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November 25, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

Re: Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, Through the Bureau of Consumer Protection and Tanya J. McCloskey, Acting Consumer Advocate v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric; Docket No. C-2014-2427656; **ENERGY SERVICE PROVIDERS, INC. d/b/a PENNSYLVANIA GAS & ELECTRIC'S UNOPPOSED MOTION FOR CONTINUANCE OF EVIDENTIARY HEARINGS**

Dear Secretary Chiavetta:

Enclosed please find Energy Service Providers, Inc. d/b/a Pennsylvania Gas & Electric's Unopposed Motion for Continuance of Evidentiary Hearing in the above-captioned matter. Copies will be provided as indicated on the Certificate of Service.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

Todd S. Stewart
Christopher M. Arfaa

CMA/das
Enclosures

cc: Administrative Law Judge Elizabeth H. Barnes
Administrative Law Judge Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY FIRST CLASS U.S. MAIL

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DATED: October 28, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection,
and
TANYA J. McCLOSKEY, Acting Consumer
Advocate,

Complainants,

v.

ENERGY SERVICES PROVIDERS, INC.
d/b/a PENNSYLVANIA GAS & ELECTRIC,
Respondent.

Docket No. C-2014-2427656

UNOPPOSED MOTION FOR CONTINUANCE OF EVIDENTIARY HEARINGS

Respondent, Energy Service Providers, Inc. d/b/a Pennsylvania Gas & Electric (ESPI or “the Company”), by its undersigned attorneys, respectfully moves for continuance of the evidentiary hearings in the above-captioned matter scheduled for December 15-19, 2014, and related due dates. In further support hereof, ESPI states as follows:

I. INTRODUCTION

1. The purpose of this request for continuance is to provide sufficient time for: (i) ESPI’s retrieval, review and analysis of the enrollment documents, customer service notes, billing statements, complaint resolution records and audio recordings pertaining to the two hundred and thirty-five (235) customers the Joint Complainants intend to call at the December 15-19, 2014 hearings in this matter; (ii) ESPI’s determination whether to waive cross examination for some of those witnesses and its preparation for cross examining the remainder;

(iii) the parties' development of efficient procedures for the logistics associated with telephonic evidentiary hearings of scores of witnesses; and (iv) the continuation of timely, meaningful settlement discussions among the parties.

2. Counsel for the Joint Complainants and the Intervenors have authorized the undersigned to represent that they do not oppose this motion.

II. BACKGROUND

3. On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as "the Joint Complainants") filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against the Company at Docket Number C-2014-2427656. The Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by ESPI, including approximately 23 formal complaints filed by consumers at the Commission. The Joint Complainants made several requests for relief, including providing restitution and prohibiting deceptive practices in the future. The Joint Complainants provided several attachments to their Complaint.

4. On July 10, 2014, ESPI filed an Answer and New Matter in response to the Complaint. In its Answer, ESPI admitted or denied the various averments made by the Joint Complainants. In particular, ESPI specifically denied that any of its actions violated Pennsylvania law or the orders and regulations of the Commission. In its New Matter, ESPI averred, among other things, that the Commission previously reviewed and approved ESPI's Disclosure Statement and that at all times during the period covered by the allegations in the Complaint, ESPI's pricing was consistent with the Disclosure Statement, except to the extent that

ESPI voluntarily absorbed extremely high wholesale electricity prices. ESPI averred thirteen affirmative defenses and concluded by requesting that the Commission dismiss the Complaint with prejudice.

