


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 3, 2020

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement
v.
Verde Energy USA, Inc.
Docket No. C-2020-3017229

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Motion of Verde Energy USA, Inc. to Strike the Affidavit of Barbara Alexander and Portions of the Office of Consumer Advocate's Comments in Opposition of Settlement in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
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Enclosures:

cc: The Honorable Christopher P. Pell (**email only**)
Certificate of Service

*300046

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement : Docket No. C-2020-3017229
v. :
Verde Energy USA, Inc. :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to the Motion of Verde Energy USA, Inc. to Strike the Affidavit of Barbara Alexander and Portions of the Office of Consumer Advocate's Comments in Opposition of Settlement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 3rd day of December 2020.

SERVICE BY E-MAIL ONLY

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Dated: December 3, 2020
*300044

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2020-3017229
	:	
Verde Energy USA, Inc.	:	

THE OFFICE OF CONSUMER ADVOCATE’S ANSWER TO THE MOTION OF VERDE ENERGY USA, INC. TO STRIKE THE AFFIDAVIT OF BARBARA ALEXANDER AND PORTIONS OF THE OFFICE OF CONSUMER ADVOCATE’S COMMENTS IN OPPOSITION OF SETTLEMENT

I. INTRODUCTION

Pursuant to Section 5.103(c) of the Pennsylvania Public Utility Commission’s (Commission) Regulations, the Office of Consumer Advocate (OCA) submits this Answer to the Motion of Verde Energy USA, Inc. (Verde) to Strike Portions of the Comments in Opposition of Settlement filed by the OCA and Appendix A (Findings of Fact), the Affidavit of OCA witness Barbara Alexander, and Exhibit BA-2 (the PPL Report) in the above-captioned proceeding (Motion to Strike). Verde’s Motion to Strike should be denied because the OCA’s Comments, attached Affidavit, PPL Report, and Findings of Facts (1) do not go beyond the scope of this proceeding nor do they violate the ALJ’s Order Denying Request for Abeyance (September 25 Order), (2) do not violate Verde’s due process rights, and (3) do not constitute or contain impermissible hearsay. The information that Verde requests to be stricken is vital for the OCA to provide substantive comments, based upon necessary and relevant facts in the record, for a contested settlement before the Commission.

As explained herein, Verde’s Motion to Strike should be denied.

II. BACKGROUND

On January 30, 2020, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint against Verde Energy alleging, *inter alia*, that from February 2017 up to the date of the Complaint, Verde engaged in deceptive and misleading tactics while conducting door-to-door and telemarketing sales, enrolled customers without authorization (i.e., slamming) and accessed customer accounts without authorization. See I&E's Non-Proprietary Formal Complaint at 4-5. The allegations stemmed from an initial informal investigation by I&E of Verde during which PPL Electric Utilities (PPL Electric), in response to I&E-served data requests, identified and provided 339 customer accounts allegedly affected by Verde's alleged conduct. Id. I&E requested, as relief, a total civil penalty of \$8,883,000.00, license revocation, refunds in the amount of the first two billing periods to customers whose electricity supply was changed without their consent, and refunds in the amount of any cancellation fees charged to customers for switching suppliers as a result of an unauthorized switch. Id. at 18-19.

On February 14, 2020, Verde was granted an extension of time to file an Answer to the Complaint. The Office of Consumer Advocate (OCA) filed a Notice of Intervention on February 21, 2020 to protect the interests of consumers in this proceeding before the Commission. Following the OCA's intervention, on March 30, 2020 and again, on May 15, 2020, Verde requested an extension of time to file its Answer. Prior to each request, Verde notified the OCA of the planned request and asked if there were any objections on behalf of the OCA. The OCA was not provided a reason for the request for extensions of time, but nonetheless stated no objection to Verde's requests given the occurrence of the COVID-19 pandemic. With the government lockdown in full effect, the Commission's emergency orders regarding its operations and deadline

extensions, the OCA transitioning to working remotely, and no Answer having yet been filed to the Complaint, the OCA refrained from conducting its own discovery in this matter.

The OCA was notified for the first time during a call with Verde's counsel on May 26, 2020 that Joint Petitioners had been engaged in settlement negotiations dating back to before the Complaint filing on January 30, 2020 and that Joint Petitioners had reached a near complete settlement. While Verde's Counsel urged the OCA to hear the details of the proposed settlement, the OCA declined because it was the OCA's view that the settlement was premature and negotiated before the OCA was able to conduct discovery into the allegations in the Complaint. The OCA was not notified of any meetings or discussions concerning the development of this Settlement prior to the oral notice on May 26, 2020 and was not included in any settlement negotiations that led up to the proposed Settlement. The draft of the settlement was provided to the OCA in an email attachment on May 27, 2020 and counsel for Verde requested that the OCA provide its position and any input on the settlement. Per the email, Joint Petitioners had agreed to nearly all of the terms except for the civil penalty amount.

The OCA served interrogatories to Verde on June 1, 2020, July 6, 2020, and August 3, 2020.¹ Verde filed its Answer to the Formal Complaint on June 30, 2020 and, a few hours later, I&E filed a Joint Petition of I&E and Verde for Approval of Settlement.

On July 20, 2020, the OCA filed a Statement in Opposition to the Non-unanimous Settlement filed by Verde and I&E pursuant to 52 Pa. Code Section 5.232(g), within which the

¹ The OCA discovered the below factual error in Verde's Motion to Strike:

"9. On July 20, 2020, OCA filed its Statement in Opposition stating that it cannot support the Joint Petition, if at all, until it has the opportunity to fully explore the allegations in the Formal Complaint while it seeks further discovery from Verde.

10. OCA then issued three (3) sets of discovery requests to Verde, to which Verde responded."

The OCA served two sets of discovery prior to filing its Statement in Opposition.

