

FILE

5

RECEIVED-DOCKETING DIV

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO 2010 JUL -7 PM 3:49

VASHON MCINTYRE,

Complainant,

v.

THE EAST OHIO GAS COMPANY d/b/a  
DOMINION EAST OHIO & THE  
CLEVELAND ELECTRIC  
ILLUMINATING COMPANY,

Respondents.

Case Nos. 08-40-GA-CSS  
08-64-EL-CSS

PUCO

**JOINT MOTION TO DISMISS FOR FAILURE TO PROSECUTE  
AND MEMORANDUM IN SUPPORT**

Respondents The East Ohio Gas Company d/b/a Dominion East Ohio and The Cleveland Electric Illuminating Company (collectively, "Respondents") hereby respectfully move to dismiss the Complaints of Complainant Vashon McIntyre ("Complainant") due to Complainant's failure to prosecute this case. For the reasons set forth below, this motion should be granted.<sup>1</sup>

This case has been pending for over two and a half years, and during that time, Complainant has taken no discovery, made no effort to contact Respondents to discuss her case (and ignored Respondents' attempts to contact her) and otherwise has done nothing to press her case. See Compls. dated Jan. 15, 2008. Moreover, the Attorney Examiner has twice *required* Complainant to participate in telephonic pre-hearing settlement conferences to discuss her claims. See Entries dated May 24 and Mar. 11, 2010. In the entries scheduling those conferences (which were served on Complainant at the address she herself provided), the

<sup>1</sup> As set forth in Respondents' pending Joint Motion to Dismiss dated February 4, 2008, the Complaints against Respondents also should be dismissed for failure to state a reasonable grounds for complaint.

Examiner warned that “[f]ailure by complainant to participate in the rescheduled settlement conference may result in the attorney examiner recommending that the complaint be dismissed.” *See id.*; Letter stating change of address dated Feb. 8, 2010. Notwithstanding this warning, Complainant failed to appear for either telephonic conference, without explanation or excuse. Counsel for Respondents appeared for both of the conferences.<sup>2</sup>

A complainant has a duty to prosecute her case, and this includes attending and participating in pre-hearing settlement conferences when required to do so. *See* Rule 4901-1-26. The Commission thus routinely dismisses cases for want of prosecution where a complainant fails to appear for a settlement conference or otherwise ignores the Commission’s scheduling orders. *See, e.g., Olivito v. Columbia Gas of Ohio, Inc.*, No. 09-1841-GA-CSS, Entry dated Mar. 24, 2010 (dismissing case where complainant failed to attend settlement conference); *Ray v. Duke Energy Ohio, Inc.*, No. 09-874-EL-CSS, Entry dated Jan. 27, 2010 (dismissing case after, among other things, complainant failed to attend conference); *Tanner v. AT&T Ohio*, No. 09-343-TP-CSS, Entry dated Nov. 4, 2009 (dismissing case where complainant failed to attend conference or follow-up with examiner as required); *Aggressive Ins. v. AT&T Ohio*, No. 07-1039-TP-CSS, Entry dated Oct. 14, 2009 (dismissing case after complainant failed to contact examiner to discuss basic allegations).

Here, Complainant twice has failed to appear for mandatory telephonic conferences of which she had notice, without any explanation or excuse, and even after being warned of the possible consequences of these failures. The Commission has given Complainant ample opportunity to press her claims. But since filing her Complaints, Complainant has shown no

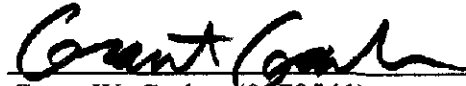
---

<sup>2</sup> Complainant also failed to attend prior settlement conferences convened on January 12 and February 23, 2010. *See* Entries dated Feb. 3, 2010 and Nov. 24, 2009. However, service of the entries scheduling those conferences apparently was unsuccessful because Complainant no longer lived at the addresses to which they were sent.

inclination to do so—in fact, there is no sign Complainant intends to participate in telephonic conferences, much less appear in person at the Commission. All the while, Respondents and their counsel have expended significant amounts of time and money investigating Complainant's claims and preparing and appearing for the conferences Complainant could not be bothered to attend. Scheduling an additional such conference (or scheduling a hearing) would no doubt force Respondents to spend additional resources on a case Complainant has no desire to pursue. Because Complainant has failed to prosecute her case, the Complaints should be dismissed.

DATED: July 7, 2010

Respectfully submitted,



Grant W. Garber (0079541)

(Counsel of Record)

JONES DAY

Mailing Address:

P.O. Box 165017

Columbus, OH 43216-5017

Street Address:

325 John H. McConnell Boulevard, Suite 600

Columbus, OH 43215-2673

Telephone: (614) 469-3939

Facsimile: (614) 461-4198

gwggarber@jonesday.com

David A. Kutik (0006418)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, OH 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

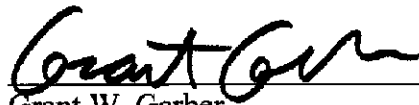
dakutik@jonesday.com

ATTORNEYS FOR RESPONDENTS THE  
EAST OHIO GAS COMPANY d/b/a  
DOMINION EAST OHIO AND THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Joint Motion to Dismiss for Failure to Prosecute and Memorandum in Support was sent by first class U.S. mail, postage prepaid, and e-mail to the following person this 7th day of July, 2010:

Vashon McIntyre  
c/o Ralph Isom  
1715 Longfellow Avenue, 4D  
Bronx, New York 10460  
Vashonmc2005@yahoo.com

A handwritten signature in black ink, appearing to read "Grant W. Garber", is written over a horizontal line.

Grant W. Garber  
An Attorney for Respondents