

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF SHAWN ANDERSON,

COMPLAINANT,

v.

CASE NO. 16-1564-EL-CSS

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on November 14, 2016

{¶ 1} On July 13, 2016, Shawn Anderson (Complainant) filed a complaint against Duke Energy Ohio, Inc. (Duke), alleging delays in receiving a net metering check. Mr. Anderson emphasized that net metering checks are to be processed within two weeks of the prior month's meter reading, and he wants Duke to abide by its agreement for mailing such checks.

{¶ 2} Duke filed an answer and motion to dismiss on July 27, 2016. Duke denied the allegations made in the complaint, and contended that Complainant did not state that Duke's service is unjust or unreasonable, but rather, he "merely alleges that a check was received later than anticipated."

{¶ 3} The parties met for a settlement conference on September 1, 2016, but were unable to resolve the matter. Accordingly, a hearing was scheduled for November 18, 2016.

{¶ 4} On October 24, 2016, Duke filed a notice to take deposition of Complainant. The deposition was to begin on November 4, 2016.

{¶ 5} Complainant did not file a response to the notice to take deposition.

{¶ 6} On November 9, 2016, Duke filed a motion to compel and a motion to continue the November 18, 2016 hearing. Duke asserts that it served written discovery upon Complainant by certified mail but did not receive a return receipt, so the discovery “was evidently not delivered” to him. In addition, Duke contends, Mr. Anderson was served with a notice to take deposition, but “without communication or prior notice” Complainant did not attend the deposition.

{¶ 7} The attorney examiner observes that although Duke did not receive a return receipt for its written discovery, there is no indication that the notice of deposition was not successfully served upon Mr. Anderson. Further, aside from Duke’s contention that it was not informed by Complainant why he could not attend the deposition, Complainant also did not contact the Commission regarding an inability to attend. The attorney examiner emphasizes the importance of cooperating with prehearing discovery requests, and reminds Mr. Anderson that lack of such cooperation may result in dismissal of the complaint for failure to prosecute the matter.

{¶ 8} In addition, while Complainant was not deposed on November 4, 2016, as Duke had planned, the attorney examiner observes that Duke’s motion to continue and motion to compel were not filed until November 9, 2016. Duke is reminded to file such motions in as timely manner as possible to allow Complainant and the Commission adequate time to respond.

{¶ 9} Accordingly, the hearing shall be continued to 10:00 a.m. on January 20, 2017, Hearing Room 11-D, 11th floor of the Commission offices, 180 East Broad Street, Columbus, OH 43215.

{¶ 10} Any party intending to present direct, expert testimony should comply with Ohio Adm.Code 4901-1-29(A)(1)(h), which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing.

{¶ 11} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E. 2d 666 (1966).

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the motion to continue and motion to compel are granted. It is, further,

{¶ 14} ORDERED, That Complainant comply with written interrogatories and notice of deposition. It is, further,

{¶ 15} ORDERED, That the hearing be continued as indicated in Paragraph 9. It is, further,

{¶ 16} ORDERED, That any party intending to present direct, expert testimony comply with Paragraph 10. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

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in

Case No(s). 16-1564-EL-CSS

Summary: Attorney Examiner Entry granting motion to continue and motion to compel, directing Complainant to comply with written interrogatories and notice of deposition, continuing hearing as indicated in Paragraph 9, and directing any party intending to present direct, expert testimony to comply with Paragraph 10. - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio