

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

ERIN DAHL,)	
)	
Complainant,)	
)	
v.)	Case No. 17-1822-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION ENERGY OHIO,)	
)	
Respondent.)	

**MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

In accordance with Ohio Adm. Code 4901-1-12, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company), respectfully requests that the Commission dismiss the complaint in this case with prejudice for failure to prosecute, mootness, and failure to state reasonable grounds. Good cause exists to grant the Company’s motion to dismiss with prejudice, which is set forth in the attached memorandum in support.

Respectfully submitted,

/s/ Andrew J. Campbell
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ATTORNEYS FOR THE EAST OHIO GAS
COMPANY D/B/A DOMINION ENERGY OHIO

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On August 22, 2017, Erin Dahl filed a complaint against DEO. Ms. Dahl alleged that her bills for the period of July to October 2016 showed usage despite the fact that she was traveling out of state during that time. (Complaint at 1.) Ms. Dahl further alleged that Company representatives did not follow proper procedures when she requested a meter test. (Complaint at 2.)

DEO filed and served its answer to the Complaint on September 11. In its answer, DEO stated that although Ms. Dahl had been a customer receiving natural gas service, her account was closed on September 1, and another party had begun receiving service at the premises in question. (Answer at 1.) Shortly after filing the answer, counsel for DEO was informed by a relative of Ms. Dahl that she no longer resided in Ohio, but had moved to Arizona. In early October, DEO received full payment for the amount in dispute.

DEO then appeared at the first scheduled settlement conference on October 25; Ms. Dahl neither appeared nor informed DEO or the Commission in advance. On March 14, 2018, DEO was informed by the Commission's Legal department that Ms. Dahl had requested another settlement conference, to be held telephonically. This conference was scheduled for April 3. DEO again appeared at the conference; Ms. Dahl again did not.

II. ARGUMENT

There are three potential grounds for which Ms. Dahl's complaint may be dismissed with prejudice: (1) Ms. Dahl has failed to prosecute her complaint; (2) any potential claims or remedies available are now moot; and (3) Ms. Dahl failed to state any reasonable grounds in her complaint under R.C. 4905.26.

A. Ms. Dahl has failed to appear or give notice of any reason for not appearing.

First, Ms. Dahl has repeatedly failed to appear and attempt to settle or prosecute her complaint. The Commission has scheduled two settlement conferences, the second by telephone at Ms. Dahl's request due to her now living in another state. Not only has Ms. Dahl not appeared for either one, but she has failed to provide notice of her absence to either DEO or the Commission.

The Commission has routinely dismissed complaints when the complaining party has failed to appear for multiple settlement conferences without any notice or reason for the failure to appear. *See, e.g., Aaron Cockrell v. DP&L*, Case No. 12-2085-EL-CSS, Entry at *7 (Nov. 7, 2012); *Anita Deal v. DP&L*, Case No. 11-6052-EL-CSS, Entry at *7 (Aug. 15, 2012); *Elbert Stidham v. Duke Energy Ohio*, Case No. 11-4788-GE-CSS, Entry at *6 (Dec. 14, 2011); *Donald Howard v. Columbia Gas of Ohio*, Case No. 10-1438-GA-CSS, Entry at *10 (Apr. 27, 2011). Multiple chances have been ignored here, and further opportunities would merely prejudice the Company by requiring it to continue investing time and resources into this proceeding.

Given that Ms. Dahl has twice failed to appear without prior notice, the Commission should dismiss the complaint.

B. Any potential claims arising from the complaint are now moot.

The complaint is also moot. It does not appear that Ms. Dahl lives in the state any longer, but regardless, it is clear from DEO's records that she no longer lives at her previous residence where the meter in question is located. Within weeks of filing her complaint, Ms. Dahl closed her account and moved away, without providing DEO with forwarding instructions or contact information. Even if the Commission found that DEO had not followed correct procedure in attempting to perform a meter test, there is no remedy to be had, because Ms. Dahl no longer has access to that meter.

In addition to not having access to the meter she has requested to be tested, Ms. Dahl has also paid DEO the entirety of her balance owed. When she rendered payment, Ms. Dahl did not indicate that she was paying the amount under protest or maintaining her dispute in any way. At this point, even if the meter could be tested, the period of time for correcting meter inaccuracies will long have elapsed. *See* Ohio Admin. Code 4901:1-31-04(D)(5)(c)(ii). Ms. Dahl has paid the balance she disputed in her complaint, closed her account, and would not be able to provide access to the meter she claimed was faulty even if the Commission found that she had sustained her burden of proof. Any potential claims Ms. Dahl originally made are now moot, and her complaint should be dismissed.

C. The complaint should be dismissed for failure to state reasonable grounds.

Finally, the complaint fails to state reasonable grounds. Under R.C. 4905.26, for a party to be granted a hearing, the complaint must “contain allegations, which, if true, would support the finding that the rates, practices, or services complained of are unreasonable or unlawful.” *See City of St. Clairsville v. South Central Power Co.*, Case No. 17-1750-EL-CSS, Finding and Order at 11 (Apr. 11, 2018). If the complaint contains no such allegations, allowing it to proceed to hearing anyway “would improperly alter both the scope and burden of proof.” *Id.*

Ms. Dahl complains that DEO did not test her meter. But as the complaint itself makes clear, DEO was willing and able to test Ms. Dahl’s meter, and to do so in her presence. But to carry out any meter test, given the size and weight of the testing equipment and the need to control the testing environment (for temperature, humidity, etc.), the meter must first be removed, and the test carried out at a designated DEO facility. Ms. Dahl insisted that the testing be carried out “on site,” at her premises, which was not technologically possible. Thus, in Ms. Dahl’s own words, “I *refused* to allow [DEO’s field personnel] to remove the existing meter and

replace it with a different one, so that he could allegedly take it to a different location for testing.” (Complaint at 2 (emphasis added).)

There is no dispute here as to the reason a meter test did not occur; Ms. Dahl refused to allow it. This does not state reasonable grounds, and provides yet another reason for dismissing this complaint.

III. CONCLUSION

For these reasons, DEO respectfully requests that the Commission grant its motion and dismiss this complaint with prejudice for failure to prosecute, mootness, and failure to state reasonable grounds.

Dated: May 15, 2018

Respectfully submitted,

/s/ Andrew J. Campbell

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ATTORNEYS FOR THE EAST OHIO GAS
COMPANY D/B/A DOMINION ENERGY OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and Memorandum in Support was served by mail to the following person this 15th day of May, 2018:

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Summary: Motion to Dismiss and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio