

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Maloney	:	
	:	
v.	:	C-2019-3007460
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Motion to Dismiss filed by Metropolitan Edison Company (“Met Ed” or “Respondent”) and dismisses the Formal Complaint (“Complaint”) filed by David Maloney (“Mr. Maloney” or “Complainant”) for his failure to serve to counsel for Met Ed full and complete responses to all of Met Ed’s discovery requests, in violation of various Interim Orders.

In addition, the Complaint is also being dismissed for failure of Mr. Maloney to comply with several Orders issued by the Presiding Officers to this proceeding.

**HISTORY OF THE PROCEEDING**

On January 24, 2019, Mr. Maloney filed a Complaint against Met Ed with the Pennsylvania Public Utility Commission (“Commission”). In his Complaint, Mr. Maloney objected to the installation of a smart meter at 320 Merkle Road, Boyertown, Pennsylvania (“Location 1”) and 304 Merkle Road, Boyertown, Pennsylvania (“Location 2”).

On February 13, 2019, Met Ed filed an Answer with New Matter to the Complaint. In its Answer, it argued, amongst other things, that Complainant cannot legally opt-out of smart meter installation. In its New Matter, properly endorsed with a Notice to Plead, Met Ed argued that the Complaint was legally insufficient due to the Commission's inability to grant Complainant with the relief that he was seeking in his Complaint (i.e. opting out of smart meter installation). Met Ed also argued that Mr. Maloney never attempted to contact Met Ed prior to filing his Complaint in violation of 66 Pa.C.S. § 1410. Met Ed concluded its Answer with New Matter by requesting dismissal of the Complaint.

Also on February 13, 2019, Met Ed filed Preliminary Objections, properly endorsed with a Notice to Plead, seeking dismissal of the Complaint due to the Complaint being legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4).

Mr. Maloney did not file a Reply to Met Ed's New Matter or Preliminary Objections.

On March 20, 2019, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge ("ALJ") Jeffrey Watson as Presiding Officer to this proceeding.

On May 1, 2019, ALJ Watson denied Met Ed's Preliminary Objections.

On June 24, 2019, Met Ed filed a Certificate of Service with the Commission indicating that it had served discovery requests, in the form of interrogatories and requests for production of documents, to Mr. Maloney.

On July 23, 2019, Met Ed filed a Motion to Compel, requesting that ALJ Watson order Mr. Maloney to respond to Met Ed's discovery requests.

On July 26, 2019, ALJ Watson issued an Interim Order establishing a litigation schedule. The litigation schedule provided deadlines by which the parties were to exchange fact and expert witness information (by October 25, 2019), to complete discovery (by December 6, 2019), and to file a status report (by January 10, 2020) with the Commission.

On July 31, 2019, ALJ Watson issued an Interim Order granting Met Ed's Motion to Compel and ordered that Mr. Maloney serve upon counsel for Met Ed, full and complete responses to all of Met Ed's discovery requests by August 30, 2019.

On September 10, 2019, Met Ed filed a Motion to Dismiss, averring, *inter alia*, that Mr. Maloney failed to provide timely objections or responses to its discovery requests in violation of the July 31, 2019, Interim Order. This Motion to Dismiss remains outstanding.

On September 18, 2019, Mr. Maloney filed an Answer to Met Ed's Motion to Dismiss.<sup>1</sup>

On October 9, 2019, ALJ Watson caused to be filed with the Commission a letter that he sent to Mr. Maloney by First-Class Mail. In this letter, ALJ Watson indicated that he received, by mail, what appeared to be incomplete responses to the interrogatories of Met Ed. The letter informed Mr. Maloney that it was not appropriate for him to submit the discovery responses to ALJ Watson. The letter indicated that ALJ Watson returned the responses back to Mr. Maloney.

