

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 July 26, 2017

I. SUMMARY

{¶ 1} The Commission grants, without prejudice, the motion to dismiss the complaint, as the complainant failed to prosecute the matter by not participating in several scheduled depositions.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility or an electric services company by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} Duke Energy Ohio, Inc. is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On July 13, 2016, Shawn Anderson (Mr. Anderson or Complainant) filed a complaint against Duke, alleging delays in receiving his net metering check. According to Complainant, after his numerous inquiries, the check arrived in late June 2016, despite Duke's indications that he would receive the check by mid-June. Mr. Anderson asserted

that his net metering checks should be processed within two weeks of the prior month's meter reading, and he contended that Duke should abide by the settlement terms that the parties agreed to after his similar prior complaint in Case No. 12-1994-EL-CSS.

{¶ 5} Duke filed an answer and a motion to dismiss on July 27, 2016, denying Complainant's allegations and contending that he did not state that Duke's service is unjust or unreasonable.

{¶ 6} The parties participated in a settlement conference on September 1, 2016. When the matter could not be resolved, a hearing was scheduled for November 18, 2016.

{¶ 7} On Oct. 24, 2016, Duke filed a notice to take deposition. The deposition was scheduled for November, 4, 2016.

{¶ 8} On November 9, 2016, Duke filed a motion to compel and motion to continue the hearing date. Duke explained that, "without communication or prior notice," Complainant did not attend the deposition. Duke added that written discovery was sent to Complainant by certified mail, but apparently not delivered, because no return receipt was received. Duke requested that the Commission order Mr. Anderson to appear for the deposition, and that the hearing be continued to allow Duke further time to engage in discovery.

{¶ 9} On November 14, 2016, the attorney examiner granted Duke's motion to compel and motion to continue, with the hearing being rescheduled to January 20, 2017.

{¶ 10} On November 23, 2016, Duke filed a second notice to take deposition. The deposition was scheduled for January 4, 2017.

{¶ 11} On December 6, 2016, Mr. Anderson responded to the second notice to take deposition. Mr. Anderson emphasized that he would not take time off work for the deposition, which he described as "bullying," and reasserted that Duke has not abided

by settlement terms concerning timely net metering payments and providing net metering statements.

{¶ 12} On December 7, 2014, Duke filed a memorandum contra and a second motion to compel. Duke argued that, by asserting that he would not attend the deposition, Complainant was not complying with Commission procedures. Duke contended that Mr. Anderson should prosecute his case or have the complaint dismissed.

{¶ 13} On December 29, 2016, the attorney examiner issued an Entry ordering Complainant to attend the January 4, 2017 deposition or face likely dismissal of the complaint for failure to prosecute the matter. The attorney examiner noted that, although Complainant had presented reasons why he would not attend the deposition, he did not state that he could not attend.

{¶ 14} On January 6, 2017, and January 9, 2017, respectively, Duke filed a renewed motion to dismiss, as well as a motion to continue the hearing. Duke requested dismissal of the complaint, with prejudice, asserting that Complainant did not attend the January 4, 2017 deposition or even contact Duke to reschedule the deposition. Duke explained that, with the motion to dismiss pending, a continuance would relieve Duke from the burdens of proceeding with its case.

{¶ 15} On January 10, 2017, the attorney examiner granted the continuance and ordered Complainant to reply to the renewed motion to dismiss no later than January 23, 2017.

{¶ 16} In a letter dated January 4, 2017, and docketed January 11, 2017, Mr. Anderson responded to the renewed motion to dismiss. Complainant contended that he had just received the Entry directing him to attend the January 4, 2017 deposition, but added that he could not do so because of recent surgeries for two of his children. He reiterated that Duke was not complying with the settlement in Case No. 12-1994-EL-CSS,

because it failed to provide monthly net metering statements and has not mailed net metering checks in timely manner. Complainant requested that the hearing be scheduled as soon as possible.

{¶ 17} The Commission observes that, pursuant to Ohio Adm.Code 4901-1-16(A), the purpose of discovery is to “facilitate thorough and adequate preparation for participation in Commission proceedings.” In addition, Ohio Adm.Code 4901-1-16(A) specifies that Ohio Adm.Code 4901-1-21, which concerns depositions, is included within the rules for discovery. While cognizant of Mr. Anderson’s explanation why he did not attend the January 4, 2017 deposition, we note that, by not attending both scheduled deposition dates, Complainant failed to prosecute his complaint. Finally, whether Duke is not complying with terms of prior settlement agreement with Mr. Anderson, and any applicability of that agreement to the present complaint, is a matter that can only be determined at a hearing. Therefore, Duke’s renewed motion to dismiss is granted in part and denied in part, as Mr. Anderson’s complaint should be dismissed without prejudice.

III. ORDER

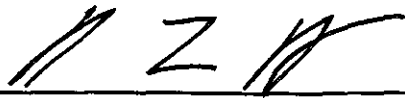
{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Duke’s renewed motion to dismiss be granted in part and denied in part. It is, further,


{¶ 20} ORDERED, That Mr. Anderson’s complaint be dismissed without prejudice. It is, further,

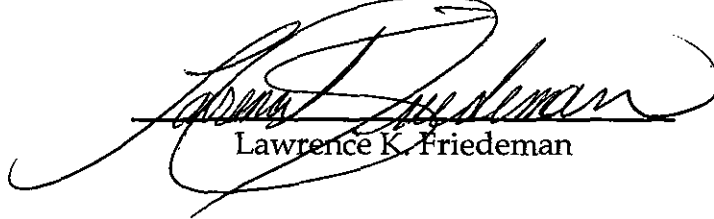
{¶ 21} ORDERED, That a copy of this Entry be served upon all parties of record.

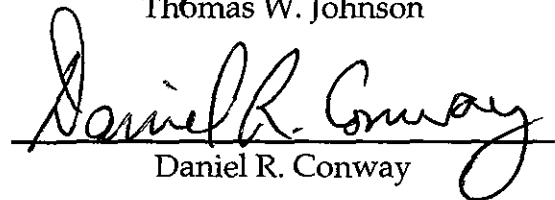
THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


M. Beth Trombold

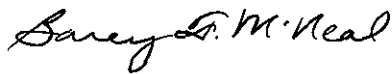

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Barcy F. McNeal
Secretary