

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
NIKITA STEWART,**

COMPLAINANT,

v.

CASE NO. 19-1107-GA-CSS

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

RESPONDENT.

ENTRY

Entered in the Journal on April 22, 2020

I. SUMMARY

{¶ 1} The Commission 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 or the Company) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On May 24, 2019, Nikita Stewart (Ms. Stewart or Complainant) filed a complaint against DEO alleging that the Company is engaging in unfair billing practices. Specifically, Complainant states that DEO overcharged her from July 2018 through January 2019, during which she lived at 4464 Parkton Drive, Warrensville Heights, Ohio 44128 (Property). Additionally, Complainant avers that she scheduled a shut-off appointment to occur on February 1, 2019, in anticipation of moving to a new address. Complainant states

that the appointment did not take place as scheduled but occurred on February 5, 2019, and, consequently, Complainant requested an adjustment to her shut-off date be made. Ms. Stewart states that, after she moved to her current address, she received an \$800 bill from DEO, which she believes is an inaccurate reflection of her gas usage. Additionally, on June 3, 2019, Ms. Stewart filed a correspondence in this docket to supplement her complaint.

{¶ 5} DEO filed its answer on June 13, 2019. In its answer, DEO admits that Ms. Stewart was a residential customer receiving natural gas services for an account at the Property from July 30, 2018, through February 5, 2019. DEO avers that, when service at the Property was initiated, a balance of \$538.78 was transferred from Ms. Stewart's previous account for service at 21230 Tracy Avenue, Euclid, Ohio 44123. DEO states that Ms. Stewart contacted DEO customer service to schedule a turn-off appointment for January 28, 2019, but rescheduled the appointment for January 30 and then again for February 1, 2019. DEO avers that, on February 1, 2019, a DEO technician visited the Property and attempted to turn off service at the curb box but was unable to locate the box because the ground was frozen. DEO states that a second attempt to turn off service was initiated on February 4, 2019, but the DEO technician was unable to locate the curb box due to snow and ice. Ultimately, DEO asserts that, on February 5, 2019, service to the Property was turned off at the curb box, and a balance of \$665.65 was transferred to Ms. Stewart's current account for service at 3930 East 177th Street, Cleveland, Ohio 44128.

{¶ 6} Additionally, DEO states that, on February 25, 2019, Ms. Stewart received a bill for \$806.60, which included the balance transferred from the Property and usage charges of \$140.95 from her current residence. DEO avers that, between March 12 and April 9, 2019, Ms. Stewart contacted DEO to inquire about her account balance and requested an adjustment be made to the end service date at the Property. In preparing its answer, DEO determined that, due to an inadvertent administrative error, no adjustment was made. DEO avers that it has since credited Ms. Stewart's account in the amount of \$34.68, which reflects usage associated with the adjustment of the service end date from February 5 to February 1, 2019, at the Property. Lastly, DEO avers that, since Ms. Stewart's February 25, 2019 bill, she

has accrued \$247.54 in current charges and has made one payment of \$101. DEO further avers that, as of May 24, 2019, Ms. Stewart's account balance, including past due charges and the end-date adjustment, is \$918.46. DEO also states that it is without sufficient knowledge or information to admit or deny the remaining allegations in the complaint. In addition, DEO sets forth in the answer several affirmative defenses.

{¶ 7} On July 23, 2019, a settlement conference was held in an attempt to informally resolve the matter. The parties, however, were unable to reach a resolution of the issues presented in the complaint.

{¶ 8} By Entry issued August 14, 2019, the attorney examiner scheduled a hearing in this matter to convene on September 26, 2019, at the Commission offices.

{¶ 9} Subsequently, on September 23, 2019, Ms. Stewart informed the attorney examiner that she would not be able to attend the hearing scheduled for September 26, 2019, due to unforeseen circumstances, and requested that the hearing be rescheduled. Ms. Stewart filed her request for a continuance on September 25, 2019. DEO did not oppose Ms. Stewart's informal request but reserved its right to object to additional requests should they occur.

{¶ 10} On September 25, 2019, the attorney examiner granted Ms. Stewart's request and directed Ms. Stewart to file a letter with the Commission, no later than October 4, 2019, indicating multiple dates in October 2019 and November 2019 that she could attend a hearing.

{¶ 11} Subsequently, on October 15, 2019, the attorney examiner scheduled this matter for hearing on November 21, 2019.

{¶ 12} On October 21, 2019, after the hearing date was set, a notice of dates of availability provided by Ms. Stewart was filed in the docket, which included November 21, 2019, the date the attorney examiner selected for a hearing. Although the notice was not

filed until October 21, 2019, the notice appears to have been faxed by Ms. Stewart on October 4, 2019.

{¶ 13} The November 21, 2019 hearing convened as scheduled. The attorney examiner, counsel for DEO, and DEO's witness were present for the evidentiary hearing. However, Complainant did not appear. At the hearing, DEO witness Margaret Callahan testified on behalf of DEO and her direct testimony was admitted into the record as Exhibit 1.

{¶ 14} On December 6, 2019, DEO filed a motion to dismiss the case with prejudice for failure to prosecute. In support of its motion, DEO states that Ms. Stewart has been given several opportunities to make her case but ultimately failed to do so. The Company represents that the attorney examiner provided notice to Ms. Stewart that failure to appear could result in a recommendation for dismissal. Additionally, the Company avers that, by failing to provide notice, Ms. Stewart has imposed needless costs on both the Commission and DEO in preparing for a hearing in this matter, and neither the Commission nor DEO should be required to continue expending resources on this complaint.

{¶ 15} Complainant did not file a response to DEO's motion to dismiss.

{¶ 16} The Commission notes that, as Complainant has been repeatedly informed, Ms. Stewart carries the burden of proving the allegations in her complaint and must appear and present testimony in support of her claims. However, as reflected by the docket in this case, the administrative proceedings in this matter have been continued several times at Complainant's request. Ms. Stewart has nevertheless failed to prosecute the case, even though she has been given several opportunities to do so. On September 23, 2019, Ms. Stewart informally requested a continuance due to lack of transportation; however, Ms. Stewart's subsequent filed request indicated that she was aware of the potential transportation issue for at least a week before she filed her request. In granting Ms. Stewart's request, the attorney examiner gave Ms. Stewart the opportunity to provide the Commission, by October 4, 2019, the dates that she would be available for a hearing, and

cautioned Ms. Stewart that, if she did not respond, the complaint may be dismissed for failure to prosecute the matter. Subsequently, the attorney examiner rescheduled the September 26, 2019 hearing to November 21, 2019, a date that Ms. Stewart was available as indicated by her notice letter filed on October 21, 2019. However, Ms. Stewart failed to appear at the November 21, 2019 hearing, even though she represented that this date would be acceptable with her schedule. As a final matter, Ms. Stewart represented to the Commission in her June 21, 2019 request for a telephonic prehearing conference that, if a hearing in this case is necessary, she would be physically present for such. For these reasons, after providing Complainant ample opportunities to appear for a hearing, the Commission finds it reasonable to grant DEO's December 6, 2019 motion to dismiss the complaint for failure to prosecute.

III. ORDER

{¶ 17} It is, therefore,

{¶ 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). 19-1107-GA-CSS

Summary: Entry granting The East Ohio Gas Company d/b/a Dominion Energy Ohio's motion to dismiss the complaint for failure to prosecute electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio