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December 14, 2012

Heidi L. Wushinske
Prosecutor
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Wayne T. Scott
First Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PA Public Utility Commission, Bureau of Investigation and Enforcement v.
Glacial Energy of Pennsylvania, Inc., Docket No. C-2012-2297092

Dear Heidi and Wayne:

Enclosed please find Glacial Energy PA's PreHearing Conference Memorandum.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert B. Hoffman". The signature is stylized and fluid, with a long horizontal stroke at the end.

Robert B. Hoffman

RBH/glp
Enclosure

cc: Rosemary Chiavetta, Secretary (w Certificate of Service only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,)
Bureau of Investigation and Enforcement)
 Petitioner,)
 v.)
)
Glacial Energy of Pennsylvania, Inc.)
 Respondent.)

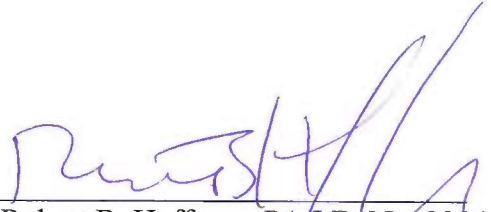
Docket No. C-2012-2297092

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2012, I caused a true and correct copy of the Respondent's Pre-Hearing Conference Memorandum to be served upon the following persons by first class mail, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54:

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an Administrative Law Judge, purportedly “[d]ue to an ongoing investigation.”² By Order of November 1, 2012, Administrative Law Judge Salapa granted that part of Glacial PA’s motion that sought assignment of an ALJ and a prehearing conference, but denied Glacial PA’s request for an expedited hearing. The November 21 Order setting the pre-hearing conference followed.

Summary of Allegations

I&E contends that Glacial PA’s EGS application (“Application”), filed in April 2009, violated 66 Pa. C.S. § 2509(b) and 52 Pa. Code § 1.35(c). Specifically, I&E contends that Glacial PA’s Application, in response to the Application’s “compliance question” (#16), should have disclosed the existence of an administrative complaint filed in June 2006 before the Public Utility Commission of Texas (“PUCT”) against another company, Energy West Resources, LTD, later known as Franklin Power.³ I&E contends this disclosure was required because Gary Mole, Glacial’s President and CEO⁴, is a person identified in Glacial PA’s Pennsylvania EGS application and that Mr. Mole had “ownership interests and experience with company(s) that have had certifications revoked, namely Franklin Power Company or Energy West Resource.” Complaint, ¶ 19.

² Over two months later, Glacial PA has no knowledge as to the basis for this purported I&E investigation, notwithstanding its formal inquiries to I&E on that topic.

³ Question 16 asks the applicant to identify “all proceedings ... dealing with business operations, in the last five (5) years, whether before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent.” It also asks whether “the Applicant, an affiliate, a predecessor of either, or a person identified in this Application has been convicted of a crime involving fraud or similar activity,” but I&E does not assert anything should have been reported in response to that inquiry.

⁴ Mr. Mole was incorrectly identified in the Complaint as Glacial PA’s “Chief Operating Officer.” Mr. Mole was identified in Glacial PA’s Application as Glacial PA’s President and CEO; Jay Silva was identified in that Application as COO.

With respect to Mr. Mole's involvement with Franklin, I&E alleges that Mr. Mole "held an ownership interest" in Franklin (§ 11), had "involvement" with Franklin (§§ 13, 14), and had "former ownership interests and experience" with Franklin (§ 16). Significantly, I&E does not assert that Glacial PA is an affiliate of or successor to Franklin as the "compliance question" requires; that Mr. Mole or Glacial was named as a respondent in the PUCT proceedings; or that Mr. Mole was an officer, board member, or employee of Franklin. Note also that the Application itself specifically limits disclosures regarding affiliates and predecessors *to the Applicant*. See, e.g., Request No. 16: "State specifically whether *the Applicant, an affiliate, a predecessor of either, or* a person identified in this Application ..." (Emphasis added).⁵

I&E made two additional but related allegations of wrong-doing in its Complaint. First, I&E alleged that Mr. Mole was required to disclose his "involvement with Franklin" on his resume submitted with the Application. Second, I&E alleged that Glacial PA sought to conceal Mr. Mole's purported affiliation with Franklin by submitting with the Application a Dunn & Bradstreet ("D&B") Report about Glacial's sister company, Glacial Energy of New York, which did not discuss Mr. Mole's "involvement with Franklin."

In response to the central allegation set forth above, Glacial PA explained that Franklin was not an affiliate or predecessor of Glacial PA; that neither Mr. Mole nor Glacial was named as a respondent in the PUCT proceedings; and that Mr. Mole was neither an officer, board member, or employee of Franklin nor involved in the management of the day-to-day activities of Franklin.

In response to the additional allegations, Glacial PA explained that there was no reason for Mr. Mole to include a reference to Franklin in his resume; indeed, it is not common or

⁵ This limitation is no doubt because individuals cannot have affiliates or predecessors.

standard practice to include information regarding financial ownership interests in a professional resume of this kind, nor was there anything in the Application that expressly required the inclusion of such information. Moreover, I&E has subsequently acknowledged that it “is aware of no regulation, rule, policy, or other document that outlines the information that should be included in a professional resume submitted with a license application.” See I&E Responses to Glacial Interrogatories and Request for Documents – Set I, dated 10/24/12, at Glacial Energy-I&E-14. The D&B Report, furthermore, was submitted in response to Question 19(A), which requested in pertinent part that Glacial PA provide “Published parent company financial and credit information.” Glacial PA notes that it did not write the D&B Report and that the portion as to which I&E complained (the “History” section, which stated in part as to Gary Mole and two other individuals that “antecedents are undetermined”) was, in fact, non-responsive to the Application question since it did not relate to “parent company financial and credit information.” Glacial PA did not want to provide an incomplete copy of the Report, however, and so that information was included notwithstanding its lack of relevance to the application.

Summary of Glacial PA’s Position

Glacial PA submits that it did not fail to disclose any information required by the Commission’s EGS license application. When all the facts are considered, it is plain that Glacial PA had no obligation to disclose the PUCT proceeding involving Energy West/Franklin. It was not a proceeding brought against Glacial PA, an affiliate of Glacial PA, or a predecessor of either, or against Mr. Mole or other persons identified in Glacial PA’s 2009 application. Furthermore, any financial interests Mr. Mole had in Franklin are irrelevant. Indeed, even if Mr. Mole had been a high-level employee, officer, or director of Franklin (which he was not), under

a plain reading of the Application, there would have been no requirement to identify the PUCT proceeding unless Mr. Mole was separately named as a respondent (which he was not).

Glacial PA believes that I&E currently has no facts or evidence to establish that reporting of the PUCT action was required, nor did it have such facts or evidence at the time the Complaint was filed.⁶ Moreover, Glacial PA believes the facts asserted by I&E are insufficient to establish breach of any disclosure obligation. Because the mere existence of these charges is unjustly harming Glacial PA's reputation with both regulators and potential and existing customers, Glacial PA respectfully urges that this matter be concluded as quickly as possible. Accordingly, Glacial PA has endeavored to resolve this matter without a hearing, and continues to support this approach. Glacial PA also endorses setting a discovery schedule and hearing date at this time, however, in the event that other approaches do not succeed in timely fashion (as they have not succeeded to date).

Since obtaining its EGS license over three years ago, Glacial PA has been in good standing with the Commission, and has history of providing reliable electric service to primarily commercial customers within the Commonwealth. Glacial PA is, and has always acted as, a good corporate citizen in the Commonwealth. Glacial PA submits that this proceeding is the unfortunate result of efforts by Mr. Michael Petras, a former Franklin employee, to initiate regulatory investigations and complaint proceedings against Glacial Energy Holdings (Glacial PA's direct parent) and its affiliates in the various states in which those entities provide retail electric services. Mr. Petras' goal is to gain a tactical advantage in litigation proceedings in Texas that are unrelated to Glacial PA's activities in Pennsylvania. To Glacial PA's knowledge,

⁶ Glacial PA sought to identify any such facts in I&E's possession or knowledge via discovery. However, I&E objected to providing any such information and the parties are attempting to resolve that dispute, as discussed further below.

Mr. Petras is not an electricity consumer in Pennsylvania and does not have any other connection with Pennsylvania. Glacial PA respectfully submits that the Commission should reject Mr. Petras's attempt to draw it into his private dispute. There is no reason to threaten Glacial PA's license on the basis of some unsubstantiated allegations made by a private individual who harbors an irrational personal hatred for Gary Mole.

