

COMMONWEALTH OF PENNSYLVANIA



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July 31, 2023

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, Inc.
Docket No. M-2023-3020643

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Bureau of Investigation and Enforcement's Petition for Reconsideration in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Paul Diskin, Bureau of Technical Utility Services (**email only:** pdiskin@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

*3498886

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
v. : Docket No. M-2023-3020643
Great American Power, 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 Commission's Bureau of Investigation and Enforcement's Petition for Reconsideration, 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 31st day of July 2023.

SERVICE BY E-MAIL ONLY

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Dated: July 31, 2023
*349887

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

THE OFFICE OF CONSUMER ADVOCATE'S
ANSWER TO
THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S
PETITION FOR RECONSIDERATION
OF THE COMMISSION'S JULY 6, 2023 OPINION AND ORDER

Pursuant to 52 Pa. Code § 5.572(e), the Office of Consumer Advocate (OCA) hereby answers the Petition for Reconsideration (Petition) filed by the Pennsylvania Public Utility Commission's (Commission or PUC) Bureau of Investigation and Enforcement (I&E) on July 21, 2023, seeking review of the Commission's July 6, 2023 Opinion and Order (Order or July 6, 2023 Order) in the above-captioned proceeding. The OCA avers as follows:

1. On January 13, 2023, I&E and Great American Power (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 (Settling Parties) agreed to settle the matter without litigation in exchange for GAP's agreement to pay a civil penalty of \$92,500 and to complete various remedial measures as set out 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.

3. On March 18, 2023, the March 2, 2023 Order was published in the Pennsylvania Bulletin.

4. On April 12, 2023, the Office of Consumer Advocate (OCA) filed comments opposing the Joint Petition.

5. On July 6, 2023, the Commission issued an Opinion and Order at Docket No. M-2023-3020643 denying the Joint Petition and referring the matter to I&E for further proceedings as deemed necessary and appropriate.

6. The July 6, 2023 Order outlined the allegations against GAP. Specifically, the Order outlined that there were more than 167 customers affected by GAP's conduct, the internal customer complaints included serious allegations of slamming, enrollment under false pretenses, enrollment of someone without mental capacity to consent, other misrepresentations or promises that were false, spoofing a phone number, pretending to be the EDC, consumer harassment, as well as violations of the Do Not Call list. July 6 Order at 11-12; OCA Comments at 2.

7. Had the matter been fully litigated, I&E was prepared to present evidence and legal arguments to demonstrate that GAP and/or its agents committed the following alleged violations: (1) the following conduct of the GAP representative directed to the Director constitutes a violation of 52 Pa. Code §§ 54.43(g), 54.122(3), 111.8(b), 111.8(f), 111.10(a) and (b), and 111.12(d): (a) calling an individual on the Do Not Call list; (b) spoofing a Chambersburg, Pennsylvania telephone number; (c) advising the recipient, via an automated recording, that he/she is qualified for a discount on their electric bill and a \$50 reward; (d) upon first contact, not stating who they were

working on the behalf of, or that they were working for the local EDC; (e) not advising the Director of OCMO that he is not required to choose a supplier and/or switch to GAP (i.e., upon first contact, failed to state the nature of the phone call); (f) agent misrepresentation that the Director of OCMO's current rate was 12.9 cents; and (g) agent misrepresentation that the Director will be receiving everything in writing and can accept or reject the terms within three days; (2) the customer complaints received by BCS alleged violations of 52 Pa. Code §§ 54.10, 54.42(a)(9), 111.7, 111.11, and 111.12; and (3) the customer complaints provided by GAP alleged violations of 52 Pa. Code §§ 54.43(g), 54.122(3), 111.7, 111.8, 111.10, and 111.12. July 6 Order at 12-13.

8. The Commission's July 6 Order identified serious violations of the Commission's regulations involving at least 167 customers. July 6 Order at 5-13.

