

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

Gwendolyn Tandy,	:	
	:	
Complainant	:	
	:	
v.	:	Case No. 12-2103-GA-CSS
	:	
The East Ohio Gas Company	:	
d/b/a Dominion East Ohio,	:	
	:	
Respondent	:	

- - -

PROCEEDINGS

before Ms. Greta See, Hearing Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 11:30 a.m. on Thursday, February 28, 2013.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

APPEARANCES:

Whitt Sturtevant, LLP
By Mr. Gregory L. Williams
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215

On behalf of The East Ohio Gas Company
d/b/a Dominion East Ohio.

- - -

1 Thursday Morning Session,
2 February 28, 2013.

3 - - -

4 EXAMINER SEE: Scheduled for hearing
5 today is Case No. 12-2103-GA-CSS -- I'm sorry, wait a
6 second. What did I say?

7 (Record read.)

8 EXAMINER SEE: Being entitled Gwendolyn
9 Tandy versus East Ohio Gas Company doing business as
10 Dominion East Ohio.

11 On behalf of Dominion East Ohio.

12 MR. WILLIAMS: On behalf of Dominion East
13 Ohio, Gregory Williams of Whitt Sturtevant, KeyBank
14 Building, 88 East Broad Street, Suite 1590, Columbus,
15 Ohio 43215.

16 EXAMINER SEE: And I would note for the
17 record that Ms. Tandy is not present. She contacted
18 me, left a message on my voice mail this morning at
19 approximately 8:35 a.m. and indicated that she had an
20 emergency and would need to reschedule without
21 further details.

22 I would note for the record that this is
23 the second time that this hearing has been scheduled
24 and that Ms. Tandy failed to appear.

25 Mr. Williams.

1 MR. WILLIAMS: Yes, your Honor. At this
2 time I would like to make a motion to preserve
3 Dominion's rights on the record. We would like to
4 move the Commission to dismiss this complaint with
5 prejudice. Dominion understands and agrees that
6 complainants should be allowed their day in court;
7 however, this is Ms. Tandy's third opportunity, in
8 fact, to prosecute this complaint before the
9 Commission. I'd like to have --

10 EXAMINER SEE: Refresh my memory,
11 Mr. Williams. You say this is the third opportunity?

12 MR. WILLIAMS: Yes, ma'am. On
13 November 27th, the Bench issued an entry for this
14 complaint, along with a companion complaint against
15 Cleveland Electric Illuminating Company. Both
16 complaints were to be held on the same day; CEI was
17 to go first in the morning.

18 Ms. Tandy was an hour late for her CEI
19 hearing which pushed back the start date -- or, start
20 time for DEO. She didn't inform either the
21 Commission or Dominion that she had limited
22 availability that day and so could not attend the
23 afternoon session which was her complaint against
24 DEO, and so that was Ms. Tandy's first opportunity to
25 prosecute this case.

1 EXAMINER SEE: And you're talking about
2 that time in addition to this instance and the
3 previously-scheduled hearing where she did not
4 even --

5 MR. WILLIAMS: Right.

6 EXAMINER SEE: -- appear.

7 MR. WILLIAMS: Right.

8 EXAMINER SEE: Okay.

9 MR. WILLIAMS: And I would like the
10 record to reflect that at each point in the process,
11 Dominion's witness, Ms. Roxie Edwards, was prepared
12 and present for at least the first hearing which was
13 scheduled for January 15th, and the second hearing
14 which was scheduled for February 6th. She traveled
15 from Cleveland to Columbus, prepared to give her
16 testimony, but because of Ms. Tandy's failure to
17 appear the first time on January 15th -- or, rather,
18 failure to prosecute because she had limited
19 availability, and because of Ms. Tandy's failure to
20 appear on February 6th, Ms. Roxie Edwards was not
21 able to present her testimony.

22 I would also like the record to reflect
23 that Ms. Edwards was prepared today to give her
24 testimony today. She was halfway on her way from
25 Cleveland to Columbus, but was advised by the

1 Commission that because Ms. Tandy would not be
2 present, her presence was also not necessary and so
3 she turned around and went back home.

4 EXAMINER SEE: Just for the record,
5 Mr. Williams, you are correct in that yes, I
6 contacted Ms. Edwards, this morning, as soon as I
7 learned that Ms. Tandy would not be here and we would
8 not be going forward with the hearing on the merits.

9 MR. WILLIAMS: Okay. And then with
10 regard to the motion to dismiss with prejudice, the
11 Supreme Court has held that it is within a tribunal's
12 discretion to dismiss a case with prejudice for
13 failure to prosecute. It is reviewed at -- an abuse
14 of discretion standard. It is permissible,
15 nevertheless, and the Supreme Court has held, and I
16 can give you the case number if you'd like it, that
17 it is not an abuse of discretion for a tribunal to
18 dismiss an action with prejudice for lack of
19 prosecution when the plaintiff voluntarily fails to
20 appear at hearing without explanation and his
21 location is unknown.

22 EXAMINER SEE: Okay. And I assume that
23 you're going to give me a copy of that, Mr. Williams.

24 MR. WILLIAMS: Yes, ma'am.

25 EXAMINER SEE: Along with a motion? Do

1 you have a written motion you want to --

2 MR. WILLIAMS: It was an oral motion. If
3 it will please the Bench, I can make it a written
4 motion and submit it after the hearing.

5 EXAMINER SEE: How quickly could you
6 submit that?

7 MR. WILLIAMS: Forty-eight hours. Is
8 that sufficient?

9 EXAMINER SEE: Monday? Is that --

10 MR. WILLIAMS: I would -- end of the day
11 tomorrow; Friday. But if Monday is better for the
12 Bench, that'd be better for me.

13 EXAMINER SEE: Monday is acceptable for
14 the Bench or any time sooner if your schedule allows.

15 If there is nothing further, the hearing
16 is adjourned.

17 (Thereupon, the proceedings concluded at
18 11:39 a.m.)

19 - - -

20

21

22

23

24

25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, February 28, 2013, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2013.

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/14/2013 10:39:15 AM

in

Case No(s). 12-2103-GA-CSS

Summary: Transcript in the matter of Gwendolyn Tandy vs The East Ohio Gas Company hearing held on 02/28/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn M. Mrs.