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January 26, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (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 FURTHER
PREHEARING CONFERENCE MEMORANDUM**

Dear Secretary Chiavetta:

Enclosed for electronic filing, please find Energy Service Providers, Inc. d/b/a
Pennsylvania Gas & Electric's Further Prehearing Conference Memorandum 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

TSS/jld
Enclosure

cc: Administrative Law Judge Elizabeth Barnes (by email and first class mail)
Administrative Law Judge Joel H. Cheskis (by email and first class mail)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true and correct copy of the foregoing document on the persons listed below by the means indicated:

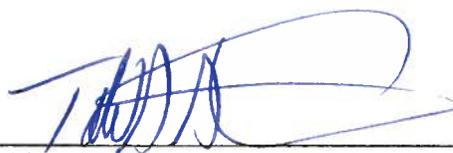
VIA ELECTRONIC AND FIRST CLASS MAIL

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DATED: January 26, 2015

**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

**FURTHER PREHEARING MEMORANDUM OF
ENERGY SERVICES PROVIDERS, INC. d/b/a
PENNSYLVANIA GAS & ELECTRIC**

Pursuant to 52 Pa. Code §§ 5.221, 5.222 and 5.223, and in response to the Presiding Officers' January 8, 2015 e-mail message, Respondent, Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric ("ESPI"), by its undersigned attorneys, submits this Further Prehearing Memorandum for consideration by the Presiding Officers.

I. BACKGROUND

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 ESPI 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.

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. Also 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.

On July 21, 2014, the Joint Complainants filed an Answer opposing ESPI's Preliminary Objections. 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.

On August 25, 2014, an Initial Prehearing Conference was convened by the Presiding Officers where various procedural issues were discussed. Following the Initial Prehearing Conference, Procedural Order #2 was issued establishing (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 would be held on December 15-19, 2014; and (3) a Further Prehearing Conference would be held in this matter on January 8, 2015.

On September 2, 2014, ESPI filed a Petition for Interlocutory Review and Answer to Material Question with the Commission requesting that the Commission conclude that it does not have jurisdiction or authority to Order Electric Generation Suppliers to issue refunds. The Joint Complainants filed a brief in opposition on September 12, 2014, and filed their own Petition for Interlocutory Review and Answer to Material Question on September 8, 2014. Commission decisions on these matters are pending. However, to the extent that decisions in similar cases have any weight, the Commission has concluded in other matters that it indeed

lacks jurisdiction under 66 Pa. C.S. § 1312, to order refunds and otherwise acknowledges that its refund authority is limited.

On October 31, 2014, an informal, off-the-record conference call was held amongst the parties and the Presiding Officers regarding various procedural matters, including the logistics for the hearings scheduled for December 15-19, 2014. On November 3, 2014, Procedural Order #3 was issued confirming matters agreed to during the informal conference call and establishing (1) that the parties would 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; (2) that ESPI would indicate to the Presiding Officers and other parties no later than December 1, 2014 which customers it intends to cross-examine; (3) that ESPI would file no later than December 8, 2014 any Motions to Strike pre-served consumer testimony; (4) that ESPI would 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 (5) that the parties were encouraged to continue settlement discussions and directed to advise the Presiding Officers of all future settlement activity.

On November 7, 2014, the Complainants pre-served the written testimony and exhibits of 235 ESPI customers and former customers whom Complainants intend to call as witnesses in this matter.

