

**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. P-2016-2541570

v.

DUQUESNE LIGHT COMPANY

**MOTION BY PETITIONER-COMPLAINANT TO STAY
PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE**

Pursuant to 52 Pa. Code §§ 5.1(a)(6) and 5.303(a)(1), Petitioner-Complainant, Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home (“Complainant” or “Hirsch”), by and through its attorneys White and Williams LLP, moves the Commission to stay the proceedings currently underway before the Administrative Law Judge in docket no. C-2016-2522634, renewing the request for a stay which Hirsch previously made of the Commission. In so moving, Hirsch avers as follows:

1. This case arises from a fire which completely destroyed Hirsch’s funeral home on or about January 10, 2009. Hirsch alleges that the fire erupted as a result of Duquesne Light’s negligence in restoring electrical service in the aftermath of a motor vehicle accident which disrupted power in the area.

2. In late 2010, Duquesne Light moved for summary judgment, contending it had had no duty to Hirsch.

3. In late 2010, the Court of Common Pleas of Allegheny County (Lutty, J.) granted the motion and dismissed Hirsch’s complaint.

4. On December 15, 2014, the Supreme Court affirmed the Superior Court's reversal of the granting of summary judgment.

5. After remand, Respondent moved to bifurcate the case so as to have the PUC adjudicate the question of Respondent's liability to Hirsch.

6. In spite of Hirsch's strenuous opposition to the motion, as wholly contrary to Pennsylvania law, the Court of Common Pleas (Lutty, J.) granted the motion in September 2015.

7. In January 2016, Hirsch filed a complaint in the PUC and immediately thereafter filed a preliminary objection to the PUC's jurisdiction as wholly contrary to Pennsylvania law, particularly given the opinion in Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa. Cmwlth. 1995), which is strikingly on-point legally and factually with the instant case.

8. On April 5, 2016, the Administrative Law Judge (the Hon. Conrad A. Johnson, A.L.J.) overruled Hirsch's preliminary objection.

9. Despite Hirsch's numerous citations to Poorbaugh in its preliminary objection, the A.L.J.'s opinion never once mentioned Poorbaugh.

10. In his opinion, the A.L.J. also transformed Hirsch's claim for negligence into a proceeding to answer a hypothetical question about whether Respondent violated the reasonable and adequate service requirements of 66 Pa.C.S. § 1501 – a claim which Hirsch has never made – in violation of Pennsylvania's well-founded rule that litigated disputes must involve actual cases or controversies. See Consol Pennsylvania Coal Co., LLC v. Dep't of Env'tl. Prot., 129 A.3d 28, 39 (Pa. Cmwlth. 2015).

11. On April 22, 2016, Hirsch petitioned the Commission for interlocutory review of the A.L.J.'s order and opinion of April 5.

12. On May 2, 2016, Hirsch filed its brief in support of the petition.

13. 52 Pa. Code § 5.303(a)(1) provides for the Commission's action on petitions for interlocutory review within thirty days of the Commission's receipt of a petition for interlocutory review.

14. Accordingly, in its brief in support of the petition for interlocutory review, Hirsch requested that the Commission stay the initial prehearing conference before the A.L.J., then scheduled for May 17, 2016, for at least thirty days; under Section 5.303(a)(1), the Commission was to have responded to Hirsch's petition by May 22, 2016.

15. On or about May 3, 2016, in the matter pending before the A.L.J., Hirsch and Respondent entered into a consent order to adjourn the May 17 conference date until the first two weeks of June 2016.

16. On the following day, May 4, 2016, in the instant case the Secretary issued a letter advising that the Commission had waived the thirty-day requirement of 52 Pa. Code § 5.303 "to afford us adequate time to address the questions raised."

17. The Secretary's May 4 letter did not advise of any new date by which a response to the petition was anticipated.

18. On May 16, 2016, the A.L.J. rescheduled the initial prehearing conference for Monday, June 13, 2016 at 10:00 A.M.

19. As of this writing, the Commission has not responded to the request for a stay in Hirsch's brief in support of the petition for interlocutory appeal.

20. As of this writing, the machinery of scheduling and holding a hearing to determine Respondent's liability to Hirsch goes forward unchecked, even though, as detailed in

Hirsch's pending petition, the procedure is wholly inconsistent with Pennsylvania law and is patently *ultra vires*.

21. Should they continue, the proceedings before the A.L.J. will waste the time, effort and expense of the parties, as well as the time and effort of the A.L.J., as the eventual reversal of the A.L.J.'s April 5 order is all but inevitable, particularly given Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa. Cmwlth. 1995), as detailed in Hirsch's pending petition.

22. In relevant part, 52 Pa. Code § 5.303 provides that in response to a petition for interlocutory review, the Commission may, *inter alia*, “[c]ontinue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.” 52 Pa. Code § 5.303(a)(1).

23. Hirsch's right to be free of an *ultra vires* proceeding before the A.L.J., as firmly established by Pennsylvania law, should be protected by the issuance of a stay.

24. Hirsch therefore respectfully requests that the proceedings before the A.L.J. be stayed pending the exhaustion of all appeals from the A.L.J.'s April 5, 2016 order and opinion.

25. Hirsch also respectfully requests that the Commission order that Law Bureau attorneys Kenneth R. Stark, Esq., Patricia T. Wiedt, Esq., Robert F. Young, Esq. and Bohdan R. Pankiw, Esq. be disqualified from participating in any determination of the instant motion. Hirsch incorporates its pending Motion to Disqualify Certain PUC Law Bureau Attorneys and to Impose an Ethical Wall, filed on May 2, 2016, as if fully set forth at length herein.

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

respectfully requests that the proceedings before the A.L.J., in docket no. C-2016-2522634, be stayed pending the exhaustion of all appeals from the A.L.J.'s order of April 5, 2016.

Respectfully submitted,

WHITE AND WILLIAMS LLP

/s/ Alan J. Charkey

By: Alan J. Charkey, Esquire
Attorneys for Complainant,
Alderwoods (Pennsylvania), Inc., a wholly
owned subsidiary of Service Corporation
International, t/a Burton L. Hirsch Funeral
Home

Date: June 3, 2016

VERIFICATION

I, Alan J. Charkey, Esquire, hereby state that I am counsel for Complainant, Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home, and that the statements contained in the foregoing Motion By Petitioner-Complainant To Stay Proceedings Before The Administrative Law Judge are true and correct to the best of my knowledge, information and belief.

I understand that this verification is made pursuant to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

/s/ Alan J. Charkey
Alan J. Charkey

Date: June 3, 2016

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ORDER

AND NOW, this _____ day of _____, 2016, in consideration of
Petitioner-Complainant's Motion To Stay Proceedings Before The Administrative Law Judge,
and any response thereto, it is hereby ORDERED and DECREED that the Motion is GRANTED.

The proceedings in the matter of Alderwoods (Pennsylvania), Inc. v. Duquesne Light
Company, docket no. C-2016-2522634, currently pending before the Administrative Law Judge,
are hereby stayed pending the exhaustion of all appeals from the A.L.J.'s opinion and order of
April 5, 2016, which overruled Petitioner-Complainant's Preliminary Objection as to PUC
jurisdiction.

**BY THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Date: _____