



Alan J. Charkey | Counsel

1650 Market Street | One Liberty Place, Suite 1800 | Philadelphia, PA 19103-7395
Direct 215.864.6312 | Fax 215.789.7633
charkeya@whiteandwilliams.com | whiteandwilliams.com

April 22, 2016

By Electronic Filing

Rosemary Chiavetta, Esq.
Secretary, Pennsylvania Public Utility Commission
400 North Street, Second Floor
Keystone Building
Harrisburg, PA 17120

RE: Alderwoods (Pennsylvania), Inc. v. Duquesne Light Company
Public Utility Commission Docket No. C-2016-2522634

Dear Ms. Chiavetta:

Pursuant to 52 Pa. Code § 5.302(a), enclosed for filing is the Petition by Alderwoods (Pennsylvania), Inc. for Interlocutory Review and Answers to Material Questions.

If you have any questions, please let me know.

Thank you.

Very truly yours,

WHITE AND WILLIAMS LLP


Alan J. Charkey

Enclosure

cc: All Parties on Attached Certificate of Service
The Honorable Conrad A. Johnson, A.L.J. (by Federal Express, w/ encl.)
Gladys M. Brown, Esq., Chairman (by Federal Express, w/ encl.)
Mr. Andrew G. Place, Vice Chairman (by Federal Express, w/ encl.)
Ms. Pamela A. Witmer, Commissioner (by Federal Express, w/ encl.)
Mr. John F. Coleman, Jr., Commissioner (by Federal Express, w/ encl.)
Mr. Robert F. Powelson, Commissioner (by Federal Express, w/ encl.)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

The Honorable Conrad A. Johnson, A.L.J.
Pennsylvania Public Utility Commission
301 Fifth Avenue, Suite 220
Piatt Place
Pittsburgh, PA 15222,

by Federal Express;

Bradley S. Tupi, Esquire
Erin Beckner Conlin, Esquire
Jeremy V. Farrell, Esquire
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222,

Counsel for Respondent,
Duquesne Light Company,

by first class U.S. mail, postage prepaid, and by e-mail to btupi@tuckerlaw.com, ebeckner@tuckerlaw.com and jfarrell@tuckerlaw.com.

The document was filed electronically on the Commission's electronic filing system.

Dated this twenty-second day of April, 2016.

WHITE AND WILLIAMS LLP

/s/ Alan J. Charkey

By: Alan J. Charkey, Esquire

Attorneys for Petitioner-Complainant,
Alderwoods (Pennsylvania), Inc., a wholly
owned subsidiary of Service Corporation
International, t/a Burton L. Hirsch Funeral
Home

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALDERWOODS (PENNSYLVANIA), INC., a
wholly owned subsidiary of SERVICE
CORPORATION INTERNATIONAL, t/a
BURTON L. HIRSCH FUNERAL HOME

Docket No. C-2016-2522634

v.

DUQUESNE LIGHT COMPANY

**PETITION BY ALDERWOODS (PENNSYLVANIA), INC. FOR INTERLOCUTORY
REVIEW AND ANSWERS TO MATERIAL QUESTIONS**

Pursuant to 52 Pa. Code § 5.302(a), Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home (“Hirsch”), by and through the undersigned counsel, submits the instant Petition for Interlocutory Review and Answers to Material Questions. In so doing, Hirsch avers as follows:

I. FACTS AND PROCEDURAL HISTORY

Hirsch alleges that on or about January 10, 2009, after a service interruption caused by a motor vehicle, Respondent, Duquesne Light Company, negligently restored service to Hirsch’s funeral home. Hirsch contends that prior to restoration Duquesne Light had actual or constructive knowledge that the building’s electrical equipment had been compromised by an overvoltage incident during the motor vehicle accident and that the building’s equipment could not withstand the restoration of service. Almost immediately upon the restoration of electrical service, the funeral home caught fire and was destroyed.

After the trial court’s 2010 granting of summary judgment and the Supreme Court’s 2014 reversal, Hirsch amended its complaint in 2015. In response to Duquesne Light’s motion, the trial court ordered, without explanation, that this matter be transferred to the PUC for an adjudication of liability. Hirsch then filed a complaint with the PUC, followed by a Preliminary

Objection, asserting that the PUC lacked jurisdiction to hear claims alleging property damage. On April 5, 2016, the Presiding Officer (Johnson, A.L.J.) overruled Hirsch's Preliminary Objection, justifying his determination of jurisdiction by writing "If Hirsch's allegations are proven by a preponderance of evidence at a hearing, the allegations *may well* constitute a violation of the reasonable and adequate service requirements of Section 1501 of the [Public Utility] Code." (Emphasis added.) In six years of litigation, Hirsch has never alleged that Duquesne Light violated the reasonable and adequate service requirement of the Public Utility Code.

In its Preliminary Objection, Hirsch cited extensively to Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa. Cmwlth. 1995), which, among other things, held that the claim of one customer for damage arising on one occasion does not implicate the reasonable and adequate service requirements of Section 1501. Even so, the Presiding Officer's opinion does not discuss Poorbaugh and egregiously misapplies Pennsylvania law as to the doctrine of primary jurisdiction.

II. MATERIAL QUESTIONS

A. Under the doctrine of primary jurisdiction, does the PUC have jurisdiction to determine the liability of a utility to one customer who alleges property damage caused by the negligent restoration of electrical service to that one customer on one particular occasion, when the customer does not allege, and has never alleged, violation of the reasonable and adequate service requirements of 66 Pa.C.S. § 1501 or any other statutory or regulatory violation?

B. May the PUC adjudicate a hypothetical question, not involving an actual case or controversy, which has been raised by the Presiding Officer but not by the complainant, when doing so deprives the complainant of a stake in the outcome of the adjudication?

III. DISCUSSION

It is very well-settled that under the doctrine of primary jurisdiction, the PUC lacks jurisdiction to hear a claim for damages, not even for a determination of liability only.

Poorbaugh; Elkin v. Bell Tel. Co. of Penna., 420 A.2d 371 (Pa. 1980); DeFrancesco v. Western Penna. Water Co., 453 A.2d 595 (Pa. 1982); Schriner v. Penna. Power and Light Co., 501 A.2d 1128 (Pa. Super. 1985); Williamson v. Duquesne Light Co., Docket No. C-2009-2138578, 2011 WL 1210916 (Pa. P.U.C. Feb. 10, 2011).

Moreover, in determining what Hirsch's claim might be, rather than what it is, the Presiding Officer has transformed Hirsch's action into a proceeding which seeks to resolve a hypothetical question, contrary to the fundamental precept that only actual cases or controversies may be adjudicated, thus depriving Hirsch a stake in the outcome. See, e.g., Consol Penna. Coal Co. v. Dept. of Env'tl Protection, 129 A.3d 28, 39 (2015).

Interlocutory review should be granted because Hirsch has waited since January 2009 for recompense. Although delay is not typically in itself grounds for prejudice, the delay here has been extraordinary. This case is not old; it is ancient. Moreover, should the Commission take no action, given Poorbaugh, the Commonwealth Court's reversal of the Court of Common Pleas' bifurcation order is all but inevitable, but it will take place only after the passage of substantial, additional effort and time – in all likelihood, at least two more years, and the case would still have to be tried. Interlocutory review would expedite the time to final resolution of the dispute.

Respectfully submitted,

WHITE AND WILLIAMS LLP

/s/ Alan J. Charkey

By: Alan J. Charkey, Esquire
Attorneys for Petitioner-Complainant,
Alderwoods (Pennsylvania), Inc.

Date: April 22, 2016