BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILLIAM TOWNE,	:	
Complainant	:	
	:	Complaint Docket
v.	:	No: C-2012-2307991
	:	
GREAT AMERICAN POWER, LLC,	:	
Respondent	:	

To: Secretary of the Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

GREAT AMERICAN POWER, LLC'S RESPONSE TO COMPLAINANT'S EXCEPTIONS FILED APRIL 9, 2013

AND NOW, comes Great American Power, LLC (hereinafter "GAP") by and through their attorneys, Jacobson, Julius & McPartland, and hereby files the following response to Complainant's (hereinafter "Towne") Exceptions and in support thereof states as follows.[1]

1. Towne does not object to finding of Fact 24. No clarification is needed. Paragraph 24 of the Findings of Fact speaks for itself and is admitted on the record by Towne. (N.T. 73). Towne was never enrolled nor ever agreed to become a customer of GAP. (N.T. 76).

2. GAP objects to Towne's exception via a Motion to Strike as Towne seeks to admit additional evidence not presented at trial and long past since the record in this case has been closed. Finding of Fact 29 citing to the Notes of Transcript page 76 is accurately stated and taken from the recording Towne provided from the call entered transcribed by the court reporter. Towne went on to state that he did not wish to switch his power and the call ended. *Id.* With his response, Towne inappropriately seeks to add to his testimony to a record that has been long since closed. Mr. Towne had ample opportunity at the hearing and thereafter to clarify and

[1] GAP notes that Towne's Exceptions fail to comply with Pa Code § 5.533(b) in that they are not clearly numbered, and identified. GAP's response out of clarity to this Commission will follow the format used by Towne to state his exceptions.

present his position. GAP therefore respectfully requests that Towne's statement as to what he allegedly understood be stricken.

3. Finding of Fact 32 speaks for itself and was established by the record of the case.

4. For the reasons as set forth in Judge Long's Initial Decision and the fact that Towne suffered no ascertainable loss of money or property, GAP believes that there is no need for further review in this case. .

5. Towne appears to take exception to the ALJ's discussion point that GAP was not using a "fresh" customer list. While it is agreed that 31 days is a commercially reasonable time to scrubbing a list, no scrubbing of the lists in question would have located Towne's telephone numbers. The numbers called by GAP representatives to Towne were not on any Do-Not-Call List. (N.T. 27-28). Towne withdrew his complaints as they related to Do-Not-Call lists at the hearing. (N.T. 28). Therefore the honorable ALJ correctly found no violation of the Consumer Protection Laws or any Commission regulation.

6. Towne does not appear to cite any specific finding of fact or conclusion of that he objects and in fact seems to agree with the findings of the honorable ALJ. Therefore no response is required.

7. GAP does advocate that there is no binding authority in the amount of time a telemarketer has to place a do-not-call request on its internal call list. GAP also advocates a thirty one day grace period as provided by FCC guidance. Nevertheless, any finding of the time that a telemarketer may have is not relevant to the findings by the honorable ALJ. The ALJ specifically held that GAP did not follow its own internal do-not-call procedure and therefore violated Section 2245 of the Telemarketer Registration Act and Commissions' 2010 Interim

Guidelines. Therefore it is not necessary for the Commission to revisit the facts and outcome of the case.

8. Towne was never a consumer of GAP nor was he was he switched to GAP electric services. The telephone calls, which speak for themselves, and other evidence presented in this case establish that Towne was fully aware that he had not switched. In fact, Towne told the telemarketer Kip that he did not want to be switched. Finding of Fact (27-31). Therefore the honorable ALJ correctly found no violation. By way of additional response, it is disingenuous at best for Towne to argue that he believed he was switched to GAP power services when by his own testimony and admission he knew he clearly was not. Towne was never confused about the status of his power provider.

9. GAP incorporates its response in paragraph eight above. Towne lacks standing to advocate the position of a "consumer less savvy". Towne is a bright educated young man who was fully aware that he had turned down the services that GAP tried to market to him.

10. GAP incorporates its responses to Paragraph 8 and Paragraph 9 above as though fully set forth.

11. GAP objects via a Motion to Strike Towne's attempt to introduce new evidence not presented at trial and well after the record of this case was closed by the honorable ALJ. Nevertheless, Towne had the burden to prove his case and he failed to provide of any evidence of call times or that the calls to him were connected. In fact, Towne admitted on the record that during some of the calls that his telephone was in fact turned off. (N.T. 113). Towne was given ample opportunity to prove his case as he read his a prepared statement into the record as a means of testimony. GAP resents any assertion by Towne that a hearing room is not a "safe

environment" to present evidence. Therefore, the honorable ALJ correctly held that GAP did not violate consumer protection laws by abandoning calls.

12. The burden of proof is on Towne to present his case and seek evidence through discovery to do so. GAP responded to the questions and document requests sought by Towne. GAP further denies that it admitted that it fails to keep all documents required by the Telemarketing Sales Rule. It is within the sound discretion of the fact finding ALJ to make her finding in the case based on evidence presented by Towne. The honorable ALJ correctly held Towne failed to meet his burden.

13. GAP incorprorates its response to Paragraph12.

14. GAP incorprorates its response to Paragraph12.

15. GAP incorprorates its response to Paragraph 12. By way of additional response, for some reason Towne seeks to discredit and place blame on the undersigned counsel for his failure to meet his burden in this case. Counsel does not recall ever "laughing out loud" at any assertion made by Towne about discovery or any other aspect in this case. Counsel participated in the discovery conference on October 5, 2012 and GAP provided complete responses to the requests of Towne. By way of additional response, GAP did not initially wish to provide responses to some of the Discovery requested by Towne on the basis that said information was a Trade Secret and if published could cause irreparable harm. It was only after Towne agreed not to publish this information to outside sources that the information was turned over.