On October 22, 2019, ALJ Watson issued an Interim Order holding the Motion to Dismiss filed by Met Ed in abeyance and providing Mr. Maloney with another opportunity to comply with the Interim Order granting Met Ed's Motion to Compel entered on July 31, 2019. Mr. Maloney's deadline to serve upon counsel for Met Ed, full and complete responses to all of Met Ed's discovery requests was extended to November 20, 2019.

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<sup>1</sup> Mr. Maloney's Answer was marked as "confidential." As such, the details of Mr. Maloney's Answer will not be discussed here.

On December 2, 2019, Met Ed filed a Status Report indicating that Mr. Maloney did not fully and completely serve responses to its discovery requests by November 20, 2019, pursuant to the October 22, 2019, Interim Order, and asked that its Motion to Dismiss be granted.

On December 13, 2019, ALJ Watson issued an Interim Order providing a final extension of time for Mr. Maloney to provide full and complete responses to Met Ed's discovery requests. The deadline for Mr. Maloney to comply with this Interim Order was January 3, 2020.

On January 9, 2020, Met Ed filed a Status Report indicating that it received partial responses to its discovery requests from Mr. Maloney.

On March 3, 2020, a Petition for Protective Order was filed by Met Ed.<sup>2</sup>

On March 9, 2020, Mr. Maloney filed an Amended Complaint against Met Ed with the Commission.<sup>3</sup>

On March 30, 2020, Met Ed filed an Answer with New Matter to Mr. Maloney's Amended Complaint. In its Answer, Met Ed asserted that its smart meters are safe and that it is required by Act 129<sup>4</sup> to install smart meters at Locations 1 and 2. In its New Matter, properly endorsed with a Notice to Plead, Met Ed argued that the Complaint was legally insufficient due to the Commission's inability to grant Mr. Maloney the relief he was seeking in his Complaint.

Mr. Maloney did not file a Reply to Met Ed's New Matter.

On November 4, 2020, in response to the Commonwealth Court of Pennsylvania's Opinion entered in *Povacz v. Pennsylvania Public Utility Commission*,

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<sup>2</sup> This Petition, which is outstanding, will be dismissed as moot in the Ordering paragraphs.

<sup>3</sup> Mr. Maloney's Amended Complaint was marked as "confidential." As such, the details of his Amended Complaint will not be discussed here.

<sup>4</sup> 66 Pa.C.S. § 2807.

241 A.3d 481 (Pa. Cmwlth. 2020), the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to electric distribution company deployment of smart meter technology as being in violation of Section 1501 of the Code. *See, Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered Nov. 4, 2020). The stay was applied to this instant case.

On November 14, 2023, in response to the Supreme Court of Pennsylvania's Opinion entered in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022), the Commission lifted the stay implemented on November 4, 2020. *See, Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered Nov. 14, 2023). The stay was therefore lifted in this case.

On November 20, 2023, a Presiding Officer Assignment Notice was issued to the parties changing the assigned presiding officer in this matter from ALJ Jeffery Watson to the undersigned, ALJ Alphonso Arnold III.

On November 27, 2023, the Commission issued a Telephonic Prehearing Conference Notice, scheduling this case for a prehearing conference on January 8, 2024. The Notice directed the parties to call in to a conference line on the date and time of the conference to participate using the method provided in the Notice.

On December 15, 2023, the Commission issued my Prehearing Conference Order. The Order informed the parties that the scheduled prehearing conference would be used to discuss outstanding procedural matters and to establish an amended litigation schedule. The Order reminded the parties of the date and time of the conference and directed the parties to call in to a conference line on the date and time of the conference to participate using the method provided in the Order.

On December 18, 2023, a Corrected Telephonic Prehearing Conference Notice was issued by the Commission.<sup>5</sup> The date of the conference and the method by which the parties were to call in to participate was provided to the parties in the Notice.

On January 8, 2024, the prehearing conference was held as scheduled. Met Ed was represented at the conference represented by Tori L. Giesler, Esquire. Mr. Maloney did not call in to participate in the conference, even after the conference was delayed until 10:15 a.m. to provide him with additional time to call in.

