

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
ANTHONY PEAGLER,**

COMPLAINANT,

v.

CASE NO. 19-1614-EL-CSS

**THE DAYTON POWER AND LIGHT
COMPANY,**

RESPONDENT.

ENTRY

Entered in the Journal on September 21, 2022

{¶ 1} 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 relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} The Dayton Power and Light Company (DP&L or Respondent) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 22, 2019, Anthony Peagler (Complainant or Mr. Peagler) filed a complaint against the Respondent. The Complainant alleges that Respondent provided inadequate service in response to Complainant's request that Respondent restore power to his residence after it was cut due to an act of God. The Complainant further alleges that Respondent is placing an unreasonable financial burden on him by requiring him to pay for relocating the electric meter from the interior of his home to the exterior. Complainant also alleges that Respondent billed him for a service address at which he never resided.

{¶ 4} On August 22, 2019, the Commission's docketing division mailed a complaint response letter to the service address on record for the Complainant to inform Complainant that the Commission had received his complaint.

{¶ 5} On September 5, 2019, the Commission received the complaint response letter returned in the mail by the United States Postal Service with the message, "Return to Sender, Vacant, Unable to Forward."

{¶ 6} On September 18, 2019, Complainant's niece, Tonja Johnson (Ms. Johnson), contacted the attorney examiner and provided a new address at which Complainant may be served correspondence related to this proceeding: 449 Fountain Avenue, Dayton, Ohio 45405.

{¶ 7} On September 23, 2019, the attorney examiner issued an Entry ordering the Commission's docketing division to update the Complainant's service address, to resend the letter confirming receipt of the complaint to the Complainant, and to serve a copy of the complaint service letter on DP&L. The Entry also ordered DP&L to file its answer within 20 days of the Entry being filed.

{¶ 8} On October 15, 2019, DP&L filed its answer to the complaint. In its answer, DP&L stated that it denies or is without sufficient knowledge to ascertain the veracity of the allegations made in the complaint and, therefore, denies the same. Additionally, DP&L sets forth several affirmative defenses as well as claims that DP&L complied with all relevant statutes, regulations, and approved tariffs in this case. DP&L also requests the opportunity to mediate with the Complainant to determine whether a mutually acceptable resolution is possible.

{¶ 9} On October 16, 2019, Ms. Johnson contacted the attorney examiner and indicated she was interested in speaking on Mr. Peagler's behalf at a settlement conference.

{¶ 10} By Entry issued October 25, 2019, the attorney examiner scheduled a settlement conference for November 20, 2019. Additionally, in order to allow Ms. Johnson

to represent Mr. Peagler during settlement discussions, the attorney examiner directed Ms. Johnson to file a document, such as a formal power of attorney or an affidavit signed by Mr. Peagler, on or before November 20, 2019, that provides evidence that Mr. Peagler has authorized Ms. Johnson to settle the issues at stake in this case, in accordance with Ohio Adm.Code 4901-1-08(D). See *In re Complaint of Dorothy Greene vs. Interstate Gas Supply, Inc.*, Case No. 18-1301-EL-CSS, Entry (November 16, 2018) at ¶ 13.

{¶ 11} On November 20, 2019, a settlement conference was held in an attempt to informally resolve this matter. During the settlement conference, the parties agreed to continue further settlement discussions after the conference.

{¶ 12} On February 2, 2021, the attorney examiner issued an entry noting the protracted nature of the settlement discussions and directing the parties to file a report with the Commission regarding the status of the proceeding by March 2, 2021, specifically indicating whether settlement negotiations are still ongoing or the parties are ready to proceed to hearing. The Entry also noted that, to this date, Ms. Johnson has not filed the documentation required by the October 25, 2019 Entry. The attorney examiner renewed the October 25, 2019 Entry's directive that Ms. Johnson file a formal power of attorney or affidavit signed by Mr. Peagler, on or before March 2, 2021, that provides evidence that Mr. Peagler has authorized Ms. Johnson to settle the issues at stake in this case, in accordance with Ohio Adm.Code 4901-1-08(D).

{¶ 13} On March 2, 2021, DP&L, now doing business as AES Ohio (AES Ohio), filed correspondence stating that, due to the pandemic, the parties have not engaged in further settlement discussions; however, counsel notes that AES Ohio remains interested in exploring settlement to determine whether circumstances have changed since the parties last met. If Ms. Johnson files proof of legal authority to act on behalf of Mr. Peagler, AES Ohio is willing to participate in another settlement conference mediated by an attorney examiner. If no settlement conference is scheduled or a settlement cannot be reached, AES Ohio states that it plans to file a dispositive motion.

{¶ 14} Ms. Johnson did not file a statement providing the status of the proceeding nor did she file a formal power of attorney or affidavit, as directed in the February 2, 2021 Entry.

{¶ 15} By Entry issued March 5, 2021, the attorney examiner provided Ms. Johnson one more opportunity to file a formal power of attorney or affidavit signed by Mr. Peagler, on or before March 22, 2021. The attorney examiner advised that if such documentation is not filed then a dismissal for this case will be recommended to the Commission.

{¶ 16} On March 11 and 12 and June 25, 2021, notices of returned mail were filed on the docket. According to these notices, the February 2 and March 5, 2021 Entries mailed to the address listed on record for the Complainant were returned as not deliverable as addressed and unable to be forwarded.

{¶ 17} After these notices were filed, the attorney examiner made multiple attempts to contact the Complainant and Ms. Johnson at the phone number on record regarding the case and to update the address on record; however, the attorney examiner was unable to reach the Complainant or Ms. Johnson.

{¶ 18} By Entry issued December 15, 2021, the Commission dismissed the complaint without prejudice for failure to prosecute the case, though it noted that the Complainant could choose to pursue its complaint at a later time.

{¶ 19} Ms. Johnson recently contacted the attorney examiner and requested that the case be reopened. Ms. Johnson advised that recent hardships involving her family prevented her from actively pursuing prosecution of this matter on behalf of Mr. Peagler; however, issues stemming from the initial complaint have persisted at Mr. Peagler's residence such that Mr. Peagler would like to continue with the complaint and engage in further settlement talks with AES Ohio. Ms. Johnson reiterated that, due to Mr. Peagler's condition, he needs her to be his representative, and she stated that she has a power of attorney supporting this claim. Ms. Peagler confirmed that her address of record, 449

Fountain Avenue, Dayton, Ohio 45405, is accurate despite the returned mail from that address.

{¶ 20} At this time, the attorney examiner finds that good cause has been shown to reopen this proceeding. According to Ohio Adm.Code 4901-1-34(A), an attorney examiner may, upon their own motion, reopen a proceeding at any time prior to the issuance of a final order. While an Entry dismissing the case for lack of prosecution was issued in this matter, no final order affecting substantial rights of any party was made. Notably, the Commission dismissed the complaint without prejudice and specifically stated that the Complainant may pursue the complaint at a later time if so desired. Consequently, the attorney examiner finds it appropriate to reopen the proceeding. The attorney examiner directs AES Ohio to file a notice of appearance by October 8, 2022.

{¶ 21} Furthermore, the attorney examiner renews the directive given in the October 25, 2019 and February 2, 2021 Entries, requiring that Ms. Johnson file a formal power of attorney or affidavit signed by Mr. Peagler, on or before October 8, 2022, that provides evidence that Mr. Peagler has authorized Ms. Johnson to settle the issues at stake in this case, in accordance with Ohio Adm.Code 4901-1-08(D).

{¶ 22} Finally, the attorney examiner finds it reasonable to schedule an additional settlement conference in this matter. Accordingly, a telephonic settlement conference should be scheduled for October 18, 2022, at 10:00 a.m. Participants should utilize the following call-in information to participate:

- Conference call number: 614.721.2972
- Conference ID: 802 602 202#

{¶ 23} If a settlement is not reached at the conference, the attorney examiner may conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

{¶ 24} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the AES Ohio shall investigate the issues raised in the complaint prior to the settlement conference, and all parties participating in the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties participating in the settlement conference should have with them all documents relevant to this matter.

{¶ 25} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That this proceeding be reopened, consistent with Paragraph 20. It is, further,

{¶ 28} ORDERED, That AES Ohio file a notice of appearance by October 8, 2022. It is, further,

{¶ 29} ORDERED, That Ms. Johnson file, on or before October 8, 2022, evidence of her authority to settle the issues at stake in this case on behalf of Mr. Peagler, as further described in Paragraph 21. It is, further,

{¶ 30} ORDERED, That a telephonic settlement conference be scheduled for October 18, 2022, in accordance with Paragraph 22. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Matthew J. Sandor

By: Matthew J. Sandor
Attorney Examiner

GAP/dmh

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

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in

Case No(s). 19-1614-EL-CSS

Summary: Attorney Examiner Entry ordering that this proceeding be reopened; that AES Ohio file a notice of appearance by October 8, 2022; that Ms. Johnson file, on or before October 8, 2022, evidence of her authority to settle issues on Mr. Paegler's behalf; that a telephonic settlement conference be scheduled for October 18, 2022, at 10:00 a.m. Participants should call 614-721-2972; ID 802 602 202# electronically filed by Ms. Donielle M. Hunter on behalf of Matthew J. Sandor, Attorney Examiner, Public Utilities Commission of Ohio