

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
ERIN DAHL,

COMPLAINANT,

v.

CASE No.17-1822-GA-CSS

THE EAST OHIO GAS COMPANY D/B/A  
DOMINION ENERGY OHIO,

RESPONDENT.

ENTRY

Entered in the Journal on December 1, 2021

I. SUMMARY

{¶ 1} The Commission denies Complainant's motion for relief from judgment and for a new trial.

II. DISCUSSION

A. *Procedural History*

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

{¶ 3} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On August 22, 2017, Erin Dahl (Ms. Dahl or Complainant) filed a complaint against DEO alleging that, during the period of July 2016 to October 2016, DEO's records of gas usage and billing for her apartment were inaccurate, possibly due to a faulty gas meter and despite the fact that she was traveling out of the state of Ohio during that time.

Complainant further alleges that DEO representatives failed to follow proper procedures when she requested a meter test and requests that DEO be directed to comply with existing statutes and test her gas meter in her presence at her apartment. Lastly, Complainant avers that DEO provided her with inadequate service.

{¶ 5} DEO filed its answer on September 11, 2017. In its answer, DEO admits certain allegations and generally denies other allegations in the complaint. DEO also states that it is without sufficient knowledge or information to admit or deny the remaining allegations in the complaint. Lastly, DEO sets forth in the answer several affirmative defenses.

{¶ 6} By Entry issued September 18, 2017, the attorney examiner scheduled a settlement conference for October 25, 2017. Ms. Dahl failed to appear on October 25, 2017, and the settlement conference was subsequently rescheduled three separate times at Ms. Dahl's request, first on April 3, 2018, then on June 5, 2018, and lastly on June 20, 2018.

{¶ 7} On June 20, 2018, the settlement conference convened as rescheduled in an attempt to resolve this matter informally. The parties, however, were unable to resolve the issues presented in the complaint during the conference.

{¶ 8} By Entry issued July 3, 2018, the attorney examiner scheduled this matter for hearing on August 30, 2018. Thereafter, pursuant to requests by Ms. Dahl, the attorney examiner rescheduled the hearing date four separate times, first for October 11, 2018, and then for November 9, 2018, January 31, 2019, and February 25, 2019, respectively.

{¶ 9} On February 22, 2019, Complainant filed a motion seeking a fifth continuance of the scheduled hearing date. In her motion, Complainant reiterates the arguments in her complaint and states that, on February 16, 2019, she was the victim of theft. Specifically, Complainant alleges that said theft caused her undue hardship on her transportation and finances, both of which she alleges impact her trip to Columbus for the scheduled hearing.

{¶ 10} Also on February 22, 2019, DEO filed a memorandum contra Complainant's motion for continuance wherein DEO states that Complainant has been given chance after

chance to make her case before the Commission, and despite being given clear direction that further continuances would not be granted, Ms. Dahl has found another reason to delay her hearing. DEO states that Complainant argues that she has demonstrated “good cause” to be granted a fifth continuance. However, DEO avers that Complainant does not explain why her transportation issues constitute “good cause” to delay the hearing and further argues that the January 28, 2019 Entry does not provide for such consideration and only provides that failure to appear will result in a recommendation of dismissal. Lastly, DEO states that Complainant waited to file her motion until two business days before the date of the hearing. With hearing preparation and travel plans already well underway, DEO states that a delay at this point would cause DEO to incur additional expense, thus unduly and unfairly prejudicing DEO.

{¶ 11} The February 25, 2019 hearing convened as scheduled. The attorney examiner, counsel for DEO, and DEO witnesses were present for the evidentiary hearing. However, Complainant did not appear. At the hearing, DEO moved to dismiss the case with prejudice for failure to prosecute, and the attorney examiner reserved a ruling on the motion.

{¶ 12} On February 26, 2019, DEO renewed its motion to dismiss with prejudice for failure to prosecute. In support of its motion, DEO states that Ms. Dahl has repeatedly failed to appear and attempt to either settle or prosecute her complaint. Furthermore, DEO opines that the Commission has scheduled five different hearing dates, each at Ms. Dahl’s sole request, and all of which she has yet to make an appearance. DEO avers that, while the Commission is within its rights to provide leniency to pro se complainants, it has a history of dismissing complaints when the complainant: (a) fails to appear multiple times before even reaching the hearing stage; (b) fails to appear multiple times after a complaint has proceeded to the hearing phase; and (c) provides notice before the actual hearing date of her inability to attend, but there have been multiple hearing dates and warnings.

{¶ 13} Also on February 26, 2019, Complainant filed a reply to DEO’s memorandum contra Complainant’s motion for continuance. In her response, Complainant states that

each of her prior continuance requests was either due to conflicting court dates in other litigation matters of which she has no control over or extenuating personal circumstances. Complainant states that her fifth request for a continuance was due to DEO's failure to provide her with the required documents needed for this case. Furthermore, Complainant avers that she has made every effort with the South Euclid Police Department to resolve her theft issue as quickly as possible so that she would not have to file another continuance with the Commission. Complainant states that the record shows DEO causing numerous delays and that this issue should have been resolved in 2017 with DEO directly. Lastly, Complainant concludes that she has not filed a single motion for continuance based on any negligence on her part.

{¶ 14} On March 12, 2019, Complainant filed a memorandum contra DEO's motion to dismiss. In her response, Complainant states that none of DEO's arguments in its motion to dismiss can be substantiated as a basis to dismiss her case. Specifically, Complainant avers that she has shown great effort and resolve in her attempts to rectify the alleged fraudulent billing issue. Additionally, Complainant avers that she has made repeated requests to DEO to reissue billing statements and did not receive the billing statements until January 2019. Complainant contends that each request has been based upon actual and verifiable scheduling conflicts and all of which have satisfied the legal requirements of "good cause." Furthermore, Complainant opines that she has heeded all directives provided by the Commission and that her requests to continue the hearing do not equate to ignoring orders or warnings as DEO asserts.

{¶ 15} On September 26, 2019, the Commission denied Complainant's fifth motion seeking a continuance and granted DEO's motion to dismiss the complaint for failure to prosecute. In our decision, we noted that Complainant was repeatedly informed that she must appear and present testimony in support of the claims made in the filed complaint. In spite of this guidance, as reflected by the docket in this case, Ms. Dahl made repeated requests to continue the administrative proceedings in this matter and ultimately failed to prosecute her case. We stressed that Complainant was cautioned on three separate

occasions, with each warning escalating in seriousness, regarding her failure to appear and prosecute the case. First, the attorney examiner's May 16, 2018 Entry advised Complainant that failure to participate in the settlement conference may result in dismissal of the complaint for lack of prosecution. Second, the attorney examiner's November 8, 2018 Entry informed Complainant that, absent extraordinary circumstances, no further continuances of the hearing would be granted and that her failure to attend the rescheduled hearing in this case would result in a recommendation to dismiss her complaint for failure to prosecute. Third, the attorney examiner's January 28, 2019 Entry, after granting Ms. Dahl's request for more time to review the billing statements received on January 12, 2019, warned Complainant that her failure to attend the February 25, 2019 hearing in this case would result in a recommendation to dismiss her complaint for failure to prosecute. Furthermore, Ms. Dahl represented to the Commission that her January 22, 2019 motion for continuance was her last, "final" request to continue the hearing; yet, Complainant moved to continue her hearing for a fifth time on February 22, 2019, and ultimately failed to appear at the February 25, 2019 hearing. As a consequence of Complainant's actions, we found it reasonable to grant DEO's February 26, 2019 motion to dismiss the complaint for failure to prosecute and to deny Complainant's February 22, 2019 motion for continuance.

{¶ 16} On May 28, 2020, Complainant filed a motion for relief from judgment and for a new trial (Motion for Extraordinary Relief). In her pleading, Complainant alleges that she did not receive a copy of the Commission's September 26, 2019 Entry (Dismissal Entry) until February of 2020, when she travelled to her Arizona address, which was where the Dismissal Entry was served. Complainant alleges that the service of the Dismissal Entry at her Arizona address was a clerical error and that, pursuant to Ohio Civil Rules 59 and 60, she is entitled to relief from judgment and a new trial such that the Dismissal Entry should be vacated. Further, she restates her arguments contra our conclusion that she failed to prosecute her case.

{¶ 17} On June 12, 2020, DEO filed a memorandum contra Complainant's Motion for Extraordinary Relief. DEO highlights the procedural case facts that supported the Dismissal

Entry. Further, DEO argues that Complainant's motion is untimely, as the procedure for contesting the Dismissal Entry required that Complainant file an application for rehearing within 30 days after the Dismissal Entry was filed on the Commission's journal, as required by R.C. 4903.10. DEO emphasizes that Complainant's motion is untimely, as it was filed 245 days after the Dismissal Entry was entered on the journal. DEO contends that the filing requirements in R.C. 4903.10 are jurisdictional and not subject to any discretionary relief, as claimed by Complainant. Moreover, DEO claims that Complainant's relief request fails on its facts in that Complainant fails to demonstrate that the Dismissal Entry was improperly served on her at her Arizona address. In support of this claim, DEO stresses that (1) Complainant repeatedly listed the Arizona address on her pleadings, and (2) nine prior Commission orders were mailed to that address without any indication of delivery failure or Complainant's request for revision to her service address.

{¶ 18} On June 19, 2020, Complainant filed a memorandum in response to DEO's memorandum contra Complainant's Motion for Extraordinary Relief. In this pleading, Complainant argues (1) that her case is guided by Ohio Civil Rules 59 and 60, which provide for relief from judgment for up to one year after a judgment is issued in a civil case, and (2) even if her case is determined pursuant to R.C. 4903.10, she met the criteria for rehearing consideration outside of the 30-day period after the Dismissal Entry was journalized on September 26, 2019.

#### ***B. Commission Analysis***

{¶ 19} The Commission denies Complainant's Motion for Extraordinary Relief. In doing so, we find that (1) Complainant's request is untimely, and (2) Complainant fails to demonstrate any administrative error that could be used to argue in her favor as to consideration of this matter.

{¶ 20} Complainant seeks reconsideration of the Dismissal Entry that disposed of her case due to her failure to prosecute. As outlined herein, the Dismissal Entry was issued after Complainant received numerous warnings that her conduct in the litigation was

jeopardizing her continuing right to prosecute her case. The last of these warnings was included in the attorney examiner's January 28, 2019 Entry, wherein Complainant was advised that her failure to attend the February 25, 2019 hearing would result in a recommendation to dismiss her complaint for failure to prosecute. In spite of this clear directive, Complainant chose to pursue a fifth continuance in her case on the eve of the February 25, 2019 hearing. Moreover, Complainant compounds her inattention to the pursuit of her case by failing to (1) provide information as to her alleged change in mailing address, and (2) take action to monitor the status of her case, including the journalization of the Dismissal Entry on September 26, 2019. As a result, her Motion for Extraordinary Relief was filed well after the expiration of the 30-day deadline for filing an application for reconsideration, as provided for in R.C. 4903.10.

{¶ 21} We find that Complainant is not entitled to relief from the Dismissal Entry that dismissed her case for failure to prosecute. Initially, we note that R.C. 4903.10 controls as to requests for relief from Commission decisions. That section requires the filing of an application for rehearing within 30 days after the entry of the order upon the Commission's journal. This statutory deadline is jurisdictional, is not subject to Commission waiver, and has been consistently upheld by the Commission. *See, e.g., Greer v. Pub. Util. Comm.*, 172 Ohio St. 361, 362, 176 N.E.2d 416 (1961); *Tandy v. Cleveland Elec. Illuminating Co.*, Case No. 12-2102-EL-CSS, Entry on Rehearing (May 1, 2013) at 3; *Paquelet v. Ohio Edison Co.*, Case No. 11-4177-EL-CSS, Entry on Rehearing (Oct. 31, 2012) at 2; *Mustric v. Columbia Gas of Ohio, Inc.*, Case No. 01-2472-GA-CSS, Second Entry on Rehearing (Mar. 25, 2003) at 2. Accordingly, Complainant's request for relief is untimely, as the time for its filing ended as of October 26, 2019.

{¶ 22} Moreover, we emphasize that Complainant fails to demonstrate her claimed right to relief both in regard to application of the criteria within R.C. 4903.10 and Ohio Civil Rules 59 and 60. Relative to R.C. 4903.10, Complainant makes a conclusory claim that she satisfies criteria for relief from the 30-day application for rehearing deadline. We disagree, as no part of the statute grants a right to file a rehearing application beyond 30 days after a

journalized Commission order. Further, while we disagree with Complainant's claimed right to further consideration of this matter pursuant to Ohio Civil Rules 59 and 60, we also note that, even if we accept her legal claim that the civil rules control this issue, her conduct in this case does not entitle her to such extraordinary relief from judgment. Complainant's argument for relief due to a "clerical error" is inconsistent with the requirement in Ohio Civ. R. 60(B), which requires that a party demonstrate "excusable neglect" in order to obtain extraordinary relief from a final judgment. In this case, Complainant claims that delivery of the Dismissal Entry to her Arizona mailing address was improper because she was, for a time, not receiving mail at that address. However, as noted herein, Complainant consistently indicated throughout this case that her mail delivery was proper at the Arizona address that she included on her pleadings. As a result, she received nine prior Commission orders that were mailed to that address without any indication of delivery failure or her request for revision to her service address. In fact, even her two pleadings immediately prior to her scheduled hearing on February 25, 2019, both indicate that her Arizona address remains valid. Further, there is never any indication in any pleading that the Arizona address is invalid. As a result, we conclude that any alleged error as to the delivery of the Dismissal Entry in this case results from Complainant's unilateral action such that she would not be entitled to the relief she requests even if Ohio Civ. Rule 60 were controlling as to this issue.

{¶ 23} In further support of our determination, we note that complainants are obligated to follow Commission rules when litigating cases. While pro se complainants may, at times, be afforded some latitude in prosecuting a case before the Commission, it is well-established that "pro se litigants \* \* \* must follow the same procedures as litigants represented by counsel." *In re the Complaint of Ricardo Garnell Lee v. Duke Energy Ohio, Inc.*, Case No. 18-445-EL-CSS (*Lee v. Duke Case*), Entry (May 15, 2019) at ¶ 11, quoting *State ex rel. Gessner v. Vore*, 123 Ohio St.3d 96, 2009-Ohio-4150, 914 N.E.2d 376, ¶ 5. Further, "pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." *Lee v. Duke Case* at



¶ 11, quoting *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, ¶ 10.

{¶ 24} In summary, we deny Complainant's Motion for Extraordinary Relief, finding that it is both untimely and inconsistent with any alleged administrative error.

### III. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That Complainant's Motion for Extraordinary Relief be denied. It is, further,

{¶ 27} ORDERED, That a copy of this Entry be served upon each party of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

MLW/hac

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**12/1/2021 2:48:13 PM**

**in**

**Case No(s). 17-1822-GA-CSS**

Summary: Entry denying Complainant's motion for relief from judgment and for a new trial electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio