

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rodney A. Shaffer	:	
	:	
v.	:	C-2019-3011645
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal complaint filed by Rodney A. Shaffer against Metropolitan Edison Company (Met-Ed or Respondent) due to (1) his failure to serve discovery responses upon Respondent in violation of an Order Granting Motion to Compel dated December 4, 2019, and (2) his failure to identify all witnesses he intended to present at the evidentiary hearing in violation of a Scheduling Order dated December 10, 2019.

HISTORY OF THE PROCEEDING

On July 18, 2019, the Complainant, Rodney A. Shaffer, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Met-Ed. In his complaint, Mr. Shaffer requested that Met-Ed postpone the installation of a smart meter at his residence. On August 8, 2019, Met-Ed filed an answer with new matter denying the material allegations in the formal complaint. On that same day, Met-Ed also filed preliminary objections to the formal complaint.

On August 21, 2019, a Motion Judge Assignment Notice was issued assigning this matter to me for disposition. On September 11, 2019, I issued an Interim Order in which I denied Met-Ed's preliminary objections.

On October 4, 2019, Met-Ed propounded on the Complainant interrogatories and document requests via first class mail. In its discovery requests, Met-Ed sought information and documents related to the Complainant's allegations regarding the company's smart meters.

On October 22, 2019, a Call-In Telephone Prehearing Conference Notice was issued which scheduled a call-in telephonic prehearing conference for December 3, 2019. On October 23, 2019, I issued a Prehearing Order in which I directed the parties to dial in for the prehearing conference pursuant to the Call-In Telephone Prehearing Conference Notice and stated that "failure of a party to participate in the prehearing conference shall constitute a waiver of all objections to the agreements reached, and any orders or rulings issued with respect thereto."

On November 20, 2019, Met-Ed filed a Motion to Compel in which it averred that the Complainant had neither objected to nor provided answers to any of the company's discovery requests. Complainant did not file a response to Met-Ed's Motion to Compel.

On December 3, 2019, the prehearing conference was convened as scheduled. Counsel for Met-Ed participated in the conference. Complainant did not connect to or participate in the prehearing conference; therefore, the prehearing conference proceeded without the Complainant's participation.

On December 4, 2019, I issued an Order Granting Motion to Compel which directed the Complainant to provide responses to Met-Ed's discovery requests no later than December 20, 2019, or face sanctions, including possible dismissal of his formal complaint.

On December 10, 2019, I issued a Scheduling Order in which I directed the parties to provide to each other, in writing, a list of potential fact and expert witnesses no later

than December 20, 2019, and directed the Complainant, again, to provide his responses to Met-Ed's discovery requests no later than December 20, 2019. Also, on December 10, 2019, a Hearing Notice was issued which scheduled an initial in-person hearing for March 17, 2020.

On December 20, 2019, Met-Ed provided notification of its anticipated expert and factual witnesses in accordance with the Scheduling Order. No such notification was provided by the Complainant.

On January 16, 2020, Met-Ed filed a Motion to Dismiss the Formal Complaint due to Mr. Shaffer's failure to comply with interim orders directing him to provide responses to Met-Ed's discovery requests and to identify, in writing, the witnesses he intended to present at the March 17, 2020 evidentiary hearing. Met-Ed's Motion to Dismiss contained a Notice to Plead that informed Mr. Shaffer that he had five days in which to file a response to the motion, if he so intended. To date, a response to Met-Ed's Motion to Dismiss has not been received by the Commission. Met-Ed's Motion to Dismiss is ready for a decision. As more fully explained below, I will grant Met-Ed's Motion and dismiss Mr. Shaffer's complaint due to his failure to comply with my Order Granting Motion to Compel and Scheduling Order.

FINDINGS OF FACT

1. Complainant is Rodney A. Shaffer.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. On July 18, 2019, Complainant filed a formal complaint against Respondent requesting that Met-Ed postpone the installation of a smart meter at his residence.
4. On August 8, 2019, Met-Ed filed an answer with new matter to Mr. Shaffer's complaint.

5. On October 4, 2019, Met-Ed propounded on the Complainant interrogatories and document requests in which it sought information and documents related to the Complainant's allegations regarding Met-Ed's smart meters.

6. On November 20, 2019, Met-Ed filed a Motion to Compel, with a Notice to Plead, in which it indicated that the Complainant had neither objected to nor provided answers to any of the company's discovery requests.

