

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
ERIN DAHL,**

COMPLAINANT,

v.

CASE NO. 17-1822-GA-CSS

**THE EAST OHIO GAS COMPANY D/B/A
DOMINION ENERGY OHIO,**

RESPONDENT.

ENTRY

Entered in the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission denies Complainant's fifth motion seeking a continuance of the hearing and grants The East Ohio Gas Company d/b/a Dominion Energy Ohio's motion to dismiss the complaint for failure to prosecute.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On August 22, 2017, Erin Dahl (Ms. Dahl or Complainant) filed a complaint against DEO alleging that, during the period of July 2016 to October 2016, DEO's records of gas usage and billing for her apartment were inaccurate, possibly due to a faulty gas meter and despite the fact that she was traveling out of the state of Ohio during that time. Complainant further alleges that DEO representatives failed to follow proper procedures

when she requested a meter test and requests that DEO be directed to comply with existing statutes and test her gas meter in her presence at her apartment. Lastly, Complainant avers that DEO provided her with inadequate service.

{¶ 5} DEO filed its answer on September 11, 2017. In its answer, DEO admits certain allegations and generally denies other allegations in the complaint. DEO also states that it is without sufficient knowledge or information to admit or deny the remaining allegations in the complaint. Lastly, DEO sets forth in the answer several affirmative defenses.

{¶ 6} By Entry issued September 18, 2017, the attorney examiner scheduled a settlement conference for October 25, 2017. Ms. Dahl failed to appear on October 25, 2017, and the settlement conference was subsequently rescheduled three separate times at Ms. Dahl's request, first on April 3, 2018, then on June 5, 2018, and lastly on June 20, 2018.

{¶ 7} On June 20, 2018, the settlement conference convened as rescheduled in an attempt to resolve this matter informally. The parties, however, were unable to resolve the issues presented in the complaint during the conference.

{¶ 8} By Entry issued July 3, 2018, the attorney examiner scheduled this matter for hearing on August 30, 2018. Thereafter, pursuant to requests by Ms. Dahl, the attorney examiner rescheduled the hearing date four separate times, first for October 11, 2018, and then for November 9, 2018, January 31, 2019, and February 25, 2019, respectively.

{¶ 9} On February 22, 2019, Complainant filed a motion seeking a fifth continuance of the scheduled hearing date. In her motion, Complainant reiterates the arguments in her complaint and states that, on February 16, 2019, she was the victim of theft. Specifically, Complainant alleges that said theft caused her undue hardship on her transportation and finances, both of which she alleges impact her trip to Columbus for the scheduled hearing.

{¶ 10} Also on February 22, 2019, DEO filed a memorandum contra Complainant's motion for continuance wherein DEO states that Complainant has been given chance after chance to make her case before the Commission, and despite being given clear direction that

further continuances would not be granted, Ms. Dahl has found another reason to delay her hearing. DEO states that Complainant argues that she has demonstrated “good cause” to be granted a fifth continuance. However, DEO avers that Complainant does not explain why her transportation issues constitute “good cause” to delay the hearing and further argues that the January 28, 2019 Entry does not provide for such consideration and only provides that failure to appear will result in a recommendation of dismissal. Lastly, DEO states that Complainant waited to file her motion until two business days before the date of the hearing. With hearing preparation and travel plans already well underway, DEO states that a delay at this point would cause DEO to incur additional expense, thus unduly and unfairly prejudicing DEO.

{¶ 11} The February 25, 2019 hearing convened as scheduled. The attorney examiner, counsel for DEO, and DEO witnesses were present for the evidentiary hearing. However, Complainant did not appear. At the hearing, DEO moved to dismiss the case with prejudice for failure to prosecute, and the attorney examiner reserved a ruling on the motion.

