

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Pauli Kleeman	:	
	:	
v.	:	C-2019-3010235
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal complaint filed by Mark Pauli Kleeman against PPL Electric Utilities Corporation due to his failure to serve discovery responses upon Respondent in violation of an Order Granting Motion to Compel, dated September 19, 2019.

**HISTORY OF THE PROCEEDING**

On May 23, 2019, the Complainant, Mark Pauli Kleeman, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) in which he objected to the installation of a smart meter at his residence. Complainant averred that smart meters are health hazards. By way of relief, Mr. Kleeman requested that an analog meter be re-installed at his residence.

On July 25, 2019, PPL filed an answer to the complaint. In its answer, PPL admitted that it installed a new automated metering infrastructure (AMI) meter (smart meter) at

the Complainant's residence. PPL averred that it is required by Act 129 of 2008<sup>1</sup> (Act 129) and its Commission-approved Smart Meter Deployment Plan (SMP) to install a smart meter at the service location. It further averred that there is nothing in the Public Utility Code, the Commission's orders and regulations, or PPL's SMP allowing customers to opt out of smart meter installation.

On July 29, 2019, the Commission issued a Call-In Telephone Hearing Notice in which it scheduled an initial call-in telephonic hearing for Wednesday, September 25, 2019 and assigned me as the Presiding Officer.

PPL filed a certificate of service evidencing its service of discovery requests upon Complainant on July 31, 2019. Objections, if any, to the discovery requests were due by August 12, 2019, and answers were due by August 20, 2019.

On September 12, 2019, PPL filed a Motion to Compel Responses to Discovery (Motion to Compel), averring that it had not received any objections or responses to its discovery requests propounded on the Complainant on July 31, 2019. 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 September 19, 2019, I issued a Hearing Cancellation Notice by which the September 25, 2019 hearing was canceled. A copy of this notice was mailed to Mr. Kleeman at the address provided by him on his complaint form. Subsequently, on or about September 29, 2019, the envelope containing the hearing cancellation notice that was addressed to Mr. Kleeman and mailed to him was returned to my office with a notation stating, "Refused / Return to Sender."

Also, on September 19, 2019, I issued an Order Granting Motion to Compel in which I granted PPL's Motion to Compel and ordered Mr. Kleeman to serve full and complete responses to the discovery requests upon PPL within ten (10) days of the dated of the order. In

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

my order, I instructed Mr. Kleeman as follows: “Mr. Kleeman is also hereby put on notice that failure to comply with this order may result in dismissal of his complaint.” (Order Granting Motion to Compel, p. 2). My Order Granting Motion to Compel was sent to Mr. Kleeman at the address provided by him on his complaint form. Subsequently, on approximately September 29, 2019, the envelope containing my order that was addressed to Mr. Kleeman and mailed to him was returned to my office with a notation stating, “Refused / Return to Sender.”

On October 2, 2019, PPL filed a Motion to Dismiss the Formal Complaint of Mark Pauli Kleeman (Motion to Dismiss) in which it seeks dismissal of the complaint due to Complainant’s failure to comply with my September 19, 2019 Order and provide answers to PPL’s discovery requests. PPL argues the complaint should be dismissed in its entirety because of Complainant’s failure to comply with my Order and respond to the discovery requests, thereby demonstrating 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 PPL’s Motion to Dismiss.

As of the date of this Initial Decision, Complainant has not filed a certificate of service evidencing service of discovery responses upon PPL.

The record closed on October 7, 2019, the first business day following the expiration of Complainant’s deadline to file a response to PPL’s Motion to Dismiss.

#### FINDINGS OF FACT

1. Complainant is Mark Pauli Kleeman.
2. Respondent is PPL Electric Utilities Corporation, a jurisdictional public utility.

