

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Moriarity	:	
	:	
v.	:	C-2020-3019147
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint filed in this matter due to Complainant’s failure to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On February 18, 2020, Kevin Moriarity (Complainant) filed a Formal Complaint against West Penn Power Company (West Penn or Respondent). Mr. Moriarity checked the “Other” box on the Formal Complaint form and alleged that he was not properly notified of a planned outage by West Penn. As relief, Mr. Moriarity requested that he be reimbursed for lost wages and that, in the future, West Penn be required to have a plan for customers to be impacted by a planned shut off.

West Penn filed an Answer and New Matter on March 30, 2020, with a Notice to Plead attached. In its Answer, West Penn denied that Mr. Moriarity was not notified of the planned outage. West Penn averred that the planned outage scheduled for January 14, 2020

occurred on January 15, 2020 due to unforeseen circumstances. Mr. Moriarity did not file an answer to the New Matter.

By hearing notice dated July 2, 2020, the Complaint was assigned to me and scheduled for a telephonic hearing on July 31, 2020, at 10:00 a.m. I issued a prehearing order on July 2, 2020, which also provided the date and time of the hearing as well as other procedural requirements related to hearings, including instructions for requesting a continuance if the hearing date and time were not convenient.

The hearing notice and the prehearing order, noting the date and time of the hearing, were e-mailed to Complainant and e-served on Respondent due to the closure of the Commission's physical offices in response to the Governor's Proclamation of Disaster Emergency regarding the Covid-19 pandemic and pursuant to the Commission's *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 (Order entered March 20, 2020) (Emergency Order), which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency.

The hearing convened as scheduled. Complainant did not appear. Attorney Margaret A. Morris appeared along with two witnesses on behalf of West Penn. Counsel for West Penn made a motion to dismiss for failure to appear, which was taken under advisement.

The record closed by Interim Order entered August 11, 2020.

#### FINDINGS OF FACT

1. Complainant in this case is Kevin Moriarity.
2. Respondent in this case is West Penn Power Company, a jurisdictional public utility.

3. Complainant did not call the conference number at 10:00 a.m. on July 31, 2020 to participate in the scheduled hearing.

4. Complainant did not contact the Commission to explain his failure to appear for the hearing.

5. A hearing notice and prehearing order noting the date and time of the scheduled telephone hearing were e-mailed to Complainant on July 2, 2020 and were not returned as undeliverable.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>1</sup> However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>2</sup> Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

By hearing notice dated July 2, 2020, the Commission scheduled this matter for a hearing to be held on July 31, 2020, at 10:00 a.m. A prehearing order issued July 2, 2020, also advised the Parties of the date and time of the hearing.

Due to the closure of the Commission's physical offices in response to the Governor's emergency declaration regarding the Covid-19 pandemic, the Commission sent the hearing notice and prehearing order to Complainant by email pursuant to the Commission's Emergency Order, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency.<sup>3</sup> Neither the hearing

---

<sup>1</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

<sup>2</sup> *Id.*

<sup>3</sup> *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 (Order entered March 20, 2020)

notice nor the prehearing order were returned as undeliverable; therefore, it is presumed that he received both documents and had adequate notice of the scheduled July 31, 2020 hearing.<sup>4</sup>

Paragraph 10 of the prehearing order informed Complainant that if he failed to participate in the hearing and present evidence in support of his Complaint, the Complaint may be dismissed.<sup>5</sup> The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date.

Section 332(a) of the Public Utility Code<sup>6</sup> places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of demonstrating that the facts alleged in his Complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, Complainant failed to meet this burden of proof. Consequently, the Complaint must be dismissed.

In conclusion, Complainant was notified of the scheduled hearing call-in procedure, date and time, as well as how to contact the Office of Administrative Law Judge, but he failed to appear without explanation. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. However, due to the unusual circumstances caused by the Covid-19 state of emergency and modified Commission procedures, the Complaint is dismissed without prejudice.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

---

<sup>4</sup> *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

<sup>5</sup> *See also*, 52 Pa.Code § 5.245.

<sup>6</sup> 66 Pa.C.S. § 332(a).

2. The due process rights of Complainant have been fully protected in this proceeding. 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet his burden of proving he is eligible to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa.Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of West Penn Power Company to dismiss the Complaint Kevin Moriarity at Docket No. C-2020-3019147 for failure to prosecute is granted.

2. That the Complaint of Kevin Moriarity against West Penn Power Company at Docket No. C-2020-3019147, is dismissed without prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2020-3019147 as closed.

Date: October 20, 2020

\_\_\_\_\_/s/

Mark A. Hoyer  
Deputy Chief Administrative Law Judge