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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of

GlidePath Marianas Operations Inc.,

Appellant.

DOCKET NOS. OPA-PA-19-010
OPA-PA-20-001

**OPPOSITION TO INTERESTED
PARTY ENGIE SOLAR'S
OBJECTIONS AND MOTION TO
STRIKE APPELLANT'S UNTIMELY
AMENDED WITNESS LIST**

Appellant, GlidePath Marianas Operations Inc., hereby files this Opposition to ENGIE Solar's Objections and Motion to Strike Appellant's Untimely Amended Witness List ("Motion") filed on July 2, 2020.

FACTS

The undersigned believes it would helpful to provide the relevant facts that would inform the OPA's decision on this Motion.

On March 13, 2020, ENGIE Solar ("ENGIE") filed its Witness List. Its Witness List identified witness number 8 as "Avisian (Worley Parsons Group) through its designee." On June 24, 2020, the OPA held a logistics meeting for the parties to review the technological capabilities of the OPA and discuss how the trial should proceed. At that meeting, the undersigned spoke with Attorney Arriola regarding the parties' experts at trial. Declaration of Joseph C. Razzano filed with this Opposition (hereinafter "Razzano Declaration"), ¶ 4. Attorney Arriola inquired

whether GlidePath had identified its expert on its witness list. *Id.* at 5. The undersigned answered that the expert was identified on March 13, 2020, the resume was bate stamp number 9-000023 and produced on March 13, 2020. *Id.* at 8. On June 25, 2020, the undersigned explained Vince Maione was GlidePath’s expert and pointed out the bate stamp documents which contained Mr. Maione’s resume, and requested Attorney Arriola to identify her expert and send his or her resume. *Id.* at 8. Attorney Arriola identified ENGIE’s expert as Richard C. Antoline and provided a link to his LinkedIn page. *Id.* at 9. She said she would “forward his resume as soon as received.” *Id.* at 10. That resume was never provided to GlidePath’s counsel. *Id.* at 11.

ENGIE did not identify its expert witness, Richard C. Antoline, until 104 days after filing its Witness List.

OPPOSITION

I. There is no Prejudice Because Richard P. Charles will Testify to the Arguments ENGIE has been Preparing to Challenge at Trial.

ENGIE argues that its “entire case is premised upon the identification of GlidePath’s witnesses in its Witness List filed on March 13, 2020.” Motion, pg. 2. ENGIE further argues that Robert P. Charles will testify to “same thing Vince Maione will testify about.” *Id.* If it is true that Robert P. Charles will testify to aid in the explanation of the technical and complex requirements of the Invitation for Bid (“IFB”), which is the same thing Vince Maione will testify to, then ENGIE will not be at a disadvantage.¹ If it has been preparing for the arguments that Vince Maione will present, then logically it has been preparing for the arguments Robert P. Charles will present. Mr. Charles will present helpful testimony to support GlidePath’s case—he

¹ The two gentlemen will not have overlapping or cumulative testimony. They will simply split their topics already being presented. There is no change in the arguments raised in GlidePath’s Notice of Appeal.

will not present cumulative, duplicative, or unnecessary evidence. Rather, his testimony will explain and inform the Public Auditor's review of the merits of this appeal. There is no prejudice if ENGIE has already been preparing for the arguments that Mr. Charles will testify to at trial. The Objection and Motion should be denied.

II. ENGIE's Motion Should be Denied Because it Requests for Relief with Unclean Hands.

The unclean hands doctrine prescribes "at law and in equity, that the courts will not aid either party to a transaction which is illegal or contrary to public policy where the parties are equally at fault, but will leave the parties where it finds them[.]" *Stockon v. Ortiz*, 417 Cal.App.3d 183, 200 (1975).

Here, ENGIE complains that it was not given enough notice to prepare for another witness that is employed by the same company, Sergent & Lundy, as the other witness named in GlidePath's Witness List, Vince Maione. Motion, pg. 2. ENGIE, however, did not identify *any* witness from the corporation it listed and only identified the corporation itself without specifying any individual. ENGIE identified witness number 8 as "Avisian (Worley Parsons Group) through its designee[.]"² ENGIE Solar's Witness List. ENGIE claims prejudice from the Amended Witness List but fails to acknowledge that its Witness List did not give any notice to GlidePath of who the designee would be from Avisian. In fact, ENGIE's counsel did not identify the individual from Avisian until the undersigned requested it in writing on June 25, 2020—104 days after ENGIE's Witness List was filed on March 13, 2020. Razzano Declaration, ¶ 12. If any party has suffered prejudice from a lack of notice, it should be GlidePath. Without any individual identified, GlidePath has been preparing for trial to cross-examine *any* employee

² The undersigned believes the correct spelling of the Worley Parsons Group Company identified is "Advisian" and not "Avisian." GlidePath should not be required to conduct independent research as to the true identity of the company that the individual works for. It should be noted that LinkedIn states there are over 30,000 people working at the Worley Parsons Group.

from Avisian. Surely, this has placed GlidePath in a significant disadvantage. Nonetheless, given the complex nature of this procurement appeal, GlidePath, in good faith, did not object to ENGIE's failure in identifying who exactly will testify from Avisian.³ ENGIE should not be allowed to claim prejudice when it has unclean hands. Its Objection and Motion should be denied.

CONCLUSION

For the foregoing reasons, the Public Auditor should find that ENGIE has suffered no prejudice from GlidePath's Amended Witness List, and it has come to the OPA with unclean hands, and thus ENGIE's Motion should be denied. Alternatively, because ENGIE failed to designate any expert from Avisian, if the OPA excludes GlidePath's additional witness based on timing then ENGIE's expert should be dealt the same fate.

Respectfully submitted this 6th day of July, 2020.

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By: 
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³ It should also be noted no resume has been provided regarding Richard C. Antoline. Razzano Declaration, ¶ 11.