

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Lyssa Holder, aka Allyssa Holder)	
Brandon Zehfus)	
4327 Harding Ave.)	
Cincinnati, OH 45211)	
)	
Complainants,)	Case No. 13-1552-EL-CSS
)	
v.)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent.)	

**RESPONDENT DUKE ENERGY OHIO, INC.’S
MEMORANDUM IN OPPOSITION TO
COMPLAINANT’S APPLICATION FOR REHEARING**

On January 30, 2014, Complainant Allyssa Holder¹ filed an unidentified document in these proceedings. The Commission is treating this unidentified filing as an application for rehearing. Complainant has not complied with ORC 4903.10 in her application for rehearing and, therefore, the Commission should deny that application.

ORC 4903.10 mandates that a party seeking a rehearing identify with specificity the manner in which the Commission’s order was unreasonable or unlawful. *Marion v. Public Util. Comm.* (1954), 161 Ohio St. 276, 119 N.E.2d 67. With respect to the December 11, 2013, settlement conference, Complainant’s application offers nothing more than an unverified statement that Complainant allegedly attempted to participate in that settlement conference. Complainant has not submitted any proof to back up her assertion. Complainant does not attach

¹ There is no indication that Complainant Brandon Zehfus consented to the filing of this document with the Commission or otherwise joined in this application for rehearing. Therefore, the case should remain closed as to Brandon Zehfus regardless of how the Commission disposes of the present filing.

an affidavit to her application, nor has she submitted sworn copies of telephone records referencing her alleged phone calls to the Commission. Complainant also never attempted to contact Respondent's attorney, either on the day of the scheduled settlement conference or any time thereafter.

Moreover, Complainant previously communicated with both the Commission and Respondent's attorney by email—as referenced in the Commission's entry dated January 22, 2014—but there is no evidence that Complainant ever attempted to contact the Commission or Respondent's attorney by email on December 11, 2013, or at any time since Complainant failed to participate in that second settlement conference. A person who supposedly tried to call in to a second settlement conference clearly would have sent written notice of those attempts to both the attorney examiner conducting the conference and to Respondent's attorney. That person also would have followed up with the Commission or Respondent's attorney to ask that the settlement conference be rescheduled, either informally or through a formal filing with the Commission. Here, Complainant did nothing and filed nothing. Therefore, Complainant's application is void of factual merit.

Notably, the Commission also must keep in mind that it did not dismiss this case in a vacuum—Complainant failed to respond to Respondent's motion to dismiss. As set forth in the record before the Commission, Respondent filed its motion to dismiss on December 30, 2013. Respondent then served its motion to dismiss on Complainant **in three separate ways**: Respondent separately mailed copies of the motion to two addresses used by Complainant at various times in these proceedings; and Respondent emailed a copy of the motion directly to Complainant. As such, Complainant had Respondent's motion to dismiss by December 30, 2013, yet never bothered to respond. Accordingly, the Commission properly granted

Respondent's motion to dismiss on January 22, 2014, once Respondent failed to respond within the time provided by rule. The record before the Commission flatly refutes Complainant's unsubstantiated claim in her application that "no one informed" her that the case may be dismissed. The Commission informed her in its November 20th entry, and Respondent gave her written notice through its motion to dismiss served on December 30th.

Moreover, even now, a week after the Commission dismissed her case, Complainant still does not bother to address the merits of Respondent's motion to dismiss. The Commission specifically cited the merits of that motion in paragraph 9 of its January 22nd entry. That motion remains unchallenged, thereby further demonstrating the legal and factual deficiencies of Complainant's application for rehearing.

The record before the Commission confirms that the Commission properly dismissed this action because Complainant failed to participate in the second settlement conference and otherwise failed to prosecute this case. Complainant has neither challenged Respondent's motion to dismiss nor otherwise explained how the Commission's entry dated January 22, 2014, was unreasonable or unlawful. Because Complainant failed to comply with ORC 4903.10, the Commission must deny her application for rehearing. *Disc. Cellular, Inc. v. PUC*, 2007 Ohio 53.

WHEREFORE, Respondent Duke Energy Ohio, Inc. requests that the Commission deny Complainant's application for rehearing, and grant Respondent such other, further or different relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Robert A. McMahon
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via email and regular US Mail, postage prepaid, on the 3rd day of February, 2014, upon the following:

Lyssa Holder
Brandon Zehfus
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/s/ Robert A. McMahon

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/3/2014 11:38:03 AM

in

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Summary: Memorandum In Opposition to Complainant's Application for Rehearing.
electronically filed by Mr. Robert A. McMahon on behalf of Duke Energy Ohio, Inc.