

COMMONWEALTH OF PENNSYLVANIA



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March 24, 2015

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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,
Complainants

v.

Energy Services Providers, Inc. d/b/a Pennsylvania Gas &
Electric

Respondent

Docket No. C-2014-2427656

Secretary Chiavetta:

Enclosed please find the Joint Petition for Approval of Settlement along with Exhibit A – Stipulation of Facts in Support of Settlement and Appendices A-C – the Statements in Support of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate, Pennsylvania Gas & Electric and the Bureau of Investigation & Enforcement, in the above-referenced proceeding.

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

Respectfully Submitted,
Candis A. Tunilo
Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Enclosures

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

*185180

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427656
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC.	:	
d/b/a PENNSYLVANIA GAS & ELECTRIC	:	
	:	
The Company	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (BCP) and Tanya J. McCloskey, Acting Consumer Advocate (OCA), (together, Joint Complainants), the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (I&E), and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E or the Company) (collectively, Joint Petitioners)¹ hereby join in this Joint Petition For Approval of Settlement (Settlement), which resolves all issues among the Joint Petitioners.

The Joint Petitioners respectfully request that Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) recommend and the Pennsylvania Public Utility Commission (Commission) approve all terms and conditions of the Settlement without modification on an

¹ The Office of Small Business Advocate (OSBA) does not join in this Settlement but does not oppose the Settlement.

expedited basis. The Settlement provides for refunds and injunctive relief in full satisfaction of the Joint Complaint filed with the Commission by Joint Complainants against PaG&E on June 20, 2014.

In support of this Settlement, the Joint Petitioners state the following:

I. BACKGROUND

1. The Attorney General is the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution and is authorized to initiate and maintain this action pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204.

2. Tanya J. McCloskey is the Acting Consumer Advocate. The OCA is authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1 *et seq.*

3. PaG&E is a New York corporation and registered to operate in Pennsylvania as Pennsylvania Gas & Electric. The Company is licensed by the Commission to supply electric generation to residential, small commercial (25 kw and under), large commercial (over 25 kw), industrial and governmental consumers in the Allegheny Power, Citizens' Electric Company of Lewisburg, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities, Inc., Pike County Light & Power Company, UGI Utilities, Inc., and Wellsboro Electric Company service territories in Pennsylvania. See License Application of Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier and Aggregator of Retail Electric Power, Docket No.

A-2010-2212421, Order (May 9, 2011) (Licensing Order I) and Order (Aug. 1, 2011) (Licensing Order II).

4. On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Commission pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA). The Joint Complaint includes seven separate counts as follows: (1) misleading and deceptive promises of savings; (2) slamming; (3) misleading and deceptive welcome letter; (4) lack of good faith handling of complaints; (5) failing to provide accurate pricing information; (6) prices nonconforming to disclosure statement; and (7) failure to comply with the Telemarketer Registration Act. With respect to relief, Joint Complainants requested that the Commission find that PaG&E violated the Public Utility Code, the Consumer Protection Law, the TRA, and the Commission's regulations and Orders; provide restitution to PaG&E's customers; impose a civil penalty; order PaG&E to make various modifications to its practices and procedures; and revoke or suspend PaG&E's EGS license, if warranted.

5. On July 10, 2014, the OSBA filed a Notice of Appearance, Notice of Intervention and Public Statement in this proceeding.

6. On July 10, 2014 PaG&E filed Preliminary Objections to the Joint Complaint. In its Preliminary Objections, PaG&E's argued that the Commission lacked jurisdiction to hear claims pursuant to the Consumer Protection Law and TRA and consider the equitable remedy of restitution, as well as insufficient specificity and legal insufficiency in the Joint Complaint.

7. On July 21, 2014, Joint Complainants filed an Answer to Preliminary Objections asserting that PaG&E's Preliminary Objections were unsupported and that it was clear and free from doubt that the Joint Complaint is legally sufficient and sought that the Commission make determinations pursuant to the Commission's powers and jurisdiction.

9. Also on July 10, 2014, PaG&E filed an Answer with New Matter to the Joint Complaint. In its Answer, PaG&E admitted or denied the various averments made by the Joint Complainants in the Joint Complaint. In its New Matter, PaG&E averred thirteen affirmative defenses and concluded by requesting that the Commission dismiss the Joint Complaint with prejudice.

10. On July 30, 2014, Joint Complainants filed their Reply to New Matter specifically denying the viability of each of PaG&E's affirmative defenses.

11. On July 31, 2014, I&E filed a Notice of Intervention in this proceeding.

12. On August 14, 2014, PaG&E filed an unopposed Motion for Protective Order. The Motion was granted by Order dated August 22, 2014.

13. By Order dated August 20, 2014, the ALJs granted in part and denied in part PaG&E's Preliminary Objections. Specifically, the ALJs found: 1) that the Commission lacks jurisdiction to hear complaints under the CPL and TRA even though compliance with these Acts is required by the Commission regulations, and 2) that the Commission lacks jurisdiction to consider the equitable remedy of restitution. Based on these findings, the ALJs struck in part Count I (Misleading and Deceptive Promises of Savings), Count II (Slamming), Count III (Misleading and Deceptive Welcome Letter), Count V (Failing to Provide Accurate Pricing Information), Count VI (Prices Nonconforming to Disclosure Statement), and Count VII (Failure to Comply with the Telemarketer Registration Act) to the extent that these Counts consider the

CPL or TRA. The ALJs also determined that while the Commission did not have jurisdiction to order restitution, the Commission did have the authority to direct refunds.

14. An Initial Prehearing Conference was convened on August 25, 2014. Following the Initial Prehearing Conference, Procedural Order #2 dated September 3, 2014 was issued establishing, *inter alia*, that the Joint Complainants would serve written direct testimony of consumer witnesses by Friday, November 7, 2014, and that evidentiary hearings for purposes of admitting the written direct testimony of the consumer witnesses subject to cross examination and timely objections would be held December 15-19, 2014.²

15. On September 2, 2014, PaG&E filed a Petition Requesting Interlocutory Commission Review and Answer to Material Question regarding the ALJs' August 20, 2014 Order granting in part and denying in part PaG&E's Preliminary Objections. Specifically, PaG&E requested that the Commission answer the following question in the negative: Does the Commission have statutory authority or subject matter jurisdiction to order electric generation suppliers to issue refunds to customers?

16. On September 8, 2014, Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions regarding the ALJs' August 20, 2014 Order granting in part and denying in part PaG&E's Preliminary Objections. Specifically, Joint Complainants requested that the Commission answer the following questions in the affirmative: (1) Does the Commission have authority and jurisdiction to determine whether a violation of the Unfair Trade Practices and Consumer Protection Law (CPL) and Telemarketer Registration Act (TRA) has occurred when considering whether the Commission's regulations—which require compliance

² Later, in Procedural Order #3 entered November 3, 2014, the ALJs also directed PaG&E to: (1) identify which consumer witnesses it intended to cross-examine by December 1, 2014; (2) file any motions to strike consumer witness direct testimony by December 8, 2014; and (3) provide its cross-examination exhibits to the ALJs, parties and witnesses by December 10, 2014.

with these laws—have been violated? and (2) Does the Commission have the authority and jurisdiction to order equitable remedies including restitution?

17. On September 12, 2014, PaG&E filed a Brief in Support of its Petition Requesting Interlocutory Commission Review and Answer to Material Question. Also on September 12, 2014, Joint Complainants and I&E filed Briefs in Opposition to PaG&E's Petition Requesting Interlocutory Commission Review and Answer to Material Question.

18. On September 18, 2014, the Joint Complainants filed a Brief in Support of their Petition for Interlocutory Review and Answer to Material Questions. Also on September 18, 2014, PaG&E filed a Brief in Opposition.

19. The Commission's Orders on PaG&E's Petition Requesting Interlocutory Commission Review and Answer to Material Question and Joint Complainants' Petition for Interlocutory Review and Answer to Material Questions are pending.

20. On October 20, 2014, PaG&E filed a Motion in Limine to Restrict Introduction of Evidence seeking an order prohibiting the introduction or admission into the record of evidence of allegations contained in formal complaints filed with the Commission against PaG&E that are the subject of filed certificates of satisfaction.

21. On November 7, 2014, Joint Complainants served the direct testimony of 245 consumer witnesses, comprising six volumes and 1365 pages.

22. On November 10, 2014, Joint Complainants filed their Answer to PaG&E's Motion in Limine asserting that the mere fact that PaG&E satisfied some consumer formal complaints in no way absolves PaG&E for its conduct under the law to the extent it engaged in a broader array of unfair and deceptive business practices.

23. On November 25, 2014, PaG&E filed an unopposed Motion for Continuance Evidentiary Hearings scheduled for December 15-19, 2014.

24. By Order entered December 1, 2014, the ALJs denied PaG&E's Motion in Limine to Restrict Introduction of Evidence.

25. By Order entered December 8, 2014, the ALJs granted PaG&E's Motion for Continuance of Evidentiary Hearings and cancelled the evidentiary hearings scheduled for December 15-19, 2014. The ALJs rescheduled the hearings for cross-examination of consumer witnesses for February 24-27, 2015. Additionally, the ALJs directed PaG&E to (1) identify no later than January 19, 2015, which customers it intended to cross-examine; (2) file no later than February 6, 2015, any motions to strike pre-served consumer testimony; and (3) circulate to the ALJs, parties and consumer witnesses no later than February 13, 2015, the exhibits PaG&E intended to use during the evidentiary hearings.

26. By letter dated January 19, 2015, PaG&E stated that the Company intended to cross-examine every consumer witness whose direct testimony Joint Complainants served on November 7, 2014.

27. Pursuant to a Notice dated January 21, 2015, a Further Prehearing Conference was convened on January 27, 2015, during which the ALJs, *inter alia*, adopted a litigation schedule for the second half of the case.

28. Pursuant to the ALJs' directive at the Further Prehearing Conference, on February 2, 2015, Joint Complainants filed their Memorandum of Law Regarding the Admission of Pattern of Practice Evidence.

29. On February 6, 2015, PaG&E filed its Motion to Strike Pre-Served Consumer Testimony.

30. Via tele-conference call on February 12, 2015, Joint Petitioners advised the ALJs that they had reached a settlement in principle pending final approval of such by the Attorney General and requested that the ALJs suspend the litigation schedule until such final approval could be obtained. The ALJs granted the request and cancelled the evidentiary hearings scheduled for February 24-27, 2015 and suspended additional upcoming schedule deadlines.

31. On February 24, 2015, the ALJs convened a Status Conference with the Joint Petitioners, wherein Joint Petitioners confirmed that a settlement in principle had been reached and all approvals of those in authority had been obtained. Thereafter, the ALJs issued an Order dated February 24, 2015 suspending the procedural schedule and directing that the Joint Petition for Settlement, along with factual stipulations, stipulations for admission of evidence and statements in support be filed by March 20, 2015.

II. SETTLEMENT TERMS AND CONDITIONS

32. It is understood that this Settlement is the compromise of the allegations in the Joint Complaint, which the Joint Complainants intend to prove and that the Company disputes. Although the Joint Complainants and the Company may disagree with the allegations as to the Company's conduct, both acknowledge the importance to consumers and the retail market of full and accurate information and disclosures to consumers, as well as the assurance of fair and transparent marketing and billing practices. The Joint Complainants and the Company recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, there are benefits to amicably resolving the disputed issues through settlement. The refunds, penalties, contributions and injunctive measures described herein are not and should not be considered to be or construed as admissions of liability or wrongdoing on the part of the Company.

It is further understood that the Company specifically denies any wrongdoing or liability in this proceeding. It is the parties' intent that the terms and conditions of this Settlement are not to be used in any further proceeding, including but not limited to, the Pennsylvania Public Utility Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter, as evidence of unlawful behavior, or as an admission of unlawful behavior by the Company.

A. Refunds.

Refund Pool

33. Upon the effective date of the Commission's final order in this proceeding, the Company agrees to pay the total sum of \$6,836,563 into a refund pool (hereinafter "Refund Pool"), which will take into account prior cash refunds provided to customers by the Company. Prior to settlement, the Company voluntarily provided \$4,511,563 in cash refunds to customers. Therefore, the net Refund Pool amount due upon the effective date of the Commission's final order in this proceeding is \$2,325,000.

34. The BCP and OCA shall determine which customers were affected by the Company's conduct as alleged in the Joint Complaint and shall determine how much restitution to offer to any individual customer. The BCP and OCA will determine the refund amount to offer eligible PaG&E customers based on the individual customer's usage, price charged and refund amounts already received directly from PaG&E. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by PaG&E pursuant to this Settlement.

Administration of Refund Pool

35. After the Commission enters the final order in this proceeding, BCP and OCA shall retain, with the concurrence of the Company, a third-party Administrator of the Refund Pool to administer the distribution of refunds referenced in Section II.A. The first \$100,000 costs and expenses of the Administrator of the Refund Pool shall be paid by PaG&E. If the costs and expenses of the Administrator exceed \$100,000, any such costs and expenses in amounts that exceed \$100,000, shall be paid out of the Refund Pool.

36. PaG&E shall deposit the net Refund Pool amount due identified above with the Administrator within five business days after BCP and OCA identify to PaG&E the Administrator retained.

37. PaG&E shall fully and timely cooperate with BCP, OCA and the Administrator by providing all customer information necessary to calculate each customer's refund amount. Such information shall include, but not be limited to, customer billing rates, usage and addresses.

38. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool within one hundred and eighty (180) days of the Commission's final order in this proceeding. The Settlement Administrator shall provide monthly reports to OCA, BCP, PaG&E and designated Commission staff of funds distributed that include at a minimum, the customer's name and other available identifying information, the amount of funds disbursed to each customer and the period for which the funds were disbursed.

39. If any funds remain in the Refund Pool, they shall be provided to electric distribution company (EDC) hardship funds and allocated by the ratio of the Company's customers in the EDC's territory to the total amount of Company customers in Pennsylvania as of January 1, 2014.

40. Any unclaimed funds from the Refund Pool shall be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customer(s) entitled to the refund.

41. The Company shall honor all commitments to customers enrolled in the Company's rebate programs, including but not limited to, a 12%/15% rebate on the highest bill after 12 months for customers who meet the eligibility requirements whether or not the customer has received a refund. This compliance recognizes the need for an allowance for prior voluntary rebates when using a particular month to calculate the highest bill month. Further, PaG&E shall honor all other commitments to Pennsylvania customers, including but not limited to, guaranteed introductory rates; service agreements for repair and maintenance; and incentives offers, such as cash offers for the enrollment of a friend and restaurant.com and "grocery dough" coupons.

42. Additional Refund Method – Any customer of the Company that does not receive or accept an offer of funds from the Refund Pool pursuant to ¶¶ 33, 34 and 38 hereto shall be entitled to seek a refund as follows:

a. The customer may contact the Company directly with complaints and request for a refund.

b. The Company shall use its best efforts to investigate the customer's complaint.

c. The Company shall use its best efforts to negotiate an agreement pursuant to which the customer will agree to accept a refund from the Company in exchange for the release any claims or causes of action that the customer has or may have against the Company.

d. If the customer is not satisfied with the Company's investigation and/or the Company's settlement offer, the customer may file a formal complaint with the Pennsylvania Public Utility Commission.

e. For one year after the Commission's final order in this proceeding, the Company shall provide quarterly reports to the BCP, OCA and designated Commission staff, setting for the names of the complainants, the general nature of the complaints, and the disposition thereof.

43. Release – No customer shall be paid any funds from the Refund Pool without executing a "Release of Claims" pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Joint Complaint. Further, as part of this settlement agreement, the Office of Attorney General, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Public Utility Commission's Bureau of Investigation and Enforcement release the Company and all of its current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Joint Complaint.

44. Settlement of Other Matters – The Parties agree that, in the event that the product offering permitted in a settlement of any other matters involving electric generation suppliers brought by the OCA and/or BCP that are pending before the Public Utility Commission as of the date of execution of this Settlement, is materially less restrictive than the product offering agreed to in this Settlement, then the following procedure shall apply:

a. If PaG&E believes that a product offering agreed-to by the Joint Complainants in settlement of such other matter is materially less restrictive than the offerings

permitted by this Settlement and wishes to offer the same product under the same conditions, it shall provide written notice to Joint Complainants within twenty (20) days of the filing of a joint petition for settlement of such other matter. Such notice shall (i) identify the product offering permitted by the settlement of the other matter, including all injunctive terms directly relating to such product offering; (ii) state why PaG&E believes such offering, including all directly-related injunctive terms, is less restrictive than the offerings permitted by this Settlement; and (iii) request the Joint Complainants' concurrence in PaG&E's offering of the same product subject to all of the identified injunctive terms directly related to such product offering.

b. Within twenty (20) days after of receipt of the notice, the Joint Complainants shall provide written notice of their concurrence or non-concurrence with PaG&E's request and its identification of the injunctive terms directly related to the product offering that must be adopted by PaG&E if the Company determines to offer the same product.

c. Upon application to the Commission on an expedited basis, and approval by the Commission, the Settlement shall be amended to include the identified product offering and related injunctive terms.

B. Penalty and Contribution to EDC Hardship Funds.

45. PaG&E shall pay a civil penalty in the amount of \$25,000 to the General Fund. PaG&E shall not claim a tax deduction for the \$25,000 civil penalty.

46. PaG&E shall make a total contribution of \$100,000 to the EDCs' hardship funds. The contribution shall be allocated by the ratio of PaG&E customers in the EDC's territory to the total amount of PaG&E customers in Pennsylvania as of January 1, 2014.

C. Injunctive Relief.

47. Modifications to Business Practices: In addition to complying with all Commission regulations, Orders and policies, PaG&E shall implement the following modifications to its business practices for all residential and small business customers:

a. Product Offering:

1. For a period of eighteen months from March 1, 2015, PaG&E will not sell variable rate products in Pennsylvania and will offer fixed rate products pursuant to which the customer's price is fixed for six-months or longer. This restriction will not apply to PaG&E's contracts with existing customers.

2. PaG&E agrees that it will not charge Pennsylvania customers cancellation or termination fees for the Company's variable rate products when such products are offered in accordance with Paragraph 47(a)(1).

b. Marketing:

1. PaG&E shall comply with all applicable Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter "Consumer Protection Law") and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (hereinafter "TRA"), and other applicable laws, as well as applicable Commission regulations, Orders and policies.

2. PaG&E commits that the Company, its agents, employees and representatives shall not make misrepresentations to residential and small business consumers.

