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April 27, 2011

VIA HAND DELIVERY

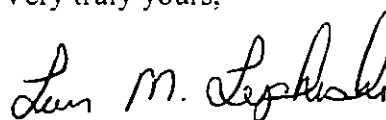
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Second Street, 2nd Floor
Harrisburg, PA 17107

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 Amend Interim Order 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: The Honorable Katrina L. Dunderdale (via UPS overnight delivery)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MOTION TO AMEND INTERIM ORDER

TO ADMINISTRATIVE LAW JUDGE DUNDERDALE:

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 Amend Interim Order (“Motion”), 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 respectfully requests that Administrative Law Judge (“ALJ”) Katrina L. Dunderdale amend the Interim Order issued April 15, 2011 (“Interim Order”) permitting Wanda Ramaley (“Ms. Ramaley”), as a corporate officer of Cowshed Inc. (“Complainant”)¹, to testify at the scheduled June 15, 2011 hearing without the presence of an attorney formally representing the corporate Complainant. The Interim Order is inconsistent with recent Commission precedent and the decisions of other Commission Administrative Law Judges regarding the same issue.

¹ It is clear from reading the Formal Complaint that the actual moving party/Complainant is the corporate entity, Cowshed Inc. and not Ms. Ramaley in her individual capacity. The Commission Secretary's office mis-captioned this proceeding when the Formal Complaint was filed. Indeed, the account holder in Penn Power's billing and service records is Cowshed Inc., which is consistent with that corporate entity being the real Complainant in this proceeding.

2. In the alternative, Penn Power respectfully requests that ALJ Dunderdale certify the following material question to the Commission for review and answer pursuant to Section 5.305 of this Commission's regulations, 52 Pa. Code § 5.305 :

Whether an officer of a corporation that is the sole complainant in a Pennsylvania Public Utility Commission proceeding is permitted to testify at the evidentiary hearing as a witness with *personal first-hand knowledge* where the corporate complainant is not represented by an attorney admitted to practice in the Commonwealth of Pennsylvania as required by Commission regulations and decisions in adversarial and contested proceedings.

If the ALJ elects to certify the material question to the Commission, Penn Power respectfully requests that the ALJ issue a temporary stay of the proceedings until the Commission has completed its review of the material question.

II. FACTUAL BACKGROUND

3. The Complainant filed the Formal Complaint against Penn Power with the Commission 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 the Complainant, Cowshed, Inc.

4. 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.

5. On February 23, 2010, Ms. Ramaley submitted a letter alleging 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.²

6. 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 this proceeding.

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

8. On March 8, 2011, ALJ Dunderdale issued a telephonic hearing notice.

9. On March 11, 2011, ALJ Dunderdale issued a Prehearing Order. Paragraph four of the Prehearing Order noted that corporations must be represented by an attorney in proceedings before the Commission:

Pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa. Code §1.24(b).

² The letter was in response to the New Matter raised in Penn Power's February 4, 2010, Answer. However, the letter was not filed by counsel for the Complainant and should be disregarded.

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 for the Complainant.

10. On March 17, 2011, Penn Power filed a Motion to Dismiss, requesting that the ALJ dismiss the Formal Complaint if an attorney does not enter an appearance for Cowshed Inc. in ten days.

11. On March 28, 2011, Ms. Ramaley sent a letter to the ALJ stating an attorney would enter their appearance for Cowshed Inc. by April 4, 2011.

12. On April 11, 2011, Ms. Ramaley sent a letter requesting a continuance of the April 19, 2011, hearing.

13. In a letter addressed to ALJ Dunderdale dated April 12, 2011, Penn Power requested that Ms. Ramaley's request for a continuance be denied.

14. On April 14, 2011, Ms. Ramaley sent a letter to the ALJ claiming that she and her husband filed for Chapter 13 bankruptcy protection and that she is unable to secure legal services without the approval from a bankruptcy judge.

