

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On August 22, 2017, Erin Dahl filed a complaint against DEO, alleging 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, denying the allegations. (Answer at 1-4.)

DEO appeared at the first scheduled settlement conference on October 25, 2017; Ms. Dahl neither appeared nor informed DEO or the Commission in advance. Nearly five months later, Ms. Dahl reached out to the Commission's Legal department and requested another settlement conference, to be held telephonically. That conference was scheduled for April 3, 2018. DEO again appeared at the conference; Ms. Dahl again did not. A third conference was scheduled for June 5, which again Ms. Dahl did not attend. Finally, at the fourth scheduled settlement conference, Ms. Dahl attended, but the parties were unable to reach a settlement.

The matter was then scheduled for hearing on August 30, 2018. Just over a week before the hearing date, Ms. Dahl informed DEO and the Commission that she would be unable to attend due to a legal matter in Arizona, where she now resided, and requested a continuance. The hearing was rescheduled to October 11, and in preparation for hearing, DEO filed witness testimony on October 4. That same day, Ms. Dahl filed another motion for continuance, citing continuing scheduling conflicts with the legal matter in Arizona, as well as difficulty obtaining necessary documentation to prepare for this proceeding. DEO did not object to the request for continuance and attempted to provide the requested documentation as well. The hearing was once again continued, this time until November 9.

On November 1, Ms. Dahl requested a third continuance of the hearing, again citing trouble receiving documents. In a further attempt to facilitate a resolution to this matter, DEO again did not contest the continuance, only requesting that the matter be held until after the new year to account for the holiday season and other ongoing regulatory proceedings. DEO also made every effort to fulfill Ms. Dahl's request for documentation, despite receiving little to no information as to what exactly she was requesting.

The hearing was once again continued, this time until January 31, 2019. In his November 8, 2018 Entry, the attorney examiner cautioned Ms. Dahl that "absent extraordinary circumstances, no further continuances of the hearing [would] be granted." Entry ¶ 10. The Entry further advised Ms. Dahl "that her failure to attend the rescheduled hearing in this case [would] result in a recommendation to dismiss her complaint for failure to prosecute." *Id.*

Despite that admonition, Ms. Dahl requested a fourth continuance of the hearing in this proceeding on January 22, 2019. Admitting she had received the requested documentation, Ms. Dahl claimed that she had not had enough time to properly prepare, and requested another month-long delay. DEO did challenge this request, but the motion was granted, and the hearing was continued to February 25. The attorney examiner once again warned Ms. Dahl in the January 28 Entry "that her failure to attend the rescheduled hearing in this case [would] result in a recommendation to dismiss her complaint for failure to prosecute." Entry ¶ 8.

Finally, on February 21, a mere four days before the new hearing date, Ms. Dahl made her fifth motion for continuance, again despite two prior warnings from the Commission about the repeated requests. DEO once again contested the motion, and this time the hearing went forward as scheduled, with DEO counsel and witnesses in attendance. Ms. Dahl did not attend. At hearing, DEO moved for dismissal for failure to prosecute, and renews that motion here.

II. ARGUMENT

As demonstrated above and explained at hearing, Ms. Dahl has repeatedly failed to appear and attempt to either settle or prosecute her complaint. The Commission has scheduled five different hearing dates, each at Ms. Dahl's sole request. She has yet to make an appearance.

While the Commission is within its rights to provide leniency to pro se complainants, it still has a history of dismissing complaints when the complaining party fails to appear multiple times, sometimes before even reaching the hearing stage. *See, e.g., Aaron Cockrell v. DP&L*, Case No. 12-2085-EL-CSS, Entry ¶ 7 (Nov. 7, 2012); *Anita Deal v. DP&L*, Case No. 11-6052-EL-CSS, Entry ¶ 7 (Aug. 15, 2012); *Elbert Stidham v. Duke Energy Ohio*, Case No. 11-4788-GE-CSS, Entry ¶ 6 (Dec. 14, 2011); *Donald Howard v. Columbia Gas of Ohio*, Case No. 10-1438-GA-CSS, Entry ¶ 10 (Apr. 27, 2011).

After a complaint has proceeded to the hearing phase, the Commission has also consistently dismissed when the complainant fails to appear multiple times. Even when the complainant has provided notice before the actual hearing date of his inability to attend, the Commission has seen fit to dismiss after multiple hearing dates and warnings. *See Vasi v. Columbia Gas of Ohio*, Case No. 06-575-GA-CSS, Entry ¶ 6 (Jul. 25, 2007) (complaint dismissed after complainant requested multiple continuances); *see also, e.g., Maholtz v. Dominion East Ohio*, Case No. 10-1411-GA-CSS, Entry ¶ 7 (May 19, 2011); *Steele v. Duke Energy Ohio*, Case No. 08-1059-EL-CSS, Entry ¶ 10 (Aug. 12, 2009); *Robinson v Ameritech Ohio*, Case No. 97-1285-TP-CSS, Entry ¶ 5 (Jan. 28, 1998).

Ms. Dahl has not only been given ample opportunities to make her case, she has also received two very direct warnings from the Commission that failure to appear would result in a recommendation for dismissal. She has ignored those warnings, and as such, the Commission should dismiss the 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.

Dated: February 26, 2019

Respectfully submitted,

/s/ Rebekah J. Glover

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mail to the following person
this 26th day of February, 2019:

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/s/ Rebekah J. Glover
One of the Attorneys for The East Ohio Gas
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Summary: Motion to Dismiss with Prejudice 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