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July 24, 2023

VIA ELECTRONIC FILING

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

RE: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Great American Power, LLC; Docket No. M-2023-3020643; **GREAT AMERICAN POWER'S ANSWER IN SUPPORT TO THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JULY 6, 2023 OPINION AND ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Great American Power's Answer in Support to the Bureau of Investigation and Enforcement's Petition for Reconsideration of the Commission's July 6, 2023 Opinion and Order in the above-captioned docket. A copy of this Answer has been served as indicated on the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,

Todd S. Stewart
Counsel for Great American Power, LLC

TSS/jld

Enclosure

cc: Office of Special Assistants (via electronic mail – ra-OSA@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAIL ONLY

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DATED: July 24, 2023

Todd S. Stewart

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**GREAT AMERICAN POWER’S ANSWER IN SUPPORT
TO THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
PETITION FOR RECONSIDERATION
OF THE COMMISSION’S JULY 6, 2023 OPINION AND ORDER**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.572(e), Great American Power, LLC (“GAP”) hereby answers the Petition for Reconsideration (“Petition”) filed by the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) on July 21, 2023, seeking review 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 its Answer, GAP avers as follows:

1. On January 13, 2023, I&E and GAP filed a Joint Petition for Approval of Settlement along with Statements in Support (“Joint Petition”) to resolve I&E’s informal investigation regarding allegations of misleading and deceptive telemarketing calls, which if not resolved in settlement, would otherwise be subject to protracted litigation. 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 that are in addition to the multiple voluntary measures undertaken by GAP prior to the Completion of I&E's investigation.

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 Order was published in the *Pennsylvania Bulletin*. The deadline to submit comments was April 12, 2023. Importantly, the notice as published did not include an opportunity for the Parties to submit reply comments, or any indication that reply comments would be considered by the Commission.

4. On April 12, 2023, the last day to file comments, the Office of Consumer Advocate ("OCA") filed comments opposing the Joint Petition and requesting that the Joint Petition be rejected.

5. At the Commission's June 15, 2023 public meeting, Vice Chairman Stephen DeFrank and Commissioner John Coleman, Jr. issued a Joint Motion that conducted an in-depth analysis of the OCA's Comments as applied to the Joint Petition, which ultimately moved 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.

7. On July 21, 2023, I&E filed a Petition for Reconsideration of the Commission's July 6, 2023 Opinion and Order, citing the lack of due process that allowed interested parties,

namely the OCA, to submit comments to the Joint Petition, but which did not permit or authorize the Joint Petitioners to respond to such comments. In this case, the OCA's comments formed the primary basis for the Commission's rejection of the Joint Petition.

8. I&E's Petition for Reconsideration should be granted. The due process rights of both I&E and GAP were violated by the Commission's heavy reliance on the OCA's comments in the Joint Motion and Opinion and Order, without providing any ability for the moving parties to respond to such comments. The OCA's Comments made numerous allegations that could have been addressed had a response been permitted. Allowing for comments on a settlement without allowing the parties that bear the burden of proving that the settlement is just, reasonable and in the public interest, an opportunity to respond, deprives them of the ability to carry their burden of proof.

9. The standard for granting reconsideration as embodied in *Duick*¹ contains a two-step process: first the Commission determines that an argument is raised that appears to have been overlooked by the Commission and then the Commission decides whether the new or novel argument compels reconsideration of its prior order. In this case, it is clear that the issue of due process for the Joint Petitioners, as regards the ability to respond to the OCA's comments, was not addressed by the Commission's Opinion and Order, except to note that no reply comments were filed, despite the fact that none were authorized, and no time allowance was provided.² In this case the deprivation of the right to be heard in response to other parties' comments while still placing the burden of proof on the Joint Petitioners, deprived the Joint Petitioners the right to due

¹ *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)).

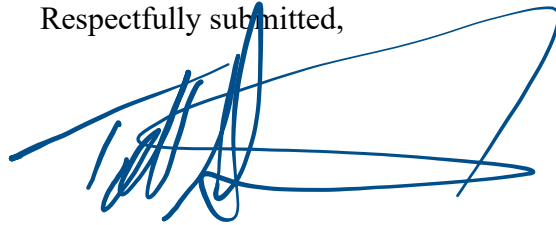
² *Opinion and Order*, slip op. at 4.

process. The best means to fix this issue is for the Commission to grant Reconsideration, authorize responsive comments and then decide the issue of whether the Joint Petition is just and reasonable.

I. CONCLUSION

WHEREFORE, Great American Power, LLC, respectfully requests that the Commission grant the Petition for Reconsideration filed by the Commission's Bureau of Investigation and Enforcement on July 21, 2023, and permit I&E and GAP to file comments responsive to the OCA within 20 days of such Order.

Respectfully submitted,



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DATED: July 24, 2023