

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
LARRY STURGILL AND PATRICIA  
GILGENBACH,

COMPLAINANTS,

v.

CASE No. 17-2127-GA-CSS

NORTHEAST OHIO PUBLIC ENERGY  
COUNCIL,

RESPONDENT.

ENTRY

Entered in the Journal on April 11, 2018

I. SUMMARY

{¶ 1} The Commission grants a motion by Northeast Ohio Public Energy Council to dismiss this case for lack of prosecution.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4929.26(F), a governmental aggregator shall be subject to supervision and regulation by the Commission to the extent of any competitive retail natural gas service that it provides and the Commission's authority under R.C. Chapter 4929.

{¶ 3} Respondent, the Northeast Ohio Public Energy Council (NOPEC), is a governmental aggregator, as defined in R.C. 4929.01(K)(1), for the provision of competitive retail natural gas service and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On October 16, 2017, Larry Sturgill and Patricia Gilgenbach (collectively, Complainants) filed a complaint alleging that NOPEC changed their gas supplier without their knowledge. Complainants further allege that they have never received the required opt-out notices from NOPEC.

{¶ 5} NOPEC filed its answer on November 6, 2017. In its answer, NOPEC generally denies all allegations in the complaint and sets forth several affirmative defenses.

{¶ 6} On December 1, 2017, the attorney examiner issued an Entry which scheduled a settlement conference for December 18, 2017. The Entry informed Complainants that failure to attend the scheduled settlement conference in this case may result in dismissal of the complaint by the Commission.

{¶ 7} On December 11, 2017, NOPEC filed a motion to dismiss the complaint due to Complainants' alleged failure to set forth reasonable grounds for their complaint.

{¶ 8} As scheduled, a settlement conference was convened in this matter on December 18, 2017. An attorney examiner from the Commission's legal department and counsel for NOPEC were present for the proceeding; however, neither of the Complainants attended the conference.

{¶ 9} On December 18, 2017, NOPEC again filed a motion to dismiss. In the motion, NOPEC renewed its December 11, 2017 motion to dismiss, and also moved to dismiss the complaint for failure to prosecute.

{¶ 10} By Entry dated January 23, 2018, the attorney examiner directed the Complainants to proceed in the case utilizing one of two options: (a) file a letter by February 9, 2018, requesting either dismissal or continued action on the complaint, or (b) take no action and the attorney examiner would recommend to the Commission that the case be dismissed.

{¶ 11} On February 2, 2018, Mr. Sturgill filed a letter in this docket stating, among other things, that there are legal aspects to the complaint that should be considered by the attorney examiner before the case is closed. Mr. Sturgill stated, however, that it is not reasonable to expect Complainants to appear for a settlement conference.

{¶ 12} On February 23, 2018, the attorney examiner issued an Entry which rescheduled a settlement conference in this case for March 20, 2018. The Entry informed

Complainants that, under Ohio Adm.Code 4901-9-01(G), a settlement conference shall be scheduled in a complaint case to attempt to resolve the issues in the case prior to hearing and that, unless good cause is shown, the settlement conference shall be held at the offices of the Commission. Further, Complainants were advised that failure to attend the settlement conference may result in dismissal of the complaint for lack of prosecution.

{¶ 13} As rescheduled, a settlement conference was convened in this matter on March 20, 2018. An attorney examiner and counsel for NOPEC were present for the proceeding; however, neither of the Complainants attended the conference.

{¶ 14} On March 6, 2018, Mr. Sturgill filed correspondence reiterating that it is not reasonable to require Complainants to appear for a settlement conference. Mr. Sturgill also requests that the Commission investigate the allegations in the complaint.

{¶ 15} On March 20, 2018, NOPEC filed a letter that stated, among other things, that the Complainants' repeated failure to attend settlement conferences indicates that they do not intend to prosecute this case. NOPEC stated that, for the reasons set forth in its December 18, 2017 motion to dismiss, the Commission should dismiss the complaint with prejudice.

{¶ 16} Considering Complainants' failure to attend the scheduled settlement conferences in this matter, the Commission finds that NOPEC's motion to dismiss should be granted. The Commission cannot render a decision based solely upon the allegations in a complaint or correspondence from a complainant. In a formal complaint case such as this one, the complainant has the legal obligation to prosecute the complaint. After receiving notice of the proceedings, Complainants in this matter have refused to appear at the scheduled settlement conferences. This case should, therefore, be dismissed, without prejudice, for lack of prosecution.

### III. ORDER

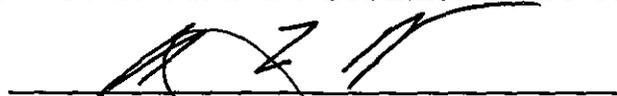
{¶ 17} It is, therefore,

{¶ 18} ORDERED, That NOPEC's motion to dismiss be granted. It is, further,

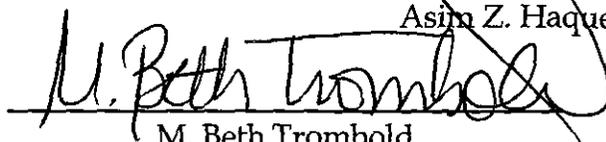
{¶ 19} ORDERED, That Case No. 17-2127-GA-CSS be dismissed, without prejudice, for lack of prosecution. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



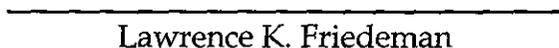
Asim Z. Haque, Chairman



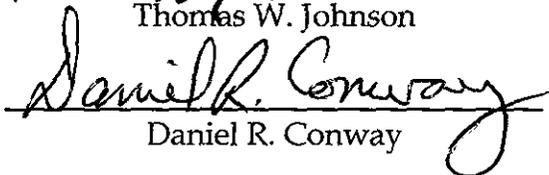
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

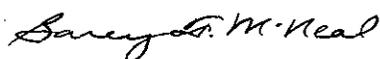


Daniel R. Conway

KKS/vrm

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APR 11 2018



Barcy F. McNeal  
Secretary