Following the conference on January 8, 2024, I issued a Rule to Show Cause Why the Formal Complaint Should Not be Dismissed (“*Rule to Show Cause*”). The *Rule to Show Cause* directed Mr. Maloney to respond as to why his Complaint should not be dismissed. In that regard, Mr. Maloney was to address (1) why he failed to appear for the January 8, 2024, prehearing conference, and (2) if he desired to continue prosecuting this matter. The *Rule to Show Cause* also directed that his response was due on or before 4:00 p.m., January 29, 2024. Further, the *Rule to Show Cause* stated that failure to timely respond to the *Rule to Show Cause* would result in dismissal of the Complaint without a hearing. (See, Ordering Paragraph No. 3, *Rule to Show Cause*). To date, Mr. Maloney has not responded to the *Rule to Show Cause*.

On March 22, 2024, Met Ed filed a Status Report, renewing its Motion to Dismiss filed on September 10, 2019, arguing that Mr. Maloney has shown an unwillingness to participate in this proceeding by not serving to Met Ed full and complete responses to its discovery requests and by not providing Met Ed with his witness information.

On April 19, 2024, the Commission issued my Interim Order Closing the Record, which formally closed the record in this proceeding.

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<sup>5</sup> The November 27, 2023, Notice provided the parties with information relating to evidentiary hearings, including directions for the submission of exhibits and for the presentation of witnesses. Given that the meeting scheduled for January 8, 2024, was a prehearing conference and not an evidentiary hearing, this information was removed in the December 18, 2023, Corrected Notice.

For the reasons discussed below, the Complaint will be dismissed without a hearing.

### FINDINGS OF FACT

1. Complainant is David Maloney.
2. Respondent is Metropolitan Edison Company.
3. On January 24, 2019, Mr. Maloney filed a Complaint against Met Ed, objecting to the installation of smart meters at 320 and 304 Merkle Road, Boyertown, Pennsylvania.
4. On February 13, 2019, Met Ed filed an Answer with New Matter, as well as Preliminary Objections, to the Complaint.
5. On June 24, 2019, Met Ed filed a Certificate of Service with the Commission indicating that it had served discovery requests, in the form of interrogatories and requests for production of documents, to Mr. Maloney.
6. On July 23, 2019, Met Ed filed a Motion to Compel, requesting that ALJ Watson order Mr. Maloney to respond to Met Ed's discovery requests.
7. On July 26, 2019, ALJ Watson issued an Interim Order establishing a litigation schedule. The litigation schedule provided deadlines by which the parties were to exchange fact and expert witness information (by October 25, 2019), to complete discovery (by December 6, 2019), and to file a status report (by January 10, 2020) with the Commission.
8. On July 31, 2019, ALJ Watson issued an Interim Order granting Met Ed's Motion to Compel and ordered that Mr. Maloney serve upon counsel for Met Ed, full and complete responses to all of Met Ed's discovery requests by August 30, 2019.

9. On September 10, 2019, Met Ed filed a Motion to Dismiss, averring, *inter alia*, that Mr. Maloney failed to provide timely objections or responses to its discovery requests in violation of the July 31, 2019, Interim Order, and requesting dismissal of the Complaint.

10. On October 22, 2019, ALJ Watson issued an Interim Order holding the Motion to Dismiss filed by Met Ed in abeyance and providing Mr. Maloney with another opportunity to comply with the Interim Order granting Met Ed's Motion to Compel entered on July 31, 2019. Mr. Maloney's deadline to serve upon counsel for Met Ed, full and complete responses to all of Met Ed's discovery requests was extended to November 20, 2019.

11. On December 2, 2019, Met Ed filed a Status Report indicating that Mr. Maloney did not fully and completely serve responses to its discovery requests by November 20, 2019, in violation of the October 22, 2019, Interim Order, and asked that its Motion to Dismiss be granted.

