



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

March 5, 2013

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Glacial Energy of Pennsylvania, Inc.; C-2012-2297092

Dear Secretary Chiavetta:

Enclosed please find an Amended Complaint in the above referenced matter. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

If you have any further questions regarding this matter, please contact me at 717-214-9594.

Sincerely,

Heidi Wushinske
Prosecutor

Enclosures

cc: As per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Docket No. C-2012-2297092

AMENDED FORMAL COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E), by its counsel, pursuant to Section 701 of the Public Utility Code, 66 Pa. C.S. §701, and files this Formal Complaint against Glacial Energy of Pennsylvania, Inc. (“Glacial” or “Respondent”), alleging violations of the Public Utility Code. In support of its Formal Complaint, I&E respectfully represents the following:

PARTIES AND JURISDICTION:

1. The Pennsylvania Public Utility Commission (Commission), with a mailing address of P.O. Box 3265, Harrisburg, PA, 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§101, *et seq.*

2. Complainant is the Commission's Bureau of Investigation and Enforcement and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa. C.S. §308.2(a)(11). Complainant's counsel are as follows:

Heidi L. Wushinske
Prosecutor
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717.214.9594

Wayne T. Scott
First Deputy Chief Prosecutor
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Counsel for the Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

3. Respondent is Glacial Energy of Pennsylvania, Inc., an electric generation supplier, with offices located at 2602 McKinney Avenue #220, Dallas, TX 75204, attention Gary Mole, and a main mailing address of 5326 Yacht Have Grande, Box 36, St. Thomas, V.I. 00802, attention Gary Mole. Glacial's registered agent in Pennsylvania is Business Filings Incorporated, 116 Pine Street, Suite 320, Harrisburg, PA 17101, attention Joel Glassman.

4. Glacial is an "electric generation supplier" as that term is defined as that term is defined in the Public Utility Code at 66 Pa. C.S. §2803.¹

¹ At 66 Pa. C.S. §2803, "Electric generation supplier" is defined under that term as:

[a] person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arrange

5. Section 501(a) of the Public Utility Code, 66 Pa. C.S. §501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

6. Section 701 of the Public Utility Code, 66 Pa. C.S. §701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.

7. Section 3301 of the Public Utility Code, 66 Pa. C.S. §3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate fine for each day's continuance of such violation(s).

8. Respondent, in providing electric generation supply service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa. C.S. §501(c), which requires any persons or corporations subject to the provisions of that part to comply with Commission orders.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company.

BACKGROUND:

10. On February 28, 2006, the Public Utility Commission of Texas (PUCT) revoked Franklin Power Company's (Franklin) (formerly Energy West Resources, Ltd, d/b/a/ Franklin Power Company) retail electric provider (REP) certification for failure to maintain the financial requirements required by the PUCT and for failing to timely remit payments for invoiced charges to a transmission and distribution utility (TDU) pursuant to the terms of the relevant tariffs.²

11. Gary Mole, Glacial's Chief Operating Officer, held an ownership interest in Franklin Power.³

12. On April 22, 2009, Glacial submitted to the Commission an application for approval as an electric generation supplier.

13. In its application, Glacial was asked to describe its compliance history. Specifically, it was asked to:

[s]tate specifically 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. Identify all proceedings by name, subject and citation, 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. Provide a statement as to the resolution or present status of any such proceedings.

Glacial responded that neither it nor any of its entities had been cited or sanctioned for criminal activity or fraud. Glacial further responded that it "has not been a

² *Complaint of TXU Energy Delivery Company and CenterPoint Houston Energy, LLC, to Revoke Retail Electric Service Provider Certificate No. 10068 of Energy West Resources, LTD*, Final Order, Docket No. 31166 (July 17, 2006).

³ *See Energy West's Amendment to its Retail Electric Provider Certification*, Docket No. 29055 (Jan. 20, 2004), reflecting a change in owner and Texas address to add the d/b/a/ Franklin Power Company.

defendant or a respondent to any proceedings dealing with business operations.” Glacial did not mention its Chief Operating Officer’s, Gary Mole, involvement with Franklin.

14. The application also asked Glacial to list the resumes of its Chief Officers. The resume of Gary Mole, Glacial’s Chief Operating Officer, failed to mention his involvement with Franklin. *Docket No. A-2009-2109572, Attachment 9.*

15. Additionally, Glacial attached to its application, a Dunn & Bradstreet Report, which stated in its History section regarding Gary Mole “antecedents are undetermined.” *Docket No. A-2009-2109572, Attachment 8.*

16. In no way did the April 22, 2009 application filed with the Commission by Glacial disclose Gary Mole’s former ownership interests and experience with Franklin, including Glacial’s responses to requests for admissions and information in its application. The application also failed to disclose the complaints filed against Energy West in Texas for failure to satisfy financial obligations, which resulted in the revocation of its certificate.⁴

17. Joel Glassman, Vice President of Corporate Development for Glacial, signed Glacial’s Pennsylvania application, which stated that he believed the facts in the application to be true and correct to the best of his knowledge, information, and belief. *Docket No. A-2009-2109572.*

⁴See *Complaint of TXU Energy Delivery Company and CenterPoint Houston Energy, LLC, to Revoke Retail Electric Service Provider Certificate No. 10068 of Energy West Resources, LTD*, Docket No. 31166 (May 27, 2005).

VIOLATIONS:

COUNT ONE

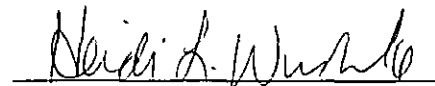
18. All allegations in paragraphs 1-17 are incorporated as if fully set forth herein.

19. Glacial's application to the Commission was not grounded in fact or was signed by a representative of Glacial without knowing the contents thereof, in that Glacial's vice president signed and verified the application and did not disclose that Gary Mole (Glacial's Chief Operate Officer) formerly had ownership interests and experience with company(s) that have had certifications revoked, namely Franklin Power Company or Energy West Resources.

This is a violation of 66 Pa. C.S. § 2809(b) and 52 Pa. Code § 1.35(c).

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission find Glacial in violation of each and every above-cited statute and regulation, and revoke Glacial's license for electric generation supplier.

Respectfully submitted,



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Date: March 5, 2013

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 : Docket No. C-2012-2297092
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Glacial Energy of Pennsylvania, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Amended Complaint** dated March 5, 2013, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Served by first class mail

Robert B. Hoffman, Esquire
Daniel Clearfield, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, Eighth Floor
Harrisburg, PA 17101

Joel Glassman
Business Filings Inc.
116 Pine Street, Suite 320
Harrisburg, PA 17101

John McGahren, Esquire
Stephanie Feingold, Esquire
Patton Boggs LLP
The Legal Center
One Riverfront Plaza
1037 Raymond Blvd., Suite 600
Newark, NJ 07102

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Heidi L. Wushinske
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PA Attorney I.D. #93792