15. In the Interim Order, ALJ Dunderdale (i) granted Ms. Ramaley's request for a continuance, and (ii) acknowledged that the customer of record at the Service Location is Cowshed Inc. and that Ms. Ramaley is the President of Cowshed Inc. The Interim Order further advised Ms. Ramaley that if she appeared at the evidentiary hearing without an attorney licensed to practice law in Pennsylvania she will neither be able to speak on behalf of the Complainant nor be permitted to offer documents in support of her claims. Finally, the Interim Order noted that if Ms. Ramaley does not obtain counsel for the evidentiary hearing scheduled on June 15, 2011, she will nevertheless be permitted to testify as a witness with personal first-hand knowledge.

16. On April 19, 2011, Ms. Ramaley requested ALJ Dunderdale to ask Penn Power for "tapes" and to send the "tapes" to Chris Ferry of Watts & Pepicelli. However, this alleged attorney has not entered his appearance in this proceeding for the Complainant Cowshed Inc.

III. PREVAILING PENNSYLVANIA LAW DOES NOT ALLOW MS. RAMALEY TO TESTIFY AT THE EVIDENTIARY HEARING IF THE CORPORATE COMPLAINANT IS NOT REPRESENTED BY COUNSEL

17. Representation before the Commission is governed by the Commission's regulations at 52 Pa. Code §§ 1.21-1.23. The Commission's regulation at 52 Pa Code §1.21(c) provides that in *non-adversarial* proceedings a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. In addition, the Commission's regulation at 52 Pa. Code §1.35(b)(ii) permits pleadings, including complaints, submittals, or other documentary filings to be signed by an officer of a corporation, trust, association or other organized group. In this case, Ms. Ramaley signed the Formal Complaint on behalf of the corporation Cowshed Inc.

18. Section 1.21 of the Commission's regulations, 52 Pa. Code §1.21 states that "[i]n *adversial* proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only by. . .an attorney." The regulation at 52 Pa. Code §1.8 defines an adversarial proceeding as one that is contested and which will be decided on the basis of a formal record.

19. In *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 & C-2008-2079076 (Order entered June 24, 2009) ("*New Fizon*"), the Commission ruled that attorney representation of a corporation was not at issue when the corporation filed a complaint because the simple filing of a complaint did not automatically trigger an adversarial proceeding.

The Commission reasoned that until an answer is filed, it is not known whether a complaint will be contested.

20. The Commission's regulations requiring attorney representation in adversarial proceedings are consistent with Pennsylvania court decisions holding that a corporation must have counsel in order to proceed in any legal action because a corporation cannot represent itself. *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994). Pennsylvania courts have ruled that a corporation can only act through its agents, and an agent representing it in court must be an attorney admitted to practice. *Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super 1984). Recently, in *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Order entered February 4, 2010) ("*Cars R Us*") and *Torino Incorporated v. PECO Energy Co.*, Docket No. C-2008-2034595 (Order entered February 2, 2010) ("*Torino*"), the Commission affirmed its decision in *New Fizon* that a corporate officer may file a complaint on behalf of a corporation but that the corporation must be represented by an attorney in an adversarial proceeding.

21. Importantly, the Commission in *Cars R Us* and *Torino* specifically held that, absent exigent circumstances, it would not allow individuals to offer testimony on a corporation's behalf if the corporation was not represented by an attorney.

22. While in *Cars R Us* the ALJ permitted an individual to testify on behalf of a corporation not represented by counsel over the company's objection, Commissioner Powelson (now Chairman) in a separate motion stated that the complainant should not have been permitted to proceed at the initial hearing without counsel. Specifically, Commissioner Powelson's motion stated in pertinent part:

While corporate officers are permitted to file formal complaints on a corporation's behalf, the Commission's

Regulations at Sections 1.21-1.23 clearly state that corporations must be represented by licensed attorneys in adversarial proceedings. A proceeding becomes "adversarial" upon the filing of an Answer.