OCA explained why the settlement was premature and inadequate. Specifically, the OCA argued that, “[b]ased on the seriousness of the allegations and the information the OCA has been able to obtain and review to date, the OCA cannot agree with this proposed Settlement.” The OCA argued that the Commission should allow this matter to proceed so that the alleged violations can be assessed in greater detail and the reasonableness of the proposed remedies in the Settlement can be determined. In response, I&E filed a letter with the Commission’s Secretary Bureau requesting that the OCA’s statement in opposition be considered “objections” and the settlement be presented to the Commission for disposition. I&E Letter to Secretary Chiavetta (July 23, 2020). On July 24, 2020, a Secretarial Letter was issued to the parties notifying them of the assignment of the contested matter to the Office of Administrative Law Judge. Secretarial Letter: Contested Matter Assigned to OALJ (July 24, 2020). Administrative Law Judge Christopher P. Pell was subsequently assigned to the matter and a prehearing conference was held telephonically on August 27, 2020.

During the prehearing conference, the parties were given an opportunity to state their positions on the matter and the pending settlement. The OCA requested that the matter be held in abeyance for sixty days while the OCA conducted further discovery. In the September 25 Order, ALJ Pell concluded that the OCA had the opportunity to conduct discovery and weigh in on the settlement and he would issue an initial decision on the settlement addressing whether it is in the public interest and should be approved. ALJ Pell’s September 25 Order also permitted I&E and Verde to file a stipulated statement of facts 20 days after the issuance of the order, permitted the OCA to file comments on the settlement 40 days after the issuance of the order, and permitted I&E and Verde to file reply comments on the settlement 60 days after issuance of the order. Verde and

I&E filed the Joint Stipulation of Facts on October 21, 2020 and the OCA filed its Comments in Opposition of the Joint Petition for Approval of Settlement on November 9, 2020.

Verde filed this Motion to Strike on November 18, 2020. On November 19, 2020, I&E filed a Letter with the Commission's Secretary Bureau indicating its support of Verde's Motion to Strike.

The OCA hereby provides its Answer to Verde's Motion to Strike. In Section III, the OCA sets forth in narrative form its legal argument as to why the Motion to Strike should be denied. In Section IV, the OCA presents a paragraph by paragraph response to the Motion to Strike.

III. ANSWER

Verde claims that portions of the OCA's Comments, its entire Statement of Facts, and the Affidavit of Barbara Alexander including the PPL Report should be stricken from the record because they "seek to impermissibly add evidence into the record, contain inadmissible hearsay, improperly broaden the scope of the proceeding, and make impertinent allegations." Motion to Strike at 1. Verde's Motion to Strike is overly broad and does not provide a single specific example from the Affidavit, Findings of Fact, or the OCA's Comments to support its claim. Rather, Verde broadly argues that particular sections of the OCA's Comments, and the entirety of Ms. Alexander's Affidavit and the OCA's Findings of Fact should be stricken from the record for an array of reasons. Nonetheless, the OCA's Comments referencing Ms. Alexander's Affidavit and the OCA's Findings of Facts are both relevant and admissible in this proceeding and due process requires the evidence to go before the ALJ and the Commission for consideration in determining whether the proposed Settlement should be approved.

- A. The OCA's Presentation Does Not Violate the ALJ's September 25 Order and Are Not an Impermissible Expansion of the Proceeding and Are Not Impertinent Allegations.

Verde first argues that the Affidavit and accompanying Appendix and Exhibits exceed the scope of ALJ Pell’s September 25 Order and improperly broaden the scope of the proceeding. Motion to Strike at ¶ 22-26. Verde also argues that the “submission of the Alexander Affidavit shows a clear disregard for the proper scope of comments in response to a Settlement Petition.” Motion to Strike at ¶¶ 24-26. Additionally, Verde argues that the OCA’s Findings of Facts violate the ALJ’s September 25 Order that permitted the OCA to file Comments on the proposed Settlement. Motion to Strike ¶ 57. The Motion to Strike on these grounds is wholly without merit.

As an initial matter, for a Settlement to be approved, it must serve the public interest and it must be supported by “substantial evidence.”² Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.³ In the event of a non-unanimous settlement, the Commission’s standards for review are the same as those for deciding a fully contested case.⁴ The standard for review of a fully contested case before the Commission is that of the burden of proof standard.⁵ Under the burden of proof standard, the party upon whom the burden is placed must meet that burden by a preponderance of the evidence.⁶ A preponderance of the evidence is established by presenting evidence that has sufficient weight to “tip the scales”

² Pa. PUC v. PGW, Docket No. R-2020-3017206 at 13-15 (Opinion and Order entered No. 19, 2020).

³ Consolidated Edison Company of New York v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217; see also, 66 Pa. C.S. § 332 for definition of evidence that may be received. Under the Commission’s regulations on the admissibility of evidence, “[r]elevant and material evidence is admissible subject to objections on other grounds.” 52 Pa. Code § 5.401. Evidence will be excluded if (1) it is repetitious or cumulative or (2) its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time. 52 Pa. Code § 5.401(b).

⁴ Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp., Docket Nos. A-2010-2176520, and A-2010-2176732 (Opinion and Order entered March 8, 2011) (citing

⁵ 66 Pa. C.S. § 315(b).

⁶ Se-Ling Hosiery v. Margulies, 70 A.2d 854, 856 (1950).

on the side of party presenting it.⁷ The non-unanimous proposed settlement must also be supported by substantial evidence consistent with statutory requirements.⁸

In the September 25 Order, ALJ Pell permitted the OCA to file substantive Comments on the Settlement. The September 25 Order stated:

Since the OCA's Statement in Opposition to the Joint Petition largely challenged the Settlement because it had not fully conducted discovery, I will allow the OCA an opportunity to provide substantive comments on the Settlement and to delineate the issues they would raise if the Settlement is rejected and to outline how the OCA's interests would be affected if the Settlement is accepted.

The ALJ's Order did not prohibit the OCA from introducing its own facts and evidence upon which it based its substantive Comments in opposition to the proposed Settlement. Indeed, the ALJ's Order sought *substantive* comments from the OCA and that substance was based on the facts that the OCA had been able to develop through the discovery it was permitted to conduct. To file substantive comments without factual support would have led to dismissal of the OCA's comments as unsupported. Verde, through its narrow interpretation of the ALJ's Order, creates a Catch-22 where the OCA would face dismissal for failure to support its position, but is precluded from presenting that support by Verde's Motion to Strike.

The OCA's Comments and Findings of Fact are fully within the parameters set forth by ALJ's September 25 Order. In accord with the ALJ's Order, the OCA filed substantive Comments with supporting facts and information developed from Verde responses to OCA and I&E discovery as well as PPL responses to I&E data requests. Far from being "impertinent allegations," the OCA's position is fully supported by the facts it has developed to date. The Affidavit, written and

⁷ Id.

⁸ Popowsky v. Pa. PUC, 805 A.2d 637 (Pa. Cmwlth. 2002); and ARIPPA v. Pa. PUC, 792 A.2d 636 (Pa. Cmwlth. 2002).

sworn to by OCA witness Barbara Alexander, was compiled using: I&E's Formal Complaint in this matter, Verde's verified responses to interrogatories and data requests made by I&E and the OCA in this matter, Ms. Alexander's own research on Verde and its parent Company, Spark, and verified data request responses provided by PPL Electric to I&E data requests upon which the allegations in I&E's Formal Complaint were based. The information contained in the Affidavit relates to facts and findings developed by the OCA during discovery and are the basis of the OCA's substantive opposition to the proposed Settlement. It provides the necessary information for the ALJ and the Commission to conduct a full and complete analysis of the allegations, the proposed Settlement, and whether the proposed Settlement serves the public interest given this background information developed in discovery.

Ms. Alexander's Affidavit, and the Findings of Fact, provide relevant background information on Verde's ownership structure, Verde's and its affiliate's history of similar allegations and proceedings in other jurisdictions, and Verde's use and management of third-party vendors in Pennsylvania. Specifically, the information cited by the OCA in its Comments involve the allegations and functions of Verde's management which are necessary to understanding the OCA's substantive issues with the Settlement and its potential implementation. This information is vital to support the OCA's position that the proposed Settlement does not serve the public interest.

The OCA's identification of specific deficiencies in the Settlement in Section V of its Comments are based on the facts it was able to develop. The purpose of the Affidavit and proposed Findings of Fact are to allow the OCA to make informed, substantive Comments permitted by the ALJ's September 25, 2020 Order. The OCA's concerns identified in the Comments needed to be

supported with facts, and the information developed from the discovery responses was critical to understanding and supporting the OCA's substantive Comments.

Verde argues that the "context is important here" and notes that the OCA's formal position is that the Complaint should not be settled. Motion to Strike at ¶ 27, citing the OCA's Statement in Opposition to Joint Petition for Approval of Non-Unanimous Settlement and the OCA's Prehearing Memorandum. The OCA agrees that context is important here, but the OCA does not agree that the Company accurately states the OCA's position in this case. As the OCA stated in its Comments, serious allegations are raised by I&E's Formal Complaint in this proceeding, and the OCA's position is that the information provided to date demonstrates that the proposed Settlement is not sufficient to address those allegations.

Verde also states that the presiding officer rejected the OCA's position in the September 25 Order and that the OCA has ignored the ALJ's ruling and procedural posture in this case by "attempting to submit 'evidence and testimony'". Motion to Strike at ¶¶ 28-29. The only position that the ALJ rejected was the OCA's request that the matter be held in abeyance for 60 days in order to allow the OCA to conduct further discovery. ALJ's September 25 Order at Ordering ¶ 9. Contrary to Verde's arguments, the ALJ did not address the substance of the OCA's issues identified in its Statement of Opposition or its Prehearing Memorandum, but asked for the OCA to specifically delineate the substance of those issues in its Comments. Ms. Alexander's Affidavit and attached Exhibits are not an attempt to create a "one-sided" parallel record. Instead, the OCA's Comments and Affidavit are presented to show the deficiencies that the OCA has found to date in the proposed Settlement.

Verde also argues that the OCA's Findings of Facts violate the ALJ's September 25 Order that permitted the OCA to file Comments on the proposed Settlement and are beyond the scope of

the ALJ's September 25 Order. Motion to Strike ¶ 57(d). The September 25 Order did not in any way limit the OCA to only the facts presented by those parties supporting the Settlement, and it would be not be proper to expect that a party contesting such a settlement must rely solely on those limited facts.

The facts presented in the OCA's Comments are necessary for an evaluation of the allegations raised by I&E's Formal Complaint and the proposed Settlement proffered by Verde and I&E to resolve these allegations. The Commission recently reiterated that, for a Settlement to be approved, it must serve the public interest and it must be supported by "substantial evidence."⁹ Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.¹⁰ The Stipulation of Facts jointly filed by I&E and Verde not only fail to demonstrate that the proposed Settlement serves the public interest and is backed by substantial evidence, but it also left out many pertinent facts which the OCA included with its Comments to demonstrate why the proposed Settlement falls short of serving the public interest.

The OCA submits that the Affidavit, Exhibits, and proposed Findings of Fact are appropriately within the scope of the ALJ's September 25, 2020 Order and should not be stricken.

B. The Comments, Affidavit of Barbara Alexander and Attached Exhibits Do Not Violate Verde's Due Process Rights.

Verde argues that the Affidavit and accompanying Appendix and Exhibits violate "basic principles of due process" and should be stricken. Motion to Strike at ¶ 30-37. The OCA agrees with the due process standard set forth in Verde's Motion to Strike. As Verde states, the Commission, as an administrative body, is bound by the due process provisions of constitutional

⁹ Pa. PUC v. PGW, Docket No. R-2020-3017206 at 13-15 (Opinion and Order entered No. 19, 2020).

¹⁰ Consolidated Edison Company of New York v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217.

law and principles of fairness. Motion to Strike at ¶ 38.¹¹ The Commonwealth Court stated in Popowsky that “[a]s an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness.”¹² Due process is satisfied when the parties are afforded notice and the opportunity to be heard.¹³

The OCA submits, however, that in making its due process argument, Verde incorrectly characterizes the OCA’s Comments and the Affidavit of Ms. Alexander. The information and related allegations are presented to demonstrate the potential deficiencies of the Settlement and identify the issues that the OCA has identified with the Settlement. Moreover, Verde’s Motion seems to assume that only Verde and I&E had a due process right to place facts on the record, but without cross-examination or rebuttal by the OCA, which Verde identifies as elements of due process. I&E and Verde placed their facts on the record through their Stipulation, and the OCA has a right to present its facts necessary to understanding its opposition to the Settlement. The purpose of the OCA’s Comments and the Affidavit of Barbara Alexander are to provide the scope of the OCA’s concerns about the Settlement. Due process is satisfied because Verde and I&E have provided the facts for the record that they found necessary to support the proposed settlement, and the settling parties have now been provided with notice of the OCA’s issues and concerns about the Settlement, along with the support for those concerns. I&E and Verde have the opportunity to respond in Reply Comments.

¹¹ Hess. v. Pa. Pub. Util. Commission, 107 A.3d 266 (Pa. Cmwlth. 2014)(); Bridgewater Borough v. Pa. Pub. Util. Commission, 124 A. 2d 165 (Pa. Super. 1956); McCormick v. Pa. Pub. Util. Commission, 30 A.2d (Pa. Super. 1943).

¹² Popowsky v. Pa. PUC, 805 A.2d 637, 642 (Pa. Cmwlth. 2002) (Popowsky) (citing West Penn Power Company v. Pennsylvania Public Utility Commission, 174 Pa. Super. 123, 100 A.2d 110 (Pa. Super. 1953) quoting Pittsburgh v. Pennsylvania Public Utility Commission, 171 Pa. Super. 391, 395, 90 A.2d 850).

¹³ Schneider v. Pa. Public Util. Com, 83 Pa. Commw. 306, 315, 479 A.2d 10, 15, 1984 Pa. Commw. LEXIS 1512, *12 (citing Township of Middleton v. The Institute District of The County of Delaware, 6 Pa. Cmwlth Ct. 146, 293 A.2d 885 (1972), aff’d 450 Pa. 282, 299 A.2d 599 (1973)).

The OCA has identified in its Comments and Affidavit of Barbara Alexander the facts that the Verde and I&E Settlement and Stipulation of Facts do not address. Verde argues that in evaluating the Settlement, the Commission must only consider the evidence in the record of this case and that “it is inappropriate for OCA Comments to reference information which is not in the record, or seek to expand the record with new information.” Verde at ¶ 31. In support of its arguments, Verde cites to the Commission’s regulation regarding briefs at 52 Pa. Code Section 5.501(a)(2) and argues that briefs must contain “[r]eference to the pages or record or exhibits where the evidence relied upon by the filing party appears.” Motion to Strike at ¶ 32. Verde argues that the “Commission has struck portions of briefs that contain references to information that is not in the record.” Motion to Strike at ¶ 32. Verde also cites to the Petition of PECO Energy for approval of its Act 129 Energy Efficiency and Conservation Plan (PECO Act 129 Order) and the Joint Application of Verizon Communications, and MCI, Inc. for Approval of Agreement and Plan of Merger in support of its arguments to strike the Affidavit and Exhibits and related Comments. Motion to Strike at ¶ 32.¹⁴ Verde argues that “if information is not in the record, it cannot be considered by the Commission in evaluating a Settlement.”¹⁵ Motion to Strike at ¶ 33, citing Equitable and PAWC.¹⁶

The OCA submits that the Company’s analysis is flawed in several respects. First, the OCA’s Comments, Affidavit, and attached Exhibits are not briefs following a full hearing on the

¹⁴ See, e.g., Petition of PECO Energy Company for Approval of Its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of Its Compact Fluorescent Lamp Program, Docket No. M-2009-2093215 (Order entered October 28, 2009) (PECO Act 129 Order); Joint Application of Verizon Communications, Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger, 2006 Pa.PUC LEXIS 22 (2006) (Verizon), *aff’d sub nom.*, Popowsky v. PA. Public Utility Commission, 937 A.2d 1040 (Pa. 2007).

¹⁵ In re Pennsylvania-American Water- Company, 95 Pa. P.U.C. 86 (Order entered February 13, 2001)(PAWC).

¹⁶ If Verde is correct, then it cannot refer to its own Statement of Facts as the Statement has not been admitted into the record and is verified by the attorneys who signed the Settlement.

matter. Second, the cases cited by Verde were all fully litigated proceedings where hearings were held and evidence was entered into the record, and a final disposition on the matter was being adjudicated. The purpose of the information presented in the Comments and Affidavit are to identify the seriousness of the allegations and the deficiencies in the Settlement in addressing those allegations. The OCA submits that the four cases cited by Verde are simply not applicable or comparable to this proceeding. PECO Act 129 Order at 6-11, 17-20 (Sworn pre-filed written testimony and oral rejoinder testimony admitted at evidentiary hearing. Order was issued closing the evidentiary record. Motion to Strike Portions of Revised Reply Brief granted based upon party's inclusion of extra-record evidence after the close of the evidentiary record.); Verizon at *2-*7 (Sworn pre-filed written testimony admitted at evidentiary hearing and various witnesses examined at hearing. After hearing and closing of the evidentiary record, Joint Applicants filed motion to strike portions of opposing party's brief for inclusion of extra-record evidence not admitted at hearing.); PAWC at 87-88 (Motion to Strike portions of Reply Exceptions after full evidentiary hearings and an Initial Decision that included 115 Findings of Fact.) All of these cases were fully litigated proceedings where sworn testimony was entered into the record and the briefs submitted following a fully litigated proceeding.¹⁷ See, Id.

Verde argues that the "evidence and facts" in the OCA's Comments are prejudicial to Verde and that Verde would have challenged the accuracy of the statements of witnesses through evidence and testimony. Motion to Strike at ¶ 34. Verde argues that inclusion of the Alexander

¹⁷ Verde also cites to Pennsylvania Public Utility Commission, et al. v. Equitable Gas Company, Docket Nos. R-2009-2088072, C-2009-2091475, C-2009-2098330 and C-2009-2100312 (Order entered December 21, 2009)(Equitable). Verde's reliance on Equitable is wholly misplaced. The Equitable case has no similarities to the argument that Verde is trying to make. In Equitable, the Office of Trial Staff raised in the case below a capacity release issue that was addressed by a Settlement that included OTS. The Commission Order rejected the capacity release language in the Settlement, and Equitable argued that there was no record evidence to support the determination since the settling parties agreed that testimony contrary to the Settlement provisions was withdrawn from the record. In the Order, the Commission remanded the capacity release issue for disposition.

Affidavit violates I&E's and Verde's due process rights because without a hearing or procedural schedule, there is no opportunity to cross-examine Ms. Alexander, serve discovery on her, or submit testimony to rebut her allegations.¹⁸ Motion to Strike at ¶ 35. Verde then argues that the cure is not to allow for that cross-examination and testimony that is being denied to Verde. Motion to Strike at ¶ 36.

Verde cannot simultaneously argue that its due process rights are being violated and that the cure (of hearings and the opportunity for cross-examination of Ms. Alexander) is not appropriate. As the ALJ correctly identified, the OCA has the right to identify its concerns with the Settlement and the Stipulated Facts. The OCA has not violated the due process rights of I&E and Verde by presenting the full scope of the allegations presented in this case and the information that the OCA has learned thus far and that forms the basis of the OCA's opposition. Verde and I&E had an opportunity to present their Statement of Facts in support of the Settlement and have an opportunity to provide responsive comments. Moreover, the OCA submits that many of the facts that Verde seeks to strike and that are presented in the Affidavit of Barbara Alexander are based upon Verde's own verified responses to discovery requests. See, Alexander Affidavit at ¶¶ 25-42. The OCA notes that many of the footnote citations are to Verde's verified responses to OCA interrogatories, the Stipulated Facts of Verde and I&E, or to the Formal Complaint itself. The OCA submits that its Comments and supporting Affidavit and Exhibits and Findings of Fact do not violate Verde's due process. Verde and I&E were permitted to place their facts on the

¹⁸ Verde does not seem as equally concerned about the due process rights of the OCA. Verde and I&E were permitted to introduce facts through a Stipulation of Facts and the OCA has been provided no opportunity to cross-examine witnesses supporting those facts. The Stipulation of Facts was not even verified by a witness or employee of Verde. Verde's one-sided discussion of due process is a fatal flaw. If Verde's position is given weight, then the Verde and I&E Stipulation falls for the same reason.

record to support the Settlement and to file responsive Comments. The question now is whether the Settlement is in the public interest.

C. The Statements Found in Barbara Alexander’s Affidavit and PPL Report are Not Impermissible Hearsay.

Verde’s broad request to strike on the basis of hearsay—in its entirety—an affidavit and attached verified data responses containing relevant and admissible information gathered in discovery and necessary to support the OCA’s position that the proposed Settlement is not in the public interest should be rejected. As an initial matter, the Commission follows the Walker rule, which allows hearsay into the record, however, the effect it is given depends on whether it is properly objected to.¹⁹ Standing alone, Verde cannot request the Affidavit, PPL Report, Findings of Facts, and portions of the OCA’s Comments be excluded in a Commission proceeding for the sole reason of hearsay.

“Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received.”²⁰ In Pennsylvania, hearsay is defined as a statement that: “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” 225 Pa. Code § 801(c). The business records exception to the rule against hearsay is commonly raised in consumer complaint matters and the Commission only requires a copy of a business record and its appropriate authentication by a witness qualified to

¹⁹ See Ruth Sanchez v. PPL Electric Utilities Corporation, Docket No. C-2015-2472600 at 11-13 (Order entered July 21, 2016) (Sanchez) (citing in part to Walker v. Unemployment Compensation Bd. of Rev., 367 A.2d 355, 370 (Pa. Cmwlth. 1976) (In Sanchez, the Commission cited to Walker stating: “...hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection, will be given its natural probative effect and may support a finding of an agency if it is corroborated by any competent evidence in the record.”)

²⁰ 2 Pa. C.S. § 505.

provide testimony on the subject matter.²¹ Under Section 803(6) of the Pennsylvania Rules of Evidence, a document containing hearsay is permissible if it is a document, including memorandums and reports, made at or near the time—or from information transmitted by—someone with knowledge, the record was kept in the course of regularly conducted activity of a “business”, the making of the record was a regular practice of that activity, the aforementioned conditions can be shown by the testimony of the custodian or another qualified witness, and the opponent does not show any indication of a lack of trustworthiness. 225 Pa. Code § 803(6).

1. Verde Has Not Demonstrated that the Affidavit and PPL Report are Hearsay.

Verde’s hearsay objection is based upon Verde’s erroneous assertion that the documents describing the allegations are offered by the OCA to prove the truth of the matters asserted. As such, Verde argues that Ms. Alexander’s Affidavit and the PPL Report contain inadmissible hearsay statements in violation of the Pennsylvania Rules of Evidence at 225 Pa. Code Section 801 and the Commission’s rules of admissibility at 52 Pa. Code Section 5.412. Motion to Strike ¶ 38-48. In reference to the PPL Report, PPL’s interrogatory responses, Verde argues that the response constitutes hearsay because it was prepared by a third party, summarizes interactions between PPL call representatives and various customers about alleged discussions between those customers and Verde sales agents, none of which Ms. Alexander personally observed. *Id.* ¶ 48. Verde’s request to strike the entirety of Ms. Alexander’s Affidavit because it constitutes hearsay is inaccurate, overly broad, and should be rejected. Many of the statements within the Affidavit were derived from Verde’s verified responses to OCA and I&E data requests, PPL’s verified responses to I&E data requests, and Ms. Alexander’s first-hand knowledge and own research as

²¹ See Sanchez at 11-12 (Commission found that testimony related to the issuance of a termination letter fell within the business records exception to the hearsay rule, and, therefore, was not simple hearsay, and was competent evidence to be relied upon in the proceeding to determine whether the complainant satisfied her burden of proof).

an expert in the field. Additionally, the PPL Report and the portion of the Affidavit and Comments which rely upon the allegations found within it, do not constitute hearsay in light of the purpose of the statements contained in them. Ms. Alexander's Affidavit and the PPL Report are offered here to alert the Commission that these are the full and detailed allegations which are to be considered by the Commission in deciding whether the proposed Settlement is in the public interest.

