

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Sherron
Neal-Putman,

Complainant,

v.

Duke Energy Ohio, Inc.,

Respondent.

Case No. 07-690-EL-CSS

ENTRY

The attorney examiner finds:

- (1) On June 7, 2007, Sherron Neal-Putman (Ms. Putman or complainant) filed a complaint against Duke Energy Ohio, Inc. (Duke). In her complaint, Ms. Putman alleged that Duke disconnected her electric service without proper notice. Ms. Putman also accused Duke of refusing to reconnect her service pursuant to an "order" from the Commission. Ms. Putman sought compensation for losses attributable to the disconnection of her electricity.
- (2) Duke filed an answer to the complaint on June 27, 2007. In its answer, Duke denied that it disconnected service to the complainant's residence. Duke alleged that it initiated service in the complainant's name on April 24, 2007, and had continued service without interruption.
- (3) On July 6, 2007, Ms. Putman filed a pleading alleging that Duke had issued bills that were excessive. Comparing her bill with others, Ms. Putman concluded that her bills did not accurately reflect consumption.
- (4) Duke filed a response to the complainant's July 6, 2007, pleading on July 19, 2007. Duke stated that it conducted a special reading on July 10, 2007, which disclosed a meter reading error. Duke alleged that it corrected its meter reading error by a subsequent bill.

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- (5) On September 26, 2007, the attorney examiner scheduled this matter for a public hearing to take place on November 1, 2007.
- (6) On October 22, 2007, the complainant filed a motion requesting a 30-day extension of time to respond to interrogatories. The complainant explained that she had just recently moved to Florida and had not had time to locate the materials needed to answer the interrogatories. On October 23, 2007, Duke contacted the attorney examiner concerning an extension of time to complete discovery.
- (7) Upon request of the parties and because of delays in discovery, the attorney examiner issued an entry on October 25, 2007, continuing the public hearing indefinitely.
- (8) By entry issued November 7, 2007, the attorney examiner scheduled a procedural conference for November 15, 2007. As stated in the entry, the purpose of the conference was to reschedule the hearing, set discovery deadlines, and address other procedural matters.
- (9) By entry issued December 20, 2007, after consultation with the parties, the attorney examiner scheduled a hearing for January 22, 2008.
- (10) On January 16, 2008, Duke filed a motion to compel discovery and a motion that certain requests for admission be deemed admitted. Duke stated that it had on four separate occasions served the complainant with interrogatories, requests for production of documents, and requests for admissions. The complainant had not served a response.

Duke noted that the parties addressed discovery matters during the November 15, 2007, prehearing conference. In response to the complainant's claim that she did not receive Duke's discovery requests, Duke agreed to resend its first set of discovery by regular mail and electronically. Duke consented to the complainant's request of 30 days to respond to the discovery requests. Duke stated that responses were due December 15, 2007. After receiving no response, Duke stated that on or about December 21, 2007, it resent its first set of discovery to the complainant electronically. Duke alleged that the complainant also failed to respond to the December 21, 2007, discovery request. Duke requested an order from the

Commission directing the complainant to provide responses to its discovery requests before January 22, 2008. With respect to the complainant's failure to respond to Duke's requests for admissions, Duke sought an order finding such matters admitted.

Duke stated that several discovery packages that were sent by certified mail to the complainant's Ohio address were returned as unclaimed. Alternatively, Duke had sent its discovery requests to the complainant's Florida address by regular U.S. mail and by e-mail.

- (11) In a telephone conversation initiated by the complainant to the attorney examiner on January 17, 2008, the complainant stated that she was unaware of the January 22, 2008, hearing date and that she would not be able to attend the hearing. In addition, the complainant stated that discovery remained incomplete.
- (12) By entry issued January 18, 2008, the attorney examiner granted Duke's motion to compel, ordering the complainant to respond to interrogatories forthwith. The attorney examiner warned the complainant that failure to respond to the interrogatories could result in sanctions that included, but were not limited to, barring claims and dismissing the case. With respect to Duke's requests for admissions, the attorney examiner ruled that, with certain exceptions, the information shall be deemed admitted if the complainant did not respond prior to the hearing.
- (13) On January 22, 2008, the date of the scheduled hearing, the attorney examiner continued the hearing indefinitely.
- (14) Following a period during which the complainant did not respond to discovery requests or the order to compel, the attorney examiner issued an entry on November 18, 2008, scheduling a hearing to take place on December 18, 2008.
- (15) On December 9, 2008, requesting expedited treatment, Duke moved to dismiss the complaint, claiming a lack of reasonable grounds and failure of prosecution. Insofar as reasonable grounds, Duke points that it provided service to Ms. Putman and maintained service until she requested that her service be discontinued. For this reason, Duke concludes that the complainant has failed to state a claim. To substantiate its

argument that the complaint should be dismissed for lack of prosecution, Duke declared that the complainant provided inadequate responses to interrogatories, did not cooperate with the Commission, and took more than two months to respond to the order to answer "forthwith" Duke's discovery requests. Duke, therefore, urges the Commission to dismiss the complaint with prejudice. On December 15, 2008, the attorney examiner issued an entry holding Duke's motion in abeyance.

- (16) On December 15, 2008, Ms. Putman delivered by facsimile to the attorney examiner a pleading styled as a motion to enlarge time or, alternatively, a motion to dismiss the complaint without prejudice.¹ Ms. Putman explained that her husband, her only witness, would be unavailable for three months because of a family emergency.

In response to Ms. Putman's request, the attorney examiner issued an entry on December 15, 2008, cancelling the hearing.

- (17) The complainant has requested that the Commission grant her additional time to present her case or dismiss the complaint without prejudice so that she may file again. Duke, on the other hand, urges the Commission to dismiss the complaint with prejudice. Even though the complainant has not filed her motion, we will nevertheless recognize her request. Pursuant to the complainant's request, we find that the complaint should be dismissed without prejudice. The Commission notes, however, that we will take administrative notice of this proceeding and the conduct of the complainant in failing to respond adequately and timely to discovery and to cooperate with the Commission in any subsequent complaint filed by the complainant.

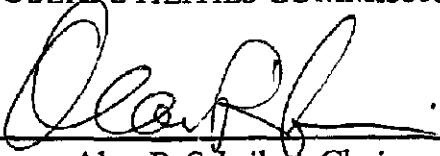
It is, therefore,

ORDERED, That, in accordance with Finding (17), the complaint shall be dismissed without prejudice. It is, further,

¹ Ms. Putman did not file the pleading.

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

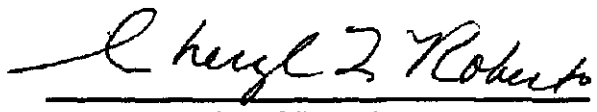
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus

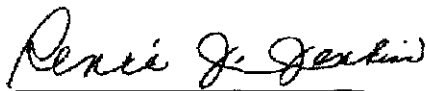

Valerie A. Lemmie


Cheryl L. Roberto

LDJ/vrm

Entered in the Journal

JAN 21 2009



Renee J. Jenkins
Secretary