5. Also on July 10, 2014, ESPI filed Preliminary Objections in response to the Complaint. In its Preliminary Objections, ESPI sought dismissal of each Count of the Complaint for various reasons, including insufficient specificity, lack of Commission jurisdiction and legal insufficiency. On July 21, 2014, the Joint Complainants filed an Answer to ESPI's Preliminary Objections asserting that ESPI's Preliminary Objections are unsupported and should be overruled. The Joint Complainants added that it is clear and free from doubt that the Joint Complaint is sufficiently pleaded and seeks that the Commission make determinations pursuant to its jurisdiction and powers. On July 30, 2014, the Joint Complainants filed an Answer to ESPI's New Matter. In its Answer, the Joint Complainants specifically denied the averments made in ESPI's New Matter, including that the Commission reviewed and approved ESPI's Disclosure Statement and denied that the stated information in any way absolves ESPI of the violations alleged in the Complaint. On August 20, 2014, an Order was issued granting in part and denying in part ESPI's Preliminary Objections. Six Counts of the Complaint were stricken in part.

6. On August 25, 2014, an Initial Prehearing Conference was convened where various procedural issues were discussed. Following the Initial Prehearing Conference, Procedural Order #2 was issued establishing the following: (1) that the Joint Complainants would submit written direct testimony of consumer witnesses it intends to present in this proceeding by Friday, November 7, 2014; (2) that the evidentiary hearings for purposes of admitting the written direct testimony of the consumer witnesses subject to cross examination

and timely objections will be held on December 15-19, 2014; and (3) a Further Prehearing Conference will be held in this matter on January 8, 2015.

7. In September, 2014, ESPI and the Joint Complainants initiated discussions to explore the possibility of settlement of this matter. These discussions are ongoing.

8. On October 20, 2014, ESPI filed a Motion in Limine requesting entry of an order providing that evidence of the allegations of any formal complaints for which ESPI has filed Certificates of Satisfaction without objection is inadmissible in this matter, and that no such evidence shall be introduced or admitted either directly (e.g., testimony of the formal complainants) or indirectly (e.g., referenced in expert testimony, cross examination or briefs). On November 10, 2014, the Joint Complainants filed an answer in opposition to the Motion in Limine.

9. On October 31, 2014, an informal, off-the-record conference call was held amongst the parties and the Presiding Officers regarding various procedural matters. During the conference call, a lengthy discussion was held regarding the logistics for the hearings scheduled for December 15-19, 2014. On November 3, 2014, Procedural Order #3 was issued establishing the following: (i) that the parties are directed to coordinate the most efficient means for admitting the pre-served consumer testimony into the record, subject to cross examination and timely objections, including entering into any stipulations or waiving the need for cross examination; (ii) that ESPI will indicate to the Presiding Officers and other parties no later than December 1, 2014 which customers it intends to cross-examine; (iii) that ESPI will file no later than December 8, 2014 any Motions to Strike pre-served consumer testimony; (iv) that ESPI will circulate to the Presiding Officers and the other parties no later than December 10, 2014 the exhibits it intends to use during the evidentiary hearings; and (v) that the parties are encouraged

to continue settlement discussions and are directed to advise the Presiding Officers of all future settlement activity.

10. On November 5, 2014, the Joint Complainants identified, for the first time, two hundred and forty-nine alleged customers of ESPI for whom Joint Complainants anticipated submitting testimony. On November 7, 2014, the Joint Complainants served the Direct Testimony of two hundred and thirty-five (235) alleged customers of ESPI (the Customer Direct Testimony).¹ The Customer Direct Testimony, including exhibits, comprises 1365 pages in six (6) bound volumes.

III. ARGUMENT

11. Requests for continuance may be granted by the presiding officer "for good cause" under Section 1.15 of the Commission's regulations, 52 Pa. Code § 1.15. The Commission has held that good cause exists where the movant has acted diligently in preparing its case but requires additional time to prepare and present its case adequately. *See, e.g., Pa. P.U.C., Bureau of Transp. and Safety v. USA Express Moving & Storage, Inc.*, No. A-00117215C0701, 2010 WL 1458129 (Pa. P.U.C. Apr. 8, 2010); *Petition of UGI Utilities, Inc.—Gas Div. for an Extension of Time*, No. P-00072269, 2007 WL 1307904 (Pa. P.U.C. Apr. 24, 2007). Good cause exists to grant ESPI's request for continuance.

