

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Larry Sturgill and Patricia Gilgenbach,)	
)	
Complainants,)	
)	Case No. 17-2127-GA-CSS
v.)	
)	
Northeast Ohio Public Energy Council,)	
)	
Respondent.)	

**MOTION TO DISMISS OF
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4901-1-12, the Northeast Ohio Public Energy Council (“NOPEC”) renews its motion to dismiss which was filed December 11, 2017, **and** also moves to dismiss the Complaint filed by Larry Sturgill and Patricia Gilgenbach (“Complainants”) **for the additional reason of failure to prosecute.** Complainants failed to attend the December 18, 2017 settlement conference and failed to notify the Attorney Examiner that they would not attend the settlement conference. This demonstrates that Complainants do not wish to continue prosecution of this case. The reasons supporting this motion are stated in the accompanying memorandum in support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. BACKGROUND

On October 16, 2017, Complainants filed a Complaint with the Commission regarding natural gas aggregation services provided by NOPEC. On November 6, 2017, NOPEC timely filed its Answer to the Complaint in which NOPEC generally denied the allegations set forth in the Complaint. On December 11, 2017, NOPEC filed a motion to dismiss¹ the Complaint due to Complainants' failure to set forth reasonable grounds for their Complaint.

On December 1, 2017, the Attorney Examiner issued an Entry which scheduled a settlement conference for December 18, 2017 at 1:30 p.m. (December 1 2017 Entry at ¶¶ 8 and 10.) The Entry informed Complainants that "failure to attend the scheduled settlement conference in this case may result in dismissal of the complaint by the Commission." (December 1 2017 Entry at ¶ 8.) Counsel for NOPEC attended the settlement conference, but neither of the Complainants attended. In addition, it is NOPEC's understanding that neither of the Complainants informed the Attorney Examiner that they could not attend the December 18, 2017 settlement conference. Further, it is also NOPEC's understanding that the Complainants never requested a continuance of the December 18, 2017 settlement conference.

II. LAW AND ARGUMENT

NOPEC requests that the Commission dismiss the Complaint for failure to prosecute. An individual's failure to attend a settlement conference ordered by the Attorney Examiner may constitute reasonable grounds for dismissal for failure to prosecute. See *In the Matter of Tara*

¹ NOPEC fully incorporates its December 11, 2017 motion to dismiss herein by reference.

Steele v. Duke Energy Ohio, Inc., Case No. 08-1059-EL-CSS, 2009 Ohio PUC LEXIS 582, *2 (Aug. 12, 2009). There is a wealth of Commission precedent which demonstrates that a complaint can be dismissed with prejudice when a complainant fails to attend a settlement conference. *In the Matter of the Complaint of Dennis E. Sands, v. American Electric Power Company*, Case No. 10-853-EL-CSS, 2011 Ohio PUC LEXIS 172, *3 (February 9, 2011); *In the Matter of the Complaint of Mary Ann Morgan, v. The Cleveland Electric Illuminating Company, Respondent*, Case No. 10-1073-EL-CSS, 2011 Ohio PUC LEXIS 787, *2 (June 22, 2011); *In the Matter of Lustrous Design Ltd., v. The Cleveland Electric Illuminating Company*, Case No. 16-1247-EL-CSS, 2017 Ohio PUC LEXIS 123, *3 (February 8, 2017).

In this case, Complainants failed to attend the December 18, 2017. Complainants received ample warning that their Complaint could be dismissed if they failed to attend the settlement conference because the Attorney Examiner's Entry expressly stated that **"failure to attend the scheduled settlement conference in this case may result in dismissal of the complaint by the Commission."** (December 1 2017 Entry at ¶ 8.) (emphasis added). Further, there is no indication that Complainants attempted to reschedule or continue the settlement conference. Therefore, there are sufficient grounds for the Commission to dismiss the Complaint for failure to prosecute

III. CONCLUSION

Based in the foregoing, and for the reasons set forth in NOPEC's December 11, 2017 motion to dismiss, NOPEC respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss of NOPEC was served upon Complainants Larry Sturgill and Patricia Gilgenbach at the below address *via* regular U.S. mail on December 18, 2017.



Devin D. Parram

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Summary: Motion to Dismiss of Northeast Ohio Public Energy Council electronically filed by
Teresa Orahod on behalf of Devin D. Parram