

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17105-3265**

**William Towne vs Great American
Power LLC**

**Public Meeting - September 26, 2013
2307991 - OSA
Docket No. C-2012-2307991**

**JOINT MOTION OF
COMMISSIONER PAMELA A. WITMER
AND CHAIRMAN ROBERT F. POWELSON**

Before the Public Utility Commission (Commission) today are the Exceptions of William Towne (Mr. Towne or Complainant) to the Initial Decision (I.D.) addressing his formal complaint against Great American Power, LLC (GAP), a licensed electric generation supplier (EGS). In his complaint, Mr. Towne alleged that he was contacted by telephone 14 times in 26 days in an attempt to switch his electricity supplier from Duquesne Light Company (Duquesne) to GAP, and that the marketing techniques used during this time period were misleading and confusing for customers. The Administrative Law Judge (ALJ)'s I.D. sustained the Complaint, in part, and assessed a civil penalty of \$5,000 upon GAP. In response, the Complainant filed Exceptions to the I.D. and GAP filed Reply Exceptions.

We agree with the Office of Special Assistants' proposed recommendation to deny most of the Complainant's Exceptions. We also agree with Complainant's Exception No. 20 that the civil penalty amount of \$5,000 assessed by the ALJ is insufficient given GAP's conduct. In this case, it is factually undisputed that GAP contacted Mr. Towne 14 times over a 26 day period despite repeated requests by the Complainant to stop calling. The ALJ stated that "...the Complainant, and no doubt other customers in the Duquesne Light service territory, were subjected to numerous phone calls by aggressive sales representatives using potentially misleading statements that at the very least created a substantial risk that the consumer would not understand who was calling and that they were enrolling in an electric supply agreement that they would have to opt-out of rather than affirmatively consenting to choose GAP as their independent electric supplier." Therefore, based on the evidentiary record in this proceeding, we recommend the Commission raise the civil penalty against GAP to \$10,000.

We find this conduct by GAP not only troubling but also potentially detrimental to the ongoing enhancements and the ultimate success of Pennsylvania's retail electric market. As we have stated in prior cases, we strongly believe the competitive market can provide consumers with a variety of electric supply products and services, and that consumers do bear some responsibility to make choices that are appropriate for their individual circumstances. However, for those market forces to work, this Commission must continue to send a clear message to EGSs that the egregious and deliberate behavior utilized in this case, including the use of potentially misleading statements that could result in slamming, will not be tolerated.

Furthermore, in cases where the Commission believes that EGSs need increased oversight to ensure adequate compliance with our regulations and statutes, the Commission has imposed conditions upon suppliers' EGS licenses, and we recommend imposing those conditions in this case. Finally, and as the I.D. made clear, there is the potential that other customers were subjected to similar mistreatment by GAP as that experienced by the Complainant. As such, we recommend referring this case to the Commission's Bureau of Investigation and Enforcement (BIE) for further action as may be warranted.

THEREFORE, WE MOVE THAT:

1. The civil penalty assessed in this case against Great American Power, LLC be increased from \$5,000 to \$10,000.

2. GAP's ability to offer, render, furnish or supply electric generation supplier services is subject to the following conditions, which will apply for a term of 18 months from the entry date of this Order. To the maximum extent possible, these conditions shall be construed to be consistent with the Commission's regulations. In the event of a conflict, the following conditions shall control:

- a. In its response to the Commission's Bureau of Consumer Services (BCS) regarding a complaint alleging slamming, improper enrollment or deception, GAP shall provide BCS with copies of the documentation that GAP has supporting its position. The documentation can include written enrollment forms, disclosure statements, audio recordings, third party verification, marketing and sales materials and any other relevant documentation. Failure to provide documentation supporting an enrollment may result in a finding against GAP and possible referral to the Commission's office responsible for enforcement action.
- b. GAP will provide a report the first week of each calendar quarter to staff capturing: (i) the complaints by category; (ii) the resolution for each complaint and (iii) any process improvements/changes, organizational changes, etc. implemented to reduce and/or eliminate similar complaints going forward;
- c. GAP will provide a single point of contact for Commission staff for resolution of consumer inquiries and/or complaints received by BCS.
- d. GAP shall operate in accordance with BCS requirements for complaint management and handling. Notwithstanding the above;
 1. GAP will send a written response, either via electronic mail, regular mail or by facsimile, to the BCS investigator assigned to mediate complaints filed against GAP, within 10 days of receipt of the complaint;

2. GAP will send a written response to the consumer who filed the complaint, within 10 days of receipt of the complaint;
 3. GAP will respond to supplemental or new information referred by BCS, within 10 days of receipt of such information; and
 4. GAP will provide final resolution in writing to BCS and provide the affected consumer with the same resolution.
- e. Not less than sixty days before the expiration of the Term, GAP shall file a status report with the Commission describing its compliance with the Public Utility Code, Commission Orders and Regulations, and the conditions set forth herein. A copy of this status report shall be provided to the Commission's Bureau of Technical Utility Services and the Commission's Bureau of Consumer Services.
4. The Commission's Bureau of Technical Utility Services, with the assistance of the Bureau of Consumer Services and the Law Bureau, shall monitor GAP's compliance with the conditions set forth in this Motion.
 5. Upon receipt of the status report directed in Paragraph 2.e. above, the Bureau of Technical Utility Services, with assistance from the Bureau of Consumer Services and the Law Bureau, shall prepare a Staff recommendation regarding appropriate license conditions after the expiration of the Term. The Commission shall consider the recommendation at a subsequent Public Meeting.
 6. This case be referred to the Bureau of Investigation and Enforcement for further action as may be warranted.
 7. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: September 26, 2013



**ROBERT F. POWELSON
CHAIRMAN**



**PAMELA A. WITMER
COMMISSIONER**