

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel Faut	:	
	:	
v.	:	C-2019-3009213
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Jeffrey Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint filed by Daniel Faut for his failure to provide witness information to Respondent and to file a certificate of service regarding service of his witness information by August 1, 2019, in violation of an Interim Order dated May 24, 2019, and his failure to serve full and complete responses to the Discovery Requests upon Respondent and file a certificate of service by August 16, 2019, in violation of an Interim Order issued July 23, 2019, and for his failure to attend the prehearing conference.

**HISTORY OF THE PROCEEDING**

Daniel Faut (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or the Company) on April 4, 2019, objecting to the installation of a smart meter at his residence at 127 Merkel Road, Gilbertsville, Pennsylvania 19525 (service location), due to health, privacy, and fire safety concerns. As relief, Complainant requested that he be allowed to keep his analog meter.

On May 6, 2019, 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<sup>1</sup> (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 May 17, 2019, in accordance with 52 Pa.Code § 5.341, the Company forwarded to Complainant interrogatories and document requests (Discovery Requests) via first-class mail. In its Discovery Requests, the Company sought information and documents related to Complainant's allegations regarding the Company's smart meters. Objections to the Discovery Requests were due by May 27, 2019, and responses to the Discovery Requests were due by June 6, 2019.

Complainant did not submit any objections to the Respondent's Discovery Requests by the May 27, 2019 deadline and failed to submit responses by the June 6, 2019 deadline.

On May 24, 2019, an Interim Order Establishing Initial Litigation Schedule was entered instructing the parties, *inter alia*, to provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other party by August 1, 2019, for expert and factual witnesses, to conclude discovery by September 5, 2019, and to file a status report by November 20, 2019.

Also, on May 24, 2019, an Interim Order Scheduling Prehearing Conference was entered, ordering the parties to fully participate in the prehearing conference on July 24, 2019,

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

and to be fully prepared for the prehearing conference. The order was provided to Complainant at the address listed on his Complaint and was not returned to the Commission as undelivered.

On July 8, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), due to the lack of response from Complainant to the 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, 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 with the Commission's Secretary no later than August 16, 2019.

The prehearing conference was convened as scheduled on July 24, 2019. Tori L. Giesler, Esquire, appeared on behalf of Respondent. Complainant did not appear and participate at the prehearing conference. At the prehearing conference, counsel for Respondent moved to dismiss the Formal Complaint with prejudice for failure of Complainant to participate at the prehearing conference. Counsel was directed to reduce the Company's motion to writing.

On August 1, 2019, in accordance with the May 24, 2019 Interim Order, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

On August 23, 2019, Respondent filed a Motion to Dismiss Complaint of Daniel Faut for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to appear at the Initial Telephonic Prehearing Conference, failed to provide his witness information in violation of the May 24, 2019 Interim Order, and failed to provide responses to Respondent's Discovery Requests by August 16, 2019, in violation of the July 23, 2019 Interim Order. Respondent argued the Complaint should be dismissed in its entirety, due to Complainant's failure to respond to the Discovery Requests, provide witness information, and appear at the prehearing conference, which demonstrates Complainant's consistent 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 (August 28, 2019). 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 his service of witness information or responses to the Discovery Requests upon Respondent.

The record closed on November 20, 2019, the deadline for filing a status report as directed by the May 24, 2019 Interim Order. Given Complainant's continued failure to obey Orders entered in this case, the Complaint is being dismissed via this Initial Decision.

#### FINDINGS OF FACT

1. Complainant is Daniel Faut.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 127 Merkel Road, Gilbertsville, Pennsylvania 19525.
4. On April 4, 2019, Complainant filed a Formal Complaint against Respondent, objecting to the installation of a smart meter at his residence due to health, privacy, and fire safety concerns; as relief, Complainant requested he be permitted to keep his current analog meter.

5. On May 6, 2019, Respondent filed an Answer and New Matter to the Complaint, averring that Respondent was required to install a smart meter at the service location, and that Complainant 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 May 17, 2019, Respondent filed a certificate of service regarding its service of Discovery Requests upon Complainant.

7. On May 24, 2019, an Interim Order Establishing Initial Litigation Scheduled was issued instructing the parties, *inter alia*, to provide the names, addresses, and written summaries of the expected testimony for each witness to the other party by August 1, 2019, for expert and factual witnesses, to conclude discovery by September 5, 2019, and to file a status report by November 20, 2019.

8. Also, on May 24, 2019, an Interim Order was issued Scheduling Prehearing Conference ordering the parties to fully participate in the prehearing conference on July 24, 2019, and to be fully prepared for the prehearing conference. The Order was sent to Complainant at his address listed on the Complaint and was not returned to the Commission as undelivered.

9. On July 8, 2019, Respondent filed a Motion to Compel, averring that Complainant had not served full and complete responses to the Discovery Requests.

10. On July 23, 2019, an Interim Order was entered granting Respondent's Motion to Compel, ordering Complainant to provide full and complete responses to all of the Respondent's Interrogatories and Request for Production of Documents not later than August 16, 2019.

11. On July 24, 2019, the prehearing conference was convened as scheduled, with counsel for Respondent present, but Complainant was not in attendance.

12. On August 1, 2019, Respondent filed a certificate of service regarding its service of witness information upon Complainant.

13. On August 23, 2019, Respondent filed a Motion to Dismiss Complaint of Daniel Faut for Failure to Comply with Orders (Motion to Dismiss), averring, *inter alia*, Complainant failed to appear at the Initial Telephonic Prehearing Conference, failed to provide his witness information in violation of the May 24, 2019, Interim Order, and failed to provide responses to Respondent's Discovery Requests by August 16, 2019, in violation of the July 23, 2019 Interim Order.

14. Complainant did not respond to the Motion to Dismiss.

15. Complainant has not filed a certificate of service regarding his service of discovery responses or witness information upon Respondent.

16. 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 appear at the Initial Telephonic Prehearing Conference, failure to provide his witness information by August 1, 2019 in violation of the May 24, 2019, Interim Order, and his failure to provide responses to Respondent's Discovery Requests by August 16, 2019, in violation of the July 23, 2019 Interim Order. Respondent argued Complainant's actions demonstrate Complainant's consistent lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations.

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 May 17, 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. Here, Complainant's objections, if any, to the Discovery Requests were due by May 27, 2019, and responses to the Discovery Requests were due by June 6, 2019.

On July 8, 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, the presiding officer 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 to file a certificate of service with the Commission's Secretary by August 16, 2019.

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 three 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, in violation of the Interim Order issued May 24, 2019. Complainant has not provided full and complete discovery responses and has not filed a certificate of service showing his service of full and complete responses to the Discovery Requests, in violation of the Interim Order issued July 23, 2019. Additionally, Complainant failed to appear at the July 24, 2019 prehearing conference in violation of the Interim Order Scheduling Prehearing Conference issued May 24, 2019.

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 upheld the administrative law judge's decision to dismiss the complaint with prejudice.

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 engage by failing to respond to discovery. Complainant has denied Respondent the opportunity to prepare a defense to his 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. *See* 66 Pa.C.S. § 703(b); 52 Pa.Code § 5.22(d). 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.
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 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. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaint of Daniel Faut filed on August 23, 2019, at Docket No. C-2019-3009213, is granted.

2. That the Complaint filed by Daniel Faut against Metropolitan Edison Company on April 4, 2019, at Docket No. C-2019-3009213 is hereby dismissed with prejudice.

3. That the Secretary’s Bureau shall mark Docket No. C-2019-3009213 as closed.

Date: February 18, 2020

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/s/  
Jeffrey A. Watson  
Administrative Law Judge