3. PaG&E, its agents, employees and representatives shall not make representations, either directly or by implication, about savings that consumers may realize by switching to PaG&E except when comparing the rate offered by PaG&E to the customer's

current Price To Compare (“PTC”), or any published future PTC or when referencing an explicit, affirmative guaranteed savings program. If the PaG&E agent, employee or representative compares the rate offered by PaG&E to the customer’s current PTC or a published PTC, the PaG&E agent, employee or representative shall also provide the term that the referenced PTC will be in effect to the consumer and inform the consumer that savings beyond that period are not guaranteed.

4. If PaG&E offers variable rate products to residential and small business consumers in the Commonwealth, after the time period set forth in Paragraph 47(a)(1) above, PaG&E, its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “risk free,” “competitive,” “guaranteed,” or any other terminology that represents, explicitly or by implication, that the price offered will always be lower than the EDC’s PTC, except when referencing an explicit, affirmative guaranteed savings program.

5. PaG&E its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “trial period” or “introductory rate,” without a clear and conspicuous disclosure of the material terms and conditions thereof, including and without limitation to, a description of the price that will be charged after the expiration of that introductory or trial period and the basis on which that price will be calculated, the circumstances under which the consumer can cancel, and the consequences of cancellation.

6. PaG&E, its agents, employees and representatives shall not make representations, either directly or by implication, about “special programs” for which a Pennsylvania consumer qualifies, unless PaG&E provides documentation to the consumer

explaining in detail the “special program,” including but not limited to the parameters of the program, term of the program and eligibility requirements for acceptance into the program.

7. (i) Except as set forth herein, PaG&E, its agents, employees and representatives shall not make representations, either directly or by implication, about the Price to Compare increasing or the Price to Compare being a variable rate; notwithstanding the foregoing, nothing herein shall prohibit PaG&E, its agents, employees and representatives from making truthful statements about the current level of the EDC’s PTC or future PTC if that information is publically available. If a PaG&E agent, employee or representative identifies the current PTC or a published future PTC, the PaG&E agent, employee or representative shall also provide the term that the referenced PTC will be in effect; and (ii) PaG&E, its agents, employees and representatives shall not make any representations whatsoever about how a consumer’s utility purchases electricity.

8. PaG&E specifically commits to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. PaG&E Third Party Verifications shall require affirmative representation by the person consenting to the change that the person is either the EDC Customer of Record or has been authorized by the Customer of Record to act on behalf of the Customer of Record; otherwise, PaG&E shall not proceed with the switch.

9. Every communication by a PaG&E representative with a potential customer shall begin with the sales representative stating:

My name is [Sales Representative's Name]. I am calling on behalf of Pennsylvania Gas & Electric. PaG&E can provide you with your electricity. I do not work for or represent your electric utility.

10. During sales calls, PaG&E representatives shall inform customers that if they switch, they will continue to receive one bill for electricity, from the utility and that the bill will include distribution charges from the utility and generation/transmission charges from PaG&E.

11. If PaG&E offers variable rate products to residential and small business consumers in the Commonwealth, after the time period set forth in Paragraph 47(a)(1) above, the PaG&E salesperson must state the following during any of its variable rate sales contacts:

After ___ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

12. During a variable rate sales contact or on any variable rate advertising, if PaG&E makes a representation to the residential and small business consumer that they may cancel their contract at any time, PaG&E must also state that cancellations will be handled promptly, but it may take several days to switch suppliers pursuant to Commission regulations.

13. If PaG&E offers a guaranteed rate for a certain time period and charges a cancellation fee for early termination, PaG&E is prohibited from stating that it has no term plans.

14. Regarding all in-person sales solicitations, the PaG&E salesperson shall provide the Disclosure Statement before presenting a contract to the residential or small

business consumer for his or her signature and inform the consumer that the document sets out his or her rights and obligations.

15. PaG&E, its agents, employees and representatives shall deposit with the United States Postal Service (or such other mail delivery service the Company may employ) its Disclosure Statement and Welcome documents by the end of the next business day after the telemarketing sales contact that resulted in the sale.

16. A Disclosure Statement shall contain at least the following information:

- i. The terms of the product.
- ii. A detailed description of the product, which shall match the oral description given in the telemarketing solicitation. This description may be satisfied with appropriate use of the Schumer box.

17. PaG&E shall retain records in accordance with the Commission's requirements, including but not limited to, confirmations of mailing, which shall include the date that the contract, Disclosure Statement, and Welcome documents were deposited with U.S.P.S. (or such other mail delivery service as the Company may employ) and the customer name and address stated on the envelope containing the documents.

18. Regarding online enrollments, within 180 days after approval of the settlement, PaG&E shall revise its website to clearly and conspicuously display its Disclosure Statement and all contract terms and conditions as one or multiple unavoidable separate screens, which require the consumer to scroll to the end of the document and click a button indicating he or she has reviewed the documents and agrees to the terms and conditions, during the electronic customer enrollment process. PaG&E shall require new customers to click a screen button

acknowledging that they have reviewed the terms and conditions. PaG&E shall offer a screen prompt enabling the consumer to print the terms and conditions.

19. In all advertising to residential and small business consumers, PaG&E shall include and clear and conspicuous display of PaG&E’s brand identification information and clear and conspicuous notice that PaG&E is independent of the consumer’s electric utility, but not formally name the electric utility. Further, PaG&E shall include clear and conspicuous language that the consumer is not required to switch to an alternate generation supplier, but if the consumer chooses to switch, he or she will continue to receive one bill from his or her electric utility and the bill will reflect PaG&E’s generation charges, unless PaG&E is providing direct billing.

20. In all of the Company’s variable rate product marketing materials that offer terms of service for acceptance by residential and small business consumers and Welcome documents to consumers that have enrolled in variable rate products with PaG&E, the Company shall provide a statement of the average price per kWh, as required by 52 Pa. Code § 54.7(b)(2). The Company shall use 24 months of price data to calculate the average price per kWh. If the Company offers variable rate products after the time period specified in Paragraph 47(a)(1) above, the Company shall also provide a statement of the total impact of the Company’s average price under the program for the levels of monthly usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

Monthly usage	500 kWh	1,000 kWh	2,000 kWh
PAG&E Average price	\$xxx	\$xxx	\$xxx

This information shall also be conveyed to the residential and small business consumer during the sales contact.

c. Third Party Verifications:

1. For live Third Party Verifications (“TPVs”), the Company representative shall provide the following explanation, in a slow and audible manner, to residential and small business consumers prior to beginning the TPV process:

You are going to hear a series of questions to confirm your understanding of the agreement. If the representative speaks too quickly, please interrupt and tell the representative to speak more slowly. If you do not understand a question, please interrupt and say that you do not understand the question. If you have a question of your own, please interrupt and ask your question.

2. PaG&E shall add the following questions to all TPVs, whether via live agent or an Interactive Voice Response system:

- What is your name? (live agent only)
- What is your address? (live agent only)
- Do you understand that PaG&E is not your electric utility?
- Do you understand that you are not required to switch to PaG&E in order to continue receiving electric service?
- Does your name appear on the electric bill?

If the consumer answers that his or her name does not appear on the electric bill, the TPV representative shall request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account.

If the consumer answers that he or she is the customer of record or authorized to act on behalf of the customer of record and the sales solicitation are for a variable rate product, PaG&E shall also add the following questions to the TPV:

- Do you understand that you are agreeing to a variable rate that changes on a month-to-month basis?
- Do you understand that a variable rate can go up as well as go down?
- Do you understand that there is no cap on the price?

3. PaG&E agrees that all TPVs will be performed outside the physical presence of the PaG&E sales representative. The PaG&E in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

4. PaG&E sales representatives shall not prompt consumers' responses to TPV questions or instruct the consumers as to the manner in which to respond to TPV questions. If the sales representative interrupts the TPV in this manner, the TPV shall immediately be terminated and the sale shall not be consummated unless a new TPV is initiated and successfully completed.

d. Disclosure Statement: Within ten business days of the Commission's final Order in this proceeding, PaG&E shall provide to BCP and OCA its current Disclosure Statement and Schumer Box, drafted pursuant to the Commission's Final-Omitted Rulemaking at Docket No. L-2014-2409385.

1. Further, PaG&E shall provide to the OCA and the Commission any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years.

2. In addition to adhering to the Commission's regulations, Orders and policies regarding the requirements for disclosure statements, terms and conditions, and

marketing materials, if PaG&E offers variable rate products pursuant to Paragraph 47(a)(1) above, the Company shall:

i. Include the following language in at least 12-point bold font in the “Price Structure” section of the Company’s Disclosure Statement and, if possible, the Schumer Box for all variable rate products:

After ___ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

ii. Under the heading “Cancellation/Early Termination Fees” of the Disclosure Statement, PaG&E shall state the following in at least 12-point bold font:

[For variable rate programs:] You may cancel this contract at any time without an early termination fee. All cancellations will be handled promptly, but it may take several days to switch suppliers pursuant to the Commission’s regulations.

[For fixed rate programs with ETFs:] You may cancel this contract at any time upon 30 days’ notice to PaG&E, for which you may be separately billed an early termination fee of \$150.

3. PaG&E shall not state or represent to customers in the Company’s variable rate programs that the price PaG&E will charge will be “market-based” or set on “market conditions” unless PaG&E also provides a specific explanation by means of a formula, or other explanation immediately following such representation in a manner readily understandable for the customers that specifies with particularity what such “market” may consist of, some representation of what components of the price fluctuate with that market and a publicly available source of information so that a customer can calculate the price and any applicable charges in terms of dollars and cents or cents per kWh.

4. The parties agree that the Disclosure Statement language stated in Paragraph 47(d)(2)(i) above is not a change in contract terms pursuant to 52 Pa. Code § 54.10.

PaG&E, however, shall notify all of its customers enrolled in variable rate programs as of the date of execution of this Settlement of the Company's fixed rate product offer identified in Paragraph 47(a)(1) above, and direct customers to review the updated Disclosure Statement online or via hard copy. PaG&E shall provide the website to view the Disclosure Statement online and a telephone number that customers may call to request a hard copy. These notifications may be provided to customers using on-bill messages and shall begin on the first billing cycle following the execution of this Settlement for which the EDCs will permit such messaging.

e. Training: PaG&E shall ensure that its training program for internal and external sales representatives meets the requirements of this section.

1. Within 60 days of the Commission's final Order in this matter, PaG&E shall provide to the Commission, BCP and OCA a detailed description of the training PaG&E will implement.

2. After a 30-day review period, the Company will meet with BCP, OCA and designated Commission staff to review and discuss the training.

3. PaG&E's training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:

i. The applicable requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSSs;

ii. The applicable requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;

iii. The applicable requirements of the Commission's regulations regarding door-to-door sales and other applicable state and federal law, with particular emphasis on the following:

A. As soon as possible and prior to describing any products or services offered for sale by PaG&E, a sales representative shall:

1. Produce identification, to be visible at all times thereafter, which prominently displays in the full name of the marketing representative, displays a photograph of the marketing representative and depicts the legitimate trade name and logo of PaG&E; and provides U.S. Gas & Electric's telephone number for inquires, verification and complaints.

2. Identify the reason for the visit and state that PaG&E is an independent energy marketer, and identify himself or herself as a representative of PaG&E; explain that he or she does not represent the distribution utility; and explain the purpose of the solicitation.

3. Offer a business card or other material that lists the agent's name, identification number and title, and the PaG&E's name and contact information, including telephone number.

B. During the sales presentation, the marketing representative must also state that if the Customer purchases electricity from PaG&E, that the Customer's utility will continue to deliver their energy and will respond to any outages or emergencies.

C. The representative will provide the Customer with written information regarding PaG&E's products and services immediately upon request, which

shall include PaG&E's name and telephone number for inquiries, verification and complaints. Any written materials, including contracts, sales agreements, and marketing materials, must be provided to the Customer in the same language utilized to solicit the customer.

D. Where it is apparent that the Customer's language skills are insufficient to allow the Customer to understand and respond to the information conveyed by the marketing representative or where the Customer or another third party informs the marketing representative of this circumstance, the marketing representative shall terminate contact with the Customer in accordance with 52 Pa. Code § 111.9. 5. The marketing representative shall leave the premises of a Customer when requested to do so by the Customer or the owner or occupant of the premises.

iv. An express warning that deceptive sales practices will not be tolerated by PaG&E's management;

v. An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engage in improper sales practices; and

vi. A description of the quality assurance, monitoring, auditing and reporting practices PaG&E maintains to identify and prevent improper sales practices.

4. The training, at a minimum, shall include the following:

i. Initial training and subsequent refresher training on at least a quarterly basis for all PaG&E internal sales representatives and customer service representatives and third-party sales agents in the modifications listed in this Settlement Agreement and the implementation thereof;

ii. Initial training and subsequent refresher training on at least a quarterly basis for all PaG&E internal sales representatives and third-party sales agents in Pennsylvania laws applicable to PaG&E, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and

iii. Initial training and subsequent refresher training on at least a quarterly basis for all PaG&E internal sales representatives and third-party sales agents on current Pennsylvania Public Utility Commission regulations, policies and Orders.

5. PaG&E shall implement and conduct the training and ensure that its internal sales representatives and third-party sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

6. Individual marketers retained by PaG&E shall be required to successfully complete PaG&E's training program. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in PaG&E's training materials before marketing to and enrolling customers on behalf of PaG&E.

7. PaG&E specifically commits to the best of its ability, to implement the provisions of this Settlement in a timely manner. Additionally, until the provisions in this Settlement are fully implemented, PaG&E commits to abiding by the spirit of the Settlement in its marketing and billing practices in the Commonwealth.

f. Compliance Monitoring: PaG&E shall increase internal quality control efforts to include at least the following:

1. PaG&E shall record all communications between customers and PaG&E's customer service representatives.

2. PaG&E shall require its telemarketers to record all communications with residential and small business consumers that result in a sale.

3. PaG&E shall maintain such recordings in accordance with the Commission's requirements.

4. PaG&E shall implement a provision in its contracts with telemarketers that no commissions shall be paid for a residential or small business consumer's enrollment unless a recording of the entire sales presentation to that consumer is supplied to PaG&E within ten business days of the sale.

5. PaG&E shall, on a monthly basis, review a random sample of calls recorded pursuant to the prior paragraph from each of PaG&E's agents and third-party contractors in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

i. The sample shall include no fewer than three sales for each sales representative conducting sales solicitations for PaG&E to Pennsylvania customers.

ii. Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, PaG&E shall investigate whether any of the Pennsylvania consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies.

iii. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten Pennsylvania consumers enrolled before the call in question and the ten Pennsylvania consumers enrolled after the call in question.

iv. If PaG&E identifies additional non-compliant sales calls, PaG&E shall implement remedial steps as described in Paragraph 47(f)(5)(vii) below.

v. Additionally, PaG&E shall offer to any residential or small business consumer subjected to the non-compliant sales practices a refund equal to the difference between the price charged by PaG&E and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within ten business days.

vi. Any substantiated consumer complaint about a PaG&E sales representative or other information indicating that a PaG&E sales representative has violated any term of this Settlement Agreement or otherwise engaged in improper sales practices shall trigger an investigation by PaG&E into whether any of the other PaG&E customers enrolled by that sales representative were subjected to sales practices that violated the terms of this Settlement Agreement or were otherwise improper.

A. Such investigation shall, at a minimum, include examination of customer enrollment records, sales service call notes for the ten Pennsylvania consumers enrolled by the sales representative immediate prior to and subsequent to the enrollment that triggered the investigation.

vii. In the event PaG&E determines that a sales representative has violated any terms of this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged

in improper sales practices, PaG&E shall take prompt remedial actions, which at a minimum shall include:

A. For the first violation, provide additional training and re-training;

B. For two violations in a six-month period, suspend the sales representative for a period of no fewer than 3 days; and

C. For any violations in excess of two within a six-month period, disqualify the sales representative for one week, and for external sales representatives, PaG&E will have the representative removed from its account.

viii. PaG&E specifically commits, to the best of its ability, to implement the provisions of this Settlement in a timely manner. Additionally, until the provisions in this Settlement are fully implemented, PaG&E commits to abiding by the spirit of the Settlement in its marketing and billing practices in the Commonwealth.

g. Reporting: Within 30 days of implementation of the training and compliance monitoring described above and semi-annually thereafter for a period of five years, PaG&E shall provide to the Commission and OCA:

1. An explanation of all internal audits and investigations performed during the reporting period, including a description of the audit(s) or investigation(s) performed as well as the results thereof and

2. The reports, as required by 52 Pa. Code §§ 56.151 and 56.152, of all customer complaints and disputes received by PaG&E for the reporting period.

h. Customer Service:

1. PaG&E shall continue to employ a Compliance Officer whose duties include, at a minimum:

i. Compliance with Chapter 56 of the Commission's regulations, including but not limited to, prompt investigation of all customer complaints, providing the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days;

ii. Resolution of customer complaints fairly and expeditiously;
and

iii. Training customer service representatives in accurately recording the reason for a customer's call in a customer contact log and ensuring compliance with the training described in this Settlement Agreement.

2. PaG&E shall at all times maintain a staff of customer service representatives necessary to at least:

i. Within normal business hours, provide consumers with reasonably timely access to a "live" customer service representative, whether the consumer seeks such access via telephone and/or e-mail. Reasonably timely access shall mean that the average hold times for consumers calling the Company shall be no more than 10 minutes, and consumer emails shall be answered within 24 hours unless sent on weekends or holidays in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

ii. provide a timely response to any voice mail messages left on its customer service toll-free number outside of normal business hours, but not, later than 24

after the message was left, unless the message is left on a weekend or holiday in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

iii. provide for the check of its voice mail message system at the beginning of each day's normal business hours;

iv. use reasonable measures to prevent its voice mail customer service message system from becoming "full" such that Consumers cannot leave a voice mail message; and

v. respond to all inquiries made by letter within five business days of receipt of said letter.

3. PaG&E shall develop and implement an action plan for handling periods of high call volumes. Such action plan will, at a minimum:

i. Provide for the answering of overflow calls to PaG&E's system by additional customer service staff or temporary services;

ii. Provide a detailed description for use by all such staff or temporary services answering calls regarding inputting of the nature of customer calls;

iii. Provide clear and consistent information to all such staff or temporary services answering calls to convey to customers with the same or similar issues; and

iv. Provide clear and consistent information to all such staff or temporary services answering calls regarding relief that will be provided by PaG&E to convey to customers.

4. If PaG&E experiences a period of high call volumes in which it could not and did not comply with the provisions of this Settlement Agreement, PaG&E shall within 30 days provide to the Commission, BCP and OCA a report of the occurrence, an

explanation of underlying reasons for the occurrence and a description of all remedial measures implemented by PaG&E.

III. THIS SETTLEMENT IS IN THE PUBLIC INTEREST

48. This Settlement was achieved by the Joint Petitioners after extensive investigation into PaG&E's marketing and billing practices, including formal and informal discovery and Joint Complainants' service on the ALJs and parties of the direct testimony of 245 consumers.

49. The agreed-upon provisions regarding refunds and comprehensive injunctive relief in the Settlement will provide reasonable relief for PaG&E's current and former customers affected by the Company's conduct as alleged in the Joint Complaint and found in the investigation by Joint Complainants into PaG&E's marketing and billing practices described in Paragraph 48 above.

50. Attached to this Settlement as Exhibit A is a Stipulation of Facts in Support of Settlement.

51. Attached to this Settlement are the respective Statements in Support of the Joint Petitioners setting forth the basis upon which each considers the Settlement to be in the public interest. The Joint Petitioners' respective Statements in Support are attached hereto as Appendices "A" through "C."

IV. ADDITIONAL TERMS AND CONDITIONS

52. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this entire Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served

upon all parties and the ALJs within five business days after the entry of an Order modifying the Settlement.

53. This Settlement is proposed by the Joint Petitioners to settle all issues among them in the instant proceeding. If the Commission does not approve the Settlement, the Joint Petitioners reserve their respective rights to conduct further hearings, including further cross-examination, submit additional direct, rebuttal and surrebuttal testimony, as contemplated by the litigation schedules adopted in this proceeding, and briefing regarding contested issues. This Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of this proceeding or in any other proceeding.

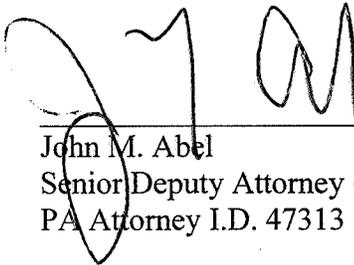
54. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the parties from taking other positions in other proceedings involving the marketing and billing practices of Electric Generation Suppliers or Natural Gas Suppliers or other aspects of the competitive market.

55. If the ALJs adopt this Settlement without modification in their Initial Decision, the Joint Petitioners waive their rights to file exceptions to the issues addressed by the Settlement.

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request:

1. That the ALJs, on an expedited basis, recommend that the Commission approve this Settlement, including all the terms and conditions thereof, without modification;
2. That the Commission approve, on an expedited basis, the Settlement without modification; and
3. That the Joint Complaint of BCP and OCA be marked satisfied.

Respectfully submitted,



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203851

**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

STIPULATION OF FACTS IN SUPPORT OF SETTLEMENT

Pursuant to 52 Pa. Code § 5.232(a), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, (together, the “Joint Complainants”) and Energy Service Providers, Inc. d/b/a Pennsylvania Gas & Electric (“PaG&E” or “the Company”), by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the parties’ proposed settlement of the above-captioned matter by the Pennsylvania Public Utility Commission (the “Commission”):

PROCEDURAL HISTORY¹

1. On June 20, 2014, the Joint Complainants filed with the Commission a formal Complaint against PaG&E at Docket Number C-2014-2427656 (“Joint Complaint”).

2. The Joint Complainants averred that the Company offers variable rate electric generation service to customers and that the Company uses a variety of marketing and advertising mediums to solicit customers for its variable rate plans, including telephonic, internet, mass mail, and print solicitations.

3. The Joint Complainants further averred that in early 2014, they received numerous complaints from consumers related to variable rates charged by PaG&E, including approximately 23 formal complaints filed by consumers at the Commission, and that these complaints alleged, *inter alia*, that: (i) customers received bills with rates for electric generation supply from PaG&E that were higher than the rates offered by local utilities even though the Company had solicited the customers’ business through promises of rates that would be lower than those of the local utilities; (ii) the customers were switched to receiving their electric generation supply from PaG&E without the customers giving consent to do so; and (iii) PaG&E mishandled customer complaints.

4. The Joint Complainants further averred, *inter alia*, that: (i) PaG&E’s Welcome Letter included representations of savings that PaG&E did not provide to its customers; (ii) PaG&E’s Disclosure Statement provided inaccurate pricing information; (iii) the prices PaG&E charged its customers did not conform with PaG&E’s Disclosure

¹ A full outline of the procedural history in this matter can be found in Section I of the Joint Petition for Approval of Settlement. A brief procedural history is provided herein.

Statement; and (iv) PaG&E's telemarketing practices did not conform with the requirements of the Telemarketer Registration Act.

5. On the basis of the foregoing averments, the Joint Complainants included seven separate counts in the Joint Complaint against PaG&E:

- A. Count I - Misleading and Deceptive Promises of Savings;
- B. Count II - Slamming;
- C. Count III - Misleading and Deceptive Welcome Letter;
- D. Count IV - Lack of Good Faith Handling of Complaints;
- E. Count V - Failing to Provide Accurate Pricing Information;
- F. Count VI - Prices Nonconforming to Disclosure Statement; and
- G. Count VII - Failure to Comply with the Telemarketer Registration Act.

6. The Joint Complainants made several requests for relief, including providing restitution to customers, prohibiting deceptive practices in the future, and revocation of PaG&E's EGS license, if warranted.

7. On July 10, 2014, PaG&E filed an Answer and admitted or denied the various averments made by the Joint Complainants and specifically denied the violations of law and other wrongdoing alleged in the Joint Complaint. In particular, PaG&E specifically denied that any of its actions violated Pennsylvania law or the orders and regulations of

the Commission. PaG&E also denied that it misled or deceived any of its customers regarding the price customers would pay for their electricity to their harm or detriment.

8. In its New Matter, PaG&E averred, among other things, that the Commission previously reviewed and approved PaG&E's Disclosure Statement and that PaG&E's pricing was consistent with the Disclosure Statement, except to the extent that PaG&E charged some customers less than called for under the terms of the Disclosure Statement and voluntarily absorbed extremely high wholesale electricity prices during the unprecedented "polar vortex" experienced in January, February and March of 2014. PaG&E averred thirteen affirmative defenses and requested that the Commission dismiss the Joint Complaint with prejudice.

9. On July 30, 2014, the Joint Complainants filed a Reply to New Matter in which they denied the averments contained in the New Matter filed by PaG&E.

10. An Initial Prehearing Conference was convened on August 25, 2014. Following the Initial Prehearing Conference, Procedural Order #2 dated September 3, 2014 was issued establishing, *inter alia*, that the Joint Complainants would serve written direct testimony of their consumer witnesses by Friday, November 7, 2014.

11. On November 7, 2014, the Joint Complainants pre-served the written direct testimony of approximately 245 former PaG&E customers (the "Customer Witnesses"), comprising approximately 1,365 pages of written statements and exhibits, which the Joint Complainants intended to move into the record in support of the allegations in the Joint Complaint. Further, Joint Complainants intended to present expert testimony regarding

PaG&E's marketing and billing practices in support of the allegations in the Joint Complaint.

STIPULATION OF FACTS BASED UPON PRE-SERVED CUSTOMER TESTIMONY

12. The pre-served Customer Witness statements include the witnesses' signed verifications that the facts set forth in their statements were true and correct to the best of their knowledge, information and belief. The statements were verified subject to the penalties of Section 4904 of the Crimes Code, 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

13. Most of the Customer Witness statements contain complaints about PaG&E's charges for electric generation service provided during the period January – March 2014.

14. Approximately 27 Customer Witness statements also contain complaints about PaG&E's charges for electric generation service provided during periods prior to January – March 2014.

15. Approximately 110 Customer Witnesses averred that the PaG&E sales representatives had stated that PaG&E's rate would always be less than or equal to the Electric Distribution Company's ("EDC") Price-to-Compare ("PTC").

16. Approximately 91 Customer Witnesses averred that the PaG&E sales representatives had guaranteed PaG&E's rate.

17. Approximately 141 Customer Witnesses averred that the PaG&E sales representatives had guaranteed savings over the EDC's PTC.

18. Approximately 139 Customer Witnesses averred that PaG&E's telemarketing representative had made misleading or confusing statements.
19. Approximately 19 Customer Witnesses averred that PaG&E's Welcome Letter contained misleading or confusing statements.
20. Approximately 11 Customer Witnesses averred that PaG&E's Price Disclosure was misleading or confusing.
21. Approximately 55 Customer Witnesses averred that PaG&E's use of the term "competitive" to describe its service was misleading.
22. Approximately 43 Customer Witnesses averred that PaG&E's use of the phrase "variable rate" was misleading.
23. Approximately 93 Customer Witnesses averred that PaG&E's rates were excessive.
24. Approximately 43 Customer Witnesses averred that the Customer Witness's electric generation service was switched to PaG&E without the Customer Witness's authorization.
25. Approximately 55 Customer Witnesses averred that the Customer Witness was unable to contact PaG&E to complain about their charges.
26. Approximately 59 Customer Witnesses averred that the Customer Witnesses' complaints were mishandled by PaG&E.

27. Approximately 2 Customer Witnesses averred that PaG&E did not provide the Customer Witnesses PaG&E's current variable rate when requested.

28. Many Customer Witnesses averred that they suffered financial difficulties after receiving PaG&E's charges. Specifically, approximately 9 Customer Witnesses averred that they received Shut-Off Notices from their EDCs after receiving PaG&E's charges; approximately 35 Customer Witnesses averred that they entered into a payment plan or paid off the charges over several months; approximately 5 Customer Witnesses averred that they borrowed money in order to pay the charges; and approximately 38 Customer Witnesses averred that they were on a limited or fixed income or generally had difficulty paying the charges.

CONCLUSION

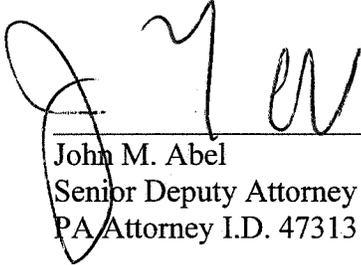
29. On January 19, 2015, PaG&E informed the Presiding Officers and other parties that it intended to cross-examine each and every Customer Witness whose testimony the Joint Complainants sought to admit into evidence at hearings. On January 26, 2015, PaG&E filed a motion to strike each Customer Witness statement in part and several statements in their entirety.

30. A settlement in principle was reached in this matter before Joint Complainants' response to PaG&E's motion to strike was due and hearings for the cross-examination of the Customer Witnesses were convened. Thus, the Presiding Officers have not ruled on PaG&E's motion to strike, and the Joint Complainants have not moved into the record the written direct testimonies of the Customer Witnesses upon which the summary in Paragraphs 12-28 above is based. If a settlement in principle had not been reached and

hearings had been held: (a) the Joint Complainants would have moved for admission of the Customer Witness direct testimonies into the record; (b) PaG&E would have challenged the admissibility and accuracy of the allegations made by the Customer Witnesses through cross-examination and cross-examination exhibits; (c) Joint Complainants would have served and moved into evidence expert testimony in support of their Joint Complaint; and (d) PaG&E would have served and moved into evidence factual testimony, expert testimony and other evidence in support of its defenses.

31. In order to conserve time and resources of the Commission and the parties, the Joint Complainants and PaG&E stipulate to the above summary of the Customer Witnesses' written testimony. This stipulation, however, does not constitute an admission by PaG&E as to any of the allegations or averments.

Respectfully submitted,

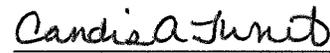


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203850

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427656
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
	:	
Complainants	:	
	:	
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC.	:	
d/b/a PENNSYLVANIA GAS & ELECTRIC	:	
	:	
Respondent	:	

**STATEMENT IN SUPPORT OF JOINT PETITION FOR APPROVAL OF
SETTLEMENT OF JOINT COMPLAINANTS COMMONWEALTH OF
PENNSYLVANIA, BUREAU OF CONSUMER PROTECTION AND OFFICE OF
CONSUMER ADVOCATE**

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (BCP or OAG) and Tanya J. McCloskey, Acting Consumer Advocate (OCA), (together, Joint Complainants), both signatory parties to the Joint Petition for Approval of Settlement (Joint Petition or Settlement) in the above-captioned matter, submit that the terms and conditions of