

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Siegle	:	
	:	
v.	:	C-2018-3004647
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by John Siegle for his failure to provide witness information, and failure to serve full and complete discovery responses, in violation of several interim orders.

HISTORY OF THE PROCEEDING

On September 11, 2018, John Siegle (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company). Complainant averred that Respondent threatened to terminate his electric service for failure to permit the installation of a smart meter in place of his current meter at his home. Complainant objected to the proposed placement and installation of a smart meter as a result of health, safety, and privacy concerns. Complainant further referenced constitutional rights of citizens. As relief, Complainant requested that Respondent permit residents to read their own meters at intervals normally used in

billing its customers with the option of permitting Respondent to send someone to read the meter at any given time.

On October 4, 2018, Respondent filed an Answer and New Matter to the Complaint, essentially denying the material allegations set forth in the Complaint. Respondent admits that it provides residential retail electric service to Complainant. Respondent averred, *inter alia*, that Complainant has refused access to permit the installation of a smart meter at the service location. Respondent denied the remaining material allegations set forth in the Complaint. Respondent further avers it is required by Act 129 of 2008¹ (Act 129), to install a smart meter.

On October 4, 2018, Respondent also filed preliminary objections to the Complaint. Respondent avers that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Complainant has failed to allege that Respondent violated any Commission statute, regulation, order or tariff provision with regard to the installation of the smart meter. Respondent further avers it is required by Act 129 to install a smart meter at the service location and that, as a matter of law, the Company is required to install a smart meter at the service location. Finally, Respondent argues that the Formal 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 that the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

On October 23, 2018, Complainant filed a reply to the answer and new matter filed by Respondent.

On November 5, 2018, the undersigned presiding officer was notified that a motion judge assignment was issued in this proceeding on November 2, 2018, assigning this proceeding to the undersigned presiding officer to rule on issues arising during the preliminary phase of this proceeding.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On November 21, 2018, an interim order was entered denying the preliminary objections filed by Respondent.

On December 27, 2018, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery and the identification of witnesses, setting a witness notification deadline of February 14, 2019 and a discovery deadline of April 15, 2019.

On January 15, 2019, Respondent forwarded to the Complainant interrogatories and document requests (Discovery Requests).

On February 2, 2019, the Complainant sent a one-page email communication to the undersigned presiding officer requesting an extension and continuance of all dates and matters for a period not to exceed 90 days regarding this proceeding.

On February 14, 2019, in accordance with the Interim Order Establishing a Litigation Schedule, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

On February 15, 2019, Respondent agreed to an extension to submit any objections to its Discovery Requests by February 24, 2019 and submit responses by March 6, 2019.

On February 22, 2019, Complainant sent a one-page email communication to the undersigned presiding officer requesting a continuance and delay of 90 days to all matters regarding this proceeding, explaining he was out of the country for medical reasons.

On February 26, 2019, an Interim Order was entered which granted in part and denied in the part the request of the Complainant to delay the proceedings. It was ordered that the litigation schedule issued on December 27, 2019 was modified to extend the

witness notification deadline to April 1, 2019, the discovery deadline to May 31, 2019 and the status report deadline to June 17, 2019.

On April 1, 2019, in accordance with the Interim Order of February 26, 2019, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

The Complainant did not file any timely objections to the Discovery Requests and did not provide any responses or the requested documents by the due date. Accordingly, on April 24, 2019, Respondent filed a Motion to Compel responses to the Discovery Requests.

By letter dated April 28, 2019, the Complainant responded to the Motion to Compel alleging that the Motion to Compel should be denied on the basis that the requests violated Complainant's basic rights to privacy and privileged information. Complainant further stated that no replies are required and seemed to object to the Discovery Requests based upon the protections provided under the 14th Amendment of the Constitution of the United States.

On May 22, 2019, an Interim Order was entered granting Respondent's Motion to Compel, overruling any objections contained in Complainant's letter dated April 28, 2019, and ordered Complainant to serve upon counsel for the Company full and complete responses to all of the Discovery Requests no later than June 6, 2019.

By letter dated June 2, 2019, Complainant responded to the Interim Order entered on May 22, 2019, contending that his objections were timely and, *inter alia*, "noting" violations of his 5th and 14th Amendment rights and violation under "Article 17 - Under International Covenant on Civil and Political Rights." Objections of the Complainant to the Discovery Requests were due within ten days after service of the Discovery Requests which was January 25, 2019.

On June 17, 2019, in accordance with the Interim Order of February 26, 2019, the Company filed a status report.

On June 28, 2019, Respondent filed a Motion to Dismiss the complaint. Respondent averred that Complainant did not contact the Company directly to discuss the Discovery Requests since the entry of the Interim Order of May 22, 2019 and that no responses to the Discovery Requests has been received from Complainant in contradiction to the Interim Order entered on May 22, 2019. Respondent further averred that Complainant violated the Interim Orders requiring the exchange of expert and factual witness information by April 24, 2019, as no witness information has been received from Complainant as of the filing of the Motion.

