

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stonehurst Realty Corp.

v.

PECO Energy Company

:  
:  
:  
:  
:  
:

Docket No. C-2010-2181922  
Docket No. C-2010-2182009

**EXCEPTIONS OF  
STONEHURST REALTY CORP.**

Francine Thornton Boone, Esquire  
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and Stonehurst Realty Corp.  
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Date: August 10, 2011

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## **I. Introduction**

Stonehurst Realty Corp. (“Stonehurst”) submit these Exceptions to the Initial Decision (“Decision”), in Stonehurst Realty Corp. v. PECO Energy Company, Docket Nos. C-2010-2181922 and C-2010-2182009, dated June 21, 2011.

## **II. Exceptions**

**A. Exception No. 1— Conclusion of Law #2 should state that Stonehurst did not receive the mailed notice that counsel must enter a notice of appearance by July 1, 2011, but did receive and did comply with a subsequent notice to have counsel file a notice of appearance prior to the August 16, 2011 hearing (the “Hearing”).** (See Conclusion of Law #2, at page 7 of the Decision).

The Conclusion of Law that “Mail sent to a party’s last known address and not returned by the post office is presumed to have been received” is inapplicable here. First, Stonehurst will attest that it did not receive the 1<sup>st</sup> Order, though it may have been mailed. But more importantly, Stonehurst did receive a second order, which included different information. Since this fact directly contradicts the “presumption”, it is inappropriate to rely on this presumption as the basis of a conclusion of law.

Further, the applicable case and statutory law clearly state that a corporation, organization or business entity must file a notice of appearance prior to and be represented by counsel at the Hearing. See 52 Pa. Code Sections 1.21-1.23 (“Statute”) Since the Hearing was scheduled for August 16, 2011, the 1<sup>st</sup> Order unduly abridged and even eliminated Stonehurst’s right to use the time granted by statute to explore its options with respect to retaining legal counsel for this matter. The Statute does not require that a party retain legal counsel six (6) weeks before a hearing; therefore, the 1<sup>st</sup> Order

contradicts and even violates the explicit language of the applicable case and statutory law.

Finally, the second “corrected” Order plainly stated:

“An attorney representing you should file a Notice of Appearance before the scheduled hearing date.”

(See a copy of the 2<sup>nd</sup> Order, which is attached hereto as Exhibit “A”)

Further, the 2<sup>nd</sup> Order provided a “corrected hearing date of “August 16, 2011”. (See Page 3 of Exhibit “A”)

It is well-established that “Due process in matters before PUC requires a party be afforded an opportunity to know the nature of its opponents’ contentions so that it can prepare a suitably responsive answer”. Duquesne Light Co. v. Pennsylvania Utility Commission, 96 Pa. Commw. Ct. 168, 507 A.2d 433 (1986). Here, the 1<sup>st</sup> Order, allegedly, stated that the corporation must be represented by counsel, and must file a notice of appearance by July 1<sup>st</sup>. The 2<sup>nd</sup> Order stated that the corporation must be represented by counsel at the Hearing (See Page 3 of Exhibit “A”). Therefore, the 2<sup>nd</sup> Order provides that the corporation’s counsel must file a notice of appearance before the Hearing date of August 16, 2011, but does not state the July 1, 2011 deadline. Since these orders that govern due process are contradictory, the contradictions should be resolved in a manner that best protects Stonehurst’s due process rights. Dismissal of the complaint and hearing, here, denies Stonehurst’s rights to be heard and to respond— which are the most fundamental due process rights. Moreover, the 2<sup>nd</sup> Order was sent after the 1<sup>st</sup> Order and so should supersede the directives of the 1<sup>st</sup> Order. Therefore, Stonehurst did not violate the directive of the Administrative Law Judge (“ALJ”), but properly complied with the 2<sup>nd</sup> Order by directing its counsel to file a notice of

appearance by August 16<sup>th</sup>, rather than by July 1<sup>st</sup>. (See the Certificate of Service of the Notice of Appearance, attached hereto as Exhibit “B”).

Accordingly, Conclusion of Law #2 should be revised as discussed herein.

