

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Lyssa)	
Holder and Brandon Zehfus,)	
)	
Complainant,)	
)	
v.)	Case No. 13-1552-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ENTRY ON REHEARING

The Commission finds:

- (1) On July 1, 2013, Lyssa Holder and Brandon Zehfus filed a complaint with the Commission against Duke Energy Ohio, Inc. (Duke or company) alleging that the company improperly charged them for electric usage at their residence.
- (2) Duke filed an answer on July 18, 2013, denying the allegations in the complaint.
- (3) By Entry issued August 6, 2013, this matter was scheduled for a settlement conference on September 10, 2013. At the settlement conference, the parties seemed to reach an agreement and settle the complaint.
- (4) On October 15, 2013, complainant Lyssa Holder contacted the Commission and indicated that the settlement documents, which she had received from Duke Energy, did not accurately reflect the parties' settlement agreement.
- (5) Accordingly, a second settlement was scheduled to take place telephonically in this matter on three separate occasions, October 18, November 12, and December 11, 2013. On each occasion, Duke Energy called in on the pre-arranged conference telephone number for the settlement conference. However, neither complainant called in to participate in the conference on any of the scheduled conference dates.

- (6) With regard to the October 18, 2013 conference date, complainant Lyssa Holder indicated to the attorney examiner via e-mails that she did not have enough notice of the conference and could not leave work. With regard to the November 12, 2013 conference date, Ms. Holder also sent an e-mail to the attorney examiner. In that e-mail, Ms. Holder stated that she had lost her voice through an illness and could not use the telephone to participate in the conference.
- (7) In the Entry rescheduling the conference date to December 11, 2013, the complainants were advised that failure to participate in the conference might result in a recommendation to the Commission to dismiss their complaint for lack of prosecution.
- (8) On December 30, 2013, Duke filed a motion to dismiss the complaint for lack of prosecution. In the memorandum in support of the motion, Duke stated that the complaint was settled at the first settlement conference on September 10, 2013. However, complainants failed to return the settlement documents that the company sent to them. No one filed a memoranda contra Duke's motion to dismiss.
- (9) On January 22, 2014, the Commission granted Duke's motion and dismissed the complaint for failure to prosecute.
- (10) R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the Commission's journal.
- (11) On January 30, 2014, complainant Lyssa Holder filed a formal complaint form listing Case No. 13-1552-EL-CSS. On the form, there is the following hand-written notation: "This is a continuance of a complaint that was closed without my knowledge." Below that notation in the document, complainant states that she tried three times to call into the December 11, 2013 settlement conference, but could contact no one on the conference line. Ms. Holder states that she then tried to call the Commission's customer service line to find out what to do, but was transferred to a voice mail. Further, Ms. Holder states that she now finds her case was closed out and no one told her about it.

- (12) The document filed by complainant Lyssa Holder on January 30, 2014, is not styled as an application for rehearing, nor does it comport with the Commission's rules for rehearing requests. Nonetheless, as the document was filed within the 30-day rehearing time period required by R.C. 4903.10, we will treat the January 30, 2014 filing as an application for rehearing.
- (13) On February 3, 2014, Duke filed a memorandum in opposition to complainant Lyssa Holder's application for rehearing. In the memorandum, Duke states that complainant's application offers only an unverified statement that complainant allegedly attempted to participate in the December 11, 2013 settlement conference. Duke states that complainant never attempted to contact the Commission, either on the day of the scheduled settlement conference or any time thereafter. Duke argues that a person who supposedly tried to call in to a second settlement conference clearly would have sent written notice of those attempts to both the attorney examiner conducting the conference and to the company's attorney. Moreover, that person also would have followed up with the Commission to ask that the settlement conference be rescheduled, either informally or through a formal filing with the Commission. Duke notes that complainant did nothing and filed nothing. Therefore, complainant's application is void of factual merit.
- (14) Duke argues that the Commission did not dismiss this case in a vacuum, i.e., complainant failed to respond to the company's motion to dismiss. Duke states that the company filed its motion to dismiss on December 30, 2013, and then served its motion to dismiss on complainant at two addresses used by complainant at various times in this proceeding, and then e-mailed a copy of the motion directly to the complainant. Duke states that complainant had the company's motion to dismiss by December 30, 2013, yet never bothered to respond. Duke argues that the Commission properly granted Duke's motion to dismiss, once complainant failed to respond within the time provided by the Commission's rules.
- (15) Duke notes that the complainant Lyssa Holder still does not bother to address the merits of the company's motion to dismiss, which was served on complainant by the company and specifically cited in the Entry that dismissed this case. Duke argues that its motion remains unchallenged; thereby

