

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
LEE POEPPELMEIER,

COMPLAINANT,

v.

CASE NO. 20-1323-EL-CSS

THE DAYTON POWER AND LIGHT
COMPANY D/B/A AES OHIO,

RESPONDENT.

ENTRY

Entered in the Journal on January 10, 2024

I. SUMMARY

{¶ 1} The Commission dismisses the complaint, without prejudice, for failure to prosecute.

II. DISCUSSION

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

{¶ 3} Respondent, The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio), is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On July 29, 2020, Lee Poeppelmeier (Complainant) initiated a complaint against AES Ohio regarding charges on his electric bill, specifically the customer charge and the amount of that charge.

{¶ 5} Pursuant to Ohio Adm.Code 4901-9-01(B), a copy of the complaint was mailed to AES Ohio on July 29, 2020, directing AES Ohio to file its answer and any other responsive pleading within 20 days after July 29, 2020.

{¶ 6} By Entry issued on September 18, 2020, the attorney examiner ordered AES Ohio to file a responsive pleading no later than October 7, 2020.

{¶ 7} On October 30, 2020, AES Ohio filed both a motion for leave to file its answer out of time and its answer to the complaint. Ohio Adm.Code 4901-1-13(A) provides that “extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown.” Respondent stated that an oversight on its part, along with then recent developments related to the COVID-19 pandemic, resulted in its failure to timely file an answer.

{¶ 8} On November 9, 2020, the attorney examiner both scheduled a telephonic settlement conference to be held on December 8, 2020, and granted AES Ohio’s motion for an extension of time to file its answer. The settlement conference was held as scheduled but the parties were unable to settle the matter.

{¶ 9} On October 19, 2021, AES Ohio filed a motion to dismiss the case on grounds that the complaint concerns only AES Ohio’s residential customer charge, which it is lawfully able to charge as it was approved by the Commission in Case No. 15-1830-EL-AIR, et al. and is set forth in Tariff Sheet No. D17. *In re The Dayton Power and Light Company*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) at ¶ 52.

{¶ 10} On February 22, 2023, AES Ohio filed a motion to dismiss or alternatively a motion for a status conference, citing that it has had no contact from Mr. Poeppelmeier since the settlement conference. AES Ohio argues that after appearing at the settlement conference, Complainant has made no effort to engage with AES Ohio for settlement discussions or otherwise prosecute his case, so it should therefore be dismissed.

{¶ 11} By Entry issued on April 20, 2023, the attorney examiner ordered that Complainant file a response to AES Ohio's February 22, 2023 motion to dismiss no later than May 10, 2023, and that failure to respond by the date could result in dismissal of the complaint for failure to prosecute the matter.

{¶ 12} Complainant did not file any documentation in the docket by the May 10, 2023 deadline indicating that a resolution has been reached or that he wishes to proceed to hearing.

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

{¶ 14} At the time of this Entry, Complainant has not filed documentation indicating that the proceeding should continue. We note that the Complainant was on notice that if he did not file documentation by the May 10, 2023 deadline, the complaint could be dismissed. Further, Complainant has not contacted the Commission or the attorney examiner to present extenuating circumstances justifying the missed deadline. Accordingly, the Commission finds that this case should be dismissed, without prejudice, and the case be closed of record due to Complainant's failure to prosecute the matter.

III. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the complaint be dismissed, without prejudice, for lack of prosecution and this case be closed of record. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

IMM/dr

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

1/10/2024 2:32:36 PM

in

Case No(s). 20-1323-EL-CSS

Summary: Entry dismissing the complaint, without prejudice, for failure to prosecute. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.