

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sandy Janick	:	
	:	
v.	:	C-2019-3007661
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Sandy Janick for her failure to serve her discovery responses upon Respondent by August 20, 2019, in violation of an Interim Order dated July 23, 2019.

HISTORY OF THE PROCEEDING

Sandy Janick (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent) on January 31, 2019, objecting to the installation of a smart meter at her residence at 602 Thornton Avenue, Greensburg, PA 15601 (service location), due to health, safety, privacy, and cyber security concerns. As relief, Complainant requested she be permitted to keep her current meter.

On February 25, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent admits that it provides residential retail electric service to Complainant at 602 Thornton Avenue, Greensburg, Pennsylvania. Respondent avers that Complainant has

refused to allow the Company access to the Company's meter in order to install a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent denied the remaining material allegations set forth in the Complaint. Respondent further avers it is required by Act 129 of 2008 (Act 129)¹ to install a smart meter. Respondent essentially denied the remaining material averments set forth in the formal complaint. Respondent further avers that its Smart Meter Deployment Plan (SMP), which was approved by the Commission, contemplates the deployment of approximately 709,000 smart meters beginning in January of 2016 through mid-2019 and includes all customers. Respondent avers that neither its tariff, Act 129 or its SMP permits the Company to forbear from the smart meter installation requirement or enable the Commission or Company to permit the opt-out of smart meter installation or delay installation in contradiction to the SMP.

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 February 25, 2019, 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.

On March 20, 2019, Complainant filed a response to Respondent's Answer and New Matter.

¹ 66 Pa.C.S § 2806.1 et seq.

On March 28, 2019, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On May 3, 2019, I issued an Interim Order, denying Respondent's Preliminary Objections.

On May 16, 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 May 27, 2019, and responses were due by June 5, 2019.

On July 19, 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 23, 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 20, 2019.

On August 30, 2019, Respondent filed a Motion to Dismiss Complaint of Sandy Janick for Failure to Comply with an Order (Motion to Dismiss), averring, *inter alia*, Complainant failed to provide responses to Respondent's discovery requests, in violation of the July 23, 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 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 upon Respondent.

The record closed on September 4, 2019, the expiration of Complainant's deadline to file a response to the Motion to Dismiss.

FINDINGS OF FACT

1. Complainant is Sandy Janick.
2. Respondent is West Penn Power Company, a jurisdictional public utility.
3. The service location is 602 Thornton Avenue, Greensburg, PA 15601.
4. On January 31, 2019, 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 February 25, 2019, Respondent concurrently filed an Answer and New Matter to the Complaint, averring that Respondent was required to install a smart meter at the service location, and 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.
6. On March 20, 2019, Complainant filed a response to Respondent's Answer and New Matter.

7. On May 3, 2019, an Interim Order was issued, denying Respondent's Preliminary Objections.

8. On May 16, 2019, Respondent filed a certificate of service regarding its service of discovery requests upon Complainant.

9. On July 19, 2019, Respondent filed a Motion to Compel responses to the discovery requests, averring that Complainant had not served any response to the discovery requests.

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

11. On July 23, 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.

12. On August 30, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant 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 23, 2019.

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

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

15. 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 23, 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. It filed a certificate of service showing its service of discovery requests upon Complainant on May 16, 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 May 27, 2019, and her responses were due by June 5, 2019.

On July 19, 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 23, 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 20, 2019.

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 an Interim Order issued in this case. As of the date of this Initial Decision, 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 23, 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 Order 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. Complainant has failed to in respond to discovery in this proceeding, 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 regulation at 52 Pa.Code § 5.371 addresses 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 regulation at 52 Pa.Code § 5.372 provides 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).

