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.	)	

MEMORANDUM IN RESPONSE TO COMPLAINANT'S APRIL 5, 2013 FILING

I. INTRODUCTION

On March 27, 2013, the Commission issued an entry dismissing this complaint with prejudice based on complainant Gwendolyn Tandy's failure to prosecute her case. On April 5, 2013, Ms. Tandy filed an untitled document in this docket expressing her "disagree[ment] with the dismissal of [her] complaint." (April 5 Filing at 1.) It is not clear what this letter is intended to accomplish, but in the event the Commission treats it as an application for rehearing, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") hereby files a memorandum in response to that letter within the 10-day response time specified by Ohio Adm. Code 4901-1-35(B). For all of the reasons discussed below, DEO asserts that no action by the Commission is necessary.

II. ARGUMENT

Ms. Tandy's letter only confirms that the Commission properly dismissed the complaint against DEO. Ms. Tandy essentially articulates three points in her letter. First, she claims that she received no "no phone call or letter to confirm the date and time of the hearing." (April 5 Filing at 2.) Second, she offers an excuse for the second of her three failures to present her case on a scheduled hearing date. (*Id*.) Finally, she asserts that had she "known that no attorney

examiner would be there" who was familiar with her case, she "would have consulted with an attorney befor[e] . . . the hearings." (*Id*. at 3.)

As explained below, Ms. Tandy's letter provides no reason to revisit the dismissal of her case. Indeed, as DEO will explain, because the letter lacks any merit, the Commission should not take any action with respect to it. Regarding her first point, Ms. Tandy plainly had notice of each hearing date, and she only calls her own truthfulness into question by asserting otherwise. Second, regarding Ms. Tandy's excuse for failing to attend her second hearing date, the Commission was already aware of this reason when it dismissed the case; more to the point, it already forgave that failure to appear and granted a third hearing date—which Ms. Tandy also missed. Finally, Ms. Tandy's assertions regarding the attendance and preparation of the attorney examiner assigned to this case are incorrect and show a lack of respect for the dignity of the tribunal.

For these reasons, the Commission should stand on its entry dismissing this case with prejudice.

A. The Commission should take no action on this letter.

The time frame for seeking rehearing from the March 27 Entry is not yet expired. It is not clear whether the April 5 letter should be considered an application for rehearing, but either way, under R.C. 4903.10, "[i]f the commission does not grant or deny [an] application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law."

DEO proposes that the Commission should take no action on this letter. The letter raises no issues of merit, and if the Commission issues an entry on rehearing, that will only restart another 30-day clock, and allow Ms. Tandy the opportunity to continue troubling the Commission and DEO with more filings. (For example, on April 9, Ms. Tandy recently filed another 40 pages of bills, letters, and handwritten notations in this docket.) While Ms. Tandy

generally has not acted in accordance with the Commission's orders, she has shown that she will continue to make filings in the docket and continue to require the attention of the parties and the Commission.

If the Commission takes no action, a jurisdictional bar will fall against further filings by Ms. Tandy. *See, e.g., Greer v. Pub. Util. Comm.,* 172 Ohio St. 361, 362 (1961) ("The commission . . . has no power to entertain an application for rehearing filed after the expiration of such 30-day period"). This case will then come to an end, as it should. DEO respectfully proposes this course of action to the Commission. This course of action is appropriate because, as explained in the remainder of this memorandum, the letter does not raise any issue of merit.

B. Ms. Tandy had notice of all hearings in this case.

Ms. Tandy first seems to assert that she lacked notice of the hearings, stating "I had no phone call or letter to confirm the date and time of the hearing." (*Id*. at 2.) This is factually incorrect.

Ms. Tandy was given notice of all three hearings. In fact, Ms. Tandy was at the Commission for the first scheduled hearing date on January 15, 2013; the problem was not lack of notice, but that she was late *and* was unprepared *and* needed to leave early. For the second two hearings (scheduled for February 6 and February 28) the Commission issued public scheduling entries and filed proof of service of these entries upon Ms. Tandy on January 23 and February 13, respectively. All of these notices were sent to 1439 Sulzer Ave., which Ms. Tandy continues to list as her home address. (*See, e.g.*, April 5 Filing at 1.)

Is it possible that these notices were not received? Not on these facts. Ms. Tandy has plainly been receiving notices to this address. For example, the entry that notified Ms. Tandy of the first hearing (which she *did* attend) was sent to the same address as the entries scheduling the second and third hearings (which she did *not*). The entry dismissing her case was also served on

this address, and Ms. Tandy evidently received notice of the dismissal, as she has filed the present letter in disagreement with it.

