

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Office of Attorney General,
Pennsylvania Office of Consumer
Advocate**

**Public Meeting February 11, 2016
2427656-OSA
Docket No. C-2014-2427656**

v.

**Energy Service Providers, Inc. d/b/a
Pennsylvania Gas & Electric**

**JOINT MOTION OF COMMISSIONER JOHN F. COLEMAN, JR. AND
COMMISSIONER ROBERT F. POWELSON**

Before the Commission for consideration and disposition is the following: 1) an Initial Decision (I.D.) recommending approval of a proposed Settlement filed in the above-captioned Formal Complaint proceeding; 2) Exceptions to the I.D. filed by Mr. Thomas Sobiech; and 3) Replies to Exceptions filed individually by Energy Service Providers d/b/a Pennsylvania Gas and Electric (Pa. G&E or Company) and the Pennsylvania Office of Attorney General/Office of Consumer Advocate (OAG/OCA). The Settlement proposes to resolve the Complaint filed by OAG/OCA, which alleges that Pa. G&E violated Pennsylvania law, including the Commission's regulations, related to its variable rate electric generation services.

The Settlement addresses three primary subject areas: 1) refunds; 2) penalties and contributions to Hardship Funds; and 3) injunctive relief. Under the Settlement, Pa. G&E agrees to pay \$6,836,563 into a Refund Pool, which will provide a funding source for refunds and/or credits to eligible customers. The Settlement requires customers who receive payment from the Refund Pool to sign a "Release of Claims," discharging Pa. G&E from any and all claims arising from, or related to, the conduct alleged in the Complaint filed by the OAG/OCA against the Company.

Mr. Sobiech is the lone party excepting to the I.D.¹ and is the lead plaintiff in a federal class action lawsuit filed against Pa. G&E. It is the Settlement term relating to the "Release of Claims" that is the subject of his Exceptions.

Upon review of the record in this case and the applicable law, we propose to deny Mr. Sobiech's Exception Nos. 2-4 for the reasons set forth in the staff recommendation. We also propose to deny his Exception No. 1, consistent with the discussion and clarification in this Motion.

As a preliminary matter, we note that to the extent Mr. Sobiech's Exceptions are objecting to the terms of the Settlement, not only as they apply to him, but also, as they apply to other Pa. G&E customers, our Order Granting Intervention limited Mr. Sobiech's participation in

¹ We note that although other Pa. G&E customers participated in this proceeding by providing witness testimony, no other customers objected to the proposed Settlement. Additionally, the OAG and OCA are legislatively charged with representing the interests of these customers. See 71 P.S. § 309.1, *et seq.* and 73 P.S. § 201-4.

this proceeding to advocating strictly on his own behalf.² As such, any claims Mr. Sobiech has made regarding the potential impacts of the Settlement on other PA G&E customers are beyond the scope of our Order Granting Intervention and will not be considered.

Exception No. 1 of Mr. Sobiech is focused on the language in paragraph 43 of the Settlement, which contemplates the execution of a “Release of Claims” in exchange for payment from the Refund Pool. We disagree that adopting a Settlement requiring a customer who elects to receive a refund from the Refund Pool to sign a release as a condition of obtaining payment is an impediment to the authority of this Commission to approve the Settlement.

First, the parties to a proceeding before the Commission may resolve their disputes according to terms and conditions that are mutually agreeable as between them. This is entirely consistent with the policy of the Commission to encourage settlements.³ Moreover, the *quid pro quo* involved in signing a release to resolve a claim is well-recognized by Pennsylvania courts. *See Buttermore v. Aliquippa Hospital*, 522 Pa. 329-30, 561 A.2d 733, 735 (1989) (Parties with possible claims may settle their differences upon such terms as are suitable to them. . . . They may agree for reasons of their own that they will not sue each other or any one for the event in question).

Second, nothing in the Settlement or the I.D. suggests or requires the Commission to adjudicate and/or interfere with private causes of action such as breach of contract. Rather, in adjudicating the Settlement, the Commission is adjudicating a Complaint brought by the entity designated by statute to represent consumers of public utility services before the Commission against an Electric Generation Supplier (EGS) licensed by the Commission. Furthermore, the Complaint being adjudicated includes allegations that the Commission-licensed supplier violated Pennsylvania law, including the Commission’s marketing and billing regulations applicable to EGSs.⁴ Consequently, the Commission possesses the requisite jurisdiction over both the Parties to this proceeding and the subject matter of the Complaint that the Settlement proposes to resolve. *See F.F. No. 3.*

Third, the Settlement does not compromise any customer’s right to pursue a claim against Pa. G&E outside of this Commission proceeding. Based on the terms of the Settlement, customers are free to accept a refund and sign a release or reject a refund and pursue a separate claim against Pa. G&E in another forum. The bottom line here is that each customer will have the right to determine whether the conditions of obtaining payment from the Refund Pool are satisfactory in order to resolve his or her claims against the Company. If a customer is not willing to resolve his or her claim under the Settlement terms and conditions, the customer is free to pursue other rights against Pa. G&E.

² Additionally, because Mr. Sobiech is not an attorney, the Commission’s regulations prohibit him from representing other Pa. G&E customers. *See* 52 Pa. Code §§ 1.21 and 1.22. Further, Mr. Sobiech’s attorney did not enter his appearance on behalf of any other Pa. G&E customers in this proceeding.

³ 52 Pa. Code § 5.231(a).

⁴ The relevant Commission regulations are found in Chapter 54, Title 52 of the Pennsylvania Code.

For these reasons, we believe the Commission has the authority to approve the Settlement.

Nevertheless, we find it necessary to clarify our adoption of the I.D. and modify the proposed Settlement obligations of the OAG and OCA regarding notice to consumers who elect to receive payment from the Refund Pool. Specifically, we propose to direct that, as an express condition of our approval of the Settlement, the OAG and OCA shall certify to the Commission that the following notice has been provided to each consumer who voluntarily elects to receive payment from the Refund Pool and sign a "Release of Claims:"

Signing the Release of Claims and receipt of payment from the Refund Pool may affect your right to recover amounts for the same conduct of Pennsylvania Gas & Electric Company that could result from legal proceedings against this supplier in a court of law.

We note that this directive is entirely consistent with the position of the OAG/OCA in their Answer to Mr. Sobiech's Petition to Intervene, wherein they stated the intent to provide customers with information that is necessary for them to make informed decisions regarding whether to accept the refund in exchange for a release of their claims. The OAG/OCA should advise in their comments if they object to this notice language and if so, they should propose alternative language.

THEREFORE, WE MOVE THAT:

1. The Exceptions filed by Thomas Sobiech be denied consistent with this Motion.
2. The Initial Decision be modified consistent with the clarification in this Motion.
3. The Office of Special Assistants prepare a Tentative Opinion and Order approving the proposed Settlement as in the public interest, consistent with this Motion.

DATE: February 11, 2016



JOHN F. COLEMAN, JR.
COMMISSIONER



ROBERT F. POWELSON
COMMISSIONER