



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 21, 2023

**Via Electronic Filing**

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.  
Great American Power, LLC  
Docket No. M-2023-3020643  
**I&E Petition for Reconsideration**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Bureau of Investigation and Enforcement's Petition for Reconsideration** in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L. Rost'.

Kayla L. Rost  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 322768  
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[karost@pa.gov](mailto:karost@pa.gov)

KLR/ac  
Enclosures

cc: As per Certificate of Service  
Office of Special Assistants (*via email* – [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Michael L. Swindler, Deputy Chief Prosecutor (*via email* – [mwindler@pa.gov](mailto:mwindler@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3020643
	:	
Great American Power, LLC	:	

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S  
PETITION FOR RECONSIDERATION OF THE  
COMMISSION’S JULY 6, 2023 OPINION AND ORDER**

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**TO THE HONORABLE COMMISSION:**

Pursuant to 52 Pa. Code § 5.572(c), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits this Petition for Reconsideration (“Petition”) of the Commission’s July 6, 2023 Opinion and Order (“Opinion and Order” or “July 6, 2023 Order”) in the above-captioned proceeding. In support of this Petition, I&E avers as follows:

**I. INTRODUCTION**

1. On January 13, 2023, I&E and Great American Power, LLC, (“GAP”) filed a Joint Petition for Approval of Settlement and Statements in Support (“Joint Petition”) to amicably resolve I&E’s informal investigation regarding misleading and deceptive telemarketing calls. As part of the settlement, I&E and GAP (hereinafter “Parties”) agreed to settle the matter without litigation in exchange for GAP’s agreement to pay a civil penalty of \$92,500.00 and to complete various remedial measures articulated in Section IV of the Joint Petition.

2. On March 2, 2023, the Commission issued an Opinion and Order directing the Joint Petition to be published in the *Pennsylvania Bulletin* and to allow interested parties an opportunity to comment. Notably, the Opinion and Order did not include an opportunity for the Parties to file reply comments to any comments received.

3. On March 18, 2023, the March 2, 2023 Opinion and Order was published in the *Pennsylvania Bulletin*.<sup>1</sup> The deadline to submit comments was April 12, 2023. Notably, the publication did not include a timeframe for the Parties to submit reply comments.

4. On April 12, 2023, the last day to file comments, the Office of Consumer Advocate (“OCA”) filed comments to the Joint Petition. In short, the OCA disagreed with the Joint Petition, offered no recommendations or remedies, and simply requested that the Joint Petition be rejected.

5. On June 15, 2023, during the public meeting, Vice Chairman Stephen DeFrank and Commissioner John Coleman, Jr. issued a Joint Motion moving that the Joint Petition be rejected and the matter returned to I&E for further action. The Joint Motion passed 5-0.

6. On July 6, 2023, the Commission issued an Opinion and Order denying the Joint Petition and referring the matter to I&E for further proceedings as deemed necessary and appropriate.

## **II. LEGAL STANDARD**

7. Section 5.572(c) of the Commission’s regulations permits a party to petition for reconsideration within fifteen (15) days after entry of a Commission order.<sup>2</sup>

8. The standard found in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa.

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<sup>1</sup> 53 Pa.B. 1629 (March 18, 2023).

<sup>2</sup> 52 Pa. Code § 5.572(c).

P.U.C. 553, 559 (1982) requires that a reconsideration petition identify “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission,” and is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”<sup>3</sup>

9. The standard articulated in *Duick* essentially requires a two-step analysis:

“First, the Commission will determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. . . The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision.”<sup>4</sup>

### **III. THE COMMISSION FAILED TO PROVIDE I&E AND GAP AN OPPORTUNITY TO SUBMIT REPLY COMMENTS**

10. The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote, and serve the public interest.<sup>5</sup>

11. To the extent that I&E and GAP request that the Commission enter an order approving the Joint Petition, they share the burden of proof to show that the terms and conditions of the proposed Settlement is in the public interest.<sup>6</sup>

12. The party with the burden of proof must meet the burden by a preponderance

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<sup>3</sup> *Duick v. Pennsylvania Gas and Water Company*, 56 Pa.P.U.C. 553, 559 (1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)).

<sup>4</sup> *Petition of Metro. Edison Co. for Approval of a Default Serv. Program for the Period Beginning June 1, 2019 Through May 31, 2023* *Petition of Pennsylvania Elec. Co. for Approval of a Default Serv. Program for the Period Beginning June 1, 2019 Through May 31, 2023*, No. C-2018-2643211, 2018 WL 5994761, at \*9 (Nov. 1, 2018).

<sup>5</sup> *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered July 14, 2011) (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996)).

<sup>6</sup> See 66 Pa. C.S. § 332(a) (“Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.”).

of the evidence.<sup>7</sup> “A preponderance of the evidence means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.”<sup>8</sup> Thus, a preponderance of the evidence is described as enough weight or evidence to “tip the scales.”<sup>9</sup>

13. A Commission’s decision must be supported by substantial evidence. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>10</sup>

14. “As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness.”<sup>11</sup>

15. Due process is satisfied when the parties are afforded notice and the opportunity to be heard.<sup>12</sup> The opportunity to be heard at a meaningful time and in a meaningful manner is the fundamental requirement of due process.<sup>13</sup>

16. Through publication in the *Pennsylvania Bulletin*, the Commission allowed other interested parties to comment on the Joint Petition. However, the Commission failed to provide I&E and GAP, the signatory Parties in this matter, a meaningful opportunity to be heard in response to any comments received when it failed to provide a timeframe for reply comments.

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<sup>7</sup> *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>8</sup> *Energy Conservation Council of Pennsylvania v. Pa. P.U.C.*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010).

<sup>9</sup> *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>10</sup> *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

<sup>11</sup> *Popowsky v. Pa. PUC*, 805 A.2d 637, 642 (Pa. Cmwlth. 2002) (citing *West Penn Power Company v. Pennsylvania Public Utility Commission*, 100 A.2d 110 (Pa. Super. 1953) quoting *Pittsburgh v. Pennsylvania Public Utility Commission*, 90 A.2d 850 (Pa. Super. 1952)).

<sup>12</sup> *Schneider v. Pa. Public Util. Com.*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (citing *Township of Middleton v. The Institute District of The County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd* 299 A.2d 599 (Pa. 1973)).

<sup>13</sup> *Amy Grainda v. Pennsylvania Electric Company*, Docket No. C-2018-3000992, (Order entered December 20, 2018) (citing *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980)).

17. In short, I&E and GAP were denied due process when the Commission failed to allow I&E and GAP the opportunity to respond to the OCA's challenges and accusations made in its comments.

18. I&E and GAP were prejudiced by the inability to file comments responsive to those filed by the OCA, as clearly shown by the Commission's extensive discussion<sup>14</sup> and substantial weight<sup>15</sup> placed on the OCA's comments.

#### **IV. CONCLUSION**

Wherefore, the Commission's Bureau of Investigation and Enforcement respectfully requests, for the reasons discussed above, that the Commission (1) grant the Bureau of Investigation and Enforcement's Petition for Reconsideration; and (2) provide the Bureau of Investigation and Enforcement and Great American Power, LLC, the opportunity to file Reply Comments within twenty (20) days of an Order granting the Petition for Reconsideration.

Respectfully submitted,



Kayla L. Rost  
Prosecutor  
PA Attorney ID No. 322768

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Dated: July 21, 2023

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<sup>14</sup> Opinion and Order (entered July 6, 2023), pgs. 20-25.

<sup>15</sup> See generally Opinion and Order (entered July 6, 2023), pgs. 25-27, 32.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3020643
	:	
Great American Power, LLC	:	

**CERTIFICATE OF SERVICE**


I hereby certify that I have this day, July 21, 2023, served a true copy of the foregoing **Bureau of Investigation and Enforcement’s Petition for Reconsideration**, 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:**

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