Respondent moved to dismiss the Formal Complaint of the Complainant due to his repeated failures to abide by the Interim Orders entered in this proceeding as well as his failure to respond to the Company's Discovery Requests and failure to exchange expert and factual witness information or offer a status report.

On July 19, 2019, Complainant filed an answer to the Motion to Dismiss.

On October 15, 2019, the undersigned Presiding Officer received a letter from Complainant objecting to the Motion to Dismiss and requesting a Protective Order. No information was provided by Complainant to support the request for a Protective Order or to specify what information was sought to be protected.

In order to complete discovery in this matter and provide the parties with an opportunity to confer and attempt to agree to the terms of a protective order or submit proposed protective orders in this proceeding, an interim order was entered on October 30, 2019, requiring the parties to confer regarding the entry of a protective order and extending the deadline of June 6, 2019, imposed for Complainant to serve full and complete discovery responses upon Respondent, to exchange witness information and to file a Certificate of Service evidencing such service, to November 15, 2019.

No certificate of service was filed evidencing service of witness information or discovery responses by Complainant.

On December 5, 2019, a protective order was entered in this proceeding.

On December 20, 2019, an interim order was entered requiring the parties to file a status report outlining the compliance by Complainant in exchanging witness information and serving full and complete discovery responses upon Respondent. On January 7, 2020, Respondent filed a status report advising that Complainant had failed to provide complete responses to Respondent's Discovery Requests or to provide his witness information to Respondent. Accordingly, Respondent requested that its Motion to Dismiss the complaint be granted.

Complainant did not file a status report, but on January 17, 2020, Complainant filed a response to the Motion to Dismiss advising that Act 129 was unconstitutional. Complainant did not address any efforts to respond to the Discovery Requests propounded by Respondent or to provide his witness information to Respondent.

As of the date of this Initial Decision, Complainant has not filed certificates of service regarding his service of witness information or discovery responses upon Respondent.

The record closed by interim order entered on May 15, 2020.

FINDINGS OF FACT

1. Complainant is John Siegle, a residential electric customer of Metropolitan Edison Company.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility.

3. The service location is 185 West Madison Street, Mohnton, Pennsylvania.
4. On September 11, 2018, Complainant filed a Complaint against Respondent, objecting to the installation of a smart meter at his residence.
5. On October 4, 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 Preliminary Objections, arguing that Complainant failed to state a claim upon which the Commission can grant relief, failed to allege a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, and failed to contact the Company prior to filing the Complaint as required by 66 Pa.C.S. § 1410 (1).
6. On October 23, 2018, Complainant filed a response to the Answer and New Matter filed by Respondent.
7. On November 21, 2018, an interim order was entered, denying Respondent's Preliminary Objections.
8. On December 27, 2018, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery and the identification of witnesses, setting a witness notification deadline of February 14, 2019 and a discovery deadline of April 15, 2019.
9. On January 15, 2019, Respondent forwarded to Complainant interrogatories and document requests (Discovery Requests).
10. On February 2, 2019, Complainant sent a one-page email communication to the undersigned presiding officer requesting an extension and continuance of all dates and matters for a period not to exceed 90 days regarding this proceeding.

11. On February 14, 2019, in accordance with the Interim Order Establishing a Litigation Schedule, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

12. On February 15, 2019, Respondent agreed to an extension to submit any objections to its Discovery Requests by February 24, 2019 and submit responses by March 6, 2019.

13. On February 22, 2019, Complainant sent a one-page email communication to the undersigned presiding officer requesting a continuance and delay of 90 days to all matters regarding this proceeding, explaining he was out of the country for medical reasons.

14. On February 26, 2019, an Interim Order was entered which granted in part and denied in the part the request of the Complainant to delay the proceedings. It was ordered that the litigation schedule issued on December 27, 2018 was modified to extend the witness notification deadline to April 1, 2019, the discovery deadline to May 31, 2019 and the status report deadline to June 17, 2019.

15. On April 1, 2019, in accordance with the Interim Order of February 26, 2019, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

16. Complainant did not file any timely objections to the Discovery Requests and did not provide any responses or the requested documents by the due date.

17. On April 24, 2019, Respondent filed a Motion to Compel responses to the Discovery Requests.

18. By letter dated April 28, 2019, Complainant responded to the Motion to Compel alleging that the Motion to Compel should be denied on the basis that the requests

violated Complainant's basic rights to privacy and privileged information. Complainant further stated that no replies were required and seemed to object to the Discovery Requests based upon the protections provided under the 14th Amendment of the Constitution of the United States.

19. On May 22, 2019, an Interim Order was entered granting Respondent's Motion to Compel, overruling any objections contained in Complainant's letter dated April 28, 2019, and ordered Complainant to serve upon counsel for the Company full and complete responses to all of the Discovery Requests no later than June 6, 2019.

20. By letter dated June 2, 2019, Complainant responded to the Interim Order entered on May 22, 2019 contending that his objections were timely and, *inter alia*, alleged violations of his 5th and 14th Amendment rights and violation under "Article 17 - Under International Covenant on Civil and Political Rights."

21. Objections of Complainant to the Discovery Requests were due within ten days after service of the Discovery Requests which was January 25, 2019.

22. On June 17, 2019, in accordance with the Interim Order of February 26, 2019, the Company filed a status report.

23. On June 28, 2019, Respondent filed a Motion to Dismiss the complaint, averring that no responses to the Discovery Requests were received from Complainant in contradiction to the Interim Order entered on May 22, 2019 and the witness information required to be provided by April 24, 2019, was not received from Complainant.

24. Respondent moved to dismiss the Formal Complaint of Complainant due to his repeated failures to abide by the Interim Orders entered in this proceeding as well as his failure to respond to the Company's Discovery Requests and failure to exchange expert and factual witness information or offer a status report.

25. On July 19, 2019, Complainant filed an answer to the Motion to Dismiss.

26. On October 15, 2019, the undersigned Presiding Officer received a letter from Complainant objecting to the Motion to Dismiss and requesting a Protective Order. No information was provided by Complainant to support the request for a Protective Order or to specify what information was sought to be protected.

27. An interim order was entered on October 30, 2019, requiring the parties to confer regarding the entry of a protective order and extending the deadline of June 6, 2019, imposed for Complainant to serve full and complete discovery responses upon Respondent, to exchange witness information and to file a Certificate of Service evidencing such service, to November 15, 2019.

28. No certificate of service was filed evidencing service of witness information or discovery responses by Complainant.

29. On December 5, 2019, a protective order was entered in this proceeding.

30. On December 20, 2019, an interim order was entered requiring the parties to file a status report outlining the compliance by Complainant in exchanging witness information and serving full and complete discovery responses upon Respondent.

31. On January 7, 2020, Respondent filed a status report advising that Complainant had failed to provide complete responses to Respondent's Discovery Requests or to provide his witness information to Respondent. Respondent requested that its Motion to Dismiss the complaint be granted with prejudice.

32. Complainant did not file a status report.

33. On January 17, 2020, Complainant filed a response to the Motion to Dismiss advising that Act 129 was unconstitutional. Complainant did not address any efforts to

respond to the Discovery Requests propounded by Respondent or to provide his witness information to Respondent.

34. As of the date of this Initial Decision, Complainant has not filed certificates of service regarding his service of witness information or discovery responses upon Respondent.

35. The record closed by interim order entered on May 14, 2020.

DISCUSSION

In its Motion to Dismiss, Respondent argues that the Complaint should be dismissed in its entirety due to Complainant's failure to provide his witness information as required by the December 27, 2018 and October 30, 2019 interim orders, and his failure to respond to Respondent's Discovery Requests, in violation of the May 22, 2019 and October 30, 2019 interim orders. Respondent argues Complainant's actions demonstrate his lack of cooperation and willingness to participate in the proceeding as required by 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, Respondent agreed to an extension for Complainant to submit any objections to the Discovery Requests by February 24, 2019 and submit responses by March 6, 2019.

In its Motion to Dismiss, Respondent averred it had not yet received Complainant's witness information or full and complete discovery responses.

Furthermore, an interim order was entered on October 30, 2019, extending the June 6, 2019 deadline imposed for Complainant to serve full and complete discovery responses upon Respondent and to exchange witness information, to November 15, 2019. No certificate of service demonstrating compliance by Complainant was filed, and on December 20, 2019, an interim order was entered requiring the parties to file a status report outlining the compliance by Complainant in exchanging witness information and serving full and complete discovery responses upon Respondent. On January 7, 2020, Respondent filed a status report advising that Complainant had failed to provide complete responses to Respondent's Discovery Requests or to provide his witness information to Respondent. Respondent requested that its Motion to Dismiss the complaint be granted with prejudice. On January 17, 2020, Complainant filed a response to the Motion to Dismiss advising that Act 129 was unconstitutional. Complainant did not address any efforts to respond to the Discovery Requests propounded by Respondent or to exchange his witness information with 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 violated several 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

witness information or his full and complete responses to the Discovery Requests upon Respondent.

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. 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 § 5.372 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.

4. 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).

5. 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 John Siegle filed at Docket No. C-2018-3004647 is granted.

2. That the Complaint filed by John Siegle against Metropolitan Edison Company at Docket No. C-2018-3004647 is hereby dismissed with prejudice.