Most critically, the facts show that Ms. Tandy had actual notice of the missed hearing dates. Each day that a hearing was scheduled, *Ms. Tandy* called the examiner to advise that she would not be attending. As the dismissal entry states, "on the afternoon of February 6, 2013, Ms. Tandy contacted the attorney examiner stating that she was unaware of the hearing date and that she had a death in the family," and again, "on February 28, 2013, Ms. Tandy left a message for the attorney examiner stating that she had an emergency and would need to reschedule the hearing." *See* Entry at 7 (April 5, 2013). It is beyond the possibility of coincidence that Ms. Tandy (*1*) would receive numerous effective notices to 1439 Sulzer Ave., (*2*) fail to receive notice only of the hearings she missed, and (*3*) still just happen to call the examiner on the dates of the hearing to advise that she had a conflict.

Ms. Tandy knew about these hearing dates. Given these facts, her assertion that she "had no knowledge of the hearing" raises questions regarding Ms. Tandy's veracity. Such dubious assertions only confirm that Ms. Tandy should not be given any further opportunity to try this case before the Commission.

C. Ms. Tandy offers no new reason for failing to appear for her second hearing date, and in any event, she also missed the third.

Ms. Tandy also reiterates her earlier excuse for failing to attend one of her hearing dates, stating that she "had a death in my family." (April 5 Filing at 2.) This assertion, while unfortunate if true, provides no reason to revisit the dismissal of the case. As DEO explained in detail in its motion to dismiss the complaint for failure to prosecute, Ms. Tandy has failed to appear and present her case not once, but three separate times. (*See* DEO Mot. to Dismiss at 6–8.) Excusing only one of these failures does not cure the problem.

Not only that, but the Commission was already aware of her claimed excuse when it dismissed the complaint with prejudice. In the dismissal entry, the Commission noted that "on the afternoon of February 6, 2013, Ms. Tandy contacted the attorney examiner stating that she was unaware of the hearing date and that she had a death in the family." Entry at 7 (April 5, 2013). Ms. Tandy has never substantiated this (or any other) excuse in any way, and this assertion was already considered and found wanting.

The most critical problem with this assertion is that the Commission has already provided the remedy for her second absence: a *third* opportunity to make her case against DEO. But again, she failed to show. And in her most recent filing, Ms. Tandy offers no further explanation for her third failure to appear.

In short, the Commission already considered the alleged hardship that caused Ms. Tandy to fail to attend the second hearing, and it already granted her full relief from that hardship: a third hearing date. She has still failed to appear to present her case. The Commission appropriately dismissed the case with prejudice.

D. Ms. Tandy's claim regarding the examiner's preparation is incorrect, improper, and irrelevant to whether she chose to consult an attorney.

Finally, Ms. Tandy closes her letter with the assertion that had she "known that no attorney examiner would be there and also [be familiar[1]] with my case," she "would have consulted with an attorney befor[e] I came to . . . the hearings." (April 5 Filing at 3.)

The premise of her assertion—that no attorney examiner familiar with the case attended her hearing—is simply false. An examiner was present and prepared for each one of Ms. Tandy's three hearing dates. Of course, given that *Ms. Tandy* was not "there," it is unclear how she can assert that the examiner lacked familiarity with her case. Moreover, the numerous

[1] The letter reads "be/formiuer."

entries in this case and the transcript from a companion case demonstrate abundant—even heroic—familiarity with Ms. Tandy's pleadings, which are anything but models of brevity, organization, or clarity.

Frankly, this allegation does nothing more than confirm Ms. Tandy's continued willingness to abuse representatives of both the Company and the Commission, both in writing and in person. (*See, e.g.*, January 11, 2013 Filing by Ms. Tandy at 2–7 (accusing examiners, *inter alia*, of lack of preparation, of failure to respond, of "horrible treatment," of allowing the violation of her rights, of deserving reprimand, of lack of familiarity with case, of hostility, of "show[ing] up to work unprepaired [sic]," of deserving to be fired, of "yell[ing] at me," and of "continu[ing to] yell at me" "rather than providing me with a copy [of evidence] as requested").) The Commission has been more than fair and solicitous of Ms. Tandy's interests. Ms. Tandy's response has simply been to abuse the process.

In any event, the primary thrust of her assertion, that she "would have consulted with an attorney," raises no fault with the Commission. If Ms. Tandy chose not to consult with an attorney, that was her choice alone. No one prevented her from contacting an attorney or advised her not to contact one. And if she had any questions regarding the hearing process, nothing prevented her from raising such questions before or even at the hearing. This assertion, like all the others, is meritless.

III. CONCLUSION

The issues raised in Ms. Tandy's letter filed April 5, 2013, are meritless. The Commission need not take any action on this letter; it can and should stand on the prior order dismissing this case with prejudice.

Dated: April 15, 2013

Respectfully submitted,

/s/ Gregory L. Williams

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Response was served by U.S. mail to the following person on this 15th day of April, 2013:

Gwendolyn Tandy
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/s/ Gregory L. Williams
One of the Attorneys for
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Dominion East Ohio

Summary: Memorandum in Response to Complainant's April 5, 2013 Filing electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio