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May 22, 2015

VIA ELECTRONIC FILING

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

RE: Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, and TANYA J. McCLOSKEY, Acting Consumer Advocate, v. ENERGY SERVICES PROVIDERS, INC. d/b/a PENNSYLVANIA GAS & ELECTRIC; Docket No. C-2014-2427656; **ENERGY SERVICES PROVIDERS, INC.'S REPLY TO THE AMICUS CURIAE BRIEF OF INTERVENOR THOMAS SOBIECH**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is Energy Services Providers, Inc.'s Reply to the *Amicus Curiae* Brief of Intervenor Thomas Sobiech in the above-referenced matter. A copy of this document has been served in accordance with the attached Certificate of Service.

Please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,

Todd S. Stewart
Christopher M. Arfaa
*Counsel for Energy Services Providers, Inc.,
d/b/a Pennsylvania Gas & Electric*

TSS/jld

Enclosure

cc: Administrative Law Judge Elizabeth H. Barnes (w/encl.)
Administrative Law Judge Joel H. Cheskis (w/encl.)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true and correct copy of the foregoing document on the persons listed below by the means indicated:

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection,
and
TANYA J. McCLOSKEY, Acting Consumer
Advocate,

Complainants,

v.

ENERGY SERVICES PROVIDERS, INC.
d/b/a PENNSYLVANIA GAS & ELECTRIC,
Respondent.

Docket No. C-2014-2427656

**ENERGY SERVICES PROVIDERS, INC.'S
REPLY TO THE *AMICUS CURIAE* BRIEF
OF INTERVENOR THOMAS SOBIECH**

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DATED: May 22, 2015

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Pursuant to the April 23, 2015 Order issued by the Presiding Administrative Law Judges in the above-captioned matter, Respondent Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (“PaG&E” or the “Company”), by and through its undersigned attorneys, files this Reply to the *Amicus Curiae* Brief filed by Intervenor Thomas Sobiech.

I. INTRODUCTION AND PROCEDURAL HISTORY

On June 20, 2014, Attorney General Kathleen G. Kane, Through the Bureau of Consumer Protection (“BCP”), and Tanya McCloskey, Acting Consumer Advocate (“OCA”) (“Joint Complainants”) filed the above-captioned Complaint against PaG&E. The Commission’s Bureau of Investigation and Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) intervened, and, after several months of prehearing litigation activity, a settlement was negotiated. On March 24, 2015, a Joint Petition for Approval of Settlement (“Settlement” or “Agreement”) was filed, with the Joint Complainants, I&E and PaG&E joining in and filing statements in support, and the OSBA not objecting.

On March 27, 2015, Thomas Sobiech, a former customer of PaG&E who had previously received rebate of \$145.58 from PaG&E, filed a “Notice of Intervention and Public Statement” seeking to intervene in this proceeding in his putative capacity as the lead plaintiff in a yet-uncertified class action that he filed against PaG&E in federal district court. In his “Public Statement”, Mr. Sobiech criticized the terms of the Settlement.

The Presiding Administrative Law Judges notified the parties, on March 31, 2015, via email that Responses to Mr. Sobiech’s request to intervene would be due on or before April 16, 2015. On April 16, 2015, the Joint Complainants and PaG&E both filed answers in opposition to the intervention request. On April 23, 2015, the Presiding Administrative Law Judges issued an Order granting Mr. Sobiech’s intervention. In the order, the Presiding Administrative Law

Judges stated that Mr. Sobiech had no standing to represent the interests of any PaG&E customers other than himself and that he would have to take the evidentiary record as it exists. Mr. Sobiech was permitted to file an *amicus curiae* brief within 20 days of the date of the Order and the other parties were permitted to respond within 10 days following that submission.

II. SUMMARY OF THE REPLY ARGUMENT

Mr. Sobiech attempts to derail the parties' unanimous Settlement on two grounds. First, he asserts that the Settlement fails the Commission's established criteria for approval of settlements. Second, he asserts that the release of claims to be signed by customers electing to receive payment under the Settlement is improper and should not be approved. Neither of these assertions withstands scrutiny.

As discussed at length in PaG&E's Statement in Support, the Settlement is in the public interest. The public interest is served because, in addition to the \$4,511,563 in cash refunds that PaG&E voluntarily provided to customers before entering into the Settlement (and which was incorporated into the relief provided to customers through the Settlement), the Company has agreed to: (i) pay an additional \$2,325,000 into a Refund Pool, to be distributed to customers willing to settle their claims against the Company; (ii) engage in a good faith effort to reach individual settlements with any customers who contact the company for a refund but who do not otherwise receive or accept an offer for a refund from the Refund Pool; (iii) pay up to \$100,000 of the cost of administering the Refund Pool; (iv) contribute \$100,000 to the EDC hardship funds; (v) pay a voluntary civil penalty of \$25,000; and (vi) injunctive relief instituting a variety of changes to its business practices, including an 18 month prohibition on the sale of variable rate electricity products which the Company began to observe in March 2015, as specified in the Settlement.

Mr. Sobiech invites the Commission to deprive the public of these benefits by rejecting or modifying the Settlement -- a settlement negotiated by the statutory representatives of Pennsylvania's consumers, the BCP and the OCA -- just to clear the way for Mr. Sobiech and his counsel to usurp the Joint Complainants' statutory role and, in so doing, convert a sizable portion of the funds available for settlement into class counsel fees. The Commission should decline this self-serving invitation. The fact that the Settlement does not promote the *private* interest of Mr. Sobiech and his counsel obviously does not diminish the *public* interest in its approval.

It is plain that the release that appears to be at the heart of Mr. Sobiech's concern does not, as he repeatedly and incorrectly contends, compromise *any* customer's rights without that customer's voluntary, informed consent. That includes Mr. Sobiech. Customers are free to accept or reject any offer from the Settlement administrator for funds from the Refunds Pool; only if they accept such an offer are they required to release their claims against PaG&E. If a customer rejects an offer, that customer is free to pursue any claims she or he may have against the Company. In effect, that is precisely what Mr. Sobiech has done by preemptively rejecting any offer from the Settlement administrator in favor of pursuing his complaint against PaG&E in federal court. Having rejected both the potential for an offer of funds from the Refund Pool and the release sight unseen, Mr. Sobiech will suffer no cognizable harm should the Commission approve the release procedure as part of the Settlement, and he, therefore, has no standing to oppose such approval.

Clearly, the Settlement is in the public interest, and all of its terms, including the release, should be approved.

III. REPLY ARGUMENT

A. The Settlement is Clearly in the Public Interest.

PaG&E submits that approval of this Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rossi v. Bell Atlantic – Pennsylvania, Inc.*, 94 Pa. P.U.C. 103 (2000), and codified in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. While many of the same factors and standards may still be considered in both litigated and settled cases, the Commission has specifically provided that in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

Contrary to Mr. Sobiech’s analysis, which is focused on protecting the interests of an uncertified class (or, more accurately, the interests of yet-to-be-appointed class counsel), the Settlement is in the public interest.

1. The first factor to be considered under the Policy Statement is whether the alleged actions themselves were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). The violations alleged here were of a serious nature in that they involved, among other things, alleged misrepresentations by sales representatives and alleged changing of customers’ electricity generation supplier without authorization. Mr. Sobiech does not disagree on the nature of the allegations.

2. The second factor to be considered under the Policy Statement is whether the resulting *consequences* of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). Despite the fact that there is no indication that the alleged violations resulted in personal injuries or property damage, Mr. Sobiech contends that this factor militates against approval because

PaG&E has failed to “take responsibility.” This contention is without merit. First, PaG&E acknowledged that the alleged violations, if true, could have caused customers financial harm. Second, the Settlement makes clear that, before entering into the Settlement, the Company voluntarily paid \$4,511,563 in cash refunds to customers and that, pursuant to the Settlement, the Company has agreed to: (i) pay an additional \$2,325,000 into a Refund Pool, to be distributed to customers willing to settle their claims against the Company; (ii) engage in a good faith effort to reach individual settlements with any customers who contact the company for a refund but who do not otherwise receive or accept an offer for a refund from the Refund Pool; (iii) pay up to \$100,000 of the cost of administering the Refund Pool; (iv) contribute \$100,000 to the EDC hardship funds; (v) pay a voluntary civil penalty of \$25,000; and (vi) injunctive relief instituting a variety of changes to its business practices, including an 18 month prohibition on the sale of variable rate electricity products.

Mr. Sobiech then dredges up a settlement in a prior case¹ involving PaG&E in which PaG&E agreed to provide refunds to customers as a result of an alleged slamming incident involving a single rogue sales agent and suggests that the refunds and/or penalty here are inadequate because the Settlement does not “completely reimburse each of [PaG&E’s] customers for the financial losses they sustained as a result of the Company’s misconduct. Mr. Sobiech’s argument ignores the fundamental characteristic of any settlement—that of *compromise*. In this case, PaG&E has denied any wrongdoing but has agreed to pay substantial refunds to thousands of customers and institute changes to its business practices in order to avoid the expense and uncertainty of further litigation. Likewise, the Joint Complainants agreed to settle this action without achieving all of the relief requested in the Joint Complaint because the provisions of the

¹ *Pa. PUC v. Energy Services Providers, Inc. dba Pennsylvania Gas & Elec.*, Docket No. M-2013-2325122, slip op. (Pa. PUC Oct. 2, 2014).

Settlement, “taken as a whole constitute a reasonable compromise of the complex issues presented” and because the “Joint Complainants recognize that, given the inherent unpredictability of the outcome of a contest proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation.”² Mr. Sobiech’s argument also fails to recognize that settlements are not precedential before the Commission.³ There simply is no basis to conclude anything from the settlement of a prior case.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Since this matter is being resolved by settlement of the parties, this factor is not relevant here.

4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Here, the Company has agreed to substantial changes in its marketing practices, disclosure statements, and third-party verification procedures in order to address the alleged conduct and to avoid similar incidents in the future. (Settlement at 14-31.) In addition, the Company has agreed not to offer variable rate plans for 18 months (a condition with which it is already complying) and to offer a fixed rate plan with a minimum initial term of six months for the same period. (Settlement at 14).

Nonetheless, Mr. Sobiech contends that the Settlement does not go far enough and should prohibit PaG&E from providing variable rates in perpetuity. Mr. Sobiech’s goal is obvious: to force untenable conditions into the Settlement so that PaG&E will have no choice but to litigate,

² See Joint Complainants’ Statement in Support of Joint Petition for Approval at 3-4.

³ *Pennsylvania Public Utility Comm’n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988), 0088 WL 1535014, Docket No. R-811819 (Opinion and Order entered November 14, 1988, slip op. at 6) (Where the Commission made it clear that it “vigorously, and without equivocation, reject[s] considering a settlement as precedent, as to any subsequent issue, in any proceeding”).

thus eliminating the immediate benefits to customers and delaying any potential compensation for years. The fact is, PaG&E did agree to suspend its marketing of variable rates for 18 months as a condition of the Settlement, but those rate plans remain legal for all other suppliers today, and without the Settlement there is no lawful basis on which to restrict PaG&E, and only PaG&E, from providing what is otherwise a legal product. The Commission has no equitable powers and may only act in accordance with the specific grants of authority included in the Code itself.⁴ Moreover, equal protection requires the government to treat like persons in like circumstances similarly.⁵

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). Given the nature of the allegations of the Joint Complaint, all of PaG&E's current and former variable rate customers may have been affected in different ways by the conduct alleged. Indeed, the Settlement provides benefits to all of PaG&E's past, current, and future customers through: (i) potential offers for refunds from the Refund Pool, the administration of which is under the sole discretion of the Joint Complainants; (ii) a duty by PaG&E to negotiate in good faith with any customers that do not receive or accept an offer for refunds from the Refund Pool; and/or (iii) changes to PaG&E's business practices.

6. The sixth factor to be considered under the Policy Statement relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). PaG&E's history of compliance

⁴ *Barasch v. Pennsylvania Pub. Utility Commission*, 516 Pa. 142, 532 A.2d 325 (1987), *prob. juris noted* 108 S.C. 1105 (1988).

⁵ *Pa. Turnpike Comm'n v. Com.*, 587 Pa. 347, 363, 899 A.2d 1085, 1094 (2006); *Corman v. Nat'l Collegiate Athletic Ass'n*, 93 A.3d 1, 24 (Pa. Commw. Ct.), *reargument denied* (Apr. 30, 2014), *writ denied, stay denied sub nom. Nat'l Collegiate Athletic Ass'n v. Com.*, 102 A.3d 1249 (Pa. 2014),

with the Public Utility Code and the Commission's regulations is respectable. Apart from a previous incident involving slamming claims, the allegations of the Joint Complaint and the informal and formal complaints referenced therein are the first alleged infractions on PaG&E's otherwise clean compliance history. *See, Pa. PUC v. Energy Services Providers, Inc. dba Pennsylvania Gas & Elec.*, Docket No. M-2013-2325122, slip op. (Pa. PUC Oct. 2, 2014). Mr. Sobiech seizes upon the slamming allegations in that proceeding as evidence that PaG&E has transgressed in the past. However, the documents attached to his brief and the settlement he quotes, which was approved by the Commission, specifically states that PaG&E admitted no wrongdoing and that the settlement "cannot and will not be used and will not be admissible in any future proceeding . . . in this or any other matter . . . as proof of unlawful and/or improper behavior, or as an admission of unlawful or improper behavior." ⁶ In any event, that matter involved a single rogue agent, and the circumstances were so completely different from those alleged in this proceeding as to warrant no further discussion. There is simply no basis to conclude based upon that isolated incident, that PaG&E has had anything other than a spotless compliance record in Pennsylvania.

7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). PaG&E fully cooperated with OAG, OCA, OSBA and I&E in providing information both formally and informally during litigation and settlement discussions. In addition, the Company has taken the initiative in the EGS industry in considering and agreeing to the injunctive terms of the Settlement. Mr. Sobiech admits that he is "unaware" of the extent of PaG&E's cooperation, and he therefore has no grounds for asserting that the Company has been uncooperative. Mr.

⁶ *See Pa. PUC v. Energy Services Providers, Inc. dba Pennsylvania Gas & Elec.*, Docket No. M-2013-2325122, slip op. (Pa. PUC Oct. 2, 2014) (Settlement Agreement at p. 15, k).

Sobiech's unsupported conjecture that PaG&E has not provided sufficient information for the Commission to assess whether the proposed settlement is in the public interest has nothing to do with this factor.

8. The eighth factor to be considered is the appropriate settlement amount. 52 Pa. Code § 69.1201(c)(8). As stated above, prior to entering into the Agreement, PaG&E voluntarily provided \$4,511,563 in cash refunds to customers. This amount was incorporated into the Settlement. Moreover, pursuant to the Settlement, the Company has agreed to pay an additional \$2,550,000, which comprises the net Refund Pool amount of \$2,325,000, up to \$100,000 of the cost of administering the Refund Pool, a \$100,000 contribution to the EDC hardship funds, and a voluntary penalty of \$25,000. In addition, the Settlement provides a mechanism for any customer that does not receive or accept an offer of funds from the Refund Pool to contact the Company directly with any complaint and request for a refund. PaG&E submits that the combination of: (i) the Company's prior provision of refunds to customers; (ii) the Company's agreement to pay an additional \$2,550,000 for the Refund Pool and other costs; and (iii) the ability for customers to seek refunds directly from the Company constitutes a reasonable and appropriate amount to resolve this proceeding.

Mr. Sobiech cites to the settlement of the slamming investigation discussed above as evidence that PaG&E is a "repeat offender." However, as noted above, there was no admission or finding of wrongdoing by PaG&E in that matter and the settlement agreement approved by the Commission expressly provides that the settlement "cannot and will not be used and will not be admissible in any future proceeding . . . in this or any other matter . . . as proof of unlawful and/or improper behavior, or as an admission of unlawful or improper behavior."⁷ Furthermore,

⁷ See *Pa. PUC v. Energy Services Providers, Inc. dba Pennsylvania Gas & Elec.*, Docket No. M-2013-2325122, slip op. (Pa. PUC Oct. 2, 2014) (Settlement Agreement at p. 15, k).

it is black-letter law that settlements are not precedential before the Commission.⁸ Nonetheless, Mr. Sobiech blithely attacks PaG&E on the basis of the settled slamming investigation. His analysis utterly ignores any mention of the rather substantial money that PaG&E has agreed to pay into a Refund Pool to compensate customers to settle *this* case.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The Joint Complainants have filed similar complaints against other EGS providers, all of which are in various stages of litigation. The Settlement is not inconsistent with any interlocutory decision by the Commission in those matters. Moreover, as discussed above, the settlement of another unrelated matter has no bearing on the outcome here.

10. The tenth and final criterion to be considered is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). As noted above, at least two additional, major factors support immediate approval of the Settlement as being in the public interest. *First*, even if the Commission ultimately were to order similar payments by PaG&E and similar changes to PaG&E’s product offerings and marketing after hearings, in view of the uncertainties and delays inherent in administrative and appellate litigation, it would be many months, if not years, before such payments could be distributed and such changes implemented. The Settlement thus provides immediate, concrete benefits to the public that would otherwise be unavailable in the near term. Second, the Settlement is in the public interest because it provides a model for resolution of similar disputes in the EGS industry. The Settlement is the product of extensive negotiations between an industry leader and the statutorily appointed Pennsylvania public advocates. Prompt

⁸ *Pennsylvania Public Utility Comm’n v. Bell Tel. Co. of Pa*, 68. 430 (1988), 0088 WL 1535014, Docket No. R-811819 (Opinion and Order entered November 14, 1988, slip op. at 6) (Where the Commission made it clear that it “vigorously, and without equivocation, reject considering a settlement as precedent, as to *any* subsequent issue, in *any* proceeding”).

approval will provide a template for resolution of pending similar proceedings, thus potentially multiplying the substantial public benefits generated by this Settlement: conservation of administrative and public advocate resources, mitigation of business uncertainty, and timely implementation of market protections and customer restitution.

B. Mr. Sobiech Self-Servingly Mischaracterizes the Release Requirement and Has No Standing to Raise the Issue.

It is patent from his brief that the goal of Mr. Sobiech (or of his counsel at the very least) in this matter is to bolster his putative class action (and the potential fees for Mr. Sobiech's counsel) by depriving potential members of the class of the benefits of the Settlement. Mr. Sobiech attempts to do so by convincing the Commission either to reject the Settlement entirely, or to insert a poison pill that conditions its approval on the elimination of the requirement that customers provide releases in exchange for compensation from the Refund Pool. Mr. Sobiech does not explain how the public interest would be served by depriving former PaG&E customers of the tangible, *timely* benefits of the Settlement negotiated by the Office of Attorney General and Office of Consumer Advocate so that Mr. Sobiech and his counsel can attempt to bolster their putative class action. His stated reasons for rejecting the release procedure which is integral to the Settlement, do not withstand scrutiny

As an individual customer, Mr. Sobiech will have a choice of whether to avail himself of the opportunity to accept a refund that may be offered to him as a result of the Settlement, or to proceed on his own. At this point, it appears that Mr. Sobiech has decided to proceed on his own by filing a federal lawsuit against the Company. As to Mr. Sobiech, then, the release issue is moot. Having decided to take his own path, he lacks standing to challenge the adequacy of the path not taken. Accordingly, his argument in this regard must be rejected.

Mr. Sobiech argues that “the Company is buying off its potential liability for a fraction of what is believed to be the actual cost.” (Sobiech Br. at 16.) To the extent this means that PaG&E is settling this matter by paying an amount that differs from the amount it potentially might have to pay after full litigation that is the nature of any settlement. To the extent Mr. Sobiech is suggesting that the amount of compensation paid is an inappropriately small fraction of the “actual cost,” his suggestion lacks any evidentiary support and must be rejected. PaG&E’s liability is the central issue in this proceeding. Mr. Sobiech does not, and cannot, point to anything in the record (which is limited to the Joint Petitioners’ Stipulation of Facts) that proves that PaG&E’s liability after full litigation and all appeals would be more than the amount it has agreed to pay in the Settlement. Similarly, to the extent Mr. Sobiech is suggesting that the Settlement allows PaG&E to settle an individual customer’s claim for less than the “actual cost” to the customer, there is nothing in the record to support his suggestion.

If, for the sake of argument, the Commission were to consider the release issue, however, it is clear that Mr. Sobiech’s arguments must fail. Simply put, a release is a contract between two parties where in exchange for consideration, one party agrees to forgo actual or potential claims against another.⁹ For Mr. Sobiech to suggest that asking a person to execute a release prior to making a payment relative to a claim is “malpractice” is so ridiculous as to render his entire argument meaningless.¹⁰

⁹ Under Pennsylvania law, a release is a contract. *See Evans v. Marks*, 421 Pa. 146, 151–52, 218 A.2d 802, 804–05 (1966) (treating a release as a contract and applying contract principles); *accord Conestoga Ceramic Tile Distributors, Inc. v. Travelers Cas. & Sur. Co. of Am.*, No. 2085 C.D. 2012, 2013 WL 4508887, at *3 (Pa. Commw. Ct. Aug. 22, 2013) (unreported).

¹⁰ Moreover, the condescending suggestion by a would-be “private attorney general” – that Pennsylvania’s *actual* Attorney General and Consumer Advocate will “commit mass malpractice” in administering the Refund Pool – is as baseless as it is offensive.

Mr. Sobiech renews his objection that the Commission cannot approve a settlement that includes releases of claims which it would not have jurisdiction to adjudicate. It is clear that the Commission has approved settlements that include releases and that those releases, because they are private contractual relationships, are possibly beyond the Commission's authority to enforce. However, there is no legal basis to conclude that the Commission was not able to approve those releases. The only support he cites for this objection is the fact that the Company's settlement of the slamming complaints discussed above did not include a similar release requirement. This of course is meaningless. As noted above, settlements are not precedential before the Commission.¹¹ Furthermore, in that case, the Commission's regulations provided the sole legal basis for any claim and the payment of the amount required by the regulation satisfied that requirement. Stated differently, there were no other claims to release. In this case, as demonstrated by Mr. Sobiech's own actions, there are multiple potential claims that could produce multiple and duplicative liability for the Company.

In any event, it is clear that the inclusion of general releases in settlement agreements is no bar to Commission approval. For example, as part of a settlement involving alleged failures by a telephone company to lift the "local service freeze" it placed on customers' accounts, the company agreed to pay restitution to the affected customers, "*provided* that these customers agree in writing *to release and forever discharge* Verizon PA *from any and all claims* that arise out of or relate to the lifting of each customer's local service freeze." *Pennsylvania Pub. Util. Comm'n v Verizon Pennsylvania, Inc.*, M-00021592, 2002 WL 1729887 (Jan. 25, 2002)

¹¹ *Pennsylvania Public Utility Comm'n v. Bell Telephone Co. of Pa.*, 68. 430 (1988), 0088 WL 1535014, Docket No. R-811819 (Opinion and Order entered November 14, 1988, slip op. at 6) (Where the Commission made it clear that "we vigorously, and without equivocation, reject considering a settlement as precedent, as to *any* subsequent issue, in *any* proceeding").

(emphasis added). The Commission approved this provision and the rest of the settlement in terms that apply equally to this case:

After a review of the terms of the settlement agreement, we are satisfied that the agreement is in the public interest. This settlement rightly focuses on resolutions that benefit consumers and competition as opposed to expensive and time-consuming litigation.

Id.; see, e.g., *Application of the Dep't of Transp. of the Commonwealth of Pennsylvania*, A-00122441, 2013 WL 4761288, at *4 (Aug. 29, 2013) (Approving settlement with the following release: “The parties agree that the purpose of this Stipulation is to act as a General Release, except as specifically noted within, and is to settle, compromise and **release all claims, actions, suits and rights whatsoever** existing between and on behalf of the respective parties as set forth above, their successors and assigns, including **all such claims, actions, suits and rights whatsoever**, whether known or unknown to the parties, except to enforce the terms of this Stipulation.” (Emphasis added). There is no doubt that the Commission believes that it has the ability to approve releases as part of settlements regardless of its jurisdiction to enforce the release.

IV. CONCLUSION

For all of the foregoing reasons, as well for as the reasons set forth in the Joint Petition, it is respectfully submitted that the Commission should approve the Settlement without modification.

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Respectfully submitted,



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