12. On December 13, 2019, ALJ Watson issued an Interim Order providing a final extension of time for Mr. Maloney to provide full and complete responses to Met Ed's discovery requests. The deadline for Mr. Maloney to comply with this Interim Order was January 3, 2020.

13. On January 9, 2020, Met Ed filed a Status Report indicating that it received partial responses to its discovery requests from Mr. Maloney.

14. On March 9, 2020, Mr. Maloney filed an Amended Complaint again objecting to the installation of smart meters at 320 and 304 Merkle Road, Boyertown, Pennsylvania.

15. On March 30, 2020, Met Ed filed an Answer with New Matter to Mr. Maloney's Amended Complaint.

16. On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, instituting a stay of this matter.

17. On November 14, 2023, the Commission lifted the stay implemented on November 4, 2020, of this matter.

18. On November 20, 2023, a Presiding Officer Assignment Notice was issued to the parties changing the assigned presiding officer in this matter from ALJ Jeffery Watson to the undersigned, ALJ Alphonso Arnold III.

19. On November 27, 2023, the Commission issued a Telephonic Prehearing Conference Notice, scheduling this case for a prehearing conference on January 8, 2024. The Notice directed the parties to call in to a conference line on the date and time of the conference to participate using the method provided in the Notice.

20. On December 15, 2023, a Prehearing Conference Order was issued to the parties. The Order reminded the parties of the date and time of the January 8, 2024, prehearing conference and directed the parties to call in to a conference line on the date and time of the conference to participate using the method provided in the Order.

21. On December 18, 2023, a Corrected Telephonic Prehearing Conference Notice was issued. The Notice directed the parties to call in to a conference line on the date and time of the January 8, 2024, prehearing conference to participate using the method provided in the Notice.

22. The November 27, 2023, and December 18, 2023, Prehearing Conference Notices, as well as the December 15, 2023, Prehearing Conference Order, were served via First-Class Mail to Mr. Maloney at the address that Mr. Maloney listed on his Complaint forms. None of these documents were returned to the Commission as being undeliverable by the postal service.

23. Mr. Maloney did not appear for the January 8, 2024, prehearing conference, which was held as scheduled.

24. On January 8, 2024, Mr. Maloney was served with a *Rule to Show Cause* Why the Formal Complaint Should Not be Dismissed, which directed that Mr. Maloney's response to the Rule to Show Cause was due by 4:00 p.m., January 29, 2024.

25. The *Rule to Show Cause* notified Mr. Maloney that failure to respond would result in dismissal of the Complaint without a hearing.

26. The *Rule to Show Cause* was served via First-Class Mail to Mr. Maloney at the address that he listed on his Complaint forms and was not returned to the Commission as being undeliverable by the postal service.

27. Mr. Maloney failed to respond to the *Rule to Show Cause*.

28. On March 22, 2024, Met Ed filed a Status Report, renewing its Motion to Dismiss filed on September 10, 2019, arguing that Mr. Maloney has shown an unwillingness to participate in this proceeding by not serving to Met Ed full and complete responses to its discovery requests and by not providing Met Ed with his witness information.

## DISCUSSION

### *Motion to Dismiss*

On September 10, 2019, Met Ed filed its Motion to Dismiss requesting dismissal of the Complaint due to Mr. Maloney's failure to serve to Met Ed full and complete responses to its discovery requests, in violation of ALJ Watson's Interim Order issued July 31, 2019. The Motion to Dismiss will be granted, and the Complaint of Mr. Maloney will be dismissed.

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).

The Commission's regulations at 52 Pa. Code § 5.342(a)(4) provide that a party must answer interrogatories fully and completely unless an objection is made. This includes requests for the production of documents sought through the interrogatories. 52 Pa. Code § 5.341(c). The Commission's regulations provide that a party must serve answers to interrogatories within twenty days of service and objections within ten days of service. 52 Pa. Code §§ 5.342(d), (e).

