

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Gwendolyn Tandy,)	
Complainant,)	
v.)	Case No. 12-2103-GA-CSS
The East Ohio Gas Company d/b/a)	
Dominion East Ohio,)	
Respondent.)	

ENTRY

The Commission finds:

- (1) On July 17, 2012, as supplemented on November 8, 2012, and January 11, 2013, Gwendolyn Tandy (complainant) filed a complaint with the Commission against The East Ohio Gas Company d/b/a Dominion East Ohio, (Dominion or respondent). Generally, in the complaint, Ms. Tandy argued that her bill is inaccurate, that she has been overcharged and inappropriately enrolled in various payment plans. Ms. Tandy states that she is enrolled in the Percentage of Income Payment Plan (PIPP) Plus program. Subsequently, on August 22, 2012,¹ August 24, 2012, and August 27, 2012, Ms. Tandy filed additional information in this case, asserting, among other things, that Dominion is improperly transferring debts to her account. The complainant also requested a statement of account from 2004 through August 1, 2012.
- (2) On August 7, 2012, as supplemented on September 17, 2012, Dominion filed its answer to the complaint, admitting very limited aspects of the extensive complaint and denying or stating that it lacks sufficient knowledge or information to either admit or deny the majority of the allegations made.

¹ The complaint information filed on August 22, 2012, was initially assigned a new Case No. 12-2326-GA-CSS. Pursuant to entry issued August 28, 2012, the complaint information filed in Case No. 12-2326-GA-CSS was incorporated into the above referenced complaint, Case No. 12-2103-GA-CSS and Case No. 12-2326-GA-CSS was closed of record on September 5, 2012.

Dominion stated that the company has at all times acted in compliance with Title 49 of the Revised Code, its tariff on file with the Commission, and the rules, regulations and order of the Commission. Further, Dominion stated that the complaint does not meet the requirements of Rule 4901-9-01(B), Ohio Administrative Code (O.A.C.), to include a statement of the relief sought, to set forth reasonable grounds to sustain a complaint as required by Section 4905.26, Revised Code, or to state a claim upon which relief can be granted. Accordingly, Dominion requested that the complaint be dismissed.

- (3) On September 27, 2012, a settlement conference was held on the complaint. However, Ms. Tandy and Dominion were unable to reach a mutually agreeable resolution of the issues raised in the complaint.
- (4) On October 11, 2012, Dominion filed a motion to dismiss the complaint. Dominion argued that Ms. Tandy's complaint consisted of 76 pages of "fragmentary assertions and incomplete thoughts" that fail to provide a clear, plain explanation of the facts, which are the basis of her complaint, and to state what relief she requires from Dominion.
- (5) By entry issued on November 1, 2012, the Attorney Examiner concluded that, over the course of the numerous pages filed, Ms. Tandy alleged the following complaints against Dominion:
 - (a) Her bill dated September 14, 2006, does not properly reflect a \$159.00 deposit she paid on June 20, 2006, by telephone and that her bill dated May 15, 2006, reflects the deposit. She requests compensation for the \$159.00.
 - (b) A "final debit" of \$430.00 was incorrectly charged to her account as reflected on the bill dated September 14, 2006, without explanation.
 - (c) On or about March 20, 2009, a transfer debit of \$532.72 was incorrectly charged to her account without explanation and the amount had been turned over to a collection agency.
 - (d) The bill dated October 13, 2010, reflects a PIPP Plus payment of \$72.00, and the bill dated

November 10, 2010, indicates that Ms. Tandy is no longer enrolled in the PIPP Plus program. The complainant stated she was enrolled on the Graduate PIPP Plus Plan, with payments due of \$341.00 each billing period, without her consent as reflected on the bill dated November 10, 2010.

- (e) By letter dated February 12, 2011, she was offered enrollment in the Current Plus Plan, which required her to pay \$45.71 each month for six months on a past due balance beginning February 10, 2011.
- (f) In May 2011, her gas was illegally turned off for six months.
- (g) On May 9, 2011, and July 20, 2011, Alliance One Collection agency improperly attempted to collect from her \$147.00, and \$74.48, respectively.
- (h) On or about September 10, 2011, Dominion attempted to collect \$375.00, she did not owe.
- (i) On or about November 2011, a new account was established and the past due amount on the account was eliminated. Further, the complainant asserted, as stated by letter dated November 9, 2011, that her application for PIPP Plus was approved with a PIPP payment due of \$29.00 monthly.
- (j) The bill dated December 9, 2011, reflects a zero balance, a credit of \$117.00 and a \$33.00 charge associated with the improper disconnection of her gas service. The complainant believed she was inaccurately billed a "final debit" of \$332.73 on the bill dated December 9, 2011. She also claimed that on or about December 9, 2011, a new account was established to eliminate the past due balance.
- (k) She was removed from PIPP Plus on or about January 31, 2012, for failing to complete her application, and reinstated on the PIPP Plus plan

in April 2012, and her reinstatement on PIPP Plus is not properly reflected on her account.

- (l) She was enrolled in the Current Plus Plan, which required her to pay \$69.67 each month for six months on her past due balance beginning April 12, 2012, bill. She disputed that she had a past due balance.
- (m) For the bill dated April 12, 2012, Ms. Tandy disputed the charges listed on the bill as owed to Kratos Gas and Power.
- (n) For the bills dated May 20, 2009, July 21, 2009, and May 11, 2012, Ms. Tandy disputed the charges listed on the bills as owed to Hess Corporation.
- (o) For the bill dated February 10, 2011, Ms. Tandy disputed the charges listed on the bill as owed to DTE Energy Supply.
- (p) Ms. Tandy requested a statement of her account, commencing 2004 through and including August 2012, and a refund of all monies "stolen from" her.
- (q) Ms. Tandy requested that Dominion be directed to refund her for overpayments of \$4,000, plus interest, and \$1,200 for her gas being turned off illegally for six months.
- (r) Ms. Tandy stated that Dominion acknowledged her complaints on December 29, 2011, and February 29, 2012, but Dominion failed to offer a solution within 90 days. Ms. Tandy asserted that when she complains to Dominion it is Dominion's duty to offer a solution within 90 days. She stated that some of her complaints are six years old.

Accordingly, the attorney examiner concluded that the complaint alleged certain bill inaccuracies and overcharges and, therefore, presented sufficient grounds to sustain a complaint pursuant to Section 4905.26, Revised Code. For that

reason, Dominion's motion to dismiss the complaint and Dominion's request for an order directing the complainant to amend the complaint, were denied.

- (6) On October 29, 2012, Ms. Tandy filed additional information in the complaint arguing that she had received a disconnection notice. According to the notice, dated October 20, 2012, Ms. Tandy's service could be disconnected as soon as October 30, 2012, for nonpayment.
- (7) By letter dated October 30, 2012, Dominion filed notice with the Commission that collection activity on Ms. Tandy's residential account had been put on hold until the pending complaint is resolved.
- (8) By entry issued November 1, 2012, this matter was scheduled for a hearing to be held on December 4, 2012, at 12:30 p.m., at the offices of the Commission.
- (9) In addition, the November 1, 2012, entry specifically stated that:

In Commission proceedings, the complainant has the burden of proving the allegations of the complaint. Thus, at the hearing it shall be Ms. Tandy's responsibility to appear and be prepared to present evidence in support of the complaint. Should Ms. Tandy fail to appear, the Attorney Examiner may recommend to the Commission that this case be dismissed.

- (10) On November 8, 2012, Ms. Tandy filed additional information in the docket reiterating her opposition to the request for dismissal and her settlement request. In her November 8, 2012, filing, the complainant also restated her claim that she complained about the serviceman who came to turn her gas off (presumably when Ms. Tandy's service was disconnected in May 2011). According to Ms. Tandy, the serviceman refused to turn the gas on and told her she needed a new furnace. Ms. Tandy stated that she had the furnace checked and the serviceman was wrong. The Commission notes that Dominion responded to this aspect of the complaint in its supplemental answer filed September 17, 2012.

- (11) On November 19, 2012, in another complaint proceeding filed by Ms. Tandy, *In the Matter of the Complaint of Gwendolyn Tandy v. Cleveland Electric Illuminating Company*, Case No. 12-2102-EL-CSS (*CEI complaint*) counsel for CEI filed a motion requesting to continue the hearing scheduled for December 4, 2012, in the Tandy CEI complaint and this case. Further, Ms. Tandy informed the attorney examiner that, as a result of her transportation arrangements, she would need the *CEI complaint* hearing to start later than the previously scheduled time of 9:00 a.m.
- (12) In light of both parties' requests, the hearings in the *CEI complaint* and this matter were rescheduled. By entries issued on November 27, 2012, both hearings were rescheduled for January 15, 2013. The hearing in the *CEI complaint* was scheduled to commence at 11:00 a.m., and the hearing in this matter was scheduled to commence after a brief recess upon the conclusion of the hearing in the *CEI complaint*, at approximately 1:30 p.m., at the offices of the Commission.
- (13) Pursuant to Rule 4901-1-29, O.A.C., Dominion filed the written direct testimony of Roxie Edwards, on January 8, 2013.
- (14) On January 15, 2013, although the *CEI complaint* was scheduled to commence at 11:00 a.m., it was not called until 11:57 a.m., as a result of Ms. Tandy's late arrival (*CEI complaint*, January 15, 2013, Tr. at 1). The hearing in the *CEI complaint* did not conclude until 2:50 p.m. (*Id.* at 102).
- (15) Accordingly, the hearing in this matter was again rescheduled. By entry issued January 23, 2013, the hearing in this case was rescheduled for February 6, 2013, at 11:30 a.m., at the offices of the Commission. The entry once again informed Ms. Tandy that the complainant has the burden of proof and that failure to appear may result in a recommendation that this case be dismissed.
- (16) Ms. Tandy did not contact the attorney examiner prior to the hearing scheduled in this case for February 6, 2013, nor did she appear for the hearing. Therefore, on February 6, 2013, after waiting 45 minutes for Ms. Tandy, the hearing was called and counsel for Dominion entered an appearance. Counsel for

Dominion also noted that his witness, Ms. Edwards, was present and prepared to proceed with the hearing.

- (17) Later, on the afternoon of February 6, 2013, Ms. Tandy contacted the attorney examiner stating that she was unaware of the hearing date and that she had a death in the family.
- (18) By entry issued on February 13, 2013, the hearing was rescheduled for February 28, 2013, at 11:30 a.m., at the offices of the Commission. The February 28, 2013, entry specifically stated that "[s]hould Ms. Tandy fail to appear, the Attorney Examiner will recommend to the Commission that this case be dismissed."
- (19) At approximately 8:30 a.m., on February 28, 2013, Ms. Tandy left a message for the attorney examiner stating that she had an emergency and would need to reschedule the hearing.
- (20) On March 4, 2013, Dominion filed a motion to dismiss, with prejudice. Dominion argues that Ms. Tandy has had three opportunities and each time failed to prosecute her case against Dominion and, therefore, the case should be dismissed with prejudice. Dominion notes that, while Ms. Tandy appeared for the first scheduled hearing on January 15, 2013, as a result of her being late, unprepared, and with her limited availability, the Dominion hearing did not go forward. The respondent notes that the hearing has been rescheduled twice, to be held on February 6, 2013, and February 28, 2013, and Ms. Tandy has failed to appear on both occasions. Dominion emphasizes that counsel for Dominion and its witness were present and ready to proceed on January 15, 2013, and on February 6, 2013. Further Dominion argues, while counsel for the respondent was present for the hearing on February 28, 2013, Dominion's witness was contacted once it was determined that the complainant would not be appearing for the hearing. Dominion argues that Ms. Tandy's consistent and unsubstantiated failure to appear for the hearing constitutes grounds for dismissal of the complaint, with prejudice, for failure to prosecute.

Dominion submits that the Commission, as an administrative body, is not bound by the Ohio Rules of Civil Procedure but uses the rules as a guide. *Mills v. Ohio Bell Telephone Co.*, Case

No. 84-763-TP-CSS, Entry at 2 (August 28, 1984). A tribunal's decision to dismiss a proceeding, with prejudice, is reviewed on an abuse of discretion standard. *Jones v. Hartranft*, 78 Ohio St.3d 368, 371, 678 N.E.2d 530 (1997) (*Jones*). Dominion emphasizes that the courts have upheld the dismissal of a case, with prejudice, where there is "evidence that a plaintiff is deliberately proceeding in dilatory fashion" supports the dismissal with prejudice" *Jones* at 372, and "where the conduct of a party is negligent, irresponsible, contumacious or dilatory" provides grounds for dismissal with prejudice. Movant notes that the Commission has exercised its authority to dismiss a complaint with prejudice for failure to prosecute. Citing *Hansel v. Windstream Western Reserve*, Case No. 07-89-TP-CSS, Finding and Order at 3 (2008); *Thomas Robinson v. The Ohio Bell Telephone Company*, Case No. 92-2237-TP-CSS, Entry at 4 (1993); *Tom Robinson v. Ameritech Ohio*, Case No. 95-553-TP-CSS, Entry (1996); *Ria Mercer v. The Ohio Bell Telephone Company*, Case No. 85-1760-TP-CSS, Entry (1986).

Dominion emphasizes that Ms. Tandy's behavior consumes the resources of the Commission and Dominion but serves to prevent the disconnection of her service. Movant notes that, if the Commission does not dismiss the complaint with prejudice, Ms. Tandy could refile an identical complaint and there would be no remedy available to Dominion but to answer and start what has been a long and expensive, but pointless, process all over again.

- (21) On March 11, 2013, Ms. Tandy resubmitted in this complaint proceeding, information previously filed in this case with new comments and questions, making the same and similar allegations, as well as new allegations to the numerous claims listed in Finding (5), above.
- (22) The Commission notes that, as the complainant has repeatedly been informed, Ms. Tandy must appear and present testimony in support of the claims made in the complaint filed. However, as reflected by the docket in this case, she has repeatedly failed to timely appear, or even to appear, to offer testimony or evidence on the scheduled hearing dates. For this reason, after providing the complainant ample opportunities for a hearing, the Commission finds it reasonable to grant Dominion's motion to dismiss the complaint for lack of prosecution. However, the

issue remains whether the complaint should be dismissed, with prejudice, which would be equivalent to an adverse decision on the merits for the complainant. Despite being given several opportunities to present evidence in support of the allegations in the complaint Ms. Tandy failed to prosecute her case. Therefore, this case should be dismissed, with prejudice. The Commission will not entertain, in the future, any complaint filed by Ms. Tandy that sets forth the same allegations presented in this docket.

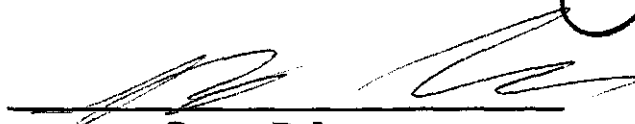
It is, therefore,

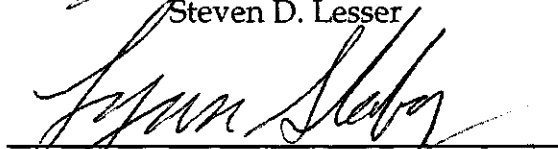
ORDERED, That Dominion's motion to dismiss the complaint is granted, with prejudice. It is, further,

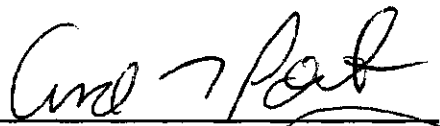
ORDERED, That a copy of this entry be served upon Ms. Tandy, Dominion and its counsel, and all other interested persons of record.

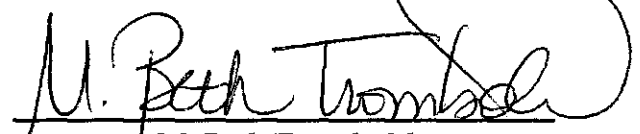
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

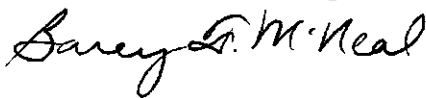

Andre T. Porter


M. Beth Trombold

GNS/vrm

Entered in the Journal

MAR 27 2013



Barcy F. McNeal
Secretary