3. The service location at issue here is 203 W. 3<sup>rd</sup> Street, Nescopeck, PA 18635.
4. On May 23, 2019, Complainant filed a formal complaint against Respondent, averring that smart meters are health hazards and requesting that the smart meter installed at his residence be removed and replaced with an analog meter.
5. On July 25, 2019, PPL filed an answer to Mr. Kleeman's complaint.
6. On July 29, 2019, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial evidentiary hearing for September 25, 2019.
7. On September 12, 2019, PPL filed a Motion to Compel Responses to Discovery in which it averred that Mr. Kleeman failed to either object or provide answers to discovery requests propounded by the company on July 31, 2019.
8. PPL's Motion to Compel contained a Notice to Plead, instructing Mr. Kleeman to file a response to the motion within five days, pursuant to 52 Pa. Code § 5.342(g)(1).
9. Mr. Kleeman never filed an answer to PPL's Motion to Compel.
10. On September 19, 2019, the Commission issued a Hearing Cancellation Notice by which it informed the parties that the September 25, 2019 hearing had been canceled.
11. On September 19, 2019, I issued an Order Granting Motion to Compel in which I directed Mr. Kleeman to provide full and complete answers to PPL's discovery requests within ten days of the date of the order.
12. My Order Granting Motion to Compel instructed Mr. Kleeman, "Mr. Kleeman is hereby put on notice that failure to comply with this order may result in dismissal of his complaint."

13. On October 2, 2019, PPL filed a Motion to Dismiss Complaint, averring that Complainant failed to serve full and complete responses to the discovery requests upon Respondent in violation of my order Granting Motion to Compel.

14. PPL's Motion to dismiss contained a Notice to Plead instructing Mr. Kleeman to file a response to the motion within five days.

15. Complainant did not file a response to PPL's Motion to Dismiss.

### DISCUSSION

In its Motion to Dismiss, PPL argues that Mr. Kleeman's complaint should be dismissed in its entirety due to his failure to respond to PPL's discovery requests in violation of my September 19, 2019 Order Granting Motion to Compel. PPL states that, as of the date of its Motion to Dismiss, it has not received any responses to its discovery requests from the Complainant.

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, PPL is entitled to engage in discovery in order to obtain information that is relevant and material to the issues raised by Complainant. It filed a certificate of service evidencing its service of discovery requests upon Complainant on July 31, 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 PPL's discovery requests were due by August 12, 2019, and his answers were due by August 20, 2019.

On September 12, 2019, PPL filed a Motion to Compel, averring that Complainant had not submitted any response to the discovery requests. PPL's Motion to Compel properly contained a Notice to Plead. 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. On September 19, 2019, I issued an Order Granting the Motion to Compel and directing Complainant to serve full and complete responses to the discovery requests on PPL within ten days of the date of the order, or by September 29, 2019. As noted above, the envelope containing my Order Granting Motion to Compel was returned to my office with the notation, "Refused / Return to Sender."

In its Motion to Dismiss, PPL averred it had not yet received Complainant's 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 violated my Order Granting Motion to Compel. As of the date of this Initial Decision, Complainant has not filed a certificate of service showing his service of full and complete responses to the discovery requests upon Respondent. At no point did Complainant request that any 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

orders requiring the Complainant to exchange witness information or failed to comply with orders granting motions to compel discovery responses. *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.*

Respondent and Complainant have due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery. Complainant has failed to engage in this proceeding in any way since filing his complaint. This is evidenced by his failure to accept documents sent to him from the Commission at the address provided by him on his complaint form or respond to any Motion submitted or any Order issued in this matter. By failing to comply with my Order Granting Motion to Compel and provide responses to PPL's discovery, Mr. Kleeman has denied PPL the opportunity to fully prepare a defense to his claims. To proceed with this matter under these circumstances would result in the denial of PPL's due process rights. Accordingly, the formal 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 PPL Electric Utilities Corporation to Dismiss the Complaint of Mark Pauli Kleeman at Docket No. C-2019-3010235, is granted.

2. That the formal complaint filed by Mark Pauli Kleeman at Docket No. C2019-3010235, is hereby dismissed with prejudice due to Complainant’s failure comply with

the Order Granting Motion to Compel, dated September 19, 2019, and provide full and complete answers to discovery propounded by PPL.

3. That the Secretary's Bureau shall mark the proceeding at Docket No. C-2019-3010235 closed.

Date: November 5, 2019

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/s/  
Steven K. Haas  
Administrative Law Judge