

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

David Coyle
vs.
West Penn Power Company

Public Meeting held May 9, 2024
3014261-ALJ
Docket No. C-2019-3014261

MOTION OF VICE CHAIR KIMBERLY BARROW

On November 12, 2019, David Coyle filed a Complaint alleging that the provision of smart meters by West Penn Power Company (West Penn) constitutes unsafe or unreasonable service under 66 Pa.C.S § 1501. On December 3, 2019, West Penn filed an answer and new matter in response to the complaint, as well as preliminary objections. In the preliminary objections, West Penn alleged that the Complaint must be dismissed as a matter of law. The Administrative Law Judge (ALJ) held the preliminary objections in abeyance and held an evidentiary hearing in September 2020 which all parties attended.

In his Initial Decision, the ALJ held that Complainant failed to carry his burden of proof that West Penn violated the Public Utility Code, a regulation or order of the Commission, or that West Penn's service was unsafe or unreasonable. The ALJ ruled on the outstanding preliminary objections and dismissed the Complaint.

Given review of the Complaint, the evidentiary hearing transcript, and the Initial Decision, I agree that the Complainant failed to meet his burden of proof on the issues raised in the Complaint. Therefore, I agree with the Initial Decision to dismiss the Complaint.

However, I do not agree with the decision to also rule on the outstanding preliminary objections. The basis for dismissal here was the failure of the Complainant to meet his burden and not that the Complaint was legally insufficient. The standard for ruling on preliminary objections requires the facts as alleged be accepted as true.¹ The appropriate disposition of this case, where a full evidentiary hearing was held and both parties rested their cases, is to rule on the merits rather than rule on the preliminary objections.² While I appreciate the ALJ's interest in allowing the complainant to respond to the preliminary objections orally given that he is appearing pro se, since an evidentiary hearing was ultimately held, the disposition of the Complaint should be based on the hearing and not the preliminary objections. The preliminary objections should have been deemed moot at that point.

THEREFORE, I MOVE THAT:


1. The Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on March 11, 2024, is modified, consistent with this Motion.

¹ *County of Allegheny v. Comm of Pa.*, 490 A.2d 402, 408 (Pa. 1985).

² I note that ALJs are required to dispose of preliminary objections within 30 days. 52 Pa. Code § 5.101(g). At the time of the hearing, the 30-day period had passed.

2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

May 9, 2024



Kimberly Barrow, Vice Chair