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March 17, 2011

VIA E-FILING AND FIRST CLASS MAIL

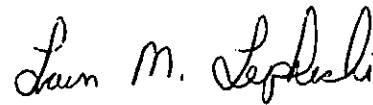
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Second Street, 2nd Floor
Harrisburg, PA 17107

Re: Wanda M. Ramaley v. Pennsylvania Power Company
Docket Nos. C-2010-2152571

Dear Secretary Chiavetta:

Enclosed please find the original and three (3) copies of the Motion to Dismiss of Pennsylvania Power Company. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Lauren M. Lepkoski

LML/kra
Enclosure
cc: Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WANDA M. RAMALEY :
 :
 v. : Docket No. C-2010-2152571
 :
 PENNSYLVANIA POWER COMPANY :

NOTICE TO PLEAD

TO: Wanda M. Ramaley
11417 State Highway 18
P.O. Box 377
Conneaut Lake, PA 16316

You are hereby notified that Pennsylvania Power Company has filed a Motion to Dismiss to the above-captioned Complaint. Pursuant to 52 Pa. Code §§ 5.61 and 5.103, you are hereby notified that if the Motion to Dismiss is granted, your Complaint may be dismissed.

A Responsive Pleading to the Motion to Dismiss must be filed within twenty (20) days of the date of service with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel.

Dated: March 17, 2011

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Attorneys for
Pennsylvania Power Company

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAR 17 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

WANDA M. RAMALEY, COWSHED, INC. :
 :
v. :
 :
PENNSYLVANIA POWER COMPANY :

Docket No. C-2010-2152571

**MOTION TO DISMISS THE COMPLAINT OF
WANDA M. RAMALEY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Power Company ("Penn Power" or the "Company") by and through its counsel Lauren M. Lepkoski, John F. Povilaitis, and Buchanan Ingersoll & Rooney PC, files this Motion to Dismiss, pursuant to Section 5.103 of this Commission's regulations, 52 Pa. Code §5.103. In support, Penn Power avers as follows:

I. Introduction

1. In this Motion, Penn Power seeks the dismissal of the Formal Complaint captioned "Wanda M. Ramaley v. Pennsylvania Power Company"¹ ("Formal Complaint") because (i) the real party in interest in the Formal Complaint, Cowshed, Inc., is a corporation and, as such, is required at this stage of the proceeding to be represented by an attorney at law² in accordance with Sections 1.21 through 1.23 of the Commission's Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code §§ 1.21-1.23; (ii) Wanda M. Ramaley ("Ms. Ramaley") has no standing in her individual capacity and not as the customer of record to

¹ The Pennsylvania Public Utility Commission docketed the instant Formal Complaint under Wanda M. Ramaley; however, the account in dispute is a commercial account in the name of Cowshed Inc. See attached affidavit of Pamela Jordon.

² The commercial account in dispute in this proceeding is No. 110005052771 and is in the name of Cowshed Inc. Wanda Ramaley is listed as the contact for and owner of Cowshed Inc, but is *not* the customer of record on Penn Power's system. See attached affidavit of Pamela Jordon.

bring a complaint against the Company and (iii) the Commission lacks jurisdiction to the award money damages sought in the Formal Complaint.

II. Factual Background

1. The Formal Complaint was filed against Penn Power on January 14, 2010. The Formal Complaint relates exclusively to electric service account No. 110005052771 at 11417 State Highway 18 P.O. Box 377 Conneaut Lake, PA 16316 ("Service Location"). The customer of record at the Service Location and the aforesaid account number is Cowshed, Inc., and not Ms. Ramaley. Thus, the real party in interest and complainant in this proceeding is Cowshed Inc. and not Ms. Ramaley.

2. On February 4, 2010, Penn Power filed an Answer and New Matter to the Formal Complaint denying the material allegations therein. In the New Matter, Penn Power noted that the real party in interest (i.e., the customer of record), Cowshed, Inc. is a corporation and is not represented by an attorney as required by the Commission's regulations.

3. In an Answer to the New Matter filed on February 23, 2010, it was alleged that attorney --Chris Ferry of Watts & Pepicelli, 916 Diamond Park, Meadville, PA 16335 -- had been retained to represent Cowshed, Inc in the balance of this proceeding.

4. As of this date, more than 12 months after the representation in the Answer to New Matter, neither Chris Ferry of Watts & Pepicelli nor any other attorney has filed an Entry of Appearance for Cowshed, Inc. in the instant proceeding.

5. On March 1, 2011, Ms. Ramaley filed additional information with Commission.³

6. On March 8, 2011, the Administrative Law Judge ("ALJ") Katrina Dunderdale issued a telephonic hearing notice.

³ The Company is not aware of the purpose for which the documents (which includes a letter filed with the Commission on January 27, 2011) were filed with Commission on March 1, 2011. Moreover, they should be disregarded because they were not filed by counsel.

III. Not Represented by Counsel

1. Representation before the Commission is governed by the Commission's regulations at 52 Pa. Code §§ 1.21-1.23. These regulations provide that "[i]n adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only by. . .an attorney." 52 Pa. Code §1.21. An adversarial proceeding begins with the filing of an Answer. 52 Pa. Code §1.8 and *New Fizon Catering, Inc. v. PECO Energy Company*, Docket No. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009).

2. A non-attorney owner/operator of a limited liability corporation may file a formal complaint pleading, *without an attorney*, but thereafter must be represented by counsel. *Tyler Run, LLC v. Met-Ed*, Docket No. C-200438888 (Order entered January 5, 2005) and *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006).

3. Commissioner Crutchfield explained the Commission's obligation to require attorneys in adversarial proceedings for parties other than individuals proceeding *pro se*:

In Pennsylvania, the Supreme Court is responsible for regulating the practice of law, and this Commission is bound by the Supreme Court's rules. The only persons authorized to practice law in Pennsylvania are as follows: (1) persons fully admitted to the Pennsylvania bar; (2) persons admitted *pro hac vice* under Rule 301; and (3) persons qualified as certified legal interns under Rule 321. The Pennsylvania Supreme Court in *Shorz v. Farrell*, 327 Pa. 81, 193 A.20 (1937), held that if the nature of an administrative hearing is to determine questions of fact or interpretation of administrative law, then the hearing is of a judicial character. Any participation in such a hearing constitutes the practice of law. Accordingly it would be unlawful to allow nonattorney representation in adversarial proceedings before the Commission.

James and Judith Simon v. Franklin Water Company, Docket No. C-00956589 (Order entered January 29, 1996).

4. Consequently, a corporation that files a formal complaint with the Commission must obtain counsel to proceed with all other aspects of the proceeding, including, without limitation, discovery, testimony preparation, attendance at the hearing examination of witnesses and briefing.

5. ALJ Dunderdale has set a hearing date for April 19, 2011. At this point, Penn Power is required to incur the time and expense to prepare for a full evidentiary hearing without knowing if Cowshed, Inc. will even be represented by counsel. This is especially disconcerting since no counsel has entered an appearance on behalf of Cowshed, Inc in the last 12 months that this matter has been pending before the Commission.

6. In order to minimize any further prejudice, time and/or expense by Penn Power, Cowshed, Inc. should be ordered to have counsel file an Entry of Appearance within ten (10) days, or the proceeding be dismissed.

III. **Ms. Ramaley Lacks Standing**

7. In order to bring a complaint before a tribunal, a complainant must first demonstrate that she/he has standing to maintain the action. *Nye v. Erie Insurance Exchange*, 470 A.2d 98, 100 (Pa. 1983). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc. et al. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). These criteria are defined as follows:

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the

action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

George v. Pennsylvania PUC, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999). The standard set by *William Penn Parking Garage* is applicable to the Commission cases. See, *Courier Express, Inc. v. F.L. Shaffer Company, Inc.*, Order entered August 30, 1990 at Docket No. C-892462, petition for reconsideration denied December 3, 1990.

8. Ms. Ramaley is not a Penn Power ratepayer of record. See attached Affidavit of Pamela Jordan.

9. Therefore, Ms. Ramaley does not have standing to bring an action against Penn Power and proceed at the hearing currently scheduled for April 19, 2011.

IV. The Commission Lacks Jurisdiction to Award Money Damages

10. In the Formal Complaint, Ms. Ramaley also references lost revenues due to the closure of her restaurant in August 2009. *Formal Complaint ¶ 4B Letter*.

11. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell*, 491 Pa. 123, 420 A. 2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A. 2d 791 (1978).

12. Therefore, to the extent that the Formal Complaint seeks any monetary relief in the form of compensation for lost revenues from the closure of the restaurant or for any other reason, the Commission does not have jurisdiction over such a claim and it should be dismissed.

V. Conclusion

WHEREFORE, for the foregoing reasons, the Pennsylvania Power Company respectfully requests that the Commission:

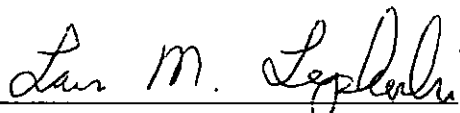
a.) Dismiss the Formal Complaint in this proceeding if counsel does not enter appearance on behalf of Cowshed, Inc within ten (10) days of the date of any applicable order;

b.) Find that Ms. Ramaley does not have standing in this proceeding to participate in any fashion and cannot represent Cowshed, Inc.; and

c.) Dismiss all requests for monetary damages in the Formal Complaint or, in the alternative, declare that all evidence related to money damages be excluded from the hearing.

Respectfully submitted,

Dated: March 17, 2011


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Buchanan Ingersoll & Rooney P.C.
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
(717) 237-4841

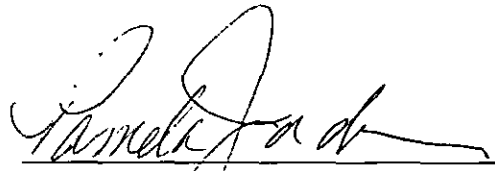
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Attorneys for
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7. Wanda Ramaley is listed as the contact for and the owner of Cowshed, but is not the customer or ratepayer at the Service Location according to Penn Power's business records.

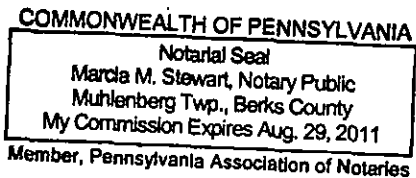
I am authorized to submit this affidavit for and on behalf of Penn Power and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief.


Pamela Jordan

Sworn and subscribed before me this _____
day of March, 16 2011.


Notary Public

My Commission expires on: 8/29/11



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