

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Case No. 11-cv-03173-REB-MEH

THERESA L. DOWLING,

Plaintiff,

v.

EXCEL ENERGY,

Defendant.

---

**ORDER ADOPTING RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

---

**Blackburn, J.**

The matter before me is the **Recommendation of United States Magistrate Judge** [#56]<sup>1</sup> filed October 12, 2012. No objections having been filed to the recommendation, I review it only for plain error. *See Morales-Fernandez v. Immigration & Naturalization Service*, 418 F.3d 1116, 1122 (10<sup>th</sup> Cir. 2005).<sup>2</sup> Finding no such error in the magistrate judge's recommended disposition, I find and conclude that recommendation should be approved and adopted.

---

<sup>1</sup> “[#56]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

<sup>2</sup> This standard pertains even though plaintiff is proceeding *pro se* in this matter. *Morales-Fernandez*, 418 F.3d at 1122. In addition, because plaintiff is proceeding *pro se*, I have construed her pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. *See Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10<sup>th</sup> Cir. 2007); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)).

The magistrate judge recommends that this lawsuit be dismissed with prejudice as a sanction for plaintiff's failure to comply with the duly issued orders of the court and failure to prosecute this action. Although dismissal with prejudice is undoubtedly an extreme sanction, the circumstances chronicled in the magistrate judge's recommendation indisputably demonstrate a "clear record of delay [and] contumacious conduct by the plaintiff" warranting the imposition of such a penalty. ***Meade v. Grubbs***, 841 F.2d 1512, 1520 n.6 (10<sup>th</sup> Cir. 1988).

The magistrate judge thoroughly considered all of the relevant factors prescribed by ***Ehrenhaus v. Reynolds***, 965 F.2d 916, 921 (10<sup>th</sup> Cir. 1992). Given both plaintiff's conduct in this case and her lengthy history of past litigation, I concur with the magistrate judge that nothing short of a dismissal with prejudice is sufficient to deter plaintiff from a clear pattern of abuse of the judicial process.<sup>3</sup>

**THEREFORE, IT IS ORDERED** as follows:

1. That **Recommendation of United States Magistrate Judge** [#56] filed October 12, 2012, is **APPROVED AND ADOPTED** as an order of this court;
2. That plaintiff's claims against defendant are **DISMISSED WITH PREJUDICE** as a sanction for failure to comply with the duly issued orders of the court and failure to prosecute;
3. That judgment **SHALL ENTER** on behalf of defendant Xcel Energy against plaintiff Theresa L. Dowling on all claims for relief and causes of action; provided, that

---

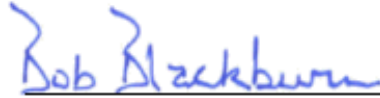
<sup>3</sup> I also echo the magistrate judge's admonition to plaintiff "that her continued practice of filing frivolous lawsuits, ignoring court orders, or failing to prosecute her actions with due diligence may result in court-imposed restrictions on her ability to file future cases in this district." (**Recommendation of United States Magistrate Judge** at 9 [#56], filed October 12, 2012.)

the judgment shall be with prejudice; and

4. That defendant is **AWARDED** its costs to be taxed by the clerk of the court pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated December 4, 2012, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge