

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

DR. THOMAS INWOOD

Complainant,

v.

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

Respondent.

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Case No. 18-744-EL-CSS

**MOTION TO DISMISS FOR FAILURE TO PROSECUTE
OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

Pursuant to Ohio Administrative Code 4901-1-12, Respondent The Cleveland Electric Illuminating Company (“CEI” or the “Company”) respectfully moves the Commission for an Order dismissing the Complaint with prejudice due to Complainant’s lack of prosecution of the Complaint. A Memorandum in Support of this Motion is attached.

Respectfully submitted

/s/ Emily V. Danford
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MEMORANDUM IN SUPPORT

I. Factual & Procedural Background

Dr. Thomas Inwood (the “Complainant”) filed his Complaint in this matter on April 24, 2018, regarding vegetation control tree trimming that CEI proposed to perform along a transmission circuit located adjacent to Complainant’s property. Respondent CEI filed its Answer on May 14, 2018. On August 16, 2018, the Commission issued an Entry scheduling a Settlement Conference for September 4, 2018. Both counsel for CEI and the Commission’s attorney examiner were present for the September 4, 2018 Settlement Conference, but the Complainant failed to appear.¹

On September 19, 2018, the Commission issued an Entry scheduling a second Settlement Conference for October 11, 2018. In that Entry, the Commission warned the Complainant that “failure to attend the October 11, 2018 settlement conference may result in dismissal of his complaint for lack of prosecution.”² On October 11, 2018, both the Commission’s attorney examiner and counsel for CEI appeared for the Settlement Conference, but Complainant, again, failed to appear. Indeed, to CEI’s knowledge, the Complainant has not participated in this matter whatsoever since he filed his Complaint on April 24, 2018.

The Complainant did not provide CEI or, to CEI’s knowledge, the Commission, with any notice that he would be unable to appear at either of the Settlement Conferences in this matter. And to CEI’s knowledge, as of the time of the filing of this Motion, Complainant has not provided any explanation or justification for his absence from the two Settlement Conferences.

¹ See Commission Entry dated September 19, 2018 at ¶2.

² *Id.* at ¶7.

II. Law & Argument

The Complaint should be dismissed for Complainant's failure to prosecute. The Complainant, like all pro se litigants appearing before the Commission, "is held to the same procedural standards as other litigants that have retained counsel."³ Thus, while the Commission "may, in practice, grant a certain amount of latitude toward pro se litigants, the court cannot simply disregard [the rules] in order to accommodate a party who fails to obtain counsel."⁴ Otherwise, "the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel."⁵

Here, the Commission granted latitude toward the Complainant by scheduling a second Settlement Conference after the Complainant failed to appear at the first Settlement Conference.⁶ The Commission even warned the Complainant that if he failed to appear for the second Settlement Conference, his Complaint could be dismissed for "lack of prosecution."⁷ Yet, the Complainant failed to appear for the second Settlement Conference, and to CEI's knowledge "has not contacted the Commission to indicate [his] intentions to pursue this complaint."⁸

The Complainant has been given substantial latitude and notice regarding his obligations in this proceeding – and the consequences for failing to meet those obligations. The Complainant's failure to appear at either Settlement Conference wasted CEI's resources, and more importantly, the Commission Staff's resources. Further, the delay to the Company's performance of its Commission-approved vegetation control plan risks negatively impacting the reliability of electric

³ *In the Matter of Michael Barker, D/B/A Comex Transport, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 16-2186-TR-CVF, p. 9-10 (July 12, 2017).

⁴ *Id.*

⁵ *Id.*

⁶ Commission Entry dated September 19, 2018 at ¶2.

⁷ *Id.* at ¶7.

⁸ *In the Matter of the Complaint of Gwendolyn Tandy v. The Cleveland Electric Illuminating Company, et al.*, PUCO Case No. 14-1241-EL-CSS (Dec. 10, 2014) at ¶16.

service to other customers.⁹ The Complainant's lack of action has risen to the level of failure to prosecute,¹⁰ and his Complaint should be dismissed.

III. Conclusion

For the reasons stated herein, the Complaint should be dismissed with prejudice.

Respectfully submitted

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⁹ See *Corrigan v. Cleveland Electric Illuminating Company*, PUCO Case No. 09-492-EL-CSS (Mar. 26, 2014) , at 13-15, *affirmed*, *Corrigan et al. v. Illuminating Company et al.*, Slip Opinion No. 2017-Ohio-7555, at ¶ 11 (noting “under Ohio Adm.Code 4901:1-10-27, CEI must [maintain programs] for the inspection, maintenance, repair, and replacement of its transmission and distribution circuits and equipment and that such programs include right-of-way vegetation control” and acknowledging the un rebutted testimony of CEI regarding “the safety hazards that the Tree, if left standing, might cause,” including hazards to the reliability of CEI’s distribution system).

¹⁰ *In the Matter of the Complaint of Gwendolyn Tandy v. The Cleveland Electric Illuminating Company, et al.*, PUCO Case No. 14-1241-EL-CSS (Dec. 10, 2014) at ¶16 (granting motion to dismiss for failure to prosecute after complainant failed to appear for one settlement conferences).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss for Failure to Prosecute of The Cleveland Electric Illuminating Company was served by U.S. mail to the following person on this 31st day of October 2018.

Dr. Thomas Inwood
34603 Bramble Lane
Solon, Ohio 44139

/s/ Emily V. Danford
*Attorney for The Cleveland Electric
Illuminating Company*

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Summary: Motion to Dismiss for Failure to Prosecute of The Cleveland Electric Illuminating Company electronically filed by Ms. Emily V Danford on behalf of The Cleveland Electric Illuminating Company