On November 25, 2014, ESP filed an Unopposed Motion for Continuance of Evidentiary Hearing scheduled for December 15-19, 2014, in part to provide the parties with time to engage in settlement discussions. In light of the time sensitive nature of ESPI's Motion, the Motion was granted preliminarily via email on November 26, 2014. On December 5, 2014, a formal Order

Granting Motion for Continuance was issued (1) granting the Motion for Continuance; (2) cancelling the evidentiary hearings scheduled for December 15-19, 2014 and rescheduling them for February 24-27, 2015; (3) cancelling the Further Prehearing Conference scheduled for January 8, 2015; (4) directing the parties 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; (5) directing ESPI to indicate to the Presiding Officers and other parties no later than January 19, 2015 which customers it intends to cross-examine; (6) directing ESPI to circulate to the Presiding Officers and the other parties no later than February 13, 2015 the exhibits it intends to use during the evidentiary hearings; (7) directing ESPI to file no later than February 6, 2015 any Motions to Strike pre-served consumer testimony; (8) advising the parties that it is unlikely that a further continuance of these evidentiary hearings will be granted, absent exigent circumstances; and (9) encouraging the parties to continue settlement discussions and directing them to advise the Presiding Officers of all future settlement activity.

On January 8, 2015, the Presiding Officers advised the parties by e-mail that further prehearing conferences would be held on January 27, 2015 to establish dates for the remainder of the litigation schedule, including the submission of pre-served expert testimony, hearings and briefs, as well as to discuss additional specifics for the evidentiary hearings already scheduled in both cases for the purpose of admitting the pre-served consumer testimony subject to cross-examination and timely motions.

On January 12, 2015, ESPI served a Notice of Deposition by Written Questions and Written Deposition Questions on each of the customer witnesses for whom the Joint

Complainants had pre-served written testimony.¹ The purpose of this discovery is, in part, to reduce or eliminate the amount of time required for cross examination of the customer witnesses. The Questions allowed the deponents to certify their answers by verifying them subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) in order to save the expense and inconvenience of notarization, and the Notice stated a return date of 30 days after service.

On January 19, 2015, ESPI informed the Presiding Officers and the parties that it intends to cross-examine each customer witness called by the Joint Complainants to testify at the hearings in this matter.

The parties' settlement discussions are continuing.

II. ISSUES

A. Customer Witness Testimony

1. Additional hearings will be required for customer testimony.

The hearings scheduled to be held on February 24-27, 2015, are reserved for the testimony of the 235 customer witnesses for whom the Joint Complainants have pre-served written testimony. For each customer witness, time must be allotted to (1) establish telephonic contact with the witness, (2) administer the oath to the witness, (3) have the witness adopt his or her pre-served testimony and exhibits, (4) set up and play recordings of sales and/or third party verification calls with the witness, (5) cross-examine the witness, (6) address any motions to strike on grounds arising during cross-examination, and (7) conduct any redirect examination of the witness on matters raised on cross. ESPI estimates that the average amount of time required

¹ Due to an administrative error, the written deposition questions were inadvertently not served on the other parties until January 16, 2015., when the error was brought to the attention of counsel.

for each witness is approximately 30 minutes.² Given the time that will be consumed each day for administrative matters, necessary rest breaks, the lunch recess, telephonic delays, etc., it seems reasonable to expect six hours per hearing day to be available for the taking of testimony, which will allow examination of an average of twelve customer witnesses each day. This means that it is reasonable to expect that only 48, or roughly 20%, of the identified customer witnesses will be able to testify during the currently-scheduled four days of hearings.³

Assuming the Joint Complainants call any substantial fraction of the 235 witnesses for whom they have pre-served written testimony, it is clear that additional hearings will be required for customer testimony as well as for the testimony of the Joint Complainant's expert witnesses and ESPI's fact and expert witnesses. The customer testimony logically should be completed first, since both ESPI's responsive testimony and both parties' experts' testimony will depend, in part, on the customer testimony and exhibits actually admitted into the record on direct and cross examination.

2. Order of appearance of customer witnesses.

Establishing some sort of order of appearance for the 235 customer witnesses in advance of the hearings is essential to meaningful preparation of cross-examination (and cross-examination exhibits) and to ensuring the efficient use of hearing time. It would be manifestly unreasonable to require ESPI to prepare to cross-examine 235 witnesses and produce its cross examination exhibits for those witnesses prior to the currently-scheduled hearings, when only 50 or so witnesses will actually be called. At the same time, the logistics of scheduling a large number of customer witnesses for telephonic appearances during the work week would likely

² ESPI previously estimated an average of 20 minutes per witness. On reflection, 30 minutes seems more realistic.