As such, the Complainant should not have been permitted to proceed at the Initial Hearing without counsel, nor should the Exceptions filed by Mr. Copeland be considered.

Even though the Commission is waiving its Regulations in this matter, on a going-forward basis, the general rule is that corporate complainants should be represented by counsel at all stages of Commission proceedings once those proceedings become adversarial. Absent exigent circumstances, individuals should not, therefore, be allowed to offer testimony on a corporation's behalf if the corporation is unrepresented.

23. In *Enola McGrew-Duncan v. Pennsylvania American Water*, Docket No. C-2009-2119162 (Order issued February 23, 2010), ALJ Salapa issued an Order that specifically stated:

However, in order to prosecute the complaint at a hearing, A-Rize-N Management Co., LLC must be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania. ***I will not allow the Complainant to present testimony at a hearing unless A-Rize-N Management Co., LLC is represented by an attorney admitted to practice in the Commonwealth of Pennsylvania***, consistent with the Commission's rulings in *Cars R Us* and *Torino*.

(emphasis added)

24. While Ms. Ramaley was allowed to file a Formal Complaint on the behalf of Cowshed Inc., she should not be allowed to testify at the evidentiary hearing currently scheduled for June 15, 2011. This proceeding became "adversarial" as soon as Penn Power filed its Answer/New Matter on February 4, 2010. Therefore, allowing Ms. Ramaley to testify as to her personal first-hand knowledge at the evidentiary hearing is unlawful.

IV. THE INTERIM ORDER VIOLATES THE COMPANY'S PROCEDURAL DUE PROCESS RIGHTS

25. Allowing Ms. Ramaley to testify as a witness to her personal first-hand knowledge adversely impacts the Company's procedural due process rights. By allowing Ms. Ramaley to testify at the hearing without an attorney, Penn Power will have no way to conduct advance discovery (since Ms. Ramaley is not a party to the proceeding), thereby prejudicing the Company. The Company will not be prepared to address the issues raised by Ms. Ramaley at the evidentiary hearing since it will not have been able to learn in advance via normal discovery processes the issues Ms. Ramaley intends to raise. And, to the extent Ms. Ramaley's latest correspondence requesting that the Company be directed to provide "tapes" between her and the Company representative constitutes discovery, she cannot do so as a non-party to this proceeding. The prejudice to the Company in this situation is palpable and asymmetrical -- Penn Power cannot conduct discovery since the corporate Complainant, Cowshed Inc., is not represented by counsel, but Ms. Ramaley in her individual capacity and not as a party is seeking to conduct discovery against the Company.

26. Ms. Ramaley testifying as a witness to her personal first-hand knowledge will also adversely impact the mechanics of the evidentiary hearing. Specifically, the ALJ will be able to hear the merits of the case, without the Company being able to conduct meaningful cross-examination since it will have not have been able to ascertain, in advance through discovery, the relevant information for cross-examination. Moreover, the ALJ will be unable to grant relief to the corporate Complainant, even if warranted, because neither Cowshed Inc nor Ms. Ramaley can lawfully request relief without counsel.

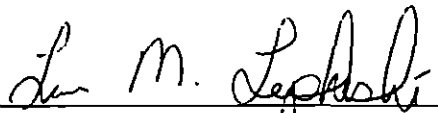
V. CONCLUSION

WHEREFORE, for the foregoing reasons, Pennsylvania Power Company respectfully requests that ALJ Katrina Dunderdale Amend the Interim Order issued on April 15, 2011, to prohibit Ms. Ramaley or any other individual from testifying as a witness with personal first-hand knowledge at the evidentiary hearing scheduled on June 15, 2011, without the corporate Complainant being represented by counsel.

In the alternative and absent amending the Interim Order as described above, Penn Power respectfully requests that the ALJ issue a temporary stay of this proceeding and certify to the Commission for review and answer the material question specified in paragraph 2 above.

Respectfully submitted,

Dated: April 27, 2011


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