**B. Exception No. 2—Conclusions of Law ## 3 and 4 should be revised to state that Stonehurst was not required to have counsel by July 1<sup>st</sup>, which is prior to the Hearing date of August 16, 2011. Pursuant to applicable case and statutory law, a corporate entity must be represented by counsel in its adversarial proceedings before the Commission and since a hearing is defined as an adversarial proceeding, Stonehurst was required to have counsel at the Hearing. Stonehurst, however, is not required by statute to have its counsel file a notice of appearance by July 1<sup>st</sup>, which is over six weeks prior to the Hearing. (See Conclusions of Law ##3 and 4, at page 7 of the Decision).**

52 Pa. Code Sections 1.22-1.23 provide that partnerships, associations and corporations may not be represented at a hearing before the Commission or a presiding officer, except by “appearance by attorney”. (See 52 Pa. Code Sections 1.22-1.23.

The Pennsylvania Utility Commission (“PUC”) and the Courts of this Commonwealth have considered and ruled on this issue. In Le Stat Corp. v. Pennsylvania Power and Light Co., C-00946284 (August 30, 1995, the Commission ruled that a corporation must be represented by counsel at the hearing, but is not required to have counsel for filing the original complaint.

Based on a review of the applicable case and statutory law, Stonehurst is required to have counsel appointed by the Hearing and not by July 1<sup>st</sup>, which is over six (6) weeks prior to the Hearing date. The 1<sup>st</sup> Order denies Stonehurst specific time-sensitive rights

as granted by statute to explore, research, or to otherwise use this valuable time to examine its legal options and retain counsel without being unduly hurried or rushed. Similarly, there is no benefit to either the Commission or to the parties, by the denial or limitation of these rights.

To the contrary, it is arguably harmful to go against the clear dictates of the plain language of the provisions of the applicable statutes. It may become the proverbial “slippery slope” to “sometimes” abide by the plain statutory language and to simply ignore the plain statutory language at other times, especially at the potential detriment or loss of due process otherwise provided to the complainant. In the case of Kistler v. Commw. of Pennsylvania, State Ethics Comm., 2011 Pa. Lexis 1420 (June 20, 2011), the Pennsylvania Supreme Court held:

“The object of all statutory interpretation is to ascertain and effectuate the intention of the General Assembly, giving effect, if possible, to all provisions of the statute...In general, the best indication of legislative intent is the plain language of the statute (citing case) ‘When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.’ 1 Pa.C.S. Section 21(b). Words of the statute are to be construed according to their ‘common and approved usage.’ 1 Pa. C.S. Section 1903(a).”

Certainly, these conclusions violate the spirit as well as the exact language of the applicable statutes.

Therefore, Conclusions of Law ##3 and 4 should be revised to reflect that Stonehurst has complied with the applicable statutes by having its attorney file a notice of appearance prior to the Hearing, rather than by July 1, 2011.

**C. Exception No. 3—Conclusion of Law #5 should state that the Complaint will not be dismissed, since the 2<sup>nd</sup> Order required Stonehurst to have its counsel file a notice of appearance by the Hearing (or August 16<sup>th</sup>), which contradicts and**

**supersedes the 1<sup>st</sup> Order and its July 1<sup>st</sup> deadline. The Complainant and the Commission should be able to rely on the 2<sup>nd</sup> Order, which Stonehurst actually received and which is consistent with the applicable case and statutory law.** (See Conclusion of Law #5 at page 7 of the Decision).

Conclusion of Law #5 should be revised to state that since Stonehurst complied with the 2<sup>nd</sup> Order by Stonehurst's counsel filing a notice of appearance prior to the August 16, 2011 hearing, the Complaint will not be dismissed. As discussed above, in Exceptions ##2 and 3, the Statute requires Stonehurst to be represented by an attorney at the hearing. Further, the 2<sup>nd</sup> Order, as attached as Exhibit "A", contained the same requirement. Instantly, this is not a case of ignoring the ALJ's directives, but a case of actual compliance with the directives of the presiding officer and the applicable statutes. The Commission has dismissed complaints where multiple orders or directives of the ALJ were ignored. In the case of Snyderville Community Development Corp. v. Philadelphia Gas Works, 2006 Pa. PUC LEXIS 64, Entered July 31, 2006, the Commission held:

"Nonetheless, the Complainant's failure to comply with [the ALJ's] multiple Orders directing the entry of appearance of an attorney to represent the Complainant at the hearing warrants the dismissal of this Complaint. An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing (citing case)."

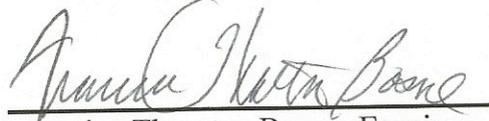
Here, the 1<sup>st</sup> Order was never received. Therefore, Stonehurst was unable to comply with the 1<sup>st</sup> Order. It did however comply with the 2<sup>nd</sup> Order. Therefore, Stonehurst presents a different set of facts and the complaint should not be dismissed for "failure to comply with [the ALJ's] multiple Orders". Stonehurst's counsel filed a notice of appearance prior to the Hearing.

