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April 16, 2015

VIA ELECTRONIC FILING

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

RE: Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, and TANYA J. McCLOSKEY, Acting Consumer Advocate, v. ENERGY SERVICES PROVIDERS, INC. d/b/a PENNSYLVANIA GAS & ELECTRIC; Docket No. C-2014-2427656; **ENERGY SERVICES PROVIDERS, INC. ANSWER IN OPPOSITION TO INTERVENTION AND REPLY COMMENTS**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric's ("PaG&E") Answer in Opposition to Intervention and Reply Comments in the above-referenced matter. A copy of this document has been served in accordance with the attached Certificate of Service.

Please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,

Todd S. Stewart
Christopher M. Arfaa
*Counsel for Energy Services Providers, Inc.,
d/b/a Pennsylvania Gas & Electric*

TSS/jld

Enclosure

cc: Administrative Law Judge Elizabeth H. Barnes (w/encl.)
Administrative Law Judge Joel H. Cheskis (w/encl.)
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:

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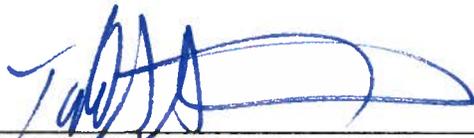
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DATED: April 16, 2015



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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

**ENERGY SERVICES PROVIDERS, INC.
ANSWER IN OPPOSITION TO INTERVENTION
AND REPLY COMMENTS**

NOW COMES, Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (“PaG&E” or the “Company”) and hereby submits this Answer in Opposition to the untimely, incorrectly-styled “Notice of Intervention” filed on March 27, 2015, in the above-captioned proceeding by Thomas Sobiech. PaG&E, the Respondent in the above-captioned matter, is a party to a Joint Petition for Approval of Settlement between PaG&E and the Attorney General Kathleen G. Kane, Through the Bureau of Consumer Protection (“BCP”), Tanya McCloskey, Acting Consumer Advocate (“OCA”), and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) that was filed with the Commission on March 24, 2015. The “Notice of Intervention” is untimely and without any

excuse. If, however, the Commission permits Mr. Sobiech to intervene at this late date, the Company stands firm in its opposition to any procedural modification that goes beyond allowing Mr. Sobiech a reasonable opportunity to be heard with regard to his opposition to the Settlement, in the form of the Comments he already has submitted in his “Public Statement.” To do otherwise would impermissibly impinge upon the due process rights of the Parties to the Settlement and would abrogate longstanding Commission precedent. Accordingly, the Company offers the following response to the “Notice of Intervention” and “Public Statement of Petitioner Thomas Sobiech and Request for Hearing.” In support thereof, PaG&E states as follows:

I. PRELIMINARY ISSUES

1. Mr. Sobiech’s request to intervene was filed well beyond the timelines established by the Commission’s Regulations. In other words, he is seeking to intervene late, and has provided no reasonable excuse for knowing about the case and not intervening in a timely manner.¹ Should the Commission permit Mr. Sobiech to intervene at this late date, it is strenuously submitted that he must take this proceeding as he finds it.² Moreover, to the extent that the Commission allows Mr. Sobiech to intervene, and to the extent the Commission is

¹ 52 Pa. Code § 5.74(b)(1); *Re S.T.S. Motor Freight, Inc.*, 54 Pa. PUC 343 (Order entered June 19, 1980)(Late intervention granted only when: 1) the petitioner has a reasonable excuse for missing the protest due date; 2) the proceeding is contested at the time of the filing of a petition for intervention; 3) a grant of intervention will not delay the orderly progress of the case; and, 4) the grant of intervention will not broaden significantly the issues, or shift the burden of proof.)

² *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. West Penn Power Company*, 2013 WL 4761265 (Pa.P.U.C.), Docket No. C-2012-2307244 (Opinion and Order entered August 29, 2013, slip op. at pp. 5-7)(“*West Penn*”)(The Commission granted a late-filed petition to intervene, but required the intervening party to take the record as he found it, allowed no evidentiary hearings, but instead permitted the Intervenor to file comments to the settlement and allowing the other parties to respond to the comments.); *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, 2013 WL 653875 (Pa.P.U.C.), Docket No. C-2012-2308997, (Opinion and Order entered February 19, 2013)(“*UGP*”).

willing to permit Mr. Sobiech's comments to be considered, it is absolutely clear that he should not be permitted to respond to Comments made by the parties to the Joint Petition for Approval of Settlement and he should not be permitted to delay or enlarge the scope of this proceeding.³

2. Mr. Sobiech asserts that the purpose of his intervention is to protect "his rights and all other customers that have contracted with U.S. Gas and Electric, Inc." (Notice of Intervention, p. 1). His improperly-filed "Public Statement" admits that his true interest is not in protecting his own rights, but in attempting to preserve a putative class action lawsuit in which no class has been certified that he and his counsel have filed against the Company in federal district court after the Attorney General and Consumer Advocate initiated this proceeding. Mr. Sobiech's attempt to represent the interests of all of the Company's customers before the Commission flies in the face of Pennsylvania law. It is well-settled that section 701 of the Pennsylvania Public Utility Code,⁴ which allows individuals aggrieved by regulated companies to file complaints with the Commission, does *not* authorize an individual to file complaints on behalf of others. Accordingly, Mr. Sobiech has no standing to represent anyone other than himself before the Commission.⁵ Mr. Sobiech is attempting to usurp the statutorily defined roles of the BCP, the OCA and I&E to represent the interests of customers, in direct contravention of the Public Utility Code. To the extent that Mr. Sobiech is permitted to participate, it should be

³ *West Penn* (slip op. at pp. 5-7); *UGI*.

⁴ 66 Pa. C.S. § 701.

⁵ *Camille Bud George v. Pennsylvania Public Utility Commission*, 735 A.2d 1282 (Pa. Cmwlth. 1999); *James E. Coggins v. PPL Electric Utilities*, 2013 WL 1856491 (Pa.P.U.C.), Docket No. C-2012-2312785 (Initial Decision entered April 22, 2013, slip op. at 4, Final Order entered July 18, 2013); *Theresa Gavin v. PECO Energy Company*, 2012 WL 6641346 (Pa.P.U.C.), Docket No. C-2012-2325258 (Initial Decision entered November 26, 2012, slip op. at 4, Final Order entered January 24, 2013)

made clear that he is able to represent only his interests and that arguments premised upon representing interests of others will not be considered.

3. Specifically, with regard to Mr. Sobiech's "Public Statement," if it is considered, it is clear that the vast majority of his assertions are premised on his mistaken notion of representing the interests of all of the Company's customers.

II. PROCEDURAL HISTORY

4. A full description of the long and complicated procedural history of this proceeding was provided in ¶ 4-31 of the Joint Petition for Settlement. In the interest of brevity, the Company incorporates those paragraphs into this filing by reference and only provides the following abbreviated procedural history as a supplement.

5. The Joint Complaints filed a Joint Complaint with the Commission on June 20, 2014.

6. On July 10, 2014, the OSBA filed a Notice of Appearance, Notice of Intervention and Public Statement in this proceeding.

7. On July 31, 2014, I&E filed a Notice of Intervention in this proceeding.

8. Between June 20, 2014 and mid-February 2015, the parties vigorously litigated the claims against the Company and participated in exhaustive discovery while simultaneously negotiating the terms of a potential settlement.

9. Via tele-conference call on February 12, 2015, Joint Petitioners advised the ALJs that they had reached a settlement in principle pending final approval of such by the Attorney General and requested that the ALJs suspend the litigation schedule until such final approval could be obtained. The ALJs granted the request, cancelled the evidentiary hearings scheduled for February 24-27, 2015, and suspended additional upcoming schedule deadlines.

10. On February 24, 2015, the ALJs convened a Status Conference with the Joint Petitioners, wherein Joint Petitioners confirmed that a settlement in principle had been reached and all approvals of those in authority had been obtained. Thereafter, the ALJs issued an Order dated February 24, 2015 suspending the procedural schedule and directing that the Joint Petition for Settlement, along with factual stipulations, stipulations for admission of evidence and statements in support be filed by March 20, 2015.

11. On March 24, 2015, the BCP, OCA, I&E and the Company filed a *Joint Petition for Approval of Settlement* (“Settlement”) with the Commission seeking to resolve the matters presently before the Commission. Included with the Settlement were statements in support from the Joint Petitioners and a Stipulation of Facts as between the BCP, OCA and PaG&E.

12. On March 26, 2015, (i.e. nine months and seven days after Joint Complainants filed their claims against the Company) Mr. Sobiech filed his “Notice of Intervention” and “Public Statement” seeking to be heard on the terms of the Settlement.

III. ARGUMENT

13. Mr. Sobiech claims on the first page of his “Public Statement” that the Settlement in not in the interests of the customers of the company or the citizens of the Commonwealth of Pennsylvania.⁶ He goes on to claim that the settlement unlawfully exceeds the authority of the Commission because one component of the settlement requires customers who seek financial compensation from the Company to release the Company from future claims regarding the subject matter of the BCP and OCA’s Complaint in this matter. Mr. Sobiech cites no legal authority to support this outrageous proposition. Contrary to Mr. Sobiech’s assertions, the

⁶ Mr. Sobiech’s “Public Statement” consists of six unnumbered pages. For purposes of identification, this response will treat the first page as though it had been numbered as page one, and all subsequent pages in serial fashion.

Commission clearly has jurisdiction to hear the claims that remain in the litigation and which are resolved by the settlement.⁷

14. It is clear that the Commission may not exceed the scope of its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the Commission's exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth 1992). Moreover, as a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.*, and its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

15. In this case, the remaining allegations are addressed by the Commission's regulations as alleged in the Complaint, and fall within the Commission's jurisdiction. *See*, 52 Pa. Code § 54.1, *et seq.*, § 56.1, *et seq.*, § 57.1, *et seq.* and § 111.1, *et seq.* That is, the Commission is clearly the only appropriate venue for parties to litigate whether an EGS has complied with the Commission's regulations in marketing and providing electricity to consumers. Moreover, despite Mr. Sobiech's misguided concern, it is common practice to secure a release of claims when settling a legal dispute. It is eminently reasonable for the Commission to approve a settlement that requires a release from customers in exchange for payment.

⁷ *Commonwealth of Pennsylvania, et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric*; Docket No. C-2014-2427656 (Order Granting In Part and Denying In Part Preliminary Objections, entered August 20, 2014).

16. Mr. Sobiech goes on to contend that the Settlement is fatally vague in that it does not specify the number of customers affected by the behavior alleged in the Complaint. This claim clearly is not germane in that Mr. Sobiech has no standing on his own, to seek to represent the interests of other customers. That duty falls to the Joint Complainants in this case, who are statutorily authorized to represent the interests of customers. It also appears that Mr. Sobiech desires to use the Commission's process as a form of discovery for his class action suit against the Company, which is likewise improper. The Settlement does not limit the distribution of refunds, but does in fact provide the BCP and OCA with the discretion to portion out the Refund Pool created by the Settlement as they see fit. This is reasonable because the harm alleged in the Complaint can vary greatly as between customers and it seems unlikely that any strictly formulaic approach would be sufficient to address the issue. Nonetheless, the Settlement clearly states that the BCP and OCA will determine which customers are eligible, and the amount of refunds by using information provided by the company that shows customers usage, price charged and refunds amounts already voluntarily provided by Company.

17. It also appears that Mr. Sobiech is contending that the total amount of compensation recognized by the Settlement, in excess of \$6 million, is not sufficient, again without proposing why it is not sufficient. Sufficiency cannot be determined in a vacuum because it clear that every customer's circumstances are different and each customer will have the ability to ascertain, based upon their singular experience, what constitutes a sufficient result for them. What is clear, however, is that a singular customer, such as Mr. Sobiech, has no basis on which to claim that the total amount of the restitution pool is insufficient, because it is ultimately he who gets to decide whether an offer made to him under the settlement is sufficient

before deciding to release his claims. Mr. Sobiech has no standing to make that determination for any other customer.

18. Mr. Sobiech makes the claim that because the Commission has concluded that it lacks jurisdiction over private breach of contract claims, it cannot release the private contractual claims of customers. (Public Statement, p.3). This claim is nonsensical. The suggestion (again, without citation to any legal authority) that a release that releases all claims of a party in exchange for payment is improper, is not based in reality. It is standard practice.

19. Mr. Sobiech also claims that the Settlement is insufficient in that it fails to establish either the amount of alleged overcharges for him in particular, or the total amount of alleged overcharges. This claim fails to recognize the procedural reality of settlement. The Commission has a policy to promote settlement as a means of promoting judicial economy. As it stands, Mr. Sobiech's demand is a shameless attempt to broaden the scope of this proceeding to include unnecessary information to support his effort to hijack this proceeding. The Commission clearly is capable of determining, based upon the allegations, the defenses, and the stipulation, whether a settlement of a certain amount is in the public interest. The Commission's policy also suggests that settlements should be sought at the earliest stages to avoid the entanglements of litigation that impose costs on all involved.⁸ Again, Mr. Sobiech is seeking to intervene in this matter when the evidentiary phase is over, and seeks to litigate a settlement that does not impinge on his individual rights. It is vital to note that the Company has denied that it overbilled its customers, but that it is willing to settle to gain certainty. Likewise, the BCP and OCA have claimed that the Company did overbill customers, but they are willing to settle for the sake of certainty and getting relief to customers without the need for protracted litigation and appeals. It

⁸ 52 Pa. Code § 5.231(a); 52 Pa. Code § 69.391(a); 52 Pa. Code § 69.401.

is axiomatic that the Commission cannot at the same time favor settlement and still require hearings to prove claims resolved by the settlement – otherwise, no one would settle before trial.

20. Finally, Mr. Sobiech contends that the Petition is insufficient in that it fails to establish the timeframe within which the Company’s Pennsylvania Customers would have suffered damages. This, as with Mr. Sobiech’s other claims, is pure sophistry. It is true that the Settlement provides no specified time period for which customers may be eligible for refunds. In other words, any customer of the Company is potentially eligible. However, the Settlement provides procedures on how the BCP and OCA’s administrator will award compensation to those who seek it, and provides those agencies with the final discretion on how to assign the benefits. Customers who, for whatever reason, are not offered or do not accept refunds from the restitution pool, are eligible to participate in the “additional refund” procedures provided in the Settlement that allow direct negotiations with the Company. Moreover, unaddressed by Mr. Sobiech, and yet prominent in the settlement, are the injunctive conditions that will address the future conduct of the Company and which benefit all customers, current and future.

21. On April 2, 2015, Mr. Sobiech, through his counsel, submitted a letter to the Presiding Administrative Law Judges, Judge Barnes and Judge Cheskis, requesting the opportunity to file a reply to any responses filed to its petition or comment, and requesting an oral argument or hearing on the same issues. The Commission’s precedent makes clear that both requests must be denied.⁹ It is clear that the goal of Mr. Sobiech’s intervention is to benefit some

⁹ *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. West Penn Power Company*, 2013 WL 4761265 (Pa.P.U.C.), Docket No. C-2012-2307244 (Opinion and Order entered August 29, 2013, slip op. at pp. 5-7)(The Commission granted a late-filed petition to intervene, but required the intervening party to take the record as he found it, allowed no evidentiary hearings, but instead permitted the Intervenor to file comments to the settlement and allowing the other parties to respond to the comments.); *Pennsylvania Public Utility*

undefined group of customers that may include himself, that are purported members of some as yet uncertified class and that his tactics include hijacking this proceeding in the process. The existence of a class action lawsuit provides Mr. Sobiech no special status before the Commission generally, and in this litigation in particular. He is not permitted to represent the interests of other customers, nor is he permitted to enlarge the scope of this proceeding, or insist on actions, such as hearings, oral argument or further rounds of comments, that will delay this proceeding. To the contrary, the law is clear, Mr. Sobiech takes the proceeding as he finds it and his right to be heard is fully satisfied with his ability to provide comments to the Settlement that he already has submitted. His rights end there. Accordingly, Mr. Sobiech's request for additional comments, reply comments, oral argument and/or hearings must be denied.

IV. CONCLUSION

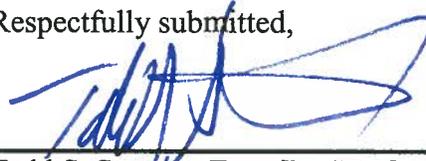
22. The BCP, OCA and I&E have the statutorily defined roles of protecting the public interest. The Commission has the obligation in reviewing the Settlement to determine whether it is in the Public Interest. The Commission has a policy to promote settlements of contested proceedings, and to do so early in the proceeding so as to save costs and provide certainty to the litigants. The Statutory Parties and the Company have reached such a settlement before this matter went to trial. A Settlement that will promote the public interest in providing immediate compensation to customers who choose to accept it, providing an alternative process for those who don't, and providing substantial injunctive conditions that will continue to provide the benefits of industry leading processes and procedures for years to come. At the eleventh hour, Mr. Sobiech comes along and seeks to disrupt the Commission's process, despite the fact that the

Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc., 2013 WL 653875 (Pa.P.U.C.), Docket No. C-2012-2308997 (Opinion and Order entered February 19, 2013).

Settlement provides substantial benefits that may not have been achievable through litigation and injunctive conditions which are not substantial and far-reaching. Mr. Sobiech seeks to disrupt the Settlement so that he can usurp the authority of the BCP, the OCA, I&E, and indeed, the Commission itself, to protect the public interest, and take that mantle upon himself as a private litigant in an attempt to financially benefit his counsel. It is clear that Mr. Sobiech has no legal standing before this Commission to represent the interests of others, and it is clear that the settlement promotes the public interest. Accordingly, Mr. Sobiech's comments should be disregarded as entirely self-serving and more importantly, incorrect. The Settlement is in the public interest and should be approved.

DATED: April 16, 2015

Respectfully submitted,



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