



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

IN REPLY PLEASE
REFER TO OUR FILE

April 12, 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:

Please find enclosed I&E's Answer to New Matter in the above captioned matter.
Copies have been served on the parties of record in accordance with the Certificate of
Service.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

Counsel for the Bureau of
Investigation and Enforcement

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

**ANSWER TO THE NEW MATTER OF GLACIAL ENERGY OF
PENNSYLVANIA**

AND NOW comes the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") and files this Answer to the New Matter of Glacial Energy of Pennsylvania ("Glacial" or "Respondent"), pursuant to 52 Pa. Code § 5.63. In support thereof, I&E avers as follows:

20. Denied. Question 16 of Glacial's application required it to disclose Mr. Mole's ownership of Franklin Power Company ("Franklin") on the basis that it was instructed to:

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.

It is also denied that Gary Mole's interest in Franklin was an "indirect partial ownership interest." To the contrary, Gary Mole was a director and officer of

Franklin and was directly involved in managing the day-to-day business activities of Franklin.

21. Denied. Question 16 of Glacial's application required it to disclose Mr. Mole's ownership of Franklin on the basis that it was instructed to:

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.

It is also denied that Gary Mole's interest in Franklin was an "indirect partial ownership interest." To the contrary, Gary Mole was a director and officer of Franklin and was directly involved in managing the day-to-day business activities of Franklin.

22. Denied. The responses to Question 16 of the application regarding Mr. Mole's previous affiliations were not accurate. See paragraphs 20-21 above.

23. Admitted in part and denied in part. It is admitted that 66 Pa.C.S. § 2809(b) does not authorize the imposition of penalties against an electric generation supplier (EGS). However, 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.

24. Denied. Glacial's application did not contain such information as the Commission required. See paragraphs 20-21 above.

25. Denied. 52 Pa. Code §1.35(c) empowers the Commission to impose “an appropriate sanction” if a document is signed in violation of this section.

26. Denied. Glacial’s application was not grounded in fact or was signed by a representative of Glacial without adequate knowledge to accurately complete the application, in that Glacial’s vice president signed and verified the application and did not disclose that Gary Mole (Glacial’s Chief Operating Officer) formerly had ownership interests and experience with company(s) that have had certificates revoked, namely Franklin or Energy West Resources, in violation of 52 Pa. Code §1.35(c).

27. Denied. 52 Pa. Code §1.35(c) applies to documents filed with the Commission.

28. Admitted in part and denied in part. It is admitted that no provision of the Public Utility Code or regulations sets forth the specific requirements of a professional resume. However, it is denied that the term “professional resume” requires definition. The term “professional resume,” as it appears in the application, speaks for itself. Furthermore, the term “professional resume” in and of itself provides the applicant with direction as to the content required to be included in the officers’ professional resumes.

29. Denied. I&E lacks sufficient knowledge to admit or deny the allegation contained in Paragraph 29. To the extent a response is necessary, this averment is denied.

30. Denied. I&E lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 30. To the extent a response is necessary, this averment is denied.

31. Denied. The assertions in Paragraph 31 are speculative. The Commission specifically has the authority to deny an applicant under these circumstances and was deprived of the opportunity to do so.

32. Denied. Revocation is the appropriate penalty for failing to disclose information requested on the application, including Mr. Mole's affiliation with Franklin.

33. Admitted. It is admitted that Mr. Mole did not hold shares in Franklin in his name. By way of further answer, Mr. Mole was the sole shareholder of Touchdown Properties, LLC, which in turn owned 60% of Franklin's stock.

34. Admitted. It is admitted that Franklin was previously licensed as a Public Utility Commission of Texas (PUCT)-licensed REP in Texas.

35. Admitted. It is believed that Energy West obtained its REP license in Texas in April of 2003 and that the Franklin Power Company was formed in 2003. This company was formed by Gary Mole, Michael Petras and Roger McAulay.

36. Admitted.

37. Admitted in part and denied in part. It is admitted that Franklin was operating as a PUCT-licensed REP in Texas prior to Touchdown's investment in the company. It is denied that Mr. Mole was purely a passive investor in Franklin. It is also denied that Mr. Mole did not manage Franklin's day-to-day business activities and did not provide the initial capitalization of Franklin.

38. Denied. It is denied that Gary Mole did not manage the day-to-day business activities of Franklin. To the contrary, both Michael Petras and Roger McAulay have stated that Gary Mole was, in fact, actively involved in the day-to-day operations of

Franklin. It is also denied that at no point was Gary Mole ever an officer or employee of Franklin.

39. Denied. It is specifically denied that Gary Mole's interest in Franklin was a "passive financial" interest. Both Michael Petras and Roger McAulay have testified that Gary Mole was in fact actively involved in the day-to-day operations of Franklin. Furthermore, Gary Mole was also a member of the Board of Directors of Franklin. I&E lacks sufficient knowledge to admit or deny the allegations regarding Gary Mole's separate consulting business. To the extent a response is necessary, this averment is denied.

40. Admitted in part and denied in part. The referenced Final Order speaks for itself. It is admitted that the PUCT formally revoked Energy West/Franklin's REP license on July 17, 2006. I&E lacks sufficient knowledge to admit or deny the date on which Franklin ceased operations and requested permission to voluntarily surrender its REP certificate. To the extent a response is necessary, this averment is denied.

41. Denied. I&E lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 41. To the extent a response it necessary, this averment is denied. By way of further answer, it is admitted that the PUCT formally revoked Energy West/Franklin's REP license on July 17, 2006.

42. Admitted.

43. Admitted in part and denied in part. It is admitted that the Commission has not found that Glacial violated the Commission's regulations or consumer protection rules. However, Glacial currently has eight pending complaints before the Commission.

I&E lacks sufficient knowledge to admit or deny the allegations contained in the second sentence of Paragraph 43. To the extent a response is necessary, this averment is denied.


44. Denied. I&E lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 45. To the extent a response is necessary, this averment is denied.

45. Denied. I&E has produced numerous documents showing that Glacial's interpretation of the information requested in the application were incorrect. Specifically, I&E has produced: certified copies of the PUCT Complaints against Energy West d/b/a Franklin, testimony that Gary Mole was directly involved in the day-to-day operations of Franklin, a Board of Directors' Resolution appointing Gary Mole to the Board of Directors of Franklin, and a document containing Gary Mole's signature as President of Franklin.

46. Denied. Paragraph 46 states a legal conclusion that requires no response.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the 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 the Public Utility and Pennsylvania Codes and revoke Glacial's EGS license.

Respectfully submitted,



Heidi L. Wushinske
Prosecutor
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265

Date: April 12, 2013

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to New Matter** dated April 12, 2013, by first class mail, upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):


Served by first class mail

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