



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

IN REPLY PLEASE  
REFER TO OUR FILE

March 25, 2013

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

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

Dear Secretary Chiavetta:

Enclosed for filing is an original copy of I&E's Response to Glacial Energy of Pennsylvania's Statement of Undisputed Material Facts Re: Motion for Summary Judgment and Memorandum in Support of I&E's Response to Glacial Energy of Pennsylvania's Statement of Undisputed Material Facts Re: Motion for Summary Judgment.

Copies have been served on all parties of record in accordance with the Certificate of Service. If you have any questions, please contact me at (717) 214-9594.

Sincerely,

Heidi L. Wushinske  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #93792

Enclosure

cc: As per certificate of service  
Hon. David A. Salapa

RECEIVED  
2013 MAR 25 PM 2:05  
PA PUC  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

---

**I&E RESPONSE TO GLACIAL ENERGY OF PENNSYLVANIA’S STATEMENT  
OF UNDISPUTED MATERIAL FACTS RE: MOTION FOR SUMMARY  
JUDGMENT**

---

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 Response to Glacial Energy of Pennsylvania’s Statement of Undisputed Facts RE: Motion for Summary Judgment. In support of its Response, I&E respectfully represents the following:

As a preliminary matter, Glacial’s Motion for Summary Judgment is deficient on its face because Glacial failed to attach the required Notice to Plead to its Motion. *See*, 52 Pa. Code § 5.102(a). Furthermore, there has been no agreement between and among the parties with regard to “undisputed” facts. However, in the interest of judicial efficiency, I&E will simply proceed and respond to Glacial’s Motion even though it is deficient.

1. Admitted.
2. Admitted.

RECEIVED  
2013 MAR 25 PM 2:05  
PA PUC  
SECRETARY'S BUREAU

3. Admitted.

4. Admitted.

5. Admitted upon information and belief. Furthermore, Gary Mole is identified as Glacial PA's President and CEO. *See*, Glacial EGS Application, Attachment 9 at I&E Exhibit No. 1, Sch. No. 1, p. 31 of 41.

6. Admitted upon information and belief. *See*, Discussion and Findings of Fact on Texas PUC Order at I&E Exhibit No. 1, Sch. No. 2, pp. 2-4.

7. Admitted in part, denied in part. By way of further response, and to clarify, it is admitted that the filing with the Texas PUC at Docket No. 29055 states that Energy West Resources, Ltd will also be known as Energy West Resources, Ltd. d/b/a Franklin Power Company. It is denied, however, that this occurred on October 31, 2003. But rather, the change was filed with the Texas PUC on or about December 12, 2003. *See*, I&E Exhibit No. 1, Sch. No. 3, pp. 2-4. Finally, Complaint ¶ 11, n. 3, as cited by Glacial in this paragraph, makes no mention of October 31, 2003.

8. Admitted in part upon information and belief, denied in part. It is admitted upon information and belief that Gary Mole, through Touchdown Properties, acquired a majority and controlling 60% of Franklin. *See*, Glacial New Matter, ¶ 36. It is also admitted upon information and belief that Gary Mole owned 100% of Touchdown Properties. *See*, Glacial New Matter, ¶ 36. Gary Mole was/is Touchdown; and, Touchdown was/is Gary Mole. Therefore it is specifically denied that Gary Mole obtained an "indirect" ownership interest in Franklin. The fact that Gary Mole WAS/IS Touchdown; and, Touchdown WAS/IS Gary Mole simply cannot be ignored. In fact, Glacial's proffered defense to attempt to characterize Gary Mole's ownership as "indirect" is one of the disputed material issues and facts in this action. Gary Mole did

indeed have a direct connection to a majority and controlling 60% of Franklin through his wholly owned shell company, Touchdown.

Furthermore, Glacial misrepresents to this Court that I&E somehow stated in its Complaint and Answer to New Matter that Gary Mole had an “indirect” ownership interest. To the contrary, Paragraph 11 of I&E’s Complaint states “ownership interest.” *See*, Complaint, ¶ 11. Nowhere in Paragraph 11 did I&E use the word “indirect.” Also, Paragraph 33 of I&E’s Answer to New Matter states even though Gary Mole “did not hold shares in Franklin in his name;” Gary Mole “was the sole shareholder of Touchdown Properties, LLC, which acquired 60% of Franklin’s stock.” *See*, I&E Answer to New Matter, ¶ 33. Nowhere in Paragraph 33 did I&E use the word “indirect.”

