

January 25, 2019

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2018-3006025
Mark Stanford v. Pennsylvania Power Company
Motion of Penn Power to Dismiss Complaint**

Dear Secretary Chiavetta:

Attached for filing is the Motion of Respondent, Pennsylvania Power Company (Penn Power), to dismiss the Formal Complaint filed by Mark Stanford (Complainant) on behalf of of Y-Clean, Inc.

A copy of the Motion to Dismiss has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lm

cc: The Hon. Mary D. Long, PaPUC, OALJ
Teresa K. Harrold, Esquire, FirstEnergy Service Company
Mark Stanford

**Re: Docket No. C-2018-3006025
Mark Stanford v. Pennsylvania Power Company
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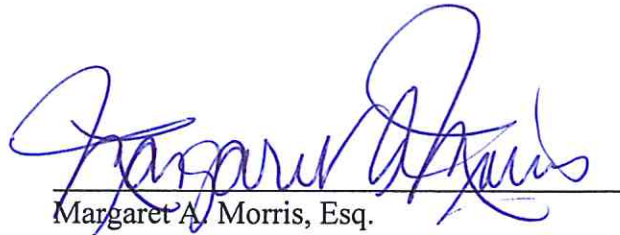
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via First Class Mail

Mark Stanford
357 Northgate Dr. Ste. #5
Warrendale, PA. 15086

Dated: January 25, 2019


Margaret A. Morris, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK STANFORD :
v. : Docket No. C-2018-3006025
PENNSYLVANIA POWER COMPANY :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that if you do not file a written response to the enclosed Motion to Dismiss of Pennsylvania Power Company, within **twenty (20) days** from service of this Notice, the facts set forth by Pennsylvania Power Company in the Motion to Dismiss may be granted. All pleadings, such as a Reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Power Company, and the Honorable Mary D. Long, the Administrative Law Judge presiding over the case.

File with:

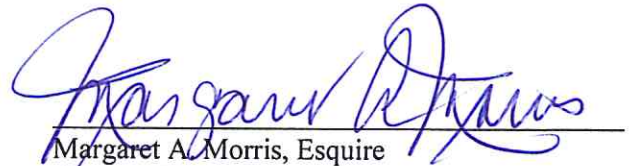
Rosemary Chiavetta, Esquire
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19140

The Honorable Mary D. Long
PA Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Date: January 25, 2019



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(215) 495-6524 tel.
mmorris@regerlaw.com

Counsel for Pennsylvania Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARK STANFORD :
 :
 v. : Docket No. C-2018-3006025
 :
 PENNSYLVANIA POWER COMPANY :

**MOTION TO DISMISS THE COMPLAINT OF
MARK STANFORD ON BEHALF OF Y-CLEAN, INC.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Power Company (Penn Power or the Company) by and through its attorneys, Reger Rizzo and Darnall, LLP files this Motion to Dismiss, 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 seeks the dismissal of the Formal Complaint captioned *Mark Stanford v. Pennsylvania Power Company* (Formal Complaint) because: (i) the real party in interest in the Formal Complaint is Y-Clean, Inc. (Customer or Y-Clean), a business entity registered on August 11, 1998 as a Pennsylvania corporation with the Pennsylvania Bureau of Corporations and, as such, is required at this stage of the proceeding to be represented by an attorney at law in accordance with Sections 1.21 through 1.23 of the Pennsylvania Public Utility Commission (Commission) regulations, 52 Pa. Code §§ 1.21-1.23; (ii) Mark Stanford (Complainant or Mr. Stanford) has no standing in his individual capacity and is not the customer of record.

II. Factual Background

2. The Formal Complaint was filed against Penn Power on November 14, 2018 and relates exclusively to commercial service provided to 357 Northgate Drive, Unit 5, Warrendale,

Pennsylvania (Service Location) under Account No. 110103164098. The Customer of record and the aforesaid Account is in the name of Y-Clean and not Mr. Stanford. Thus, the real party in interest and complainant in this proceeding is the Customer and not the Complainant.

3. On December 4, 2018, Penn Power filed an Answer and New Matter to the Formal Complaint denying the material allegations therein. In the New Matter, Penn Power alleged that the real party in interest (i.e., the customer of record), Y-Clean is a Pennsylvania corporation and is not represented by an attorney as required by the Commission's regulations.

4. No response was filed to the New Matter. No attorney has filed an Entry of Appearance in the instant proceeding.

5. By Notice, dated January 16, 2019, the Commission scheduled the matter for a Telephonic Hearing on March 14, 2019, before the Honorable Mary D. Long.

III. Not Represented by Counsel

6. Representation before the Commission is governed by the Commission's regulations at 52 Pa. Code §§ 1.21-1.23. These regulations provide that "[i]n adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only by . . . an attorney." 52 Pa. Code § 1.21. An adversarial proceeding begins with the filing of an Answer. 52 Pa. Code § 1.8 and *New Fizon Catering, Inc. v. PECO Energy Company*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009).

7. A non-attorney owner/operator of a limited liability corporation may file a formal complaint pleading, *without an attorney*, but thereafter must be represented by counsel. *Tyler Run, LLC v. Penn Power*, Docket No. C-200438888 (Order entered January 5, 2005) and *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006).

8. The Commission's obligation to require attorneys in adversarial proceedings for parties other than individuals proceedings *pro se* is well-settled:

In Pennsylvania, the Supreme Court is responsible for regulating the practice of law, and this Commission is bound by the Supreme Court's rules. The only persons authorized to practice law in Pennsylvania are as follows: (1) persons fully admitted to the

Pennsylvania Bar; (2) persons admitted pro hac vice under Rule 301; and (3) persons qualified as certified legal interns under Rule 321. The Pennsylvania Supreme Court in *Shorz v. Farrell*, 327 Pa. 81, 193 A.2d 81 (1937), held that if the nature of an administrative hearing is to determine questions of fact or interpretation of administrative law, then the hearing is of a judicial character. Any participation in such a hearing constitutes the practice of law. Accordingly, it would be unlawful to allow non attorney representation in adversarial proceedings before the Commission.

James and Judith Simon v. Franklin Water Company, Docket No. C-00956589 (Order entered January 29, 1996)

9. Consequently, a corporation that files a formal complaint with the Commission must obtain counsel to proceed with all other aspects of the proceeding, including, without limitation, discovery, testimony preparation, attendance at hearing examination of witnesses and briefing.

10. A telephonic hearing is currently scheduled for March 14, 2019. At this point, Penn Power is required to incur the time and expense to prepare for a full evidentiary hearing without knowing if the Customer will even be represented by counsel.

11. In order to minimize any further prejudice, time and/or expense by Penn Power, the Customer should be ordered to have counsel file an Entry of Appearance within ten (10) days, or the proceeding be dismissed.

IV. Mr. Stanford's Standing

12. In order to bring a complaint before a tribunal, a complainant must first demonstrate that she/he has standing to maintain the action. *Nye v. Erie Insurance Exchange*, 470 A.2d 98, 100 (Pa. 1983). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc., et al v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). These criteria are defined as follows:

A 'substantial' interest in the outcome of the litigation, which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the casual connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to

protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

George v. Pennsylvania PUC, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999).

13. The standard set by *William Penn Parking Garage* is applicable to the Commission cases. *See, Courier Express, Inc. v. F.L. Shaffer Company, Inc.*, Order entered August 30, 1990 at Docket No. C-892462, Petition for Reconsideration denied December 3, 1990.

14. Mr. Stanford is not the Penn Power ratepayer of record. *See* attached Affidavit of Charles J. Howlett.

15. Therefore, the Complainant does not have standing to bring an action against Penn Power and proceed on behalf of the Customer at the telephonic hearing currently scheduled for March 14, 2019.

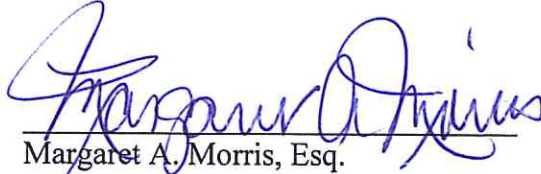
V. Conclusion

WHEREFORE, for the foregoing reasons, the Pennsylvania Electric Company respectfully requests that the Commission:

- a) Enter an Order directing Y-Clean, Inc. to have a Pennsylvania licensed attorney enter an appearance on behalf of Y-Clean, Inc. within ten (10) days of the issued Order;
- b) Dismiss the Formal Complaint in this proceeding if a Pennsylvania licensed attorney does not enter appearance on behalf of Y-Clean, Inc. within ten (10) days of the date of any applicable Order; and

c) Find that Mark Stanford does not have standing in this proceeding to participate in any fashion, other than as a witness, and cannot represent Y-Clean, Inc. at the duly scheduled hearing.

Respectfully submitted,



Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia PA 19104
(215) 495-6524 tel.
mmorris@regerlaw.com

Dated: January 25, 2019

Counsel for Pennsylvania Electric Company

6. Y-Clean receives commercial service under Penn Power's Rate GS-Medium, General Service -Medium Tariff, Electric Pa. P.U.C. No. 36, (Supp. 28), Fourth Revised Page 69, Superseding Third Revised Page 69, issued March 23, 2017; effective March 24, 2017.


7. Mark Stanford is an authorized contact for Y-Clean according to Penn Power's business records.

I am authorized to submit this affidavit for and on behalf of Penn Power and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.




Charles Howlett

Sworn and subscribed before me this 24th
day of January, 2019.



Notary Public
My commission expires on: 09/05/2019



Ruben M. Oliveras
Notary Public of New Jersey
My Commission Expires 9/05/2019