INFORMATION REQUIRED BY PREHEARING CONFERENCE ORDER

1. Designation of counsel:

John McGahren, Esq. (admitted *pro hac vice*)
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2. Statement Regarding Settlement: Glacial PA and I&E engaged in discussions regarding settlement but were far apart on terms. That failure led to efforts by Glacial PA to move this case to an expedited resolution via hearing. Nevertheless, Glacial PA remains open to the possibility of engaging in further settlement discussions with I&E.

3. A Proposed Plan and Schedule of Discovery: The parties have served document requests and interrogatories. Both parties have objected to certain discovery requests and those objections may need to be addressed.

Glacial PA may wish to take the deposition of an I&E designee with knowledge of the facts that form the basis of I&E's allegations concerning the relationship between Mole, Glacial PA, and Franklin; and of witnesses identified by I&E in its prehearing memorandum and discovery responses.

Glacial PA proposes that all discovery be completed by February 20, 2013, in accordance with the schedule below.

Glacial PA reserves its right to identify additional witnesses prior to Glacial PA's deadline for submission of written testimony.

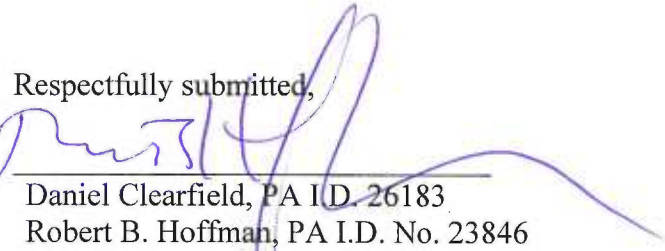
7. A list of the issues and sub-issues of this proceeding which the party intends to address and a statement of the party's position on each of the issues and sub-issues listed.

Issue	Glacial of PA's Position
Did Glacial PA violate 66 Pa. C.S. § 2509(b) and/or 52 Pa. Code § 1.35(c)?	No. Glacial PA's application was grounded in fact and was in compliance with 52 Pa. Code § 1.35(c); nothing in 66 Pa. C.S. § 2509(b) and/or 52 Pa. Code § 1.35(c) required disclosure of unrelated, indirect financial interests previously held by Glacial's officers.
Was Energy West/Franklin an affiliate or predecessor of Glacial PA?	No.
Was Energy West/Franklin a predecessor of an affiliate of Glacial PA?	No
Did Glacial PA's Application fail to report a proceeding dealing with business operations in the five years prior to the application, before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent?	No
Did Glacial PA's Application fail to report that the Applicant, an affiliate, a predecessor of either, or a person identified in this Application had been convicted of a crime involving fraud or similar activity?	No
Was Gary Mole's resume submitted with the application improper and misrepresentative insofar as it did not list his indirect financial investment in/ownership of Franklin?	No. It is neither common nor standard for a resume, which lists prior work experience, to list an individual's investments or status as a shareholder, particularly when the entity at issue no longer exists.
Was Glacial PA's submission in response to question 19A (requesting "Published parent company financial and credit information") misleading in that the D&B Report did not report on Gary Mole's "involvement" with Franklin?	No. The D&B report was submitted for the specific purpose of providing Glacial's financial and credit information, in response to question 19A. Other parts of the report were included in the interest of completeness, but were otherwise irrelevant to the Application, and were not

	previously questioned by the Commission. In any event, Glacial PA assumes that the report accurately sets forth D&B's knowledge as of that time and believes the report was properly submitted.
Did Paragraph 16 of the Application require disclosure of Mr. Mole's prior, indirect, partial ownership interest in Franklin Power?	No.

8. A statement describing the evidence the party proposes to present at hearing, relating the evidence to each of the issues and sub-issues the party intends to address.

Glacial PA intends to present evidence demonstrating that Franklin is not its affiliate or predecessor, and that Gary Mole was not an officer, director, or employee of Franklin Power, as per the discussion above. Glacial PA also intends to present evidence demonstrating that it did not intentionally withhold information from its Application, but rather, that its Application was prepared and submitted in good faith. This evidence will include Glacial PA's April 2009 Application, as well as other materials and testimony produced and obtained through discovery, hearing testimony, and publicly available documents. These facts relate to all of the issues listed above.

Respectfully submitted,

 Daniel Clearfield, PA I.D. 26183
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