{¶ 12} On February 26, 2019, DEO renewed its motion to dismiss with prejudice for failure to prosecute. In support of its motion, DEO states that Ms. Dahl has repeatedly failed to appear and attempt to either settle or prosecute her complaint. Furthermore, DEO opines that the Commission has scheduled five different hearing dates, each at Ms. Dahl’s sole request, and all of which she has yet to make an appearance. DEO avers that, while the Commission is within its rights to provide leniency to pro se complainants, it has a history of dismissing complaints when the complainant: (a) fails to appear multiple times before even reaching the hearing stage; (b) fails to appear multiple times after a complaint has proceeded to the hearing phase; and (c) provides notice before the actual hearing date of her inability to attend, but there have been multiple hearing dates and warnings.

{¶ 13} Also on February 26, 2019, Complainant filed a reply to DEO’s memorandum contra. In her response, Complainant states that each continuance was either requested due to conflicting court dates in other litigation matters of which she has no control over or

extenuating personal circumstances. Complainant states that her fifth request for a continuance was due to DEO's failure to provide her with the required documents needed for this case. Furthermore, Complainant avers that she has made every effort with the South Euclid Police Department to resolve her theft issue as quickly as possible so that she would not have to file another continuance with the Commission. Complainant states that the record shows DEO causing numerous delays and that this issue should have been resolved in 2017 with DEO directly. Lastly, Complainant concludes that she has not filed a single motion for continuance based on any negligence on her part.

{¶ 14} On March 12, 2019, Complainant filed a memorandum contra DEO's motion to dismiss. In her response, Complainant states that none of DEO's arguments in its motion to dismiss can be substantiated as a basis to dismiss her case. Specifically, Complainant avers that she has shown great effort and resolve in her attempts to rectify the alleged fraudulent billing issue. Additionally, Complainant avers that she has made repeated requests to DEO to reissue billing statements and did not receive the billing statements until January 2019. Complainant contends that each request has been based upon actual and verifiable scheduling conflicts and all of which have satisfied the legal requirements of "good cause." Furthermore, Complainant opines that she has heeded all directives provided by the Commission and that her requests to continue the hearing do not equate to ignoring orders or warnings as DEO asserts.

{¶ 15} The Commission notes that, as Complainant has been repeatedly informed, Ms. Dahl must appear and present testimony in support of the claims made in the filed complaint. However, as reflected by the docket in this case, Ms. Dahl has made repeated requests to continue the administrative proceedings in this matter and has ultimately failed to prosecute her case. Complainant was cautioned on three separate occasions, with each warning escalating in seriousness, regarding her failure to appear and prosecute the case. First, the attorney examiner's May 16, 2018 Entry advised Complainant that failure to participate in the settlement conference may result in dismissal of the complaint for lack of prosecution. Second, the attorney examiner's November 8, 2018 Entry informed

Complainant that, absent extraordinary circumstances, no further continuances of the hearing would be granted and that her failure to attend the rescheduled hearing in this case would result in a recommendation to dismiss her complaint for failure to prosecute. Third, the attorney examiner's January 28, 2019 Entry, after granting Ms. Dahl's request for more time to review the billing statements received on January 12, 2019, warned Complainant that her failure to attend the February 25, 2019 hearing in this case would result in a recommendation to dismiss her complaint for failure to prosecute. Furthermore, Ms. Dahl represented to the Commission that her January 22, 2019 motion for continuance was her last, "final" request to continue the hearing; yet, Complainant moved to continue her hearing for a fifth time on February 22, 2019, and ultimately failed to appear at the February 25, 2019 hearing. For these reasons, after providing Complainant ample opportunities for a hearing, the Commission finds it reasonable to grant DEO's February 26, 2019 motion to dismiss the complaint for failure to prosecute and to deny Complainant's February 22, 2019 motion for continuance.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That Complainant's motion for continuance be denied. It is, further,

{¶ 18} ORDERED, That DEO's motion to dismiss for failure to prosecute be granted. It is, further,

{¶ 19} ORDERED, That the complaint be dismissed with prejudice and this case be closed of record. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

LLA/hac

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Case No(s). 17-1822-GA-CSS

Summary: Entry that the Commission denies Complainant's fifth motion seeking a continuance of the hearing and grants The East Ohio Gas Company d/b/a Dominion Energy Ohio's motion to dismiss the complaint for failure to prosecute. electronically filed by Docketing Staff on behalf of Docketing