7. Complainant did not file a response to Met-Ed's Motion to Compel.

8. On December 4, 2019, an Order Granting Motion to Compel was issued which directed the Complainant to provide responses to Met-Ed's discovery requests no later than December 20, 2019, or face sanctions, including possible dismissal of his formal complaint.

9. On December 10, 2019, a Scheduling Order was issued in which the parties were directed, *inter alia*, to provide a list of potential fact and expert witnesses no later than December 20, 2019, and which again directed Mr. Shaffer to provide his responses to Met-Ed's discovery requests no later than December 20, 2019.

10. On December 10, 2019, a Hearing Notice was issued which scheduled an initial in-person hearing for March 17, 2020.

11. On December 20, 2019, Met-Ed provided notification of its anticipated expert and factual witnesses in accordance with the Scheduling Order.

12. The Complainant never submitted the identification of his proposed witnesses as directed by the Scheduling Order.

13. On January 16, 2020, Met-Ed filed a Motion to Dismiss the Formal Complaint due to Mr. Shaffer's failure to comply with interim orders directing him to provide

responses to Met-Ed's discovery requests and to identify the witnesses he intended to present at the March 17, 2020 evidentiary hearing.

14. Met-Ed's Motion to Dismiss contained a Notice to Plead, instructing Mr. Shaffer to file a response to the motion within five days.

15. Mr. Shaffer never filed a response to Met-Ed's Motion to Dismiss.

DISCUSSION

In its Motion to Dismiss, Met-Ed argues that Mr. Shaffer's complaint should be dismissed in its entirety due to his failures (1) to respond to Met-Ed's discovery requests in violation of my December 4, 2019 Order Granting Motion to Compel, and (2) to identify witnesses he intended to present at the hearing in violation of my December 10, 2019 Scheduling Order. Met-Ed noted that, as of the date of its Motion to Dismiss, it has not received either responses to its discovery requests or a witness list from the Complainant.

Failure to Answer Discovery Requests

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, Met-Ed 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 October 4, 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 Met-Ed's discovery requests were due by October 14, 2019, and his answers were due by October 24, 2019.

On November 20, 2019, Met-Ed filed a Motion to Compel, averring that Complainant had not submitted any response to the discovery requests. Met-Ed'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 December 4, 2019, I issued an Order Granting the Motion to Compel directing Complainant to serve full and complete responses to the discovery requests on Met-Ed by December 20, 2019.

In its Motion to Dismiss, Met-Ed 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 responses to the discovery requests upon Respondent. At no point did Complainant request that any deadlines be extended.

Failure to Provide Witness List

In my Scheduling Order dated December 10, 2019, I directed, *inter alia*, that the parties provide a list of witnesses each intended to present at the evidentiary hearing in this matter by December 20, 2019. On December 20, 2019, I received from Met-Ed notification of its anticipated expert and factual witnesses in compliance with my December 10, 2019 Scheduling Order. In its Motion to Dismiss, Met-Ed stated that it had not received from the Complainant his proposed witness list by the December 20, 2019 deadline. A search of the Commission's records confirmed that, in fact, the Complainant's witness list had not been filed with or submitted to the Commission.

Disposition

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.*

Respondents and Complainant have due process rights that must be protected. Met-Ed attempted to gather information about Complainant's claims through discovery. Complainant has failed to engage or cooperate in this proceeding since filing his complaint. This is evidenced by his failure to respond to Motions submitted or Orders issued in this matter. By failing to comply with my Order Granting Motion to Compel and Scheduling Order, Mr. Shaffer has denied Met-Ed the opportunity to fully prepare a defense to his claims. To proceed with this

matter under these circumstances would result in the denial of Met-Ed'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 Metropolitan Edison Company to Dismiss the formal complaint of Rodney Shaffer at Docket No. C-2019-3011645, is granted.

2. That the formal complaint filed by Rodney Shaffer at Docket No. C-2019-3011645 is hereby dismissed with prejudice due to Complainant's failure comply with (1) an Order Granting Motion to Compel, dated December 4, 2019, and (2) a Scheduling Order dated December 10, 2019.

3. That the Secretary's Bureau shall mark the proceeding at Docket No. C-2019-3011645 closed.

4. That the evidentiary hearing scheduled for March 17, 2020, is canceled.

Date: February 27, 2020

_____/s/
Steven K. Haas
Administrative Law Judge