2. Even If the Statements In the PPL Report Constitute Hearsay, It Would Remain Admissible Under the Exception For Records Of A Regularly Conducted Activity.

Under Pennsylvania law, there is an exception to the rule against hearsay for records of a regularly conducted activity at 225 Pa. Code Section 803(6).²² This exception permits documents, including memorandums and reports, into the record if it was made at or near the time—or from information transmitted by—someone with knowledge, the record was kept in the course of regularly conducted activity of a “business”, making the record was a regular practice of that activity, the aforementioned conditions can be shown by the testimony of the custodian or another qualified witness, and the opponent does not show any indication of a lack of trustworthiness. Id. The PPL Report is a confidential memorandum in response to I&E data requests served to PPL. It

²² 225 Pa. Code §803(6) Records of a Regularly Conducted Activity. A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

- (A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;
- (B) the record was kept in the course of a regularly conducted activity of a "business", which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;
- (C) making the record was a regular practice of that activity;
- (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
- (E) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

provides records of alleged conversations between PPL personnel and Verde customers and was the basis for I&E's Formal Complaint. The Commission recognizes this exception to the hearsay rule when commonly used in consumer complaint proceedings and only requires a copy of a business record and its appropriate authentication by a witness qualified to provide testimony on the subject matter.²³ Similarly here, even if the document contained hearsay for the purpose of showing the truth of the statements made within it, the document would still be admissible under the exception for records of a regularly conducted activity. The PPL Report constitutes a report created by PPL to keep record of contacts between PPL employees and customers regarding alleged discrepancies and complaints, mostly alleged unauthorized switches, throughout the time period of the allegations of this Formal Complaint. The PPL Report also includes a signed verification from a project manager at PPL. See OCA Comments (Confidential Version), Affidavit Attachment BA-2, p. 125 of PDF.

3. Conclusion.

For the reasons provided in Sections III(C)(1) and (2) above, Verde's request for Ms. Alexander's Affidavit, the PPL Report, and any citations to them be stricken from the record as hearsay must be rejected. First, hearsay is not a basis to exclude evidence from an administrative hearing. Second, Verde's claim that the Affidavit and PPL Report contain hearsay statements fails because the statements and allegations within those documents are not offered by the OCA to prove the truth of the matters asserted. Rather, they are offered to provide the Commission with a full and complete account of the allegations and Verde's operations in support of the OCA's opposition to the proposed Settlement. Lastly, even if the allegations within the PPL Report, which are discussed in the Affidavit, were hearsay, the documents would still be admissible under the

²³ See Sanchez at 12-13.

hearsay exception for records of a regularly conducted activity.

IV. OCA RESPONSE TO CLAIMS.

In response to the various claims made by Verde in its Motion to Strike, the OCA states as follows:

1-5. These paragraphs set forth a procedural history to which no response is required.

6. Denied in part. The OCA denies that the Joint Petition for Settlement fully addresses all of the allegations in the Formal Complaint against Verde.

7-9. These paragraphs set forth a procedural history to which no response is required.

10. Denied in part. The OCA denies that it filed three (3) sets of discovery to Verde after filing its Statement in Opposition to the Joint Petition for Settlement. Rather, the OCA served Set I on June 1, 2020 and Set II on July 6, 2020 prior to filing its Statement in Opposition on July 20, 2020.

11-19. These paragraphs set forth a procedural history to which no response is required.

20. Denied. The OCA denies Verde's claim that the OCA's Comments go beyond the scope permitted by ALJ Pell in the September 25 Order. The OCA further denies that its Comments constitute "a hybrid of a legal brief, impermissible written testimony, unauthenticated exhibits consisting entirely of hearsay, discussion of matters that are far outside the scope of the Complaint and the Settlement, and 'Findings of Fact' that are based almost entirely on information that is not in the record in the proceeding." For a full discussion of Verde's argument, see Section III above.

21. Denied. The OCA denies that Verde has provided reasons to strike the materials identified in the Chart contained in this paragraph.

22. Denied. The Affidavit of Barbara Alexander and accompanying Exhibits should not be stricken for the reasons set forth in Sections III(A)-(C) above.

23. Denied. The Affidavit and its two Exhibits do not go beyond the scope of the ALJ's September 25, 2020 Order for OCA's Comments on the Joint Petition as discussed in Section III(A) above.

24. Admitted, in part. Paragraph 24 includes an accurate partial recitation of the language included in the September 25, 2020 Order. The quotation is referenced as legal argument, for which no response is required.

25. Denied. For the reasons set forth in Section III (A) above, the OCA denies that the inclusion of the Alexander Affidavit and accompanying Exhibits go beyond the scope of the September 25, 2020 Order.

26. Denied. The OCA denies that the submission of the Alexander Affidavit disregards the proper scope of comments in response to the Settlement Petition. The OCA Comments provide the OCA's substantive analysis of the Settlement as requested by the ALJ in his Order. For a full discussion, see Section III(A) above.

27. Admitted, in part; denied, in part. As discussed in Section III (A) above, the OCA admits that context is important. The OCA denies that it is the OCA's position that the Complaint should not be settled and must be litigated. It is the OCA's position is that the proposed I&E and Verde Settlement is deficient and not that full litigation is necessary. The OCA requested that the matter be held in abeyance for 60 days to allow the OCA additional time to investigate the allegations in the I&E Formal Complaint and to engage in meaningful discussions. See, Tr. 11.

28. Denied. The statements are legal arguments for which no response is required. Verde's characterization of the ALJ's September 25, 2020 Order is denied. The ALJ denied the OCA's request to hold the proceeding in abeyance for 60 days to allow the OCA to complete additional discovery. The OCA denies that the ALJ "rejected the OCA's position" in this matter.

29. Denied. The OCA specifically denies that it ignored the “presiding officer’s ruling.” The OCA presented the facts and information necessary to support its substantive Comments. The OCA also denies Verde’s characterization that there is a “settlement procedural posture of the case.” I&E and Verde have entered into a Settlement, but the OCA, as a full party and Intervenor in this matter, has contested that proposed Settlement.

30. Denied. The OCA denies Verde’s characterization of the Alexander Affidavit and Exhibits. For the reasons set forth in Section III(B), Ms. Alexander’s Affidavit and attached Exhibits are not an attempt to create a “one-sided parallel record.” Instead, the OCA’s Comments and Affidavit are presented to show the deficiencies that the OCA has found to date in the proposed Settlement.

31. Denied. Verde’s statements are legal conclusions to which no answer is required. For the reasons set forth in Sections III(A) and (B) above, the OCA specifically denies Verde’s characterization that the information presented in the OCA’s Comments is not part of a record for the Commission’s consideration as it was presented through a sworn Affidavit.

32. Admitted, in part; denied, in part. Verde accurately recites the language identified in Section 5.501(a)(2) of the Commission’s regulations and the remainder of the paragraph presents legal argument to which no response is required. It is, however, denied that the cases cited by Verde are relevant to the matter at hand. For the reasons set forth in Section III(B) above, the OCA denies that the regulation or cases are applicable.

33. Admitted, in part; denied, part. Paragraph 33 includes an accurate recitation of the law. The quotation, however, is included as a part of a legal argument, for which no response is required. It is, however, denied that the cases cited by Verde are relevant to the matter at hand. For the reasons set forth in Section III(B), the OCA denies that the cases are applicable.

34. Denied. For the reasons set forth in Section III(B) above, the OCA denies that the evidence and facts presented by the OCA are prejudicial. The OCA is without sufficient information to admit or deny the statements as to what actions Verde may have taken at an evidentiary hearing.

35. Admitted, in part; denied, in part. The OCA admits that no litigation procedure was established for the case to date. The OCA denies that the Formal Complaint has been fully resolved by the Settlement between Verde and I&E. For the reasons set forth in Section III(B) above, the OCA also denies that Verde's and I&E's due process rights have been violated.

36. Denied. For the reasons set forth in Section III(B) above, the OCA also denies that Verde's and I&E's due process rights have been violated. As discussed in Section III(B) above, Verde cannot simultaneously argue that its due process rights are being violated and that the cure (of discovery, testimony, hearings and the opportunity for cross-examination of Ms. Alexander) is not appropriate. The OCA denies Verde's characterization that "doing so would effectively reverse the presiding officer's prior ruling regarding the appropriate process for evaluating the Joint Petition." The OCA also specifically denies the characterization that the OCA is attempting to "force" litigation in this matter. The OCA's Comments, accompanying Affidavit and Exhibits are presented for the purpose of identifying the OCA's concerns regarding deficiencies in the Settlement. The OCA also specifically denies that Verde's characterization that this matter has been fully resolved because the OCA, a full party and Intervenor in this matter, has not agreed to the Settlement.

37. Denied. The statement calls for a legal conclusion for which no response is required. Moreover, the OCA denies that any remedy is necessary.

38. Admitted, in part; denied in part. Paragraph 38 includes an accurate recitation of the law. The quotation, however, is included as a part of a legal argument, for which no response is required.

39. Denied. The OCA denies that Ms. Alexander's Affidavit is unauthenticated or constitutes hearsay under it under Pennsylvania Rule of Evidence 801 (225 Pa. Code §801). Ms. Alexander's Affidavit was authenticated and sworn to in front of a duly authorized notary who affixed the appropriate seal. As set forth in Section III(C), Ms. Alexander's Affidavit is not "statement, other than one made by a declarant while testifying at trial, that is being offered into evidence to prove the truth of the matters asserted therein." Rather, Ms. Alexander's Affidavit is offered to identify to the Commission the seriousness of the allegations and provide a full and complete background of Verde's operations to support the OCA's opposition to the proposed Settlement.

40. Admitted, in part; denied in part. Paragraph 40 includes an accurate recitation of the law. The statement, however, is included as a part of a legal argument, for which no response is required. However, as set forth in Section III(C), this legal argument, and cases cited to in support thereof, are inapplicable here for hearsay is not a basis for having evidence stricken from the record in an administrative proceeding.

41. Admitted, in part; denied in part. Paragraph 41 includes an accurate recitation of the law. The statement, however, is included as a part of a legal argument, for which no response is required. However, as set forth in Section III(C), this legal argument is inapplicable here for Ms. Alexander's Affidavit states that it was prepared by her or under her supervision, is accompanied by a signed verification, and was sworn to in front of a duly authorized notary who affixed the appropriate seal.

42. Admitted, in part; denied in part. Paragraph 42 includes an accurate recitation of the law. The quotation, however, is included as a part of a legal argument, for which no response is required. This legal argument is inapplicable here for Ms. Alexander's Affidavit states that it was prepared by her or under her supervision, is accompanied by a signed verification, and was sworn to in front of a duly authorized notary who affixed the appropriate seal.

43. Admitted, in part; denied in part. Paragraph 43 includes an accurate recitation of the law. The statement, however, is included as a part of a legal argument, for which no response is required. However, as set forth in Section III(C), this legal argument, and the case cited to in support thereof, are inapplicable here for hearsay is not a basis for having evidence stricken from the record in an administrative proceeding.

44. Admitted, in part; denied in part. The OCA admits that the OCA's intent is to have the Commission consider the facts it has adduced when determining whether the proposed Settlement is in the public interest, but the OCA denies Verde's claim that it is the OCA's intention to force Verde and I&E litigate a matter satisfactorily resolve.

45. Denied. As discussed above in Section III(A), the OCA was not prohibited from introducing evidence it developed in discovery to support its substantive Comments before the Commission. The remainder of the paragraph constitutes legal argument to which no response is required. As discussed in Section III(C), however, Ms. Alexander's Affidavit does not constitute inadmissible hearsay and, even if it contained hearsay, the source of the hearsay would fall under the hearsay exception at 225 Pa. Code §803(6) for records of a regularly conducted activity, also referred to as the business records exception.

46. Denied. As discussed in Section III(B), Verde's due process rights are not violated by the inclusion of Ms. Alexander's Affidavit in the record. Also, as discussed in Section III(C), Ms. Alexander's Affidavit does not include layers of hearsay.

47. Admitted in part; denied in part. The OCA partially admits that Ms. Alexander's Affidavit was created by a person with no first-hand knowledge of some of the allegations contained within it and that some of those allegations stemmed from conversations between third-parties. The OCA denies that this is a basis for exclusion of Ms. Alexander's Affidavit either in part or in whole. As discussed in Section III(C), Ms. Alexander's Affidavit is a relevant and admissible evidentiary document compiled using information from the Formal Complaint and information developed in discovery upon which the OCA supports its position on the Settlement.

48. Admitted in part; denied in part. The OCA admits that Exhibit BA-2, the PPL report, was created by a third-party, PPL Electric, and that Ms. Alexander did not observe any of these interactions. For the reasons discussed in Section III(C), the OCA denies that this raises foundation, authentication, and due process issues. The OCA can neither admit nor deny that Verde and I&E do not have the ability to cross-examine Ms. Alexander, the preparer of the PPL Report, or the individuals allegedly involved in the underlying discussions.

49. Denied. The OCA denies that any of its statements found in its Comments go beyond the scope of this proceeding. As explained in Section III(A), Verde's broad and unspecific request to exclude portions of the OCA's Comments because they go beyond the scope of this proceeding is without merit and should be rejected.

50. The OCA is without information to admit or deny this statement by Verde.

51. Admitted in part; denied in part. For the reasons set forth in Section III(A), the OCA denies that the September 25 Order has limits that the OCA's Comments inappropriately reaches beyond.

52. No response needed as this is Verde's legal position.
53. Admitted in part; denied in part. It is admitted that the Complaint in this matter relates to 1) alleged conduct by agents of Verde that violated the Commission's regulations in connection with 339 customer interactions, 2) alleged deficient notification of door-to-door sales activity, and 3) alleged improper account access by agents acting on behalf of Verde. It is denied that this recitation is a complete representation of the Complaint that also alleged that Verde processed and completed unauthorized switches of customer accounts, improper release of customer information, violations of door-to-door and telemarketing marketing regulations, and failure to maintain sales verifications and requested an \$8.8 million civil penalty and license revocation.
54. Admitted in part; denied in part. The allegations in a complaint are not facts, but the existence of an allegation is a fact.
55. Denied. For the reasons discussed in Section III(A), the OCA denies that the Stipulated Facts in Support of the Joint Petition for Approval of Settlement constitutes the sole factual record in this case and delineates that scope of the alleged violations, the factual foundation for the alleged violations, and material facts on which the Settlement is based. Rather, due process requires that the OCA be permitted to present additional facts and evidence necessary to support its opposition to the Settlement.
56. Denied. The OCA denies that the references in the OCA's Comments to Ms. Alexander's Affidavit and attached exhibits, Verde's affiliates, Verde's operations in other states, and Verde's ownership and vendors are beyond the scope of this proceeding and its factual record. As discussed in Sections III(A) and (C), the above-mentioned references in the OCA's Comments are relevant to the allegations, Verde's operations, and why the Settlement does not serve the public interest.

57. Denied. For the reasons discussed in Sections III(A) and (C), the OCA denies that the September 25 Order restricted the OCA from introducing additional findings of facts, that the information contained in the findings of facts is not in the record of this proceeding, the findings of facts rely upon and amplify hearsay, and that the findings of facts seek to address issues that go well beyond the scope of the proceeding, including allegations regarding Verde operations in other states, Verde's affiliates, and Verde's operations that were not part of the Complaint.

58. Denied. The OCA denies that Verde has shown reason to strike the portions of the OCA's Comments, Affidavit of Barbara Alexander, or OCA Findings of Fact.

V. CONCLUSION

The OCA requests that the Presiding Officer deny Verde's Motion to Strike the OCA's Comments, attached Affidavit, PPL Report, and Findings of Facts because the evidence (1) do not go beyond the scope of this proceeding nor do they violate the ALJ's Order Denying Request for Abeyance (September 25 Order), (2) do not violate Verde's due process rights, and (3) do not constitute or contain impermissible hearsay

Respectfully Submitted,

/s/Laura J. Antinucci

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Attachment A

The following materials that Verde specifically requested be stricken from the record are relevant, admissible and should remain in the record for the Commission to consider in determining a resolution in this matter as these materials provide the basis for the OCA’s substantive disagreement with the Settlement:

Description of Material	Location	Verde’s Basis for Objecting	Answer Reference for OCA Response
Affidavit of Barbara Alexander, including Exhibits BA-1 and BA-2	Attached to Comments	Beyond the Scope; Hearsay; Due Process Violation	Sections III(A-C)
OCA “Finding of Facts”	Appendix A to Comments	Beyond the Scope; Hearsay, Due Process	Sections III(A-C)
OCA discussion of Verde ownership structure, affiliates and operations in other states, and vendors	P. 2, last two lines, through the end of P. 3; P. 14, last paragraph, through end of P. 17; P. 29 (first 2 paragraphs); P. 32 (last paragraph); P. 40 (first full paragraph); P. 44 (starting with last sentence in first paragraph) through first sentence on P. 45	Beyond the Scope	Section III(A)
All citations to “Affidavit” and/or its Exhibits, and Ms. Alexander’s opinions throughout the Comments	P.9, 13,14, 15, 21, 22, 23, 26, 27, 28, P. 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 43, 45	Beyond the Scope; Hearsay; Due Process Violation	Sections III(A-C)