

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Sherron)	
Neal-Putman,)	
)	
Complainant,)	
)	
v.)	Case No. 07-690-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On December 9, 2008, Duke Energy, Inc. (Duke) filed a motion to dismiss the complaint filed by Sherron Neal-Putman (Ms. Putman or complainant). Duke moves to dismiss the complaint on the grounds that the complaint fails to state reasonable grounds and for failure of prosecution.

Duke alleges that the complaint fails to raise any particular allegation regarding Duke's service. Although Ms. Putman alleges that Duke improperly disconnected her service, Duke responds that Ms. Putman's claims are ambiguous, vague, and inaccurate.

Duke denies that it disconnected Ms. Putman's service. Moreover, Duke claims that it never terminated Ms. Putman's service. On or about April 24, 2007, Duke established service for Ms. Putman at 33 East Lakeshore Drive. According to Duke, service remained connected until Ms. Putman requested disconnection upon vacating the premises.

- (2) For its claim that the complaint should be dismissed for failure to prosecute, Duke states that it served its first set of interrogatories on the complainant on four separate occasions beginning in September 2007. Duke reports that, to date, it has not received satisfactory responses to its interrogatories.

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In a November 15, 2007, prehearing conference, the parties discussed discovery issues. Duke agreed to serve interrogatories on the complainant electronically and by ordinary mail. The complainant requested 30 days, rather than the 20 days prescribed by the rules, to respond to the interrogatories. Duke agreed. Duke calculated that the complainant's responses were due December 15, 2007. The complainant did not respond by December 15, 2007. On December 21, 2007, Duke served its discovery again by electronic service. The complainant did not respond.

On January 16, 2008, Duke filed a motion to compel discovery. The attorney examiner, on January 18, 2008, with certain exceptions, granted Duke's motion to compel. The attorney examiner ordered the complainant to answer the interrogatories "forthwith." Duke states that in March 2008 the complainant responded to Duke's discovery. Duke contends that the complainant refused to provide meaningful responses.

On October 31, 2008, Duke served a third set of interrogatories on the complainant by electronic mail and by certified mail, return receipt requested, directed to the complainant's Florida address. Duke states that it did not receive a receipt confirming electronic delivery. However, Duke alleges that it did receive a receipt for mail delivery. To date, Duke has not received a response to its third set of interrogatories.

- (3) Duke stresses that this case has been scheduled for hearing on November 1, 2007, January 22, 2008, and December 18, 2008. Moreover, the hearing has been continued twice. Because the complainant refuses to comply with discovery requests and to cooperate with the Commission, Duke urges the Commission to dismiss the complaint with prejudice.
- (4) Given that the hearing in this matter is scheduled less than a week from the filing of Duke's motion to dismiss, Duke requests expedited treatment of its motion. Upon review of the motion and the unique circumstances of this proceeding, Duke's motion shall be held in abeyance. The complainant shall be granted, by means of hearing, a final opportunity to prosecute the complaint. Insofar as the complainant's failure to respond to discovery, at the hearing, the attorney examiner

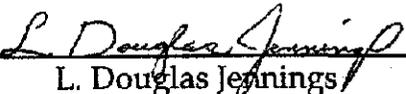
shall be sensitive to any prejudice to Duke's case caused by the complainant's failure to respond to discovery.

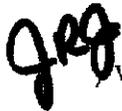
It is, therefore,

ORDERED, That, in accordance with Finding (4), Duke's motion to dismiss shall be held in abeyance. It is, further,

ORDERED, That a copy of this entry be served upon the complainant, Duke and its counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: L. Douglas Jennings
Attorney Examiner

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Entered in the Journal
DEC 15 2008



Renee J. Jenkins
Secretary