³ Even if only 20 minutes were, on average, required for each witness, and a full seven hours were available each day for testimony, only 84 witnesses, or roughly 36%, could be heard in the time allotted.

preclude establishing a precise order of appearance at this time. To accommodate both of these concerns, ESPI requests that the Joint Complainants be directed (1) to indicate to the Presiding Officers and the parties which fifty (50) witnesses they will present during the hearings scheduled for February 24-27, 2015, weekly, beginning immediately, as those witnesses are scheduled and that a complete and final list be provided no later than February 10, 2015; and (2) to provide each day's witness list no later than five (5) prior to the hearing (for example, the list of witnesses to be called on Tuesday, February 24, 2015, would be due in-hand on Thursday, February 19, 2014).

3. Cross-examination exhibits.

Procedural Order #3 directs ESPI to serve copies of the cross-examination exhibits we intend to use during the February 24-27 hearings by February 13, 2015. ESPI will do so for the 50 witnesses scheduled to testify during those four days. However, it would be burdensome and unnecessary to require ESPI simultaneously to select and produce cross-examination exhibits for witnesses who will not testify during the February 24-27 hearings. ESPI therefore proposes that cross-examination exhibits for all customer witnesses be provided on a similar schedule - that is, at least ten (10) days before the first day the witness is scheduled to testify.

4. Confidentiality

In order to protect customer information and proprietary company information, ESPI requests that the hearings in this matter be closed to the public and that the transcripts and exhibits be treated as "confidential" and "proprietary" information under and subject to the protective order currently in place.

B. Further Hearings

As is evident from the above discussion, additional hearing days will be required to receive customer testimony if the Joint Complainants present all 235 of the customers for whom

they have pre-served written testimony. To ensure sufficient hearing time, ESPI recommends that eight (8) additional days of hearings be scheduled for examination of customer witnesses. The number of additional hearing days can be adjusted at a later time in light of experience after the customer witness hearings scheduled for February 24-27, 3015.

Apart from the additional hearing days required for customer testimony, ESPI submits that the cross-examination of Complainants' expert witnesses and the oral surrebuttal and cross examination of ESPI's witnesses will likely consume at least three hearing days. If after reviewing the pre-served, written testimony the parties believe more hearing time is required, they will notify Your Honors.

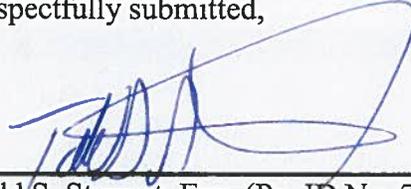
C. Proposed Schedule

Joint Complainant begin providing weekly list of scheduled witnesses	January 30, 2015
Joint Complainants serve final list of customer witnesses to be called at Feb. 24-27 hearings	February 10, 2015
ESPI serves any motions to strike pre-served customer witness testimony/Joint Complainants serve motion, if any, regarding "pattern and practice".	February 12, 2015
ESPI serves copies of exhibits it intends to use during cross examination of 50 customer witnesses scheduled for Feb. 24-27 hearings	February 13, 2015
Initial Customer Witness Hearings	February 24-27, 2015
Additional Customer Witness Hearings	[8 days tbd]
Complainants' Expert Direct Testimony served	May 1, 2015
ESPI Direct Testimony served	June 12, 2015
Complainants' Rebuttal Testimony served	July 13, 2015
ESPI Provides outline of surrebuttal	July 20, 2015
Hearings (including ESPI oral surrebuttal)	July 22-24, 2015

III. CONCLUSION

ESPI respectfully requests the adoption of procedures consistent with the positions stated above.

Respectfully submitted,



DATED: January 26, 2015

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