



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 17, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Great American Power, LLC
Docket No. M-2016-2536806

Dear Secretary Chiavetta:

Enclosed please find the Joint Supplemental Statement in Support of Settlement Agreement of the Bureau of Investigation and Enforcement and Great American Power, LLC in the above-referenced proceeding as directed by Commission Order of September 15, 2016. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319

Enclosure

cc: As per certificate of service
Cheryl Walker Davis, OSA

RECEIVED
2016 OCT 17 PM 2:11
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2016 OCT 17 PM 2:11
PA PUC
SECRETARY'S BUREAU

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, BUREAU OF :
INVESTIGATION AND ENFORCEMENT :

v. :

DOCKET NO. M-2016-2536806

GREAT AMERICAN POWER, LLC :

**JOINT SUPPLEMENTAL STATEMENT IN SUPPORT
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
AND GREAT AMERICAN POWER, LLC**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

On March 28, 2016, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) and Great American Power, LLC (Great American or Company)(referred to collectively as Parties) filed with the Commission a proposed Settlement Agreement, including the individual Statements in Support of I&E and Great American, intended to amicably resolve the investigation instituted by I&E against Great American as a follow-up to the Commission's Order in *William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Order entered October 18, 2013). The Parties submitted in its filing that the settlement as proposed is in the public interest and consistent with the Commission's Policy Statement at 52 Pa. Code § 69.201, *Factors and Standards for Evaluating Litigated and Settled*

Proceedings Involving Violations of the Public Utility Code and Commission Regulations
– *Statement in Policy (“Policy Statement”)*.

By Order in the instant action entered September 15, 2016 (*September 15 Order*), the Commission directed the Parties to file supplemental statements in support of the proposed Settlement Agreement within thirty days of the entry of its Opinion and Order.¹ According to the Commission, “[n]either the Settlement nor the statements in support [filed on March 28, 2016] contain sufficient information about the referenced twenty incidences...” *September 15 Order* at 8. The *September 15 Order* continued:

As such, we seek further information related to the dates, descriptions of the complaints, the research conducted by the Company, and the findings and actions taken by the Company or by BCS. See e.g., *Pa. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered March 19, 2014) (*ResCom Order*).

Id. at 9. Pursuant to the Commission’s *September 15 Order*, the Parties file the instant Joint Supplemental Statement in Support. This Joint Supplemental Statement in Support is filed by the Parties in order to provide further detail to substantiate that the Settlement Agreement amicably reached by the Parties and filed with the Commission on March 28, 2016, provides for a monetary civil penalty and non-monetary corrective actions taken or to be taken by the Company that sufficiently address the violations alleged by I&E. As a result of the supplemental details provided herein, I&E and Great American respectfully request that the Commission conclude that the terms and conditions memorialized in the

¹ In lieu of filing separate supplemental statements in support of I&E and of Great American, the Parties respectfully request that the Commission accept the within Joint Supplemental State in Support as in compliance with the *September 15 Order*.

Settlement Agreement adequately balance the duty of the Commission to protect the public interest with the interests of the Company, the Company's customers, and all electric consumers in Pennsylvania and that the Settlement Agreement should be approved as filed.

II. SUPPLEMENTAL INFORMATION

A. Dates

In its *September 15 Order*, the Commission seeks further information regarding the dates of the complaints in question. As stated in the Settlement Agreement, the seventeen customer complaints gleaned from the Company's confidential customer log were from the period of December 2012 to November 2013. In addition to this information, as part of I&E's investigation, I&E also inquired into the customer complaints received by the Commission's Bureau of Consumer Services (BCS) during this time period as well as into 2014. By email communication in March 2014 between the BCS Manager of Informal Compliance and Competition Unit and I&E's prosecutor, BCS advised that it had the following history of informal complaints regarding Great American:

<u>Calendar Year</u>	<u>No. of informal complaints received</u>
2012	23
2013	7
January 2014	2
February 2014	78

Subsequently, by email between the same contacts dated January 2015, BCS updated its informal complaint history to state that it received a total of approximately 200 informal complaints regarding Great American for all of 2014. Although at first

glance this might suggest that an inordinate amount of complaints were filed against this Company, the BCS communication to I&E further revealed that the initial investigations conducted by BCS of the totality of these informal complaints against Great American uncovered concerns with only four of the 200 complaints. The BCS investigations concluded that the vast majority of the informal complaints received from Great American customers in 2014 were sparked by spikes in variable rates related to legitimate variable rate plan rate changes. BCS also noted that the quantity of inquiries that it received related to Great American, although large, was actually consistent with the quantity of similar inquiries received regarding all other energy suppliers during the challenging period that became known as the "polar vortex." The four informal complaints that were escalated to I&E for further investigation as part of this matter resulted in I&E's determination that three of these four matters warranted inclusion in a formal complaint to be lodged against Great American. Consequently, the total of twenty incidences referenced in the Settlement Agreement (seventeen from the internal customer log and three from the BCS informal complaints) were for the period of December 2012 through 2014.

B. Descriptions of Complaints, Research Conducted and Findings and Actions taken by the Company

The Commission's *September 15 Order* next seeks further information regarding the descriptions of the complaints, the research conducted by the Company, and the findings and actions taken by the Company or by BCS. In the Settlement Agreement, the Parties noted that the seventeen direct customer complaints highlighted in I&E's

investigation all involved “unacceptable or, at minimum, questionable marketing practices ... exhibited by the outside vendor’s sales representatives (“TSR”) telemarketing on behalf of Great American.” Settlement Agreement at 4. The Parties did not provide more descriptive information regarding each individual customer complaint because it was not believed necessary in a settlement of violations related to, and the imposition of a cumulative civil penalty pursuant to, 52 Pa. Code § 54.43(f). Section 54.43(f) finds a licensee responsible “for any fraudulent deceptive or unlawful marketing or billing act” of its agent or representative. Indeed, the detail provided by I&E and Great American was thought by the Parties to be adequately consistent with the detail provided in the previous *ResCom* matter.

In *ResCom*, cited in the *September 15 Order*, the Commission directed the parties in that case, I&E and electric generation supplier *ResCom*, to file Supplemental Statements in Support of the Settlement in order to provide the Commission with enough information “to evaluate whether the civil penalty and corrective actions are sufficient to address the alleged violations.” *ResCom Order* at 9.

The *ResCom Order* explained:

Specifically, the complaints against *ResCom* allege violations of the Commission’s anti-slamming regulations. The remedial actions outlined in the Settlement, however, all relate to marketing practices. Therefore, we seek further information on how *ResCom* has revised its operating procedures so as to safeguard against future slamming incidences.

...

As such, we seek further information related to the number of customers that were affected by *ResCom*’s allegedly illegal marketing practices, how many customers were allegedly slammed, how many customers *ResCom* allegedly attempted to slam but successfully rescinded, and how many Do Not Call violations allegedly occurred.

Id. at 9.

Consequently, in its Supplemental Statement in Support in *ResCom*, I&E and ResCom described the corrective actions to be taken by the Company, clarified the number of complaints involved and explained the inability to specifically quantify the Do Not Call violations.

Having been a party to the *ResCom* matter, I&E was aware of the level of detail sought by the Commission in that case from its directive to the parties to file supplemental statements in support. I&E anticipated that the level of detail sought in the supplemental statements of the parties in *ResCom* would be deemed sufficient by the Commission in the instant case. As such, I&E determined that it was unnecessary and/or inappropriate to provide specific details regarding each incident referenced for purposes of settlement beyond providing a general categorization of the complaints, the number of incidences and the corrective actions of the Company.

As this Commission states in its *Policy Statement*, at 52 Pa. Code § 69.1201, “[t]he parties in settled cases will be afforded the flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” Section 69.1201(b). Based on the detail requested in *ResCom* and the flexibility presumably afforded to settling parties, the Parties in the instant case believed that a sufficient amount of detail had been provided for the Commission to find the settlement to be in the public interest. Moreover, as stated in the Settlement Agreement and noted in the Commission’s Order, these customer complaints were gleaned from Great American’s confidential internal customer log listing Pennsylvania customer complaints received by the Company

in the 12 months preceding I&E's data request. Settlement Agreement at 4, Order at 3. Great American's internal customer log, while referenced in the Settlement Agreement, was marked "confidential" when provided by the Company in response to I&E's discovery request. I&E and Great American noted in the Settlement Agreement that the customer log was confidential and the Commission's *September 15 Order* acknowledges the confidentiality of the log in its discussion of the background of this case. Given the level of detail sought in the previous *ResCom* matter and the concern for releasing information that had been designated by the Company as confidential, the Parties crafted the Settlement Agreement such that it identified the primary source of the investigatory materials that lead to the amicable resolution of the matter without jeopardizing the sensitive nature of the specific information set forth therein.

With that said, I&E and Great American have consulted regarding the Commission's determination in the *September 15 Order* that the detail initially provided is not sufficient for it to rule on whether the settlement is in the public interest and the resulting directive that the Parties provide supplemental information regarding the twenty incidents referenced in the Settlement Agreement. The request for supplemental information appears to target information contained in the referenced confidential internal customer log. In order to comply with the *September 15 Order*, Great American has reevaluated the contents of its internal customer log and agrees to withdraw the "confidential" designation of its internal customer log for the purpose of providing to the Commission the descriptive information requested. For the relevant excerpts of this customer information, see Appendix A, attached.

C. Findings and Actions taken by BCS

The action taken by BCS over a two year period regarding informal complaints received from Great American customers has been set forth, above. Essentially, BCS personnel examined the informal complaints received and found only four instances that BCS deemed worthy of escalation to I&E for further investigation. Those four informal complaints and the Company responses were forwarded to I&E. I&E investigated those incidences and elected to move forward with three of them, finding sufficient evidence in each of a violation of the Commission's regulations and warranting the imposition of a civil penalty. For the relevant detail regarding these BCS informal complaints, see Appendix B, attached.

D. Civil Penalty

The Settlement Agreement reached between I&E and Great American proposes a monetary civil penalty of \$18,000. The civil penalty is intended to resolve all allegations raised as a result of I&E's investigation. This monetary fine equates to a payment of \$900 for each of the 20 violations alleged by I&E. This civil penalty is consistent with prior settlement agreements of a similar nature that were recently approved by this Commission, including the *ResCom* proceeding cited in the *September 15 Order*.²

² For example, see also *I&E v. APG&E*, Docket No. M-2013-2311811 (Order entered October 17, 2013)(\$43,200 for 54 violations); *I&E v. IDT*, Docket No. M-2013-2314312 (Order entered October 17, 2013)(\$39,000 for 39 violations); *Law Bureau v. MXEnergy*, Docket No. M-2012-2201861 (Order entered December 5, 2013) (\$22,000 for 22 instances of slamming).

III. CONCLUSION


In addition to the reasons previously set forth by the Parties in their individual Statements in Support, based upon the supplemental information submitted by the Parties herein, approval of this Settlement Agreement is in the public interest and consistent with the Commission's Policy Statement at 52 Pa. Code § 69.201 and should be approved in its entirety.


WHEREFORE, I&E and Great American Power, LLC respectfully represent that they support the settlement of this matter as memorialized by the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the foregoing Settlement Agreement, including all terms and conditions contained therein in its entirety.

Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

Great American Power, LLC

By: 
Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105
717.783.6369
mwindler@pa.gov

By: 
Kari Binns
General Counsel
Great American Power, LLC
2959 Cherokee Street
Suite 202
Kennesaw, GA 30144
281.631.5512
kbinns@pcrigcccenergy.com

Dated: October 17, 2016

RECEIVED
2016 OCT 17 PM 2:11
PA PUC
SECRETARY'S BUREAU

Log #	Date	Description	Research	Results and Action Taken	Enroll Resulted
1016	10/4/2012	Customer says she is with Dominion and didn't want to change her supplier. She thought we were just verifying her information.	Pulled Full Recording of Sale	Customer did not mention that she was enrolled with Dominion. The TSR did not do a good job of explaining that he was with Great American Power and that she was re-enrolling. The TPV is clear that she was enrolling with Great American Power. Cancelled the customer enrollment.	Yes
1018	12/22/2012	Customer states that TSR told him that his contract was up for renewal.	Customer enrolled and dropped in January 2012.	Customer is correct. TSR was coached on subject. This was completed on 12/28/12. Follow up monitoring to be done.	Yes
1020	1/22/2013	Customer sent an email stating that the TSR was rude.	Pulled Full Recording of Sale	The customer is correct and the TSR was removed from GAP campaign.	No
1024	2/7/2013	Customer states that the TSR did not mention GAP and he thought he was talking with PPL.	Pulled Full Recording of Sale	The TSR did introduce herself as PPL. TSR was re-trained and added to the Monitoring Log for follow up. Customer Enrollment Cancelled.	Yes
1027	2/12/2013	Called and claimed that agent signed her up and she doesn't want to sign up; she said our rate is more than PECO; she also states in a voice mail that she doesn't want to sign up the account.	Pulled Full Recording of Sale	TSR did not do a good job of explaining the price plan. TSR was retrained on 2/18. Follow up monitoring to be done on TSR's calls. Customer's number was put on internal DNC. No enrollment was processed.	No
1030	2/26/2013	She said the agent lied to her telling her that she does not have a supplier and that she needs to get one. So she went with us. She did have Dominion that came with an ETF. TPV for the most part is good but she had a question at the end. But the TPV cut off.	Pulled Full Recording of Sale	The customer stated that she had Dominion and the TSR said that she did not. The TSR has been removed from the GAP campaign. Customer enrollment cancelled.	Yes
1033	4/3/2013	Customer was contacted by the call center last night. The customer initially accepted the offer but at the end of the TPV, she asked the agent if she would incur any termination fee from her existing supplier. The agent looked it up and told her that yes, she would incur an early termination fee. The customer said that the agent asked a supervisor and the supervisor agreed....that they couldn't cancel the sale. The TPV accepted the sale. The customer does NOT want to switch to GAP.	Stopped customer enrollment.	On 4/5/13 the TSR's were re-trained on the process to cancel an order.	No

RECEIVED

OCT 17 2016

Appendix A

Log #	Date	Description	Research	Results and Action Taken	Enroll Resulted
1034	4/5/2013	Someone from the call center hung up on her when she called the center to ask to be taken off of the call list. The customer said [the representative] was extremely rude and unprofessional.		On 4/18/13 the TSR was given a verbal warning about being rude and not accepting DNC requests. Additional monitoring of TSR is being done.	No
1037	4/22/2013	80 year old that was led to believe she had to sign up; also her son said that the "215" number that called him had a message that the box was full so he couldn't leave a message.	Pulled Full Recording of Sale and the Call Log. Check the voicemail box.	TSR has been re-trained. This GAP voicemail box is at the call center. Confirmed that it is to be checked every day.	Yes
1040	4/30/2013	Power of attorney for Customer calling to report that no one authorized the enrollment. Customer is deceased and the agent talked with the spouse of Customer. Power of attorney claims the agent "coached" the customer who is 95 years old.	Pulled Full Recording of Sale.	TSR was too assumptive with Customer and did not use his best judgment on the call. TSR has been coached on being too assumptive.	Yes
1060	9/19/2013	Customer calling wondering why she has us as a provider. Listened to TPV, the TPV we listened to was for the phone # on acct. [] - while listening we noticed it was for a church and not a business	Pulled Full Recording.	TSR verified and entered the incorrect account information for the enrollment. TSR is no longer on GAP campaign. Put the phone number on the Internal DNC. Issued Drop Request.	Yes
1062	10/4/2013	Customer said that call center told her that GAP's rate would always be 5% below Duquesne's rate.	Pulled Full Recording.	There were two calls to customer with two different TSR's. Neither TSR told the customer GAP rate would always be 5% below Duquesne. Neither TSR did a good job of explaining the price plan. Both TSR's have been removed from the campaign. Due to the confusion over the rates, GAP issued a refund check to correct her billing to \$.0599/kwh. The customer then chose to enroll on a fixed rate plan with GAP.	Yes
1066	10/23/2013	Call center called 4 times so he finally answered since he thought it was important and agent told him his name is wrong so he was not getting the discount.	Pulled Full Recording.	TSR was attempting to explain why an enrollment might not go through, which included having the wrong name on the account. TSR could have handled the call better and was coached on 10/24/13. Customer number was put on DNC. Cancelled Enrollment.	Yes

Log #	Date	Description	Research	Results and Action Taken	Enroll Resulted
1067	10/23/2013	Customer said that [the representative] told him that he'd get a \$50 rebate.	Pulled Full Recording.	TSR ad-libbed about a non-existent rebate program because the customer specifically asked about a rebate he thought he should have received from a prior plan. TSR did repeatedly state that the program she was calling about did not have a rebate. Re-trained TSR and perform follow up monitoring. Customer care explained to the customer that there wasn't a rebate. Customer decided to stay enrolled.	Yes
1070	10/29/2013	Agent told customer that he was with Great American Power and just wants to change rate.	Pulled Full Recording.	TSR was extremely misleading. TSR is no longer on campaign. No enrollment was processed.	No
1072	10/31/2013	Customer said agent led him to believe that GAP was already his supplier. The fact is, he already had a supplier.	Pulled Full Recording.	Customer is correct. TSR was making a winback call to a customer who had been a GAP customer previously, but failed to make it clear that GAP was not presently the customer's supplier. TSR has been pulled off campaign for retraining. Follow up monitoring is in place. Enrollment cancelled.	Yes
1077	11/22/2013	Agent told her the TPV will reflect Direct Energy so she went through the verification process. She said he was belching on the phone and hung up on her.	Pulled Full Recording.	Complaint is valid. TSR was coached and retrained on 11/25. Follow up monitoring is in place. No enrollment was processed.	No

Legend

DNC – do not call

GAP – Great American Power

TPV – third-party verification

TSR – telemarketing sales representative

BCS Complaints

Case #	Date	Description	BCS Research	Action Taken
3190796	2/20/2014	Never requested service from this company.	Forwarded to company for response and review.	Reviewed TPV which confirms proper enrollment. However, company not satisfied with quality of recording and issues a refund.
3193816	2/25/2014	Did not know her fixed plan changed to a variable rate plan. Received no such notice.	Forwarded to company for response and review.	Could not locate renewal notices sent; refund sent.
3261079	7/9/2014	Customer complains of price increases without notice to customers.	Forwarded to company for response and review.	Reviewed TPV which confirms enrollment to variable rate plan. However, company not satisfied with quality of TPV and issues a refund. Number put on DNC list.

RECEIVED

OCT 17 2016

PA PUBLIC UTILITIES COMMISSION
SECRETARY'S OFFICE

CERTIFICATE OF SERVICE

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

Service by Electronic Mail and First Class Mail:

Kari Binns, Esquire
General Counsel
Great American Power, LLC
722 Pin Oak Road, Suite 202
Katy, TX 77494

Ginger Lucas, CEO
Great American Power, LLC
2959 Cherokee Street, Suite 202
Kennesaw, GA 30144



Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 783-6369

Dated: October 17, 2016

RECEIVED
2016 OCT 17 PM 2:11
PA PUC
SECRETARY'S BUREAU