The Commission's regulations at 52 Pa. Code § 5.371(a) address the consequences of a participant's failure to comply with the Commission's discovery regulations and provide 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. Further, 52 Pa. Code § 5.372 provides 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.

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 Mr. Maloney. In that regard, Met Ed filed a certificate of service showing its service of discovery requests, in the form of interrogatories and requests for production of documents, upon Mr. Maloney on June 24, 2019. Mr. Maloney did not file a certificate of service indicating that he served objections or answers to Met Ed's discovery requests.

On July 23, 2019, Met Ed filed a Motion to Compel, requesting that ALJ Watson order Mr. Maloney to respond to Met Ed's discovery requests.

By Interim Order issued July 31, 2019, ALJ Watson granted Met Ed's Motion to Compel and ordered that Mr. Maloney serve upon counsel for Met Ed, full and complete responses to all of Met Ed's discovery requests by August 30, 2019.

Mr. Maloney did not serve full and complete responses to Met Ed's discovery requests in violation of the July 31, 2019, Interim Order and as a result Met Ed filed its Motion to Dismiss on September 10, 2019, requesting dismissal of the Complaint.

By Interim Order issued October 22, 2019, ALJ Watson held Met Ed's Motion to Dismiss in abeyance and provided Mr. Maloney with another opportunity to comply with the July 31, 2019, Interim Order granting Met Ed's Motion to Compel. As such, Mr. Maloney's deadline to serve upon counsel for Met Ed full and complete responses to all of Met Ed's discovery requests was extended to November 20, 2019.

On December 2, 2019, Met Ed filed a Status Report indicating that Mr. Maloney did not fully and completely serve responses to its discovery requests by November 20, 2019, in violation of the October 22, 2019, Interim Order.

By Interim Order issued December 13, 2019, ALJ Watson provided a final extension to Mr. Maloney to provide full and complete responses to Met Ed's discovery requests. As such, Mr. Maloney's deadline to serve upon counsel for Met Ed full and complete responses to all of Met Ed's discovery requests was extended to January 3, 2020.

On January 9, 2020, Met Ed filed a Status Report indicating that Mr. Maloney served partial responses to its discovery requests, and as such, did not comply with the December 13, 2019, Interim Order.

On March 22, 2024, Met Ed filed a Status Report, indicating that Mr. Maloney failed to serve full and complete responses to Met Ed's discovery requests dating back to June 2019.

In summary, Mr. Maloney has failed to serve full and complete responses to Met Ed's discovery requests in violation of three Interim Orders entered by ALJ Watson. Met Ed has due process rights that must be protected, and Mr. Maloney's actions have denied Met Ed the opportunity to prepare a defense to Mr. Maloney's claims. To proceed with this matter in these circumstances would result in the denial of Met Ed's due process rights. Accordingly, the Complaint will be dismissed with prejudice.

#### *Failure to Comply with Orders*

The Complaint will also be dismissed due to failure of Mr. Maloney to comply multiple Orders issued by the Presiding Officers to this proceeding.

The Commission has consistently found that the failure to comply with an order issued by a presiding officer warrants dismissal of a complaint. *See e.g., Application of And Ex Cor*, Docket No. A-2012-2337848 (Final Order entered June 19, 2013); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2016). In particular, the Commission has upheld decisions issued by ALJs dismissing smart meter complaints with prejudice for failure of a complainant to comply with the Orders of the Presiding Officer. *See Cook v. W. Penn Power Co.*, Docket No. C-2018-3003051 (Order entered July 11, 2019); *Altieri v. Metro. Edison Co.*, Docket No. C-2018-3006496 (Final Order entered Nov. 8, 2019); *Altman v. W. Penn Power Co.*, Docket No. C-2018-3006434 (Final Order entered Aug. 17, 2020).

