

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 16, 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 Answer of Joint Complainants Commonwealth of Pennsylvania, Bureau of Consumer Protection and the Office of Consumer Advocate, to the Petition to Intervene of Thomas Sobiech, 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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**ANSWER OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA,  
BUREAU OF CONSUMER PROTECTION  
AND OFFICE OF CONSUMER ADVOCATE  
TO THE PETITION TO INTERVENE OF THOMAS SOBIECH**

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On March 27, 2015, Petitioner Thomas Sobiech, on behalf of himself and all others similarly situated by and through his counsel, Jonathan Shub, Esquire and Scott George, Esquire, of Seeger Weiss, LLP and Troy M. Frederick, Esquire of Marcus & Mack, P.C. filed a Petition to Intervene (Petition)<sup>1</sup> and a Public Statement in the above-captioned proceeding. Pursuant to 52 Pa. Code Section 5.66 and the direction of Administrative Law Judges Barnes and Cheskis (ALJs), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the

<sup>1</sup> Although the pleading is titled "Notice of Intervention," Administrative Law Judge Elizabeth Barnes informed the parties that she and Administrative Law Judge Joel H. Cheskis would treat the pleading as a Petition to Intervene, since a Notice of Intervention is a pleading reserved only for use by governmental agencies. See 52 Pa. Code § 5.71.

Bureau of Consumer Protection (OAG) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively Joint Complainants) provide the following Answer to the Petition. For the reasons set forth below, Joint Complainants submit that the ALJs should deny the Petition.

## **I. INTRODUCTION**

On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Public Utility Commission (Commission) asserting seven separate counts and alleging that Energy Services Providers, Inc. d/b/a/ Pennsylvania Gas & Electric (PaG&E, Respondent or the Company) violated Pennsylvania law and Commission orders and regulations. The seven separate counts in the Joint Complaint are as follows: I) misleading and deceptive promises of savings; II) slamming; III) misleading and deceptive welcome letter; IV) lack of good faith handling of complaints; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; and VII) failure to comply with the Telemarketer Registration Act (TRA). With respect to relief, the Joint Complainants request that the Commission find that Respondent violated the Public Utility Code, the Consumer Protection Law (CPL), the TRA, and the Commission's regulations and orders; provide restitution to Respondent's customers; impose a civil penalty; order Respondent to make various modifications to its practices and procedures; and revoke or suspend Respondent's Electric Generation Supplier (EGS) license, if warranted. The Commission's Bureau of Investigation and Enforcement (I&E) intervened in the proceeding on July 31, 2014, and the Office of Small Business Advocate (OSBA) intervened on July 10, 2014.

On July 10, 2014, PaG&E filed Preliminary Objections to the Joint Complaint and an Answer with New Matter to the Joint Complaint generally denying the alleged violations. On July 21, 2014, the Joint Complainants filed an Answer to Preliminary Objections. On July 30,

2014, Joint Complainants filed a Reply to PaG&E's New Matter. By Order dated August 20, 2014, the ALJs granted in part and denied in part PaG&E's Preliminary Objections. Specifically, the ALJs held: 1) that the Commission lacks jurisdiction to hear complaints under the CPL and TRA even though compliance with these acts is required by the Commission regulations, and 2) that the Commission lacks jurisdiction to consider the equitable remedy of restitution, but could order refunds pursuant to 66 Pa. C.S. Section 1312.

On September 2, 2014, PaG&E filed a Petition for Interlocutory Review and Answer to Material Question with the Commission seeking for the Commission to answer: Does the Commission have statutory authority or subject matter jurisdiction to order electric generation suppliers to issue refunds to customers. On September 8, 2014, Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions with the Commission. Specifically, Joint Complainants sought for the Commission to answer the following questions: (1) Does the Commission have authority and jurisdiction to determine whether a violation of the CPL and TRA has occurred when considering whether the Commission's regulations—which require compliance with these laws—have been violated and (2) Does the Commission have the authority and jurisdiction to order equitable remedies including restitution. On September 12, 2014, Joint Complainants filed a Brief in Opposition to PaG&E's Petition for Interlocutory Review. On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and PaG&E filed a Brief in Opposition. The Commission's Orders are pending.

Pursuant to the litigation schedule adopted at the Prehearing Conference on August 25, 2014, Joint Complainants served direct testimony from 245 consumer witnesses on November 7, 2014. Hearings for cross-examination of the consumer witnesses were initially scheduled for

December 15-19, 2014. On November 25, 2014, PaG&E filed a Motion for Continuance of evidentiary hearings. On December 5, 2014, the ALJs granted the Motion for Continuance and rescheduled the hearings for February 24-27, 2015. On February 24, 2015, the ALJs convened a status conference wherein the parties notified the ALJs that a full settlement had been reached and requested that the remainder of the litigation schedule be suspended pending submission of the Joint Petition for Approval of Settlement (Settlement) and the Statements in Support.

On March 24, 2015, the Joint Complainants, I&E, and PaG&E (collectively, Joint Petitioners) filed the Settlement and their Statements in Support. The Joint Petitioners requested that the Commission approve the Settlement on an expedited basis. Settlement at 34. The OSBA did not oppose the Settlement. Settlement at 1. Under the terms of the Settlement, PaG&E agreed to pay a total sum of \$6,836,563<sup>2</sup> in refunds to eligible consumers (Refund Pool). Settlement at ¶ II.A.33. The Settlement provides that Joint Complainants shall determine which customers were affected by the Company's conduct as alleged in the Joint Complaint and shall determine how much of a refund to offer any individual customer. Settlement at ¶ II.A.34. The Joint Complainants will determine the refund amount to offer eligible customers based on the individual customer's usage, price charged, and refund amounts already received directly from PaG&E. *Id.* The Settlement Administrator, who will distribute the refunds to the customers, will provide monthly reports to the Joint Complainants, PaG&E, and designated Commission staff that will include, at a minimum, the customer's name and other available identifying information, the amount of funds disbursed to each customer, and the period for which the funds were dispersed. See Settlement at ¶ 38.

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<sup>2</sup> This amount includes \$4,511,563 of prior cash refunds provided to customers by the Company, which leaves a net refund amount of \$2,325,000.

Under the terms of the Settlement, a customer must execute a “Release of Claims” in order to receive funds from the Refund Pool, in which the customer will release PaG&E and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Joint Complaint. Settlement at ¶ II.A.43. If the customer does not receive or accept an offer for a refund, the customer can contact the Company, and PaG&E will use its best efforts to negotiate an agreement with the customer in which the customer will accept a refund in exchange for the release of any claims that the customer may have against the Company. Settlement at ¶ II.A.42. Additionally, the Joint Complainants and I&E have agreed to release the Company and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Joint Complaint. Settlement at ¶ II.A.43.

PaG&E also agreed to pay a civil penalty of \$25,000 and make a contribution of \$100,000 to the Electric Distribution Companies’ hardship funds. Settlement at ¶¶ II.A.45-46. Additionally, the Settlement requires the Company to make various modifications to its business practices. Settlement at ¶ II.A.47. Among these modifications, the Company has agreed to offer only fixed rate products of at least six-month durations for eighteen months beginning March 1, 2015. *Id.* The Company has also agreed to make modifications to its marketing and third-party verification processes; disclosure statement; and training, compliance monitoring, and customer service practices. *Id.* The modifications to PaG&E’s business practices are designed to provide accurate information to customers in a clear, direct and understandable manner. Settlement Appendix A at 24.

On March 27, 2015, Thomas Sobiech, on behalf of himself and all others similarly situated, filed a Petition to Intervene, in which he objected to the Settlement and requested oral

argument on the same. For the reasons set forth below, Joint Complainants submit that the ALJs should deny the Petition.

## II. ANSWER

### A. LEGAL STANDARD

The Commission's procedural regulations, codified at 52 Pa. Code § 5.72, provide the eligibility requirements for a person to intervene in a Commission proceeding, as follows:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

Additionally, 52 Pa. Code Section 5.74(b) provides, in pertinent part, as follows:

(b) Petitions to intervene shall be filed:

- (1) No later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53 (relating to applications requiring notice; and time of filing) absent good cause shown.

52 Pa. Code § 5.72.

In order for a potential intervenor to present an "interest" in the proceeding, and therefore, confer standing, he must show that his interest is a "substantial, immediate and direct interest, as interpreted by Pennsylvania appellate courts." See e.g. PPL Electric Util. Corp. Universal Service and Energy Conservation Plan for 2011 through 2013, Docket No. M-2010-

2179796, Order at 3 (May 5, 2011) (PPL USECP 2011-2013), citing William Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).

It is well established that allowance of intervention is a matter within the discretion of the Commission. City of Pittsburgh v. Pa. PUC, 33 A.2d 641 (Pa. Super. 1943); NAACP, Inc. v. Pa. PUC, 290 A.2d 704 (Pa. Cmwlth. 1972).

**B. RESPONSE TO PETITION TO INTERVENE & PUBLIC STATEMENT**

In his Petition, Petitioner Sobiech states that he contracted with PaG&E in early October 2013 to purchase electricity for his home, and he began receiving electricity supply service from the Company on October 31, 2013. Petition at ¶ 2. According to the Petition, Petitioner Sobiech is a Plaintiff in a lawsuit seeking damages for himself and all others similarly situated in the United States District Court for the Eastern District of Pennsylvania, Docket Number 2:14-CV-04464-GAM, against PaG&E (Class Action). Petition at ¶ 3. Petitioner Sobiech seeks to intervene in this proceeding to protect his rights and the rights of all other customers who have contracted with PaG&E. Petition at ¶ 1. Petitioner Sobiech asserts that Settlement is deficient or not in the best interests of PaG&E's customers or the citizens of the Commonwealth. Petition at 4.

Petitioner Sobiech's eligibility to intervene in this proceeding on his own behalf is governed by 52 Pa. Code § 5.72(a)(2). Thus, Petitioner Sobiech must show that his interest, which is substantial, immediate and direct, will be directly affected and may be bound by the action of the Commission in the proceeding. See 52 Pa. Code § 5.72(a)(2); PPL USECP 2011-2013 at 3. Joint Complainants submit that Petitioner Sobiech does not meet the requirements for intervention in this proceeding because even if he is directly affected by the Settlement in that he is offered a refund from the Refund Pool, there is no requirement in the Settlement that Mr.

Sobiech accepts the refund. Instead, Mr. Sobiech may refuse the refund and pursue his own action against PaG&E.

Joint Complainants further submit that Petitioner Sobiech lacks standing to intervene on behalf of others similarly situated, as it is well settled at the Commission that a person may not claim standing to intervene in a proceeding to vindicate the rights of a third party that has an opportunity to be heard. See e.g. PECO Energy Company Universal Services Three-Year Plan 2007 – 2009 Submitted in Compliance with 52 Pa. Code § 54.74, Docket No. M-00061945, Order at 3 (Apr. 9, 2008). The OCA and OAG have adequately and zealously represented the rights of PaG&E’s former, current and future customers in this proceeding. Additionally, there is no provision in the Public Utility Code or the Commission’s regulations for a class action before the Commission.

Petitioner Sobiech does not meet the requirements for intervention and therefore, his Petition should be denied.

1. Petitioner Sobiech’s Interest May Not Be Directly Affected by the Settlement, and It Will Be His Choice Whether To Be Bound by the Settlement’s Refund Pool Provisions Should the Commission Approve the Settlement.

Petitioner Sobiech’s Petition to Intervene in this proceeding on his own behalf is governed by 52 Pa. Code § 5.72(a)(2).<sup>3</sup> As such, Petitioner Sobiech must meet the following requirements in order for his Petition to be granted:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

...

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<sup>3</sup> Petitioner Sobiech is not a Commonwealth agency pursuant to 52 Pa. Code § 5.72(b), and neither a statute of the United States nor of the Commonwealth confers on him a right to intervene pursuant to 52 Pa. Code § 5.72(a)(1). Further, Petitioner Sobiech has not identified another interest of such nature that his participation may be in the public interest pursuant to 52 Pa. Code § 5.72(a)(3).

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

52 Pa. Code § 5.72(a)(2).

For intervention, a potential intervenor must show that his interest is “substantial, immediate and direct.” See PPL USECP 2011-2013 at 3, citing William Penn Parking Garage. The Commission uses the following description in guiding its determination of whether an interest is substantial, immediate and direct:

A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statute or the constitutional guarantee in question.

Id., citing George v. Pa. PUC, 735 A.2d 1282 (Pa. Cmwlth. 1999).

In the Petition, Petitioner Sobiech states that he contracted with PaG&E in early October 2013 to purchase electricity for his home, and he began receiving electricity supply service from the Company on October 31, 2013. Petition at ¶ 2. Attached to the Petition as Exhibit A is the First Amended Class Action Complaint, wherein it is alleged that Petitioner Sobiech signed up with PaG&E at an initial rate of \$0.07899 per kWh. Petition at Exh. A, ¶ 25. It appears that Petitioner Sobiech signed up for a variable rate with PaG&E,<sup>4</sup> and he was charged a rate of \$0.2729 per kWh in February 2014. Petition at Exh. A, ¶¶ 26, 17-18, 28. Petitioner Sobiech does not provide any further information in his Petition or Public Statement regarding his specific individual interest in the Joint Complainants' action against PaG&E or whether his

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<sup>4</sup> PaG&E's Terms and Conditions are purported to be attached to the First Amended Class Action Complaint as Exhibit A (see Petition at Exh. A, ¶ 15), but there is no Exhibit A to the Amended Complaint attached to the Petition.

individual interest is substantial, immediate and direct. Rather, Petitioner Sobiech asserts that the Settlement is not in the best interests of PaG&E's customers or the citizens of the Commonwealth. Petition at 4. Petitioner Sobiech's primary issue with the Settlement appears to be with the release language related to the Refund Pool disbursements to customers. See Petition at 5-9.

Pursuant to the Settlement, PaG&E is required to make refunds available to customers that were affected by the Company's conduct as alleged in the Joint Complaint by paying the refund amount into a Refund Pool. See Settlement at ¶¶ II.A.33, 34. Joint Complainants have indicated that they intend to offer refunds from the Refund Pool to all PaG&E customers who were on variable rate plans and billed for usage in January, February, and March 2014. See Settlement at App. A at 8. As further stated in the Settlement, the refund eligibility shall be determined "based on the individual customer's usage, price charged and refund amounts already received directly from PaG&E." Settlement at ¶ 34.

Joint Petitioners submit that while Petitioner Sobiech *may* be eligible for a refund from the Refund Pool in the Settlement to the extent that he was a customer of PaG&E in January, February, or March of 2014, there is no information in the Petition regarding Petitioner Sobiech's usage for the relevant period or refunds received directly from PaG&E to date. Also, there is incomplete information in the Petition regarding PaG&E's charges to Petitioner Sobiech for the relevant time period. As such, it cannot be determined with certainty if Petitioner Sobiech has an interest in the Refund Pool provisions of the Settlement.

Joint Complainants further submit that Petitioner Sobiech, even if eligible, would not be bound by the Refund Pool and Release provisions of the Settlement, should the Commission approve the Settlement. The Settlement permits each individual customer who is offered a

refund to choose whether to accept the refund in exchange for releasing his or her claims against PaG&E. See Settlement at ¶ II.A.43. If a customer refuses the refund or is not offered a refund pursuant to the Settlement, the customer does not provide any release of claims to PaG&E. See Settlement at ¶¶ II.A.42, 43. Joint Complainants submit that Petitioner Sobiech will not be bound by the Settlement should the Commission approve it, because if eligible and offered a refund pursuant to the Settlement, Petitioner Sobiech can choose to forego the refund and pursue his claims against the Company through the Class Action or by filing a Formal Complaint at the Commission. Therefore, he does not meet the Commission's eligibility requirements for intervention.

Additionally, Petitioner Sobiech did not file his Petition until March 27, 2015, more than nine months into this case. Neither his Petition nor his Public Statement identified any reason for Petitioner Sobiech's failure to file his Petition at an earlier time. Because Petitioner Sobiech does not meet the eligibility requirements to intervene in this proceeding and did not file his Petition timely, Joint Complainants submit that the ALJs should deny his Petition.<sup>5</sup>

2. Petitioner Sobiech May Not Intervene on Behalf of other Customers Similarly Situated.

Petitioner Sobiech also seeks to intervene in this proceeding "on behalf of others similarly situated." It is well settled at the Commission that a person seeking intervention may not claim standing to vindicate the rights of a third party who has the opportunity to be heard. See PECO Energy Company Universal Services Three-Year Plan 2007 – 2009 Submitted in

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<sup>5</sup> Joint Complainants also note that the Commission has determined that an intervening party who files an untimely Petition to Intervene must take the record as it stands at the time the Petition to Intervene is granted. See Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc., Docket No. C-2012-2308997, Order at 13 (Feb. 19, 2013); see also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. West Penn Power Company, Docket No. C-2012-2307244, Order at 5 (Aug. 29, 2013). Thus, Joint Complainants submit that in the event the Petition is granted, Petitioner Sobiech should not be permitted to introduce new evidence into the record.

Compliance with 52 Pa. Code § 54.74, Docket No. M-00061945, Order at 3 (Apr. 9, 2008). As averred in the Joint Complaint, the OCA received over 800 contacts between February and May 2014 from PaG&E customers, and the OAG had received over 1,700 consumer complaints from PaG&E customers between February and June 2014. See Joint Complaint at ¶¶ 19, 20. The Office of Consumer Advocate is the agency authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1, *et seq.* Additionally, the Attorney General may bring an action in the name of the Commonwealth to restrain by temporary or permanent injunction, any act or practice declared unlawful by the Consumer Protection Law, when she determines that the proceeding would be in the public interest, as authorized by 73 P.S. § 201-4. The Attorney General, as the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution, is further authorized to initiate and maintain this action, and does so, pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204.

Joint Complainants submit that the Settlement to the Joint Complaint adequately protects the interests of consumers through: (1) continued government monitoring of the Company; (2) comprehensive injunctive relief that requires PaG&E to implement various modifications to its business practices; (3) a swift resolution of this matter; and (4) significant relief to eligible customers in the form of refunds.

While the Federal Rules of Civil Procedure specifically allow for one or more members of a class to sue or be sued as representative parties on behalf of all members of the class under certain circumstances (see Fed. R.C.P. 23), neither the Public Utility Code nor the Commission's regulations provide for a class action process at the Commission. As such, Joint Complainants submit that even if Petitioner Sobiech met the Commission's requirements to intervene

individually in the instant proceeding, he may not intervene on behalf of “all others similarly situated.”

Joint Complainants acknowledge that their participation in a proceeding does not necessarily limit the right of an individual consumer from intervening in the proceeding on his or her own behalf if he or she meets the Commission’s requirements for intervention. Further, Joint Complainants acknowledge that their participation in a proceeding does not limit individual consumers from pursuing formal complaints before the Commission. As noted above, however, it is not proper to claim standing to intervene in order to vindicate the rights of consumers whose interests are adequately represented by the OCA and OAG. Additionally, the Commission’s statute and regulations do not permit individuals to bring class actions before the Commission. Consequently, Petitioner Sobiech’s Petition to Intervene on behalf of “all others similarly situated” should be denied.

3. Joint Complainants’ Response to Petitioner Sobiech’s Public Statement.

In his Public Statement, Petitioner Sobiech asserts that the Settlement is deficient. Petitioner Sobiech’s critiques of the proposed Settlement have no bearing on whether his Petition to Intervene should be granted, as they are irrelevant to the standards for intervention set forth in the Commission’s regulations. Petitioner Sobiech, however, makes misstatements in his Public Statement that require correction. First, he asserts that the Settlement unlawfully exceeds the authority of the Commission in that it requires “any of [t]he Company’s Pennsylvania Customers to release all private causes of action they may have against [t]he Company, including claims for breach of contract.” Public Statement at 1-2. Petitioner Sobiech states that in order for a customer to take advantage of the proposed Settlement, the customer is required to execute a general release that would discharge the Company from any and all claims for liability,

regardless of whether the Commission has jurisdiction over those claims. Public Statement at 2. Petitioner Sobiech asserts that the Commission does not have the authority to release private breach of contract claims or to require customers to waive their right to pursue private breach of contract claims. Public Statement at 3.

Joint Complainants note that the release is limited to claims arising from or related to the conduct alleged in the Joint Complaint. See Settlement at ¶ II.A.43. Moreover, the only PaG&E customers who will be required to release their claims pursuant to the Settlement are those who are offered a refund and voluntarily agree to accept the refund. See Settlement at ¶ II.A.43. In contrast to Petitioner Sobiech's statements, the Commission is not releasing the Company from liability; it is the customers themselves that may choose to do so if they deem it to be in their best interests.<sup>6</sup>

Additionally, Petitioner Sobiech asserts that the Settlement is "patently insufficient in determining which of [t]he Company's customers were defrauded by [t]he Company's misconduct." Public Statement at 2. Petitioner Sobiech submits that the Settlement is overly vague, because it does not identify which of the Company's customers are entitled to relief, how many customers are entitled to relief, or the guidelines that will be used to determine which customers are entitled to relief. Public Statement at 3. Petitioner Sobiech also asserts that the Settlement is insufficient because it fails to establish the amount of money that the Company overbilled its customers and fails to establish the timeframe for which customers suffered damages to make them eligible for relief under the Settlement. Public Statement at 3.

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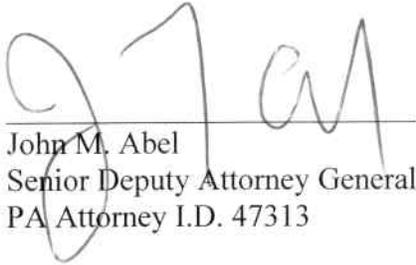
<sup>6</sup> Joint Complainants also note that when customers are offered refunds pursuant to the Settlement, Joint Complainants intend to provide the customers with information that is necessary for them to make informed decisions regarding whether they want to accept the refund in exchange for a release of their claims or pursue other methods to obtain a refund.

The Settlement provides that Joint Complainants shall determine which customers were affected by the Company's conduct as alleged in the Joint Complaint and shall determine how much restitution to offer any individual customer. Settlement at ¶ II.A.34. The Settlement further provides that the Joint Complainants will determine the refund amount to offer eligible customers based on the individual customer's usage, price charged, and refund amounts already received directly from PaG&E. Id. In their Statement in Support of the Settlement, Joint Complainants identified customers who were affected by PaG&E's conduct as alleged in the Joint Complaint as those who were on variable rate plans and billed for usage in January, February or March 2014 and stated their intention to offer refunds to all of those customers after taking into account a customer's usage, price charged and refunds already received from PaG&E directly. See Settlement Appendix A at 8; see also Settlement at ¶ 34. The Settlement Administrator, who will distribute the refunds to the customers, will provide monthly reports to the Joint Complainants, PaG&E and designated Commission staff that will include, at a minimum, the customer's name and other available identifying information, the amount of funds disbursed to each customer, and the period for which the funds were dispersed. See Settlement at ¶ 38. Thus, Joint Complainants submit that the Settlement sufficiently identifies the process by which consumers will be offered refunds and which factors Joint Complainants will consider in determining appropriate refund offers.

**III. CONCLUSION**

WHEREFORE, Joint Complainants respectfully request that the ALJs deny the Petition to Intervene of Thomas Sobiech because he does not meet the Commission’s intervention requirements.

Respectfully submitted,



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

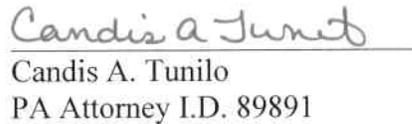
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Date: April 16, 2015  
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CERTIFICATE OF SERVICE

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 :

I hereby certify that I have this day served a true copy of the foregoing document, the Answer of Joint Complainants Commonwealth of Pennsylvania, Bureau of Consumer Protection and the Office of Consumer Advocate, to the Petition to Intervene of Thomas Sobiech, in the manner and upon the persons listed below:

Dated this 16th day of April 2015.

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