

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diane Trieb	:	
	:	
v.	:	C-2018-3004454
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Diane Trieb for her failure to serve full and complete responses to the discovery requests upon Respondent, in violation of Interim Orders dated March 28, 2019, September 4, 2019, and October 31, 2019.

HISTORY OF THE PROCEEDING

On August 28, 2018, Diane Trieb (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company), objecting to the installation of a smart meter at her residence at 609 N. 26th Street, Reading, PA (service location) due to health and safety concerns. As relief, Complainant requested that the Company stop installing smart meters and that no smart meter be attached to her home.

On September 24, 2018, Respondent filed an Answer and New Matter to the Complaint. Respondent admitted that it provides residential electric service to Complainant at

the service location. Respondent averred, *inter alia*, installation of the smart meter is required by Act 129 of 2008¹ (Act 129) and Respondent's Commission-approved Smart Meter Deployment Plan (SMP), and Complainant's refusal to allow the installation of a smart meter is sufficient grounds to terminate service to the service location in accordance with the Commission's rules, regulations, and recent decisions, as well as Respondent's tariff. Respondent essentially denied the remaining material averments 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 the Commission is unable to grant the relief requested by Complainant.

On September 24, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable and Complainant failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the proposed installation of the smart meter at the 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. Finally, Respondent argued a hearing is not in the public interest, and the Complaint does not meet the standards set forth in recent Commission decisions to survive preliminary objections.

Complainant did not file a response to the Preliminary Objections.

On October 29, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to the undersigned.

On November 21, 2018, an Interim Order was issued, denying the Preliminary Objections.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On February 8, 2019, Respondent filed a certificate of service evidencing its service of Interrogatories and Requests for Production of Documents (Discovery Requests) to Diane Trieb. Objections were due by February 18, 2019, and responses were due by February 28, 2019.

On March 12, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring it had not received any objections or responses 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 March 28, 2019, the undersigned 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 April 12, 2019.

On May 9, 2019, Respondent filed a Motion to Dismiss Complaint of Diane Trieb for Failure to Comply with Orders (Motion to Dismiss), averring Complainant failed to provide responses to Respondent's Discovery Requests in violation of the March 28, 2019 Interim Order. 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, permitting Complainant to file a response within five days of service. Complainant did not file a response to the Motion to Dismiss.

On September 4, 2019, an Interim Order was entered holding the Motion to Dismiss in abeyance and directing Complainant to serve full and complete responses to the

Discovery Requests upon Respondent's counsel and file a certificate of service by October 1, 2019.

On September 4, 2019, an Interim Order was entered establishing an initial litigation schedule. The Interim Order directed the parties to, *inter alia*, provide the names and addresses of each fact and expert witness, as well as written summaries of the expected testimony for each witness (witness information) to the other party by October 17, 2019; conclude discovery by November 22, 2019; and file a status report by December 20, 2019.

On October 18, 2019, Respondent filed a status report advising that Complainant had not provided Respondent with discovery responses as ordered.

On October 31, 2019, an Interim Order was entered providing Complainant with a final opportunity to comply with the Orders issued in this case. Complainant was directed to serve full and complete discovery responses upon Respondent's counsel and file a certificate of service on or before November 22, 2019. The Order read, in part, "Complainant is advised that **Complainant's failure to provide full and complete responses to the discovery responses and exchange witness information as previously ordered, on or before November 22, 2019, will result in sanctions, up to and including dismissal of the Complaint.**" (emphasis in original).

On December 27, 2019, Respondent filed a status report advising that Complainant had still not responded to the Discovery Requests and renewing its Motion to Dismiss.

On May 13, 2020, the undersigned issued an Interim Order Closing the Evidentiary Record.

FINDINGS OF FACT

1. Complainant is Diane Trieb.

2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.
3. The service location is 609 N. 26th Street, Reading, PA.
4. On August 28, 2018, Complainant filed a Complaint against Respondent, objecting to the installation of a smart meter at her residence.
5. On September 24, 2018, Respondent filed an Answer and New Matter to the Complaint, averring, *inter alia*, Respondent was required to install a smart meter at the service location.
6. On September 24, 2018, Respondent filed 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.
7. On February 8, 2019, Respondent submitted a certificate of service regarding its service of Discovery Requests upon Complainant. Objections to the Discovery Requests were due on February 18, 2019, and responses to the Discovery Requests were due on February 28, 2019.
8. On March 12, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests, averring it had not received any objections or responses to its Discovery Requests.
9. 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.