9. The Commission has been clear on numerous occasions that it has a zero-tolerance policy against slamming. *See Pa P.U.C. et al. v. AP Gas & Electric*, Docket No. M-2013-2311811, 2013 Pa. PUC LEXIS 1169, *20 (Oct. 17, 2013). In particular, the Commission has stated, "[t]he Commission does not trivialize allegations of unauthorized enrollment of customers, or 'slamming,' and seeks to deter such conduct by instituting firm retaliatory measures for violations of the Commission's regulations with respect to enrollment of customers." *See, Pa P.U.C. v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order at 5 (Sept. 26, 2001).

10. Pursuant to Section 54.42 of the Commission's regulations, 52 Pa. Code § 54.42, the Commission may suspend or revoke an EGS's license and impose civil penalties for the following EGS conduct:

- Failure to follow the principles in 52 Pa. Code § 54.43;
- Violation of applicable provisions of the Public Utility Code, Commission regulations and Commission orders; and

- Violation of the consumer protection law.

11. On July 21, 2023, I&E filed a Petition for Reconsideration of the Commission's July 6, 2023 Opinion and Order asserting that it should have been provided an opportunity to file reply comments to the OCA's comments and alleging a generalized assertion about a lack of due process.

12. On July 24, 2023, GAP filed a letter in support of I&E's Petition for Reconsideration.

13. 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. 52 Pa. Code § 5.572(c).

14. The standard found in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. 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." *Duick v. Pennsylvania Gas and Water Company*, 56 Pa.P.U.C. 553, 559 (1982) (*Duick*).

15. The standard articulated in *Duick* regarding the analysis of Petitions for Reconsideration 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. *See 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).

16. Putting aside whether I&E's Petition meets the *Duick* standard, the OCA does not object to an opportunity for I&E and GAP to file reply comments to the OCA's Comments. The OCA supports open and transparent processes and the ability to broadly participate in proceedings; if reply comments by I&E and GAP would shed light onto the reasonableness of the settlement the OCA supports the Parties' ability to file them.

17. However, if the Commission is inclined to grant reconsideration and allow I&E and GAP the ability to file reply comments, the OCA urges the Commission to consider the OCA's comments again in their entirety, as well as GAP's apparent failure to rectify its misconduct in light of the fact that this is the third time that GAP is before the Commission on a negotiated settlement for substantially similar conduct.¹ The OCA continues to submit that the negotiated settlement is patently insufficient to deter and dissuade future misconduct by GAP.

18. Moreover, if the Commission reconsiders its July 6, 2023 Order remanding this matter back to I&E, it should consider whether, rather than leaving the matter completely to the discretion of I&E, it should *modify* as opposed to outright reject the settlement so as to hold GAP accountable for its egregious conduct.² As such, the OCA requests that if the Commission reconsiders its Order pursuant to I&E's request, that it modify the settlement to include, among other possible modifications: (1) the revocation and/or suspension of GAP's EGS license for a period of at least 12 months; (2) the requirement that GAP not contract with the same third-party vendor when and if its license is restored and it resumes telemarketing activity; (3) the issuance of

¹ See *Pa. PUC, BI&E v. GAP*, Docket No. M-2016-2536806, Order (April 20, 2017) (2017 Settlement Order); *Pa. PUC, BI&E v. GAP*, Docket No. M-2018-2617335, Order (July 11, 2019) (2019 Settlement Order).

² The OCA recognizes that if the Commission were to modify the settlement that either I&E or GAP could withdraw from the settlement. See Joint Petition for Approval of Settlement ¶ 46.

an increased fine against GAP; and (4) any other modification that the Commission deems necessary to ensure that GAP does not continue to violate the law in its interactions with consumers.

Respectfully Submitted,

/s/ Harrison W. Breitman
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Dated: July 31, 2023

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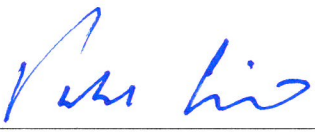
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's Answer to the Petition of the Commission's Bureau of Investigation and Enforcement, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: July 31, 2023
*3498889

Signature: 
Patrick M. Cicero
Consumer Advocate

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