9. Admitted upon information and belief. *See*, Glacial New Matter, ¶ 36. By way of further response, Mr. Mole was/is Touchdown and Touchdown was/is Mr. Mole. Mr. Mole acquired a majority and controlling 60% of Franklin through his alter ego, Touchdown. *See*, I&E Statement No. 2, pp. 4-6. *See also*, I&E Statement No. 3, pp. 1-4.

10. Admitted in part, denied in part. It is admitted upon information and belief that Energy West obtained its REP license in Texas in April of 2003. *See*, I&E Exhibit No. 1, Sch. No. 2, pp. 3-4. It is also admitted that the Franklin Power Company was formed in 2003 by Gary Mole, Michael Petras and Roger McAulay. *See*, I&E Statement No. 2, pp. 2-3; and, I&E Statement No. 3, pp. 1-2. Furthermore, it is admitted that Energy West notified the Texas PUC in a filing dated December 12, 2003 that Energy West would, from that moment forward, also be known as Energy West d/b/a Franklin Power Company. *See*, I&E Exhibit No. 1, Sch. No. 3.

Because of all of the above, it should be clarified that through the course of this investigation and the Pleadings in this action, the terms “Energy West;” Energy West d/b/a Franklin Power Company;” and “Franklin Power Company” ALL became interchangeable under the term “Franklin.” The blanket statement made by Glacial in this Motion (as well as the blanket statements in Glacial’s New Matter, ¶ 37; and I&E’s

Answer to New Matter, ¶ 37) that “Franklin” was already operating as a PUCT-licensed REP in Texas when Touchdown invested in Franklin is admitted to the extent that the use of the term “Franklin” encompasses the terms Energy West, Energy West d/b/a Franklin, and Franklin.

By way of further clarification, and upon information and belief, only Energy West (prior to its purchase by Franklin) was operating as a PUCT-licensed REP when Touchdown obtained a majority and controlling 60% of Franklin. Franklin then bought the existing Energy West for the purpose of operating in Texas. *See*, I&E Statement No. 2, p. 3, ln. 4-7. Therefore, it is generally denied that the Franklin Power Company was already operating as a PUCT-licensed REP in Texas when Touchdown invested in the Franklin Power Company.

And finally, this paragraph makes reference to Paragraph 37 of Glacial’s New Matter yet makes no mention of the other “disputed” material facts alleged therein. It is specifically denied and therefore disputed that Touchdown (and therefore Gary Mole) was “purely a passive investor” in Franklin, as alleged in Glacial’s New Matter ¶ 37. To the contrary, Gary Mole acquired a majority and controlling 60% of Franklin through his shell company, Touchdown. *See*, I&E’s response to Paragraphs 8 and 9 above. It is also specifically denied and therefore disputed that Touchdown (and therefore Gary Mole) did not provide or did not promise to provide initial capitalization for Franklin as alleged in Glacial New Matter ¶ 37. To the contrary, both Michael Petras and Roger McAulay have testified that Gary Mole either provided, or agreed to provide, the initial capitalization of Franklin. *See*, I&E Statement No. 2, pp. 5-6; and, I&E Statement No. 3, pp. 1-4. Furthermore, it is specifically denied and therefore disputed that Touchdown (and therefore Gary Mole) did not manage the day-to-day business activities of Franklin as alleged in Glacial New Matter ¶ 37. To the contrary, both Michael Petras and Roger McAulay have testified that Gary Mole was in fact actively involved in the day-to-day operations of Franklin. *See*, I&E Statement No. 2, pp. 3-6; and, I&E Statement No. 3, pp. 1-4.

11. Admitted. By way of further response, a certified true and correct copy of the referenced Final Order is attached to I&E Statement No. 1 as I&E Exhibit 1, Sch. No. 2.

12. Denied. The referenced Final Order speaks for itself. To the extent that Glacial's characterization of the Final Order disagrees with the actual findings in the Final Order, Glacial's characterizations are denied.

13. Admitted in part, denied in part. The referenced TXU Complaint speaks for itself. It is admitted that Exhibit C attached to Glacial's Motion appears to be a true and correct copy of the TXU Complaint. To the extent that Glacial's characterization of the TXU Complaint disagrees with the actual statements in the TXU Complaint, Glacial's characterizations are denied.

14. Admitted in part, denied in part. The referenced CenterPoint Complaint speaks for itself. It is admitted that Exhibit D attached to Glacial's Motion appears to be a true and correct copy of the CenterPoint Complaint. To the extent that Glacial's characterization of the CenterPoint Complaint disagrees with the actual statements in the CenterPoint Complaint, Glacial's characterizations are denied.

15. Denied. Both the TXU Complaint and the CenterPoint Complaint speak for themselves with regard to named defendants and therefore the averments in this paragraph are denied. By way of further response, both Complaints name Energy West Resources, Ltd as defendants. Energy West had already begun operating as Energy West d/b/a Franklin Power Company at the time these complaints were filed. Gary Mole (through Touchdown) had already obtained a majority and controlling 60% ownership of Franklin. Gary Mole had already been appointed to the Board of Directors of Franklin. *See*, I&E's responses to Paragraphs 8, 9 and 10 above.

16. Admitted upon information and belief. Glacial's Exhibit E speaks for itself and appears to be a true and correct copy. Also note, the reference to "Franklin" by Glacial in this paragraph refers to the "Franklin Power Corporation." *See*, Glacial's Exhibit E.

17. Admitted upon information and belief.

18. Admitted. *See also*, a certified true and correct copy of Glacial's EGS Application at I&E Exhibit No. 1, Sch. No. 1.

19. Admitted. *See*, I&E Exhibit No. 1, Sch. No. 1, p. 9.

20. Admitted. *See*, I&E Exhibit No. 1, Sch. No. 1, p. 13.

21. Denied to the extent that Glacial has paraphrased its response to Question 16. The certified true and correct response to Question 16 of the EGS Application is attached to the Application as Attachment 4. *See*, I&E Exhibit No. 1, Sch. No. 1, p. 14.

22. Admitted in part, denied in part. It is admitted upon information and belief that, at the time of the Application, Gary Mole had not been convicted of any crimes dealing with business operations.

It is denied, however, to the extent that this paragraph attempts to speak for the TXU and CenterPoint Complaints discussed in Paragraph 15 above. As stated earlier, both the TXU Complaint and the CenterPoint Complaint speak for themselves with regard to named defendants. By way of further response, both Complaints name Energy West Resources, Ltd. As a named defendant. Energy West had already begun operating as Energy West d/b/a Franklin Power Company. Gary Mole (through Touchdown) had already obtained a majority and controlling 60% ownership of Franklin. Gary Mole had

already been appointed to the Board of Directors of Franklin. *See*, I&E response to Paragraphs 8, 9, 10 and 15 above.

23. Admitted.

24. Denied. Generally, the theme of I&E's Complaint, and as supported by I&E's Statement Nos. 1, 2 and 3, is that Franklin is the predecessor of Glacial to the extent that Gary Mole formed Glacial while Franklin was still viable. Then Gary Mole failed to follow through with the promised capitalization of Franklin; commandeered the assets of Franklin for Glacial; and eventually, Glacial stepped into the shoes of Franklin. *See*, I&E Statement No. 2, pp. 3-6; and, I&E Statement No. 3, pp. 1-4. *See also*, I&E Statement No.1, p. 9, ln. 14-19. I&E specifically alleged that Gary Mole is the common thread between Franklin and Glacial. *See*, I&E Formal Complaint, ¶¶ 11, 13, 14, 15 and 16.

25. Admitted. *See*, I&E Exhibit No. 1, Sch. No. 1, p. 30.

26. Denied. To the extent that words have meaning, the use of the term "professional resume" in and of itself provides the applicant with direction as to the content required to be included in the officer's professional resumes. Furthermore, the term "professional resume" has a commonly accepted meaning within the particular industry or profession in which it is being used. And, finally, Glacial's inability to understand the term "professional resume" is, and should be accepted by the Commission as, evidence that Glacial lacks the requisite "technical fitness" to hold an EGS license in Pennsylvania. *See*, I&E Exhibit No. 1, Sch. No. 1, p. 30, Question 20.

27. Denied. The term "professional resume", as it appears in the Application, speaks for itself. *See also*, I&E response to Paragraph 26 above, and, I&E Answer to New Matter, ¶ 28.

28. Denied. The term “professional resume,” as it appears in the Application, speaks for itself. *See also*, I&E’s responses to Paragraphs 26 and 27 above. Furthermore, to the extent that this paragraph paraphrases I&E’s response to Glacial’s Interrogatory – Set I, Interrogatory 14, it is denied. I&E stated that “a professional resume submitted in connection with a license application is expected to accurately reflect the applicant’s prior relevant experience.”

29. Admitted upon information and belief. *See*, I&E Exhibit No. 1, Sch. No. 1, pp. 22-29. However, the D&B Report submitted by Glacial PA is for “Glacial Energy of New York,” whereas, the “parent” company of Glacial PA, is “Glacial Energy Holdings.” *See*, I&E Exhibit No. 1, Sch. 1, p. 22. Furthermore, there is no denying that the D&B report is incomplete with regard to Gary Mole’s history, as the report states “Gary Mole Antecedents Undetermined.” *See*, I&E Exhibit No.1, Sch. No. 1, p. 27.

30 Admitted upon information and belief. *See*, I&E Exhibit No. 1, Sch. No. 1, p. 27. *See also*, I&E’s response to Paragraph 29 above. As such, Glacial knowingly submitted incomplete information to the Commission in response to Question 19 of the Application in the form of the D&B Report.

31. Admitted upon information and belief. Glacial’s EGS Application speaks for itself. *See*, I&E Exhibit No. 1, Sch. No. 1, pp. 36-38.

32. Admitted upon information and belief.

33. Denied. To clarify, Glacial has attached “Document Request 8” and “Document Request 9” to its Motion as Exhibit I; and not, “Interrogatory 8” and “Document Request 9” as stated in this paragraph.

By way of further response, I&E's Objections to Glacial's Document Request 8 and Document Request 9 speak for themselves. Furthermore, I&E's objections are not factual responses to document requests, but rather, they are legal objections to discovery requests. Additionally, Glacial misstates and mischaracterizes I&E's objections.

In response to Document Request 8, I&E clearly states: "Objection. This discovery request as phrased is argumentative as it requires the adoption of an assumption that Touchdown was a passive investor in Franklin, did not provide Franklin's original capitalization, and did not manage its day-to-day business activities."

Also, in response to Document Request 9, I&E clearly states: "Objection. This discovery request as phrased is argumentative as it requires the adoption of an assumption that Gary Mole never held an officer or director position in Franklin or managed the day-to-day business activities of Franklin."

I&E needs only to refer to I&E's responses to Paragraphs 8, 9, 10, 15, 22, 24, and 29 above as to why I&E objected to the argumentative language in Glacial's Document Requests 8 and 9. Furthermore, Glacial has raised all of these arguments as defenses and therefore Glacial has made all of these issues relevant. (*See*, Glacial Answer and New Matter, ¶¶ 11, 13, 14, 16, 19, 20, 21, 33, 36, 37, 38, and 40).

Also, despite its initial objections, I&E has produced the Board of Directors Resolution (I&E Exhibit No. 1, Sch. No 4; and, I&E Exhibit No. 3, Sch. No. 1); the Indemnification Agreement (I&E Exhibit No. 1, Sch. No. 5; and, I&E Exhibit No. 3, Sch. No. 2); the direct testimony of Michael V. Petras (I&E Statement No. 2); Gary Mole's signature as President of Franklin on legal documents (I&E Exhibit No. 2, Sch. No. 1); the direct testimony of Roger McAulay (I&E Statement No. 3); and the exhibits supporting Mr. McAulay's direct testimony (I&E Exhibit No. 3, Sch. Nos. 1 and 2).

All of the above referenced documents and direct testimonies contradict all of the defenses raised by Glacial and create genuine issues as to material facts relevant to Glacial's defenses. In fact the Board of Directors' Resolution evidencing Gary Mole's appointment to the Board of Directors of Franklin (I&E Exhibit No. 3, Sch. No. 1) and Gary Mole's signature as President of Franklin (I&E Exhibit No. 2, Sch. No. 1) BOTH

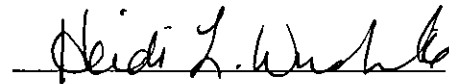
serve to disprove Glacial's verified statement that "at no point did Mr. Mole ever hold an officer or director position in Franklin." *See*, Glacial Answer and New Matter, ¶ 38.

34. Admitted in part, denied in part. It is admitted that as part of Mr. Granger's duties as an Executive Policy Analyst with I&E, Mr. Granger presents expert testimony in matters involving EGS applications. However, to the extent that this paragraph paraphrases I&E's response to Glacial Energy-I&E-16, it is denied. I&E's response to Glacial-I&E-16 speaks for itself.

35. Admitted. By way of further response, I&E Respondent, Scott Granger's contact with the Texas PUC has been to simply access public documents on the Texas PUC website. I&E Legal counsel has also been in contact with the Texas PUC in order to inquire about public documents filed in Texas and request certified copies of documents. *See*, I&E Exhibit No. 1, Sch. Nos. 2, 3 and 6.

**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 deny Glacial's Motion for Summary Judgment.

Respectfully submitted,



Heidi L. Wushinske  
Prosecutor

Attorney # 93792  
717.214.9594

[hwushinske@pa.gov](mailto:hwushinske@pa.gov)

Wayne T. Scott  
First Deputy Chief Prosecutor

Attorney # 29133  
717.783.6150

[wascott@pa.gov](mailto:wascott@pa.gov)

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Date: March 25, 2013

RECEIVED  
2013 MAR 25 PM 2:06  
PA PUC  
SECRETARY'S BUREAU