10. On March 28, 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 April 12, 2019.

11. On May 9, 2019, Respondent filed a Motion to Dismiss, averring, *inter alia*, Complainant failed to provide responses to Respondent's Discovery Requests in violation of the March 28, 2019 Interim Order.

12. The Motion to Dismiss contained a Notice to Plead, permitting Complainant to file a response within five days of service. Complainant did not file a response to the Motion to Dismiss.

13. On September 4, 2019, an Interim Order was entered holding the Motion to Dismiss in abeyance and directing Complainant to serve full and complete responses to the Discovery Requests upon Respondent's counsel and file a certificate of service by October 1, 2019.

14. On October 18, 2019, Respondent filed a status report advising that Complainant had not provided Respondent with discovery responses as ordered.

15. On October 31, 2019, an Interim Order was entered directing Complainant to serve full and complete discovery responses upon Respondent's counsel and file a certificate of service on or before November 22, 2019.

16. The October 31, 2019 Interim Order read, in part, "Complainant is advised that **Complainant's failure to provide full and complete responses to the discovery responses and exchange witness information as previously ordered, on or before November 22, 2019, will result in sanctions, up to and including dismissal of the Complaint.**" (emphasis in original).

17. On December 27, 2019, Respondent filed a status report advising that Complainant had still not responded to the discovery requests and renewing its Motion to Dismiss.

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 multiple Interim Orders. Respondent argues Complainant's actions demonstrate her lack of cooperation and willingness to participate in this proceeding as required under 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 February 8, 2019.

On March 12, 2019, Respondent filed its Motion to Compel averring that Complainant did not submit any response to the Discovery Requests. Complainant did not file a response to the Motion to Compel.

On March 28, 2019, an Interim Order was issued granting the 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 by April 12, 2019.

On May 9, 2019, Respondent filed its Motion to Dismiss, averring Complainant had not yet provided her discovery responses. Complainant did not file response to the Motion to Dismiss.

In order to provide Complainant an additional opportunity to provide her discovery responses to Respondent, an Interim Order was issued on September 4, 2019, holding the Motion to Dismiss in abeyance and directing Complainant to file full and complete responses to the Discovery Requests and file a certificate of service by October 1, 2019.

On October 18, 2019, Respondent filed a status report advising, it still had not received any response to the Discovery Requests from Complainant.

In order to provide Complainant a final opportunity to provide her discovery responses to Respondent, an Interim Order was issued on October 31, 2019, directing Complainant to file full and complete responses to the Discovery Requests and file a certificate of service by November 22, 2019.

On December 27, 2019, Respondent filed a status report advising, it still had not received any response to the Discovery Requests from Complainant.

As of the closure of the record on May 13, 2020, Complainant still had not filed a certificate of service evidencing her service of her discovery responses upon Respondent.

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 multiple Interim Orders issued in this case. As of the closure of the record on May 13, 2020, Complainant had not filed a certificate of service evidencing her service of full and complete discovery responses upon Respondent, in violation of Interim Orders issued March 28, 2019, September 4, 2019, and October 31, 2019. The October 31, 2019 Interim Order clearly warned Complainant of the possible consequences of failing to comply with the Orders issued in this case. The Order read, in part, “Complainant is advised that **Complainant’s failure to provide full and complete responses to the discovery responses and exchange witness information as previously ordered, on or before November 22, 2019, will result in sanctions, up to and including dismissal of the Complaint.**” (emphasis in original). Complainant has not participated in this proceeding in any way since filing her Complaint on August 28, 2018, almost two years ago.

Respondent has due process rights that must be protected. Complainant has had multiple opportunities to comply with the Interim Orders issued in this proceeding and provide her discovery responses to Respondent. 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.

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 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).

4. 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).

5. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Metropolitan Edison Company to Dismiss the Complaint of Diane Trieb filed on August 28, 2018, at Docket No. C-2018-3004454, is granted.

2. That the Complaint filed by Diane Trieb against Metropolitan Edison Company at Docket No. C-2018-3004454 is hereby dismissed with prejudice.

3. That the Secretary’s Bureau shall mark C-2018-3004454 as closed.

Date: June 10, 2020

/s/
Jeffrey A. Watson
Administrative Law Judge