

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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January 26, 2015

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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,  
Complainants

v.

Energy Services Providers, Inc. d/b/a Pennsylvania Gas &  
Electric

Respondent

Docket No. C-2014-2427656

Secretary Chiavetta:

Enclosed please find the Joint Objections of the Commonwealth of Pennsylvania and the Office of Consumer Advocate to Depositions By Written Examination of Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric Served on Joint Complainants' Consumer Witnesses, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Handwritten signature of Candis A. Tunilo in cursive.

Candis A. Tunilo

Assistant Consumer Advocate  
PA Attorney I.D. #89891

Enclosures

cc: Honorable Elizabeth Barnes, ALJ  
Honorable Joel Cheskis, ALJ  
Certificate of Service

\*185180

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection	:	
	:	
And	:	Docket No. C-2014-2427656
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate	:	
	:	
Complainants	:	
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC. d/b/a	:	
PENNSYLVANIA GAS & ELECTRIC	:	
Respondent	:	

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**JOINT OBJECTIONS OF THE COMMONWEALTH OF PENNSYLVANIA AND THE  
OFFICE OF CONSUMER ADVOCATE TO DEPOSITIONS BY WRITTEN  
EXAMINATION OF ENERGY SERVICES PROVIDERS, INC. d/b/a PENNSYLVANIA  
GAS & ELECTRIC SERVED ON JOINT COMPLAINANTS' CONSUMER WITNESSES**

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Pursuant to 66 Pa. C.S. § 333 and 52 Pa. Code §§ 5.345(c) and 5.437, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (Attorney General) and the Office of Consumer Advocate (OCA) (collectively Joint Complainants) submit these Objections to the Depositions by Written Questions that Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E or the Company) served upon Joint Complainants' consumer witnesses.

**I. INTRODUCTION**

On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Public Utility Commission (Commission) pursuant to, *inter alia*, the Public Utility Code, 66 Pa. C.S. Ch. 28, and the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111. Pursuant to the partial

litigation schedule adopted by Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) at the Prehearing Conference on August 25, 2014, Joint Complainants served the direct testimony of its consumer witnesses on the ALJs and parties on November 7, 2014. Hearings for cross-examination of Joint Complainants' consumer witnesses were scheduled for December 15-19, 2014. PaG&E filed a Motion for Continuance of the Hearings on November 25, 2014, and in support of the Motion, identified the need for additional time to review the consumer direct testimony in order to prepare for hearings and investigate whether cross of any consumers could be waived. PaG&E's Motion was granted by Order dated December 5, 2014, and the hearings were rescheduled for February 24-27, 2015.

The parties have continued to exchange discovery and have engaged in ongoing settlement discussions since PaG&E's filing of the Motion for Continuance. By e-mail dated January 8, 2015 at 4:25 p.m., sent to all counsel in the above captioned proceeding, counsel for PaG&E stated in relevant part:

The purpose of this email is to address several issues that have come up as we prepare for the first set of hearings in this matter.

First, we wanted to give you advance notice that we have tentatively decided to cross-examine all of the customer witnesses whom you have identified, and that we intend to notify the ALJs and parties of that decision on January 19, 2015, per the Third Procedural Order.

Second, please be advised that we intend to conduct depositions by written questions of each customer witness pursuant to 52 Pa. Code § 5.345. We hope thus to reduce the hearing time required for cross-examination.

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We suggest that a call among counsel for the parties be held in the near future to discuss these procedures. Thank you for your consideration.

The parties did not schedule a call specifically to discuss these issues identified in the January 8<sup>th</sup> e-mail; however, the parties already had a settlement conference call scheduled for January 16, 2015, at which time it was assumed the parties would also discuss the hearing procedures outlined in counsel's email.

Even though a call had not yet taken place, on or about January 12, 2015, PaG&E served Notices of Deposition by Written Questions and Depositions upon nearly all of the consumer witnesses from whom Joint Complainants submitted written testimony. Joint Complainants became aware that the Notices and Depositions were served, when a consumer contacted the OCA about the documents on January 16, 2015. Joint Complainants inquired of counsel for PaG&E about the Notices and Depositions during the conference call on January 16, 2015. Joint Complainants asked PaG&E, *inter alia*, why PaG&E had not served Joint Complainants with the Notices and Depositions. Soon thereafter, PaG&E sent a temporary link to view the documents online via email and indicated that paper copies would follow. See Appendix A attached hereto.<sup>1</sup> Thereafter, on January 21, 2015, Joint Complainants were served with paper copies of the Notices and Depositions.<sup>2</sup>

Joint Complainants continue to receive calls from consumers that received PaG&E's Notices and Depositions. On January 22, 2015, Joint Complainants contacted PaG&E counsel and advised that they intended to request an emergency discovery conference call with the ALJs regarding Joint Complainants' objections to PaG&E's Notices and Depositions. Thereafter, on January 22, 2015, Joint Complainants sent their request for an emergency discovery conference

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<sup>1</sup> The OCA was not able to access the documents through the link provided in the email. Counsel for the Office of Small Business Advocate (OSBA) also indicated that she could not access the documents through the link. PaG&E was advised of the problem with the link on January 21, 2015.

<sup>2</sup> On January 22, 2015, PaG&E filed an updated Certificate of Service with the Secretary of the Commission indicating that service of the Notices and Depositions was made on Joint Complainants' consumer witnesses on January 12, 2015, and service was made on Joint Complainants and other parties on January 16, 2015.

call and the basis of their objections to PaG&E's Notices and Depositions to the ALJs and parties. The ALJs directed that the objections would be discussed at the Further Prehearing Conference on January 27, 2015.

Joint Complainants object to the Notices and Depositions for several reasons. First, the Public Utility Code requires that a party seeking to take a deposition by written questions apply to the ALJs for an order to do so. See 66 Pa. C.S. § 333(b)(2). PaG&E did not apply for or obtain such order. Second, the Notices and Depositions were served without proper notice or service to Joint Complainants and other parties. See 52 Pa. Code § 5.345(a). Third, the Depositions seek information that is beyond the permissible scope of discovery, as many of the questions seek information that is not relevant to a claim or defense in this matter and not reasonably calculated to lead to admissible evidence. See 52 Pa. Code § 5.321(c). Next, the Depositions would cause unreasonable annoyance, embarrassment or burden to the deponents because many questions seek deeply personal information that has nothing to do with the consumer's dealings with PaG&E or electric generation supply. These questions seek to annoy, embarrass and harass the consumer witnesses in violation of 52 Pa. Code § 5.361(a). Last, PaG&E is beyond the permissible timeframe to serve the Depositions because the parties would not have the opportunity for cross and reply questions as provided in the regulation prior to the hearings for cross-examination of the consumer witnesses. See 52 Pa. Code § 5.345(a).

Joint Complainants submit that an expedited ruling on these Objections is necessary so that Joint Complainants may answer consumers' questions regarding whether they are obligated to answer the Depositions. Joint Complainants request that the Administrative Law Judges sustain these Objections and direct that Joint Complainants' consumer witnesses not be required to answer PaG&E's Depositions by Written Questions. Further, Joint Complainants respectfully

request that the ALJs direct PaG&E to immediately forward any responses received from Joint Complainants' witnesses directly to Joint Complainants without opening or reviewing the responses.

## II. OBJECTIONS

A. PaG&E Improperly Served the Notices and Depositions by Written Questions without Seeking or Obtaining an Order from the ALJs in Violation of Section 333(b) of the Public Utility Code.

By email on January 8, 2015, PaG&E notified Joint Complainants and other parties that it intended to conduct Depositions by Written Questions on Joint Complainants' consumer witnesses and requested a conference call to discuss this matter. PaG&E claims that the vague email constitutes proper notice to Joint Complainants of its intention to directly contact Joint Complainants' witnesses and instruct the witnesses to answer the questions, verify them, and return them to PaG&E. The Public Utility Code, however, requires that PaG&E apply to the ALJs for an order allowing PaG&E to depose Joint Complainants' consumer witnesses. Specifically, the Public Utility Code states:

**(b) Depositions.**—A party to the proceeding shall be able to take depositions of witnesses upon oral examination or written questions for purposes of discovering relevant, unprivileged information, subject to the following conditions:

(2) The party seeking to take a deposition shall apply to the presiding officer for an order to do so.

66 Pa. C.S. § 333(b).

Section 333(b) is clear and unequivocal that an order is required prior to noticing and taking of depositions. PaG&E did not apply to the ALJs for an order allowing depositions by

written questions of Joint Complainants' consumer witnesses.<sup>3</sup> As such, PaG&E served the Notices and Depositions on the consumer witnesses in violation of the Public Utility Code, and the Notices and Depositions should be quashed. Further, Joint Complainants submit that PaG&E should not be permitted to further its violation of the Public Utility Code by reviewing or retaining any Deposition responses it may receive from Joint Complainants' consumer witnesses. Joint Complainants, therefore, request that the ALJs also direct PaG&E not to open any responses received and immediately forward such responses to Joint Complainants.

B. PaG&E Failed to Properly Serve the Notices and Depositions by Written Questions on Joint Complainants and Other Parties.

PaG&E served the Notices and Depositions on Joint Complainants' consumer witnesses on January 12, 2015. Joint Complainants learned of this on January 16, 2015, when a consumer contacted the OCA with questions about the Deposition. That same day, Joint Complainants inquired about the Depositions with PaG&E and requested copies of the Notices and Depositions. In response to the request, PaG&E attempted to serve Joint Complainants and the other parties by email on January 16, 2015.<sup>4</sup> PaG&E also mailed hard copies of the Notices and Depositions to Joint Complainants and other parties on January 16, 2015. PaG&E filed a Certificate of Service with the Commission's Secretary on January 22, 2015, confirming these dates of service. Joint Complainants received the hard copies on January 21, 2015.

Section 5.345 of the Commission's regulations regarding discovery require that a party taking a deposition by written questions serve a copy of the questions "upon each other party or

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<sup>3</sup> Also of note, Section 333(b)(7) states that an order to take a deposition shall be enforceable through the issuance of a subpoena ad testificandum. See 66 Pa. C.S. § 333(b)(7). In the absence of a subpoena requiring them to do so, Joint Complainants' consumer witnesses are not required by law to answer PaG&E's Depositions.

<sup>4</sup> The OCA was not able to access the documents through the January 16, 2015 email. OSBA also reported that it was not able to access the documents through the email.

his attorney of record.” 52 Pa. Code § 5.345(a). Although PaG&E *eventually* served Joint Complainants and the other parties with the Notices and Depositions, Joint Complainants submit that PaG&E violated Section 5.345(a) because PaG&E served the documents only because Joint Complainants asked PaG&E to do so.

For PaG&E’s failure to properly serve the Notices and Depositions in violation of 52 Pa. Code § 5.345(a) and the other reasons discussed herein, the Notices and Depositions should be quashed. Further, Joint Complainants submit that PaG&E should not be permitted to further its violation of the Commission’s regulations by reviewing or retaining any Deposition responses it may receive from Joint Complainants’ consumer witnesses. Joint Complainants, therefore, request that the ALJs also direct PaG&E not to open any responses received and immediately forward such responses to Joint Complainants.

C. PaG&E’s Depositions by Written Questions Seek Information that Is Beyond the Permissible Scope of Discovery.

Section 333(b) permits depositions by oral examination or written questions “for purposes of discovering relevant, unprivileged information.” 66 Pa. C.S. § 333(b). Additionally, the Commission’s regulations define the scope of discovery as follows:

- (c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

PaG&E's Depositions by Written Questions to Joint Complainants' consumer witnesses

contain questions such as:

Q3 What jobs have you held during the past ten years?

Q4 Have you ever been a plaintiff or defendant in a lawsuit? If so, please identify each lawsuit by caption (party names), court, and docket number.

Q5 Have you ever filed a formal or informal complaint with Pennsylvania Public Utility Commission? If so, please identify every such formal and informal complaint by company complained of, the docket number, and the date filed.

Q6 Have you ever been arrested for, charged with or convicted of a crime, other than a summary offense? If so, please describe each such crime and the circumstances leading to the arrest, indictment, information, criminal complaint or conviction.

Q7 Have you ever been adjudicated as an incompetent or has been involuntarily committed to a mental institution?

Q8 Are you legally residing in the United States?

Q9 Have you ever served in the United States Armed Forces? If so, was your discharge other than honorable?

Q10 Have you ever applied for or received a variable rate mortgage to purchase a home? finance the purchase of real property.

Q11 Have you ever applied for or received a variable rate home equity loan?

Q12 Have you ever applied for or received a variable rate line of credit?

Q13 Have you ever applied for or received a credit or charge card account with a variable rate? If so, identify the issuer of the card.

Q14 Have you ever applied for or received a variable rate annuity?

Q15 Please list every other variably-priced product and service you have purchased or subscribed to within the past five years.

Q16 Please identify each and every electric generation supplier from which you have taken service during the past five years.

Q19 Please list the dates of all communications between you and the Pennsylvania Office of Attorney General and/or the Pennsylvania Office of Consumer Advocate.

Q20 Do you have any notes or other writings memorializing the communications between you and the Pennsylvania Office of Attorney General and/or the Pennsylvania Office of Consumer Advocate? If the answer is “yes,” please describe the contents of all such notes or other documents (use an additional sheet if necessary). In the alternative, you may answer this question simply by enclosing copies of the bills with your other answers.

See Depositions by Written Questions, which are attached hereto as Appendix B.

Joint Complainants’ allegations in the Joint Complaint relate solely to PaG&E’s marketing and billing practices for electric generation supply in the Commonwealth. As such, questions relating to Joint Complainants’ work history, litigation and criminal history, military service, mental health, and citizenship status have no relevance to a claim or defense in this matter, and they are not reasonably calculated to lead to admissible evidence as is required by Section 5.321(c). See also 66 Pa. C.S. § 333(b).

Furthermore, the ALJs have already held that discovery seeking additional details about contacts and complaints about variable rates of other EGSs is not relevant and will not lead to admissible evidence in a complaint regarding the marketing a billing practices of an EGS. See Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection and TANYA J. McCLOSKEY, Acting Consumer Advocate v. IDT Energy, Inc., Docket No. C-2014-2427657, Order Denying IDT Energy, Inc. Motion to Compel at 7 (Sept. 8, 2014) (IDT Discovery Order). Specifically, the ALJs stated:

Materials and practice of other EGSs have no relevance to whether IDT’s materials and practices violate the Public Utility Code. Even if it was determined that IDT’s materials and practices were similar to those of other EGSs that would not be a reasonable defense to the averments in the Complaint. As the Joint Complainants noted in their Answer to IDT’s Motion, IDT’s argument regarding “pattern and practice” should be rejected because the “pattern and practice” at issue in this proceeding is IDT’s pattern and practice, as opposed to other EGSs’

pattern and practice. The “wide latitude” that IDT requests in its Motion to Compel is a “fishing expedition” that is prohibited in discovery. Land v. State Farm Mutual Ins. Co., 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991).

IDT Discovery Order at 7.<sup>5</sup>

Again, the Joint Complaint against PaG&E in this proceeding is likewise limited solely to the marketing and billing practices of PaG&E as an EGS licensed by the Commission. Joint Complainants’ consumer witnesses provided testimony limited to PaG&E’s marketing and billing practices in the Commonwealth in support of the allegations in the Joint Complaint. Joint Complainants submit that PaG&E’s Deposition questions to Joint Complainants’ consumer witnesses regarding their experience with products and services, whether variable or otherwise, of entities not regulated by the Pennsylvania Public Utility Commission are merely a fishing expedition into the consumer witnesses’ private financial affairs. Such fishing expeditions are prohibited. See IDT Discovery Order, citing Land v. State Farm Mutual Ins. Co., 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991).

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<sup>5</sup> Similarly, in another EGS case brought by Joint Complainants, where the EGS sought information in discovery to Joint Complainant relating to third party sales and marketing agents used by other EGSs, the ALJs sustained Joint Complainants’ objections, stating:

Second, the requested information about other EGS third party sales or marketing services appears to be outside the scope of discovery and not relevant to the issues to be addressed in this proceeding. The requested information is not likely to lead to the discovery of admissible evidence regarding the allegations against HIKO in the Joint Complaint. The allegations of violations in the Joint Complaint are specific to HIKO’s billing and marketing practices in Pennsylvania. The Commission’s regulations state that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives. See e.g. 52 Pa. Code § 54.43(f) (emphasis added). As such, information about the third-party sales or marketing companies of other EGSs will not lead to relevant information or admissible evidence regarding the specific allegations of violations in the Joint Complaint against HIKO. HIKO seeks to obtain information that is outside the scope of discovery. See 52 Pa. Code § 5.321(c).

See Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection and TANYA J. McCLOSKEY, Acting Consumer Advocate v. HIKO Energy, LLC, Docket No. C-2014-2427652, Order Denying HIKO Energy, LLC’s Motion to Compel at 4 (Sept. 2, 2014) (HIKO Discovery Order).

Joint Complainants further submit that PaG&E's Deposition questions about consumer witnesses' dealing with other EGSs are also not relevant to this proceeding, as witnesses' dealings with other EGSs are not relevant to the allegations against PaG&E in this proceeding. See IDT Discovery Order at 7; see also HIKO Discovery Order at 4. The Public Utility Code and the Commission's regulations set forth EGSs' marketing and billing requirements when conducting business in the Commonwealth. The regulations are clear that an EGS is responsible for the actions of its own employees, agents and contractors. See e.g. 52 Pa. Code § 54.43(f), 111.4 and 111.5. The information sought in PaG&E's Depositions are not relevant to Joint Complainants' allegations of violations of the Public Utility Code and Commission regulations and Orders. Further, the information sought is not relevant to any defense raised by PaG&E (see PaG&E Answer with New Matter) in this proceeding and will not lead to admissible evidence.

Finally, PaG&E's Deposition question regarding the consumer witnesses' contacts with Joint Complainants and the Commission are extremely broad. For instance, consumer witnesses may have contacted the Office of Attorney General about any number of topics that have nothing to do with PaG&E's generation supply, such as contractor licensing, elder abuse or illegal drug trafficking. Likewise, consumer witnesses may have contacted the OCA or the Commission regarding any number of public utility issues that have nothing to do with PaG&E's generation supply. PaG&E already possesses information relating to informal or formal complaints these witnesses filed against PaG&E with the Commission, as the Commission provides these to PaG&E upon filing. Additionally, PaG&E has already asked BCP and OCA in discovery for all information related to complaints and contacts BCP and OCA received from or had with these witnesses regarding PaG&E, and BCP and OCA have provided the responses and supplemented the responses, to the extent not privileged, as required by the Commission's discovery rules.

As such, PaG&E's Depositions questions are not relevant to this complaint proceeding regarding PaG&E's marketing and billing practices or the testimony Joint Complainants' consumer witnesses have provided in this proceeding and will not lead to admissible evidence. See IDT Discovery Order at 7; HIKO Discovery Order at 4. See also Pa. PUC Bureau of Investigation and Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410, Order Denying HIKO Energy, LLC's Motion to Compel, Denying an Application for *Subpoena Duces Tecum* and Granting a Motion for Admission *Pro Hac Vice* at 6, 15-16 (Dec. 30, 2014). Joint Complainants, therefore, submit that these Deposition questions are also a fishing expedition, which is prohibited. See e.g. Land v. State Farm Mutual Ins. Co., 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991).

Because the Depositions do not ask questions that are within the permissible scope of discovery and the other reasons discussed herein, the Notices and Depositions should be quashed. Further, Joint Complainants submit that PaG&E should not be permitted to further its violation of the Public Utility Code and Commission's regulations by reviewing or retaining any Deposition responses it may receive from Joint Complainants' consumer witnesses. Joint Complainants, therefore, request that the ALJs also direct PaG&E not to open any responses received and immediately forward such responses to Joint Complainants.

D. PaG&E's Depositions Directed to Joint Complainants' Consumer Witnesses Will Cause Unreasonable Annoyance, Embarrassment or Burden to the Witnesses.

According to the Commission's discovery rules:

(a) Discovery or deposition is not permitted which:

(2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

52 Pa. Code § 5.361(a)(2).

PaG&E's Deposition questions seek deeply personal information from Joint Complainants' consumer witnesses, including work, criminal, and mental health history, military service, financial services they have applied for or obtained, and contacts with government agencies. As discussed in Section II.C above, such information is not related to a claim or defense in this matter and will not lead to admissible evidence. Additionally, PaG&E's counsel stated to Joint Complainants during their conversation on January 16, 2015, that PaG&E intends to move to strike the direct testimony of any consumer witness that does not answer the Deposition questions. Joint Complainants submit that it is unreasonably annoying, embarrassing and burdensome for consumer witnesses to be required to answer deeply personal questions on various topics that have nothing whatsoever to do with the testimony they have provided, which is related solely to their dealings with PaG&E as an EGS in the Commonwealth. Joint Complainants further submit that requiring consumer witnesses to provide such deeply personal information to an entity against which the witnesses have a dispute would have a chilling effect on the willingness of consumers to come forward with relevant information about their experiences and disputes with EGSs.

Because the Depositions seek information that would cause unreasonable annoyance, embarrassment and burden for Joint Complainants' consumer witnesses to provide and the other reasons discussed herein, PaG&E's Notices and Depositions should be quashed. Further, Joint Complainants submit that PaG&E should not be permitted to further its violation of the Public Utility Code and Commission's regulations by reviewing or retaining any Deposition responses it may receive from Joint Complainants' consumer witnesses. Joint Complainants, therefore, request that the ALJs also direct PaG&E not to open any responses received and immediately forward such responses to Joint Complainants.

E. PaG&E's Depositions to Joint Complainants' Consumer Witnesses Are Not Timely Pursuant to 52 Pa. Code § 5.345(a).

Joint Complainants submit that even if PaG&E had properly applied for and obtained an order permitting it to depose Joint Complainants' consumer witnesses as required by 66 Pa. C.S. § 333, PaG&E's timing does not permit the other parties the opportunity submit cross and reply questions as provided for in 52 Pa. Code § 5.345(a). The process for depositions by written questions is, in relevant part, as follows:

- (a) A party taking a deposition by written questions shall serve the questions upon the deponent and serve a copy upon each other party or his attorney of record. Within 30 days thereafter the party served and other parties may serve cross questions upon the deposing party and upon each other party or the attorney of record. Reply questions shall be similarly served by a party within 10 days of the service of cross questions.

52 Pa. Code § 5.345(a).

PaG&E served the Depositions on Joint Complainants' consumer witnesses on January 12, 2015. If the Depositions had been properly noticed and served and were not objectionable, the witnesses' responses would be due in 30 days, or by February 11, 2015 (not counting the mailbox rule). Section 5.345(a) allows the party served and other parties to serve cross-questions on PaG&E within 30 days after they are served. Joint Complainants and the other parties were not served with the Depositions until January 16, 2015. As such, Joint Complainants and the other parties have until February 15, 2015 (not counting the mailbox rule) to serve cross-questions on PaG&E. It is not clear in Section 5.345(a) when the responses to the cross-questions would be due, but it can be presumed to be 30 days because the answers to the Depositions questions are due within 30 days. As such, the answers to Joint Complainants' cross questions would not be due until mid-March 2015, which is well after the hearings for cross-examination of Joint Complainants' consumer witnesses. These hearings are scheduled for

February 24-27, 2015. As cross-examination is generally limited to the scope of direct testimony, it is presumed that the deposition cross-questions would be related to the questions in PaG&E's Depositions. Receipt of the responses prior to the hearings for cross-examination of consumers is, therefore, appropriate.

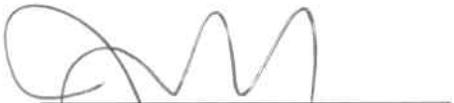
Joint Complainants served their consumer direct testimony on November 7, 2014. Soon thereafter, on November 25, 2014, PaG&E filed a Motion to Continue the hearings for cross-examination of the consumer witnesses in order to, *inter alia*, provide additional time for PaG&E to prepare for the hearings. The Motion was granted by Order of December 5, 2014, and hearings were re-scheduled to February 24-27, 2015. As such, PaG&E had been in possession of the consumer direct testimony for at least two months before PaG&E determined it necessary to depose Joint Complainants' consumer witnesses. PaG&E's delay, if permitted, would deprive Joint Complainants and the other parties of permitted follow-up discovery related to PaG&E's Deposition questions.

Because PaG&E's delay would deprive Joint Complainants and the other parties of the opportunity to obtain discovery related to PaG&E's Deposition questions in violation of 52 Pa. Code § 5.345(a) and the other reasons discussed herein, PaG&E's Notices and Depositions should be quashed. Further, Joint Complainants submit that PaG&E should not be permitted to further its violation of the Public Utility Code and Commission's regulations by reviewing or retaining any Deposition responses it may receive from Joint Complainants' consumer witnesses. Joint Complainants, therefore, request that the ALJs also direct PaG&E not to open any responses received and immediately forward such responses to Joint Complainants.

### III. CONCLUSION

Based on the foregoing, Joint Complainants submit that an expedited order is necessary and respectfully request the ALJs rule on these Objections on an expedited basis. Consumers are contacting Joint Complainants with questions as well as expressing dismay about the nature of the deposition questions, and a ruling on the objections is necessary for Joint Complainants to adequately answer the consumers' questions and concerns. Joint Complainants respectfully request that their objections be sustained and the Notices and Depositions be quashed. Additionally, Joint Complainants request that the ALJs direct that any responses that PaG&E receive be immediately forwarded, unopened to Joint Complainants.

Respectfully Submitted,



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John M. Abel  
Senior Deputy Attorney General  
PA Attorney I.D. 47313

Nicole R. (Beck) DiTomo  
Deputy Attorney General  
PA Attorney I.D. 315325

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Bureau of Consumer Protection

DATE: January 26, 2015  
201007



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Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

# APPENDIX A

## Tunilo, Candis

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**From:** Debbie A. Schreffler <DASchreffler@hmslegal.com> on behalf of Christopher M. Arfaa <CMARfaa@hmslegal.com>  
**Sent:** Friday, January 16, 2015 2:56 PM  
**To:** jabel@attorneygeneral.gov; nbeck@attorneygeneral.gov; Webb, Sharon; Tunilo, Candis; Pierce, Brandon J.; Swindler, Mike; Wimer, Stephanie M.; Scott, Wayne  
**Subject:** Atty General and OCA v. ESPI dba PAG&E; C-2014-2427656; Notice of Deposition by Written Questions

Some files have been sent to you via **Hightail**.

**Download the file - Notice of Deposition by Written Questions.docx; PaGE Consumer Witness List (Customers receiving Notices of Deposition).xlsx**

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Your files will expire after 14 days.

Good Afternoon:

Attached you will find a Notice of Deposition as well as the list of witnesses that the notice was served upon. Paper copies will follow by first class mail. If you have any questions, please contact me.

Regards,

*Christopher M. Arfaa*

*Hawke McKeon & Sniscak LLP  
100 N. Tenth Street  
Harrisburg, PA 17101  
717-236-1300 x231  
717-236-4841 (Fax)  
[cmarfaa@hmslegal.com](mailto:cmarfaa@hmslegal.com)*

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*NEW IRS RULES RESTRICT WRITTEN FEDERAL TAX ADVICE FROM LAWYERS AND ACCOUNTANTS. THIS STATEMENT IS INCLUDED IN OUTBOUND EMAILS BECAUSE EVEN INADVERTENT VIOLATIONS MAY BE PENALIZED. NOTHING IN THIS MESSAGE IS INTENDED TO BE USED, OR MAY BE USED, TO AVOID ANY PENALTY UNDER FEDERAL TAX LAWS. THIS MESSAGE WAS NOT WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF ANY TRANSACTION.*

## APPENDIX B

**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

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**NOTICE OF DEPOSITION BY  
WRITTEN QUESTIONS**

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**TO:**

«AddressBlock»

PLEASE TAKE NOTICE that Energy Services Providers Inc. d/b/a Pennsylvania Gas & Electric, by and through its counsel in this matter, Hawke McKeon & Sniscak, LLP, and Blank Rome, LLP, and pursuant to the Pennsylvania Utility Commission's ("Commission") regulation at 52 Pa. Code §§5.345, is taking the deposition by written questions of each Consumer Witnesses who is submitting testimony on behalf of the Complainants in this matter.

You must answer the enclosed deposition questions truthfully and completely, certify your answers by signing the enclosed certification, and return the completed deposition in the enclosed envelope to the undersigned counsel no later within **thirty (30) days** after the date of this Notice.

DATED: January 12, 2015

Respectfully submitted,

*Christopher M. Arfaa*

---

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Christopher M. Arfaa, Esq. (Pa. ID No. 57047)  
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*Attorneys for ENERGY SERVICES PROVIDERS, INC. d/b/a PENNSYLVANIA GAS & ELECTRIC*

**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:

**First Class Mail, Postage Prepaid, and Electronic Mail**

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Nichole R. Beck, Esq.  
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DATED: January 12, 2015

*Christopher M. Arfaa*

---

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**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

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**DEPOSITION OF «FIRST\_NAME» «LAST\_NAME»**

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- Q1 Please state your full name.
- Q2 What is your education? (For example, last grade completed, high school graduate, associate's degree, bachelor degree, graduate degree, professional degree, etc.)
- Q3 What jobs have you held during the past ten years?
- Q4 Have you ever been a plaintiff or defendant in a lawsuit? If so, please identify each lawsuit by caption (party names), court, and docket number.

- Q5 Have you ever filed a formal or informal complaint with Pennsylvania Public Utility Commission? If so, please identify every such formal and informal complaint by company complained of, the docket number, and the date filed.
- Q6 Have you ever been arrested for, charged with or convicted of a crime, other than a summary offense? If so, please describe each such crime and the circumstances leading to the arrest, indictment, information, criminal complaint or conviction.
- Q7 Have you ever been adjudicated as an incompetent or has been involuntarily committed to a mental institution?
- Q8 Are you legally residing in the United States?
- Q9 Have you ever served in the United States Armed Forces? If so, was your discharge other than honorable?
- Q10 Have you ever applied for or received a variable rate mortgage to purchase a home? finance the purchase of real property.
- Q11 Have you ever applied for or received a variable rate home equity loan?
- Q12 Have you ever applied for or received a variable rate line of credit?
- Q13 Have you ever applied for or received a credit or charge card account with a variable rate? If so, identify the issuer of the card.

- Q14 Have you ever applied for or received a variable rate annuity?
- Q15 Please list every other variably-priced product and service you have purchased or subscribed to within the past five years.
- Q16 Please identify each and every electric generation supplier from which you have taken service during the past five years.
- Q17 When did you start receiving electric generation service from Pennsylvania Gas & Electric?
- Q18 Have you ever attempted to contact Pennsylvania Gas & Electric to complain about or question its charges? If so, please state the date on which you first attempted to contact the company and the dates of all subsequent attempts.
- Q19 Please list the dates of all communications between you and the Pennsylvania Office of Attorney General and/or the Pennsylvania Office of Consumer Advocate.
- Q20 Do you have any notes or other writings memorializing the communications between you and the Pennsylvania Office of Attorney General and/or the Pennsylvania Office of Consumer Advocate? If the answer is “yes,” please describe the contents of all such notes or other documents (use an additional sheet if necessary). In the alternative, you may answer this question simply by enclosing copies of the bills with your other answers.

Q21 Please review your electric bills for each month from the first month for which you were billed for electric generation service by Pennsylvania Gas & Electric through the present. For each monthly bill, please list the billing period and the price per kWh charged for electric generation service for that period. In the alternative, you may answer this question simply by enclosing copies of the bills with your other answers.

**CERTIFICATION**

I, «First\_Name» «Last\_Name», hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

DATE: \_\_\_\_\_

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by :  
Attorney General KATHLEEN G. KANE, :  
Through the Bureau of Consumer Protection, :  
: :  
And :  
: :  
TANYA J. McCLOSKEY, Acting Consumer :  
Advocate, :  
Complainants :  
: Docket No. C-2014-2427656  
v. :  
: :  
ENERGY SERVICES PROVIDERS, INC. d/b/a :  
PENNSYLVANIA GAS & ELECTRIC :  
Respondent :

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Objections of the Commonwealth of Pennsylvania and the Office of Consumer Advocate to Depositions By Written Examination of Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric Served On Joint Complainants' Consumer Witnesses, in the manner and upon the persons listed below:

Dated this 26th day of January 2015.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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