter installation is not legally recoverable and Complainant 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 averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the 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.

The Preliminary Objections contained 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 January 22, 2019, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On June 11, 2019, I issued two Interim Orders, one denying Respondent's 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, and written summaries of the expected testimony for each witness (witness information) to the other party by August 20, 2019.

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

On July 23, 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 July 31, 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 August 19, 2019.

On August 20, 2019, Respondent provided its witness information to Complainant.

On August 27, 2019, Respondent filed a Motion to Dismiss Complaint of Christine Schomberg for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide her witness information, as ordered by the June 11, 2019 Interim Order, and failed to provide responses to Respondent's discovery requests, in violation of the July 31, 2019 Interim Order. Respondent averred Complainant, at no point, contacted Respondent to discuss the discovery requests. Respondent argued the Complaint should be dismissed in its 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.

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

The record closed on September 3, 2019, the first business day following the expiration of Complainant's deadline to file a response to the Motion to Dismiss.

FINDINGS OF FACT

1. Complainant is Christine Schomberg.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 2206 Cherry Court, Stroudsburg, PA 18360.
4. On November 26, 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 December 17, 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 December 17, 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 11, 2019, an Interim Order was issued, establishing an initial litigation schedule and ordering the parties to, *inter alia*, exchange witness information by August 20, 2019.

8. On June 11, 2019, an Interim Order was issued, denying Respondent's Preliminary Objections.

9. On June 25, 2019, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant.

10. On July 23, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had not served any response to the discovery requests.

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

12. On July 31, 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 August 19, 2019.

13. On August 20, 2019, Respondent provided its witness information to Complainant.

14. On August 27, 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 June 11, 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 July 31, 2019.

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

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

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

18. 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, in violation of the July 31, 2019 Interim Order, and exchange witness information, in violation of the June 11, 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 June 25, 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 July 5, 2019, and her responses were due by July 15, 2019.

On July 23, 2019, Respondent filed a Motion to Compel, averring Complainant had not submitted any response to the discovery requests. Complainant did not file a response to the Motion to Compel.

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. As such, on July 31, 2019, I issued an Interim Order granting the Motion to Compel and directing 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 by August 19, 2019.

On June 11, 2019, I issued an Interim Order, directing the Parties to, *inter alia*, exchange witness information by August 20, 2019. On August 20, 2019, Respondent provided its witness information to 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).

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 June 11, 2019. Additionally, Complainant has not filed a certificate of service showing her service of full and complete responses to the discovery requests upon Respondent, in violation of the Interim Order issued July 31, 2019. At no point did Complainant request that any of her deadlines be extended.

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.*

Both parties have due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery and complied with the Interim Order requiring the exchange of witness information. Complainant has failed to engage in these proceedings in any way since filing her Complaint. By failing to respond to discovery and provide her witness information, Complainant has denied Respondent the opportunity to prepare a defense to her 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 with prejudice. The dismissal of the Complaint with prejudice is consistent with recent Commission precedent.

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 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaint of Christine Schomberg filed on November 26, 2018 at Docket No. C-2018-3006189, is granted.

2. That the Complaint filed by Christine Schomberg against Metropolitan Edison Company at Docket No. C-2018-3006189 is hereby dismissed with prejudice due to Complainant's failure to file a certificate of service regarding her service of her witness information, in violation of an Interim Order dated June 11, 2019, and her failure to serve discovery responses upon Respondent and file a certificate of service, in violation of an Interim Order issued July 31, 2019.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3006189 as closed.

Date: October 10, 2019

/s/
Jeffrey A. Watson
Administrative Law Judge