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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

ROBERT C. TARRY, SR.,

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

Case No. 09-1086-EL-CSS

MOTION TO DISMISS FOR FAILURE TO PROSECUTE
AND MEMORANDUM IN SUPPORT

Respondent Ohio Edison Company ("Ohio Edison") hereby respectfully moves to dismiss the Complaint of Complainant Robert C. Tarry, Sr. ("Complainant") due to Complainant's failure to prosecute this case. For the reasons set forth below, this motion should be granted.¹

The Attorney Examiner has twice *required* Complainant to appear at a pre-hearing settlement conference to discuss his claims. *See* Entries dated Apr. 28 and Mar. 4, 2010. The first conference was scheduled for April 9, 2010. Complainant failed to attend this conference, without any explanation or excuse. In scheduling a second conference for June 15, 2010, the Examiner noted that "failure to attend the scheduled settlement conference may result in a recommendation that the Commission dismiss the case for lack of prosecution." Entry dated Apr. 28, 2010, ¶ 4. Notwithstanding this warning, Complainant again failed to attend, without explanation. Counsel for Ohio Edison appeared at both of the conferences.

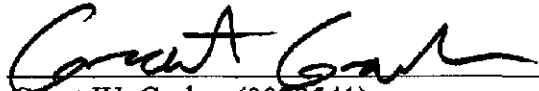
¹ As set forth in Ohio Edison's pending Motion to Dismiss dated November 30, 2009, the Complaint also should be dismissed for failure to state a reasonable grounds for complaint.

A complainant has a duty to prosecute his case, and this includes attending and participating in pre-hearing settlement conferences when required to do so. See Rule 4901-1-26. The Commission thus routinely dismisses cases for want of prosecution where a complainant fails to appear for a settlement conference or otherwise ignores the Commission's scheduling orders. See, e.g., *Olivito v. Columbia Gas of Ohio, Inc.*, No. 09-1841-GA-CSS, Entry dated Mar. 24, 2010; *Ray v. Duke Energy Ohio, Inc.*, No. 09-874-EL-CSS, Entry dated Jan. 27, 2010; *Tanner v. AT&T Ohio*, No. 09-343-TP-CSS, Entry dated Nov. 4, 2009; *Aggressive Ins. v. AT&T Ohio*, No. 07-1039-TP-CSS, Entry dated Oct. 14, 2009.

Here, Complainant twice has failed to appear at mandatory conferences, without any explanation or excuse, and even after being warned of the possible consequences of this failure. The Commission has given Complainant ample opportunity to press his claims. But since filing his Complaint, Complainant has shown no inclination to do so. All the while, Ohio Edison and its counsel have expended significant amounts of time and money investigating Complainant's claims and preparing and appearing for the conferences Complainant could not be bothered to attend. Scheduling a third such conference (or scheduling a hearing) would no doubt force Ohio Edison to spend additional resources on a case Complainant has no desire to pursue. Because Complainant has failed to prosecute his case, the Complaint should be dismissed.

DATED: June 24, 2010

Respectfully submitted,



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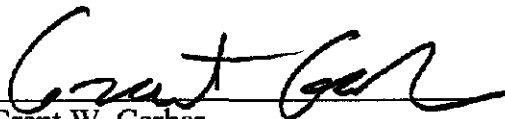
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ATTORNEYS FOR RESPONDENT
OHIO EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss for Failure to Prosecute and Memorandum in Support was sent by first class U.S. mail, postage prepaid, to the following person this 24th day of June, 2010:

Robert C. Tarry, Sr.
500 Middle Avenue
Elyria, Ohio 44035



Grant W. Garber
An Attorney for Respondent