

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	:	Case No. 22-0049-EL-CSS
India Davis and Denzel Jacobs,	:	
	:	
Complainants,	:	
	:	
v.	:	
	:	
The Dayton Power and Light Company	:	
d/b/a AES Ohio,	:	
	:	
Respondent.	:	

MOTION TO DISMISS FOR LACK OF PROSECUTION

Pursuant to Ohio Adm.Code 4901-1-12 and the September 8, 2022 Entry in this proceeding, The Dayton Power and Light Company d/b/a AES Ohio moves to dismiss the Complaint in this matter for lack of prosecution. The reasons for granting this Motion are explained in the attached Memorandum in Support.

Respectfully submitted,

/s/ Christopher C. Hollon
Christopher C. Hollon (0086480)
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Counsel for AES Ohio

(willing to accept service by e-mail)

MEMORANDUM IN SUPPORT

The Commission should dismiss this proceeding because Complainants India Davis and Denzel Jacobs have failed to prosecute their January 20, 2022 Complaint against AES Ohio.

Following the commencement of this action, AES Ohio filed a timely Answer on February 9, 2022, and requested a mediation pursuant to Ohio Adm.Code 4901-9-01(G). Soon thereafter, the Attorney Examiner scheduled a settlement teleconference for February 24, 2022. Feb. 11, 2022 Entry. Counsel for AES Ohio and Mr. Jacobs attended the mediation, and although the parties did not reach a settlement during their conference, they agreed to continue working together toward achieving settlement. Mr. Jacobs further represented that he would soon obtain and share certain information that would be helpful in resolving the case.

AES Ohio has not heard from either Complainant since that mediation. Undersigned counsel attempted to contact Complainants but did not receive a response. In addition, the Attorney Examiner “has made numerous efforts, all to no avail, to contact Complainants to learn about their willingness to move forward with their complaint.” Sept. 8, 2022 Entry, ¶ 6.

In light of those circumstances, the Attorney Examiner ordered the parties to attend a second settlement teleconference. *Id.* at ¶ 7. The Attorney Examiner scheduled the mediation for September 20, 2022 and advised Complainants that “their failure to attend and participate . . . may result in dismissal of this complaint for Complainants’ lack of sufficient prosecution.” *Id.* at ¶¶ 7-8. Counsel for AES Ohio attended the mediation, but Complainants did not join.

The Commission has held that a complainant’s failure to attend a settlement conference ordered by the Attorney Examiner may constitute reasonable grounds for dismissal for failure to prosecute. *E.g., In re Moss v. The Cleveland Electric Illuminating Co.*, Case No. 17-0651-EL-CSS, Entry (Aug. 2, 2017) (action dismissed due to complainants’ failure to attend settlement conference and not contacting attorney examiner regarding their case); *In re Sturgill v. NOPEC*,

Case No. 17-2127-GA-CSS, Entry (Apr. 11, 2018), ¶ 16 (“Considering Complainants’ failure to attend the scheduled settlement conferences in this matter, the Commission finds that NOPEC’s motion to dismiss should be granted.”). *Accord: In re Sands v. AEP*, Case No. 10-0853-EL-CSS, Entry (Feb. 9, 2011); *In re Morgan v. The Cleveland Electric Illuminating Co.*, Case No. 10-1073-EL-CSS, Entry (June 22, 2011); *In re Lustrous Design Ltd. v. The Cleveland Electric Illuminating Co.*, Case No. 16-1247-EL-CSS, Entry (Feb. 8, 2017).

Since Complainants have abandoned settlement negotiations, refused to respond to attempts to communicate with them by the Attorney Examiner and AES Ohio, and otherwise failed to prosecute this matter in any way, AES Ohio moves the Commission to dismiss their Complaint with prejudice for lack of prosecution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Ohio Adm.Code 4901-1-05, I certify that a copy of the foregoing document was e-filed with the Public Utilities Commission of Ohio on October 7, 2022. In addition, I certify that this document was sent by U.S. mail upon the following parties.

India Davis and Denzel Jacobs
59 Pinewood Cir., Apr. A
Dayton, OH 45426

/s/ Christopher C. Hollon
Christopher C. Hollon

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Case No(s). 22-0049-EL-CSS

Summary: Motion Motion to Dismiss for Lack of Prosecution electronically filed by
Mr. Christopher C. Hollon on behalf of The Dayton Power and Light Company d/b/a
AES Ohio