12. **First**, ESPI and its counsel have worked and continue to work diligently to prepare for the scheduled December 15-19, 2014 hearing. Such preparation requires the investigation and analysis of all of the allegations asserted by each of the 235 customers in the Customer Direct Testimony. This in turn requires the retrieval, review, synthesis and evaluation

¹ The customers for whom Joint Complainants have served testimonies include not only individual consumers but also some governmental units, small businesses and churches.

of a large number of records relating to all of the 235 customers submitting testimony, including customer service notes, mailing records, billing records, complaint resolution records, and audio records of sales calls and third party verifications. ESPI notes that some of the relevant audio records are more than 30 minutes long in total duration. A continuance will allow ESPI to complete its investigation and analysis of the 235 witnesses' testimony in a thorough manner.

13. *Second*, the determination whether to waive cross examination of a customer witness prior to presentation of the testimony requires particularly thorough investigation and analysis. ESPI is using its best efforts to make such determinations by the December 1, 2014 due date. To the extent ESPI is unable to complete its investigation and analysis with respect to particular witnesses by that date, it will be unable to waive cross examination of those witnesses, thus requiring hearing time to be reserved for that purpose, until the eve of hearings. A continuance will ensure that ESPI completes its review of the 235 witness testimonies in time to determine whether to waive cross examination before the witness hearing schedule is formulated. This, in turn, will conserve hearing time, reduce confusion, and minimize inconvenience to the witnesses.

14. *Third*, a continuance will ensure adequate hearing time for the orderly presentation and cross examination of witnesses. Assuming that it will take an average of 20 minutes for each witness to appear telephonically, be sworn, authenticate her or his statement and exhibits, and be cross examined, it would take approximately 78 hours – nearly ten days of hearings (assuming eight hours hearings per day not including breaks) – for all 235 customer witnesses to appear and be cross examined. Even if ESPI were to waive authentication and cross examination with respect to 100 customer witnesses, it would take more than the five days of hearings currently scheduled for the remaining 135 witnesses to appear and be cross examined

(again assuming 20 minutes per witness and eight hours of hearings per day not including breaks).

15. *Fourth*, although ESPI and the Joint Complainants have had constructive discussions exploring the possibility of settlement, the parties have in effect had to put their discussions on hold in order to prepare for the examination and cross examination of the 235 witnesses presenting the Customer Direct Testimony during the week of December 15-19, 2014. A continuance will allow the parties to dedicate adequate resources to exploring the possibility of settlement without the competing demands of simultaneous hearing preparation.

16. In view of the parties' schedules, what is known of the Presiding Officers' schedules in other matters, and the impending holiday season, ESPI submits that the week starting on March 2, 2015, appears to be a convenient time for rescheduling the evidentiary hearings for presentation of the Customer Direct Testimony and associated cross examinations.

17. Upon granting of the continuance, ESPI will communicate with the other parties to reschedule the due dates for service of cross examination waivers, motions to strike and hearing exhibits.

IV. CONCLUSION

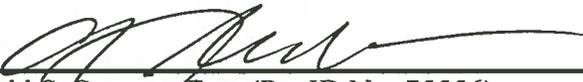
18. For all of the foregoing reasons, ESPI respectfully requests the Presiding Officers enter an ORDER providing:

- a. That ESPI's unopposed Motion for continuance is granted;
- b. That the evidentiary hearings currently scheduled for December 15-19, 2014 are continued until March 2, 2015, whereupon they shall continue from day to day until completed;

- c. That the parties shall confer and submit to the Presiding Officers a joint stipulation of new due dates for service of cross examination waivers, motions to strike and hearing exhibits within ten (10) days of issuance of the Order; and
- d. Such other relief as may be just.

Respectfully submitted,

DATED: November 25, 2014



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