**III. Conclusion:**

Stonehurst Realty Corp. respectfully requests that the Commission:

1. Reject Conclusions of Law Nos. 2, 3, 4, and 5 and revise the same consistent with Exception Nos. 1, 2, and 3.
2. Reject Order Nos. 1, 2, and 3 and revise the same consistent with Exception Nos. 1, 2, and 3.

Respectfully submitted,



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Date: August 10, 2011



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
June 14, 2011

IN REPLY PLEASE  
REFER TO OUR FILE

*Scan*

In Re: C-2010-2182009  
&  
C-2010-2181922

PHIL PULLEY  
DIRECTOR OF OPERATIONS  
STONEHURST REALTY CORPORATION  
PO BOX 549  
ABINGTON PA 19001

Stonehurst Realty Corporation v. PECO Energy Company

Billing dispute.

CORRECTED Hearing Notice

This is to inform you that the notice dated May 24, 2011 on the above-captioned case contained incorrect information. The purpose of this notice is to correct that information. All corrections will be double underlined.

Type: Initial Hearing

Date: Tuesday, August 16, 2011

Time: 10:00 AM

Location: In an available 4th Floor Hearing Room  
(Take one of the last four elevators at the far end of the lobby)  
801 Market Street (enter on 8th Street)  
Philadelphia, PA 19107

Presiding: Administrative Law Judge Christopher P. Pell  
Suite 4063  
801 Market Street  
Philadelphia, PA 19107  
Telephone: 215.560.2105  
Fax: 215.560.3133

Exhibit  
"A"

C-2010-2182009 - STONEHURST REALTY CORPORATION v. PECO ENERGY  
COMPANY

C-2010-2181922 - STONEHURST REALTY CORPORATION v. PECO ENERGY  
COMPANY

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STONEHURST REALTY CORPORATION  
PO BOX 549  
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215.938.6665

TISHEKIA WILLIAMS ESQUIRE  
EXELON BUSINESS SERVICES COMPANY  
2301 MARKET STREET S23-1  
PO BOX 8699  
PHILADELPHIA PA 19101-8699  
215.841.6841

*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*

You must serve the Presiding Officer with a copy of ANY document you file in this case.

If you intend to file exhibits, two (2) copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearings, we will make every reasonable effort to have an interpreter present. Please call the scheduling office at the Public Utility Commission at least ten (10) business days prior to your hearing to submit your request.

- ◆ Scheduling Office: 717.787.1399
- ◆ AT&T Relay Service number for persons who are deaf or hearing-impaired:  
1.800.654.5988

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

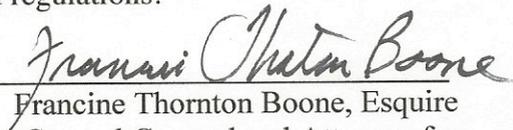
Stonehurst Realty Corp.	:	
	:	
v.	:	Docket Nos. C-2010-2181922 and
	:	C-2010-2182009
	:	
PECO Energy Company	:	

**CERTIFICATE OF SERVICE OF  
NOTICE OF APPEARANCE**

I hereby certify that I, Francine Thornton Boone, Esq., attorney for Claimant, Stonehurst Realty Corp., have on this day, July 25, 2011, served the Notice of Appearance as counsel to Stonehurst Realty Corp., in the above-referenced matters, the foregoing document upon all parties of record in this proceeding, which are:

1. Ward L. Smith, Associate General Counsel, PECO Energy Company (by email)
2. Tishekia Williams, Esquire, PECO Energy Company (by email); and
3. Secretary of the Commission, Pennsylvania Public Utility Commission (by e-filing (on 7/22/2011 for C-2010-2181922 and 7/25/2011 for C-2010-2182009) and certified mail (on 7/25/2011--both).

The above service was completed in accordance with the requirements of §33.32 (relating to service by a participant) and the applicable rules and regulations.



Francine Thornton Boone, Esquire  
General Counsel and Attorney for  
SBG Management Services, Inc.  
and Stonehurst Realty Corp.

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Phone: 215-260-4562  
Email: Booneft@aol.com

Date: July 25, 2011

Exhibit  
"B"