16. Towne had every opportunity to request information and GAP provided the responses to the information that was requested and its possession. Furthermore, Towne was aware prior to the hearing that Ginger Lucas, CEO of GAP was to testify. For whatever reason,

Towne did not call Lucas during his case-in-chief but only as a matter of cross examination. (N.T. 131).

It was in fact Towne that failed to turn over documents and information that was requested by GAP during discovery. Specifically, Towne refused to turn over calls that he had recorded to be introduced as evidence during the hearing. Towne rationalized that if he turned over the recordings that GAP would "doctor" or "manipulate" the recordings to its advantage. GAP heard Towne's version of the call recordings he sought to introduce for the first time at the hearing. (N.T. 66-67).

17. GAP fully cooperated in the Discovery process. Any statement to contrary is false and not supported by the record of the case. If Towne thought otherwise he should have pursued the same when he had the opportunity. Towne's request for discovery sanctions is meritless and furthermore is untimely. Towne has waived such argument by failing to bring said motion prior to the closing of the record in this case. To the extent it is even relevant, GAP never misstated the size of the company.

18. GAP once again objects to Towne's exception via Motion to Stike as Towne seeks to admit additional evidence not presented at trial and long past the time the record in this case has been closed. Towne conceded that GAP was not required to register. (Initial Decision at Page 26). For purposes of the law of this case Towne's admission is now the law of the case. Therefore, the honorable ALJ correctly held Towne did not meet his burden regarding his claim for failure to register.

19. GAP incorporates its response in Paragraph 18 as though fully set forth.

20. (A)-(F) While GAP appreciates Towne's desire to "change the scope of deregulation", Towne's argument that a higher penalty is warranted in this case is simply

misplaced and unfair. Towne admits in Paragraph 20(f) that the impact of the threat of the loss of its licenses will have on GAP is substantial. (Towne Exception at Page 9). It is perhaps the threat of the loss of its license that is the largest deterrent in this case. (Initial Decision at Page 31). GAP has interpreted the honorable ALJ's statement as meaning that any violations in the future will likely lead to GAP losing is license to operate. That to GAP would be the end of its ability to do business. This is something that cannot happen if GAP wishes to continue to operate and as such GAP has taken steps to prevent such issues in the future. Those include changing call scripts, increased monitoring, and increased screening of call centers.

Despite Towne's belief to the contrary, GAP is not a large company and the $5,000.00 civil penalty was quite significant to its bottom line. Nevertheless, it is not fair based on the facts of this case that GAP should pay a higher civil penalty merely because Towne believes that it would be a better deterrent to other energy providers. This would be akin to punishing GAP to prevent potential in appropriate conduct of others. This request is simply unfair and not appropriate. Therefore, the honorable ALJ assessed appropriate sanctions based on the facts of the case and no further sanctions are warranted.

21. To the extent relevant, it is disingenuous for Towne to come to the Commission as a claimed unrepresented party. Towne admitted to the undersigned counsel that he was receiving legal advice from counsel during the process but that counsel would not enter their appearance. Furthermore, at no time did GAP or its representatives threaten or in any way show any hostility toward Towne. GAP is disappointed that Towne has made such accusations and further states that we believe they are being made by Towne in an attempt to slander GAP in front of the Commission because he did not achieve his perceived desired result.

It is true that the undersigned counsel informed Towne that he could not recover personally in this matter. In fact, it was developed through discovery and on the record that Towne had recently secured a loan in the amount of $22,000.00 for the installation of solar panels at his home. (N.T. 100-101). Towne on multiple occasions had stated to counsel that he believed he would recover personally. He specifically requested said relief in his initial complaint to the Commission. Said statements were not made to discourage Towne from moving forward in the case but to make clear a legal point in the case. Towne is a bright individual and PHD candidate. It would seem unreasonable to think that Towne failed to understand the adversarial nature of the Commission process when he first sought to bring a complaint. Towne did not come off during the hearing or in discussions leading up to the hearing as easily discouraged or the unknowing consumer/complainant he claims to be.

WHEREFORE, Great American Power, LLC prays this honorable court deny the exceptions and enter the Initial Decision as a Final Decision, and for any other relief the court deems just and appropriate.

Respectfully submitted,

JACOBSON, JULIUS & MCPARTLAND

Date: April 19, 2013

s/Chad J. Julius

Chad J. Julius, 209496
8150 Derry Street
Harrisburg, PA 17111
Phone: 717.909.5858
FAX: 717.909.7788
Counsel for Great American Power, LLC.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILLIAM TOWNE,	:	
Complainant	:	
	:	Complaint Docket
v.	:	No: C-2012-2307991
	:	
GREAT AMERICAN POWER, LLC,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Elizabeth Rhoades, with Jacobson, Julius & McPartland, do hereby certify that on this day I served the within Answer to Exception upon the following persons via the ECF/CM system and/or by depositing a true and correct copy of the same in the United States Mail, first class, postage prepaid:

First –Class Mail
William B. Towne
4243 Glen Lytie Road
Pittsburgh, Pa 15217

DATED: April 19, 2013

s/Elizabeth Rhoades
Elizabeth Rhoades, Paralegal