further demonstrating the legal and factual deficiencies of the complainant's application for rehearing. Duke argues that the record before the Commission confirms that the Commission properly dismissed this action because complainants failed to participate in the second settlement conference and otherwise failed to prosecute this case.

- (16) The Commission finds no merit in complainant Lyssa Holder's arguments that she tried to call into the December 11, 2013 settlement conference and could not contact anyone, or that no one informed her that her complaint might be dismissed if she failed to participate in the conference. As Duke notes in its memorandum in opposition, complainant offers no facts to support her assertion that she tried to call in to the December 11, 2013 settlement conference. *The filings in this case reveal that the complainants were served with notice of the December 11, 2013 conference at the address listed in their complaint. The entry containing that notice also included the admonition that the complaint might be dismissed if complainants failed to participate in the conference. The Commission further observes that complainants were served with Duke's motion to dismiss at the address listed in their complaint and that they did not respond to Duke's arguments that the complaint should be dismissed for failure to prosecute. Furthermore, we note that complainant Lyssa Holder has never offered an explanation why her co-complainant, Brandon Zehfus, could not call into the settlement conference when she was unavailable or indisposed.*
- (17) Accordingly, the Commission finds that the application for rehearing filed by complainant Lyssa Holder should be denied.

It is, therefore,

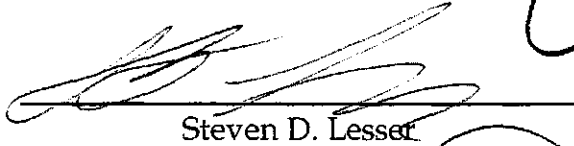
ORDERED, That the application for rehearing filed by complainant Lyssa Holder is denied in its entirety. It is, further,

ORDERED, That copies of this Entry on rehearing be served upon the parties, their counsel, and all interested persons of record.

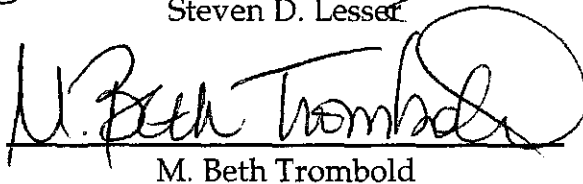
THE PUBLIC UTILITIES COMMISSION OF OHIO



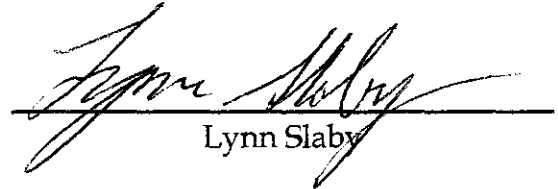
Todd A. Snitchler, Chairman



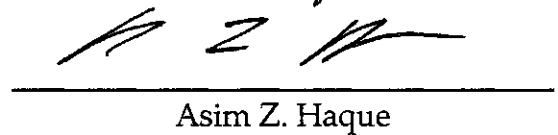
Steven D. Lesser



M. Beth Trombold



Lynn Slaby

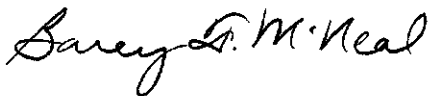


Asim Z. Haque

KKS/vrm

Entered in the Journal

FEB 19 2014



Barcy F. McNeal
Secretary