

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia Steely	:	
	:	
v.	:	C-2018-3004770
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Patricia Steely for her failure to exchange witness information and serve her discovery responses upon Respondent in violation of the Interim Orders issued May 13, 2019, October 17, 2019, and December 5, 2019.

HISTORY OF THE PROCEEDING

Patricia Steely (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) on September 17, 2018, alleging, *inter alia*, that Respondent threatened to terminate her electric service at her residence, 1116 Rainbow Avenue, Reading, Pennsylvania (service location), and that she objected to the installation of a smart meter due to health concerns. As relief, Complainant requested Respondent forego the installation of a smart meter at the service location.

On October 9, 2018, Respondent filed an Answer and New Matter to the Complaint. Respondent admits that it provides residential retail electric service to Complainant at Complainant's residence. Respondent averred that Complainant 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. Further, Respondent averred it is required by Act 129 of 2008 (Act 129) to install a smart meter at Complainant's residence. Additionally, Respondent's Smart Meter Deployment Plan (SMP), which was approved by the Commission, requires the installation of a smart meter. Respondent averred that neither its tariff, Act 129 nor 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. 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 and that neither Act 129 nor the SMP permit Complainant to opt-out of smart meter installation.

Also, on October 9, 2018, Respondent filed Preliminary Objections to the Complaint. Respondent averred that the request for an exemption from the installation of a smart meter is not legally recoverable and Complainant failed to allege Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the installation of the smart meter at the service location. Finally, Respondent argued the Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief, that 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.

Complainant did not file a response to Respondent's Preliminary Objections.

On November 27, 2018, a Motion Judge Assignment Notice was issued assigning the undersigned as the Presiding Officer to this proceeding.

On December 20, 2018, an Interim Order was entered denying the Preliminary Objections.

Also, on December 20, 2018, an interim order was entered establishing an initial litigation schedule. The parties were ordered to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other party by February 14, 2019, to conclude discovery by April 15, 2019 and to file a status report by May 2, 2019.

On January 15, 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 January 25, 2019, and responses were due by February 4, 2019.

By letter dated January 31, 2019, which was directed to the Commission's Secretary, Rosemary Chiavetta, Complainant requested an extension of time to file a response to the Discovery Requests until May 15, 2019. Complainant failed to provide a copy of this filing to Respondent.

On February 13, 2019, in accordance with the December 20, 2018 Interim Order Establishing a Litigation Schedule, Respondent provided notice and summaries of testimony of its factual and expert witnesses.

On February 22, 2019, Respondent filed a Motion to Compel Discovery Responses (Motion to Compel). In the Motion to Compel, Respondent averred that Complainant did not file any objections or responses to the Discovery Requests.

On May 13, 2019, an Interim Order was entered granting the Motion to Compel Discovery Responses filed by Respondent and directing Complainant to file a certificate of service and serve upon counsel for Respondent, full and complete responses to all of the discovery responses served upon Complainant, no later than May 31, 2019.

Also, on May 13, 2019, Complainant filed a letter in response to the Motion to Compel stating that she had requested an extension of time to respond and erroneously included incomplete responses to the Discovery Requests. Complainant failed to provide a copy of the filing to Respondent.

On July 19, 2019, Respondent filed a Motion to Dismiss the Complaint in this proceeding.

On August 21, 2019, the undersigned Presiding Officer received a one-page letter from Complainant dated August 19, 2019, requesting an extension of time to respond to the Discovery Requests until October 31, 2019. Complainant stated that she spoke with counsel for Respondent and was told to submit a letter request to the undersigned Presiding Officer. Complainant did not attach a Certificate of Service to her letter dated August 19, 2019 and did not indicate whether a copy of the letter was provided to Respondent. Accordingly, on September 30, 2019, a copy of the letter from Complainant was provided to counsel for Respondent.

On September 30, 2019, an Interim Order was entered holding the Motion for an Extension of Time in abeyance, providing for a response by Respondent on or before October 4, 2019, and extending the deadline for Complainant to respond to the Motion to Dismiss until October 15, 2019.

On October 4, 2019, Respondent filed a response objecting to the Complainant's request for an extension of time to respond to the Discovery Requests.

On October 17, 2019, an Interim Order was entered granting Complainant's request for an extension to serve Discovery Responses upon Respondent and directing Complainant to serve full and complete responses to all Discovery Requests served by Respondent and file a Certificate of Service with the Commission Secretary not later than October 31, 2019. In addition, it was ordered that Complainant shall serve her witness information upon Respondent, as ordered on December 20, 2018, or a statement that no fact

and/or expert witnesses will be called and file a Certificate of Service evidencing service of the witness information or statement that no witnesses will be called at the hearing, not later than October 31, 2019. Finally, the Parties were directed to file Status Reports addressing the compliance with this order not later than November 7, 2019.

On November 1, 2019, the undersigned Presiding Officer received a letter from Complainant dated October 29, 2019, requesting “a three-month deferment of any pending due dates or further requests for submission of documents during this time.” Attached to Complainant’s letter was a letter from William Kracht, D.O., dated October 11, 2019, requesting that a smart meter not be installed at Complainant’s residence. Also attached was a letter from William Kracht, D.O., dated October 24, 2019, stating “it is medically necessary that she be provided a 3-month deferment concerning her smart meter action.”

On December 5, 2019, an Interim Order was entered which provided, in part, that Complainant may serve full and complete responses to all Discovery Requests served by Respondent, exchange her witness information and file a Certificate of Service with the Commission Secretary not later than December 30, 2019, along with the filing of a Certificate of Service with the Commission Secretary.

As of the date of this Initial Decision, Complainant has not filed certificates of service regarding her service of witness information or Discovery Responses.

The record closed via Interim Order on January 3, 2020.

