



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**215 PROFESSIONAL BUILDING  
1036 QUARRIER STREET  
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.  
Governor

November 13, 1985

Kenneth E. Tawney, Esquire  
P.O. Box 1273  
Charleston, WV 25325

Roy Breckenridge  
50 Warren Street  
Peabody, MA 01960

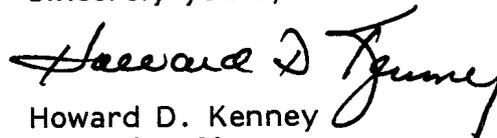
RE: Roy Breckenridge V. Columbia Gas Transmission Corp.  
Docket No.: ER-299-76

Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Roy Breckenridge V. Columbia Gas Transmission Corporation/Docket No.: ER-299-76.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

  
Howard D. Kenney  
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Roy Breckenridge,  
COMPLAINANT,

V

DOCKET NO: ER-299-76

Columbia Gas Transmission Corporation,  
RESPONDENT.

ORDER

On the 12th day of June 1985, the Commission reviewed Hearing Examiner James Gerl's Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A CONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 8th day of November 1985

RESPECTFULLY SUBMITTED,

*Nathaniel G. Jackson*  
CHAIR/VICE-CHAIR  
WV HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA  
HUMAN RIGHTS COMMISSION

**RECEIVED**

APR 22 1985

W.V. HUMAN RIGHTS COMM.  
*[Signature]*

ROY BRECKENRIDGE,  
COMPLAINANT,

V.

DOCKET NO. ER-299-76

COLUMBIA GAS TRANSMISSION CORPORATION,  
RESPONDENT.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A hearing was convened for this matter on March 26, 1985 in Charleston, West Virginia. The complaint was filed on January 15, 1976. A Status Conference was held on January 9, 1985.

At hearing, counsel for the Human Rights Commission made a Motion to Dismiss for failure to cooperate and counsel for respondent made a Motion to Dismiss for failure to answer discovery requests. The Hearing Examiner construed the motions as a joint Motion to Dismiss for failure to proceed. The Motion to Dismiss was granted at hearing and such ruling is incorporated by reference herein.

## FINDINGS OF FACT

1. Complainant failed to appear at the duly scheduled hearing for this matter. At no time did complainant contact the Hearing Examiner to request that he be excused from attending the hearing.

2. On January 11, 1985, counsel for the Human Rights Commission sent complainant a letter explaining certain deadlines and requesting that he contact her.

3. On March 5, 1985, counsel for the Human Rights Commission called complainant's message telephone number and left a message for complainant to call her.

4. On March 7, 1985, counsel for the Human Rights Commission called complainant's message telephone number and left a message that it was important that complainant call her.

5. On March 8, 1985, counsel for the Human Rights Commission wrote complainant a letter by certified mail, return receipt requested, stating that if she did not hear from complainant within five days, she would assume that he does not want to proceed with his case.

6. On March 15, 1985, counsel for the Human Rights Commission sent complainant a letter by certified mail, return receipt requested, stating that if complainant did not contact her by March 23, 1985, she would move that the complaint be dismissed

with prejudice. Included with such letter was a subpoena commanding complainant's attendance at the hearing.

7. Complainant received the letters described in findings of fact number 5 and 6.

8. At no time did complainant contact counsel for the Human Rights Commission.

9. On February 20, 1985, respondent served upon complainant interrogatories, requests for the production of documents, and requests to admit.

10. Among the discovery requests served by respondent upon complainant on February 20, 1985 was Request to Admit No. 6 which stated "Columbia Gas Transmission Corporation did not discriminate against you on account of your race by failing to hire you for a janitorial position."

11. Complainant has never responded to respondent's discovery requests.

#### CONCLUSIONS OF LAW

1. Complainant has failed to diligently prosecute his complaint, and such complaint should be dismissed, with prejudice.

## DISCUSSION

Complainant has failed to diligently prosecute his complaint. Firstly, he failed to appear at the duly scheduled hearing for this matter. Complainant made no attempt to contact the Hearing Examiner to request that he be excused from the hearing or otherwise explain his nonappearance. Such failure to appear is in itself grounds for dismissal. Emergency Rules Pertaining To Practice and Procedure Before the West Virginia Human Rights Commission, Sections 7.06(a)(3), 7.06(a)(1).

Secondly, counsel for the Human Rights Commission made numerous and repeated efforts to get complainant to contact her. Despite these efforts, however, complainant failed to contact counsel for the Commission. Complainant's refusal to cooperate with counsel for the Commission is also grounds for dismissal. Emergency Rules Pertaining To Practice and Procedure Before the West Virginia Human Rights Commission, Section 3.10(b)(3).

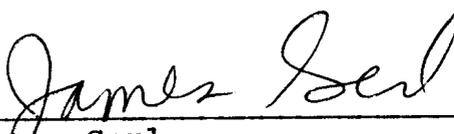
Thirdly, complainant has made no effort to respond to respondent's discovery requests. Under the rules then ineffect, responses to the discovery requests were due 15 days after service and any request to admit was deemed admitted unless the party upon whom the request was served filed a written answer or objection within 15 days. Emergency Rules Pertaining to Practice and Procedure Before the West Virginia Human Rights Commission, Sections 7.19(a), 7.19(b), 7.16(a), 7.17(b) (November 1984).

Thus, complainant's failure to respond to request to admit No. 6 constitutes an admission by complainant that respondent did not discriminate against him on the basis of his race, and is, therefore, dispositive of this case.

Because complainant has failed to appear at a duly scheduled hearing, because complainant has refused to cooperate with counsel for the Human Rights Commission, and because complainant has failed to respond to respondent's discovery requests, justice requires that the complaint be dismissed.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaint in this matter, with prejudice.

  
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James Gerl  
Hearing Examiner

ENTERED: April 22, 1985