

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Africa's Pearl
v.
PECO Energy Company

Public Meeting April 14, 2011
2162269-ALJ
Docket No. C-2010-2162269

JOINT MOTION OF VICE CHAIRMAN JOHN F. COLEMAN, JR.
AND COMMISSIONER WAYNE E. GARDNER

Before the Commission for disposition is an Initial Decision dismissing the above-captioned Formal Complaint without prejudice. The Complaint was dismissed because the Complainant failed to provide the Commission with proof that the name "Africa's Pearl" is a properly registered fictitious name, as required by Section 331(a) of the Fictitious Names Act, 54 Pa. C.S. §§ 331 et seq.

We do not agree with the decision to dismiss the Complaint here. Rather, consistent with prior Commission precedent and in the interest of administrative efficiency, this matter should have been allowed to proceed in the name of the individual who signed the verification on the Complaint. See, e.g., Application of Jose Ramirez, Docket No. A-00119918 (Order adopting Initial Decision entered July 14, 2004).¹

When a formal complaint is filed by an unregistered fictitious name that is not a registered corporation or similar legal entity,² the better procedure is to order the complainant to provide the Commission with proof of registration of the fictitious name within a reasonable time period, or the complaint is to proceed in the name of the individual verifying the complaint, if such a name is provided. If such an individual's name is not provided, then the proper procedure would be to dismiss the complaint without prejudice. Here, because the Complaint was signed by an individual, it should not have been dismissed, and a hearing should have been held on the substance of the Complaint.

THEREFORE, WE MOVE THAT:

1. This matter be remanded to the Office of Administrative Law Judge for a hearing.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

¹ Furthermore, the Pennsylvania Superior Court has held that those who deal with an unregistered party and accept the benefits of the transaction knowing the party's true identity and are not deceived, are estopped from claiming that the party cannot sue them. In such circumstances, a suit is not precluded. George Stash & Sons v. New Holland Credit Co., 905 A.2d 541 (Pa. Super. Ct. 2006).

² Corporate complainants must be represented at all stages of Commission proceedings once these proceedings become adversarial upon the filing of an answer. Cars R Us c/o Holman Copeland v. Philadelphia Gas Works, Docket No. C-2008-2033437 (Order entered February 4, 2010).

DATE: April 14, 2011

**JOHN F. COLEMAN, JR.
VICE CHAIRMAN**

**WAYNE E. GARDNER
COMMISSIONER**