As highlighted above, Mr. Maloney failed to comply with three Interim Orders issued by ALJ Watson on July 31, 2019, October 22, 2019, and December 13, 2019, ordering Mr. Maloney to serve full and complete responses to Met Ed's discovery requests.

Also, Mr. Maloney failed to comply with ALJ Watson's July 26, 2019, Interim Order wherein ALJ Watson ordered Mr. Maloney to exchange fact and expert witness information to Met Ed by October 25, 2019. Met Ed's March 22, 2024, Status Report indicates that Mr. Maloney did not provide fact and expert witness information to Met Ed.

In addition to failing to comply with ALJ Watson's Orders, Mr. Maloney failed to comply with the Orders that I issued in this proceeding, following my assignment as Presiding Officer on November 20, 2023. Specifically, Mr. Maloney did not comply with my Prehearing Conference Order, nor did he comply with my *Rule to Show Cause*.

My Prehearing Conference Order directed the parties to attend a January 8, 2024, prehearing conference. This Order, in addition to the Telephonic Prehearing Conference Notice and the Corrected Telephonic Prehearing Conference Notice, provided the parties with the date and time of the conference and the method by which the parties could call in to participate. All three of these documents were served via First-Class Mail to the mailing address that Mr. Maloney listed on his Complaint forms. As these documents were not returned to the Commission as being undeliverable by the postal service, I presume Mr. Maloney received all three documents. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Celina*). Mr. Maloney chose not to appear for the prehearing conference despite having notice of the date and time of the conference and despite being directed to appear.

Following the prehearing conference, I issued the *Rule to Show Cause*. The purpose of the *Rule to Show Cause* was to ascertain (1) why Complainant failed to appear for the January 8, 2024, prehearing conference, and (2) if Complainant desired to continue prosecuting this matter. The *Rule to Show Cause* directed Complainant to explain why his Complaint should not be dismissed. The Complainant's response to the *Rule to Show Cause* was due by 4:00 p.m. on January 29, 2024. The *Rule to Show Cause* further warned Complainant that if he did not

timely respond to the *Rule to Show Cause* that his Complaint would be dismissed without a hearing.

The Commission served the *Rule to Show Cause* upon Complainant on January 8, 2024, via First-Class Mail to the mailing address that Complainant listed on his Complaint forms. As the document was not returned to the Commission as being undeliverable by the postal service, I presume Complainant received it. *See Berkowitz; Meierdierck; Samaras; Celina.* Complainant did not respond to the *Rule to Show Cause* as directed.

In summary, Mr. Maloney has continuously failed to comply with Orders issued by the Presiding Officers to this proceeding. Mr. Maloney has not served full and complete responses to Met Ed's discovery responses as directed. 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 § 5.21(d).* Therefore, the Complaint will be dismissed in the Ordering paragraphs below.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 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. A party must answer interrogatories fully and completely unless an objection is made. 52 Pa. Code § 5.342(a)(4).

4. A party must serve answers to interrogatories within twenty days of service and objections within ten days of service. 52 Pa. Code §§ 5.342(d), (e).

5. 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(a).

6. 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.

7. The Commission has consistently found that the failure to comply with an order issued by a presiding officer warrants dismissal of a complaint. *See e.g., Application of And Ex Cor*, Docket No. A-2012-2337848 (Final Order entered June 19, 2013); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2016).

8. Smart meter complaints may be dismissed with prejudice for failure of a complainant to comply with the Orders of the Presiding Officer. *Cook v. W. Penn Power Co.*, Docket No. C-2018-3003051 (Order entered July 11, 2019); *Altieri v. Metro. Edison Co.*, Docket No. C-2018-3006496 (Final Order entered Nov. 8, 2019); *Altman v. W. Penn Power Co.*, Docket No. C-2018-3006434 (Final Order entered Aug. 17, 2020).

9. Notice mailed to a person's last known address and not returned as being undeliverable by the postal authorities is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

10. A hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