FINDINGS OF FACT

1. Complainant is Patricia Steely.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.

3. The service location is 1116 Rainbow Avenue, Reading, Pennsylvania 19605 (service location).

4. On September 17, 2018, Complainant filed a Complaint against Respondent, objecting to the installation of a smart meter at her residence due to health concerns.

5. On October 9, 2018, 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 Complainant failed to allege a violation of any statute which the Commission has jurisdiction to administer, or of any regulation or order of the Commission and Preliminary Objections arguing that the Complaint is legally insufficient because Complainant failed to state a claim upon which the Commission can grant relief.

6. On December 20, 2018, an Interim Order was entered denying the Preliminary Objections.

7. Also, on December 20, 2018, an interim order was entered establishing an initial litigation schedule. The parties were ordered to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other party by February 14, 2019, to conclude discovery by April 15, 2019 and a status report deadline of May 2, 2019.

8. On January 15, 2019, Respondent filed a certificate of service regarding service of its Discovery Requests upon Complainant. Objections were due by January 25, 2019, and responses were due by February 4, 2019.

9. By letter dated January 31, 2019, Complainant requested an extension of time to file a response to the Discovery Requests until May 15, 2019.

10. On February 22, 2019, Respondent filed a Motion to Compel Discovery Responses (Motion to Compel). In the Motion to Compel, Respondent averred that Complainant had not served any objections or responses to the Discovery Requests.

11. Complainant has not filed a response to the Motion to Compel.

12. On May 13, 2019, an Interim Order was entered granting the Motion to Compel Discovery Responses filed by Respondent and directing Complainant to file a certificate of service and serve upon counsel for Respondent, full and complete responses to all of the Discovery Responses served upon Complainant, no later than May 31, 2019.

13. Also, on May 13, 2019, Complainant filed a letter in response to the Motion to Compel stating that she had requested an extension of time to respond and erroneously included incomplete responses to the Discovery Requests. Complainant failed to provide a copy of the filing to Respondent.

14. On July 19, 2019, Respondent filed a Motion to Dismiss Complainant's Complaint, averring, *inter alia*, Complainant failed to serve a certificate of service evidencing her service of witness information and full and complete responses to the Discovery Requests.

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

16. On August 21, 2019, the undersigned Presiding Officer received a one-page letter from Complainant dated August 19, 2019, requesting an extension of time to respond to the Discovery Requests until October 31, 2019.

17. On September 30, 2019, an Interim Order was entered holding the Motion for Extension of Time in abeyance, providing for a response by Respondent on or before October 4, 2019, and extending the deadline for Complainant to respond to the Motion to Dismiss until October 15, 2019.

18. On October 4, 2019, Respondent filed a response objecting to the Complainant's request for an extension of time to respond to the Discovery Requests.

19. On October 17, 2019, an Interim Order was entered granting Complainant's request for an extension to serve Discovery Responses upon Respondent, directing Complainant to serve full and complete responses to all Discovery Requests served by

Respondent and file a certificate of service with the Commission Secretary not later than October 31, 2019. In addition, it was ordered that Complainant shall serve her witness information upon Respondent, as ordered on December 20, 2018, or a statement that no fact and/or expert witnesses will be called and file a certificate of service evidencing service of the witness information or statement that no witnesses will be called at the hearing, not later than October 31, 2019. Finally, the Parties were directed to file Status Reports addressing the compliance with this order not later than November 7, 2019.

20. On November 1, 2019, the undersigned Presiding Officer received a letter from Complainant dated October 29, 2019, requesting “a three-month deferment of any pending due dates or further requests for submission of documents during this time.”

21. On November 8, 2019, Respondent filed a Status Report stating Complainant has not provided any discovery responses and requesting that the Motion to Dismiss be granted.

22. On December 5, 2019, an Interim Order was entered which provided, in part, that Complainant may serve full and complete responses to all Discovery Requests served by Respondent, exchange her witness information and file a certificate of service with the Commission Secretary not later than December 30, 2019, along with the filing of a certificate of service with the Commission Secretary.

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

DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant’s failure to exchange witness information, in violation of the December 20, 2018 Interim Order and her failure to respond to the Discovery Requests, in violation of the May 13, 2019 Interim Order. Respondent contends Complainant’s

actions demonstrate her lack of cooperation and willingness to participate in the proceedings 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 January 15, 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 January 25, 2019, and her responses were due by February 4, 2019.

On February 22, 2019, Respondent filed a Motion to Compel, averring Complainant had not submitted any response to the Discovery Requests.

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 May 13, 2019, an Interim Order was entered granting the Motion to Compel and directing Complainant to serve full and complete responses to all of the Discovery Requests upon Respondent's counsel and to file a certificate of service

evidencing service of the responses to the undersigned and Respondent, not later than May 31, 2019.

In its Motion to Dismiss on July 19, 2019, Respondent averred it had not yet received Complainant's responses to the Discovery Requests.

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).

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 Orders issued May 13, 2019, October 17, 2019, and December 5, 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 Order entered August 8, 2019). In each of these cases, the Commission 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 provide full and complete responses to Respondent's Discovery Requests; thus, Complainant has denied Respondent the opportunity to prepare a defense to her claims.

Complainant has had over one year to provide responses to Discovery Responses and to complete the task of identifying her witnesses as set forth in the litigation schedule. 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 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 Patricia Steely at Docket No. C-2018-3004770, is granted.

2. That the Complaint filed by Patricia Steely against Metropolitan Edison Company at Docket No. C-2018-3004770, is hereby dismissed with prejudice.

3. That the Secretary’s Bureau shall mark Docket No. C-2018-3004770 as closed.

Date: April 6, 2020

/s/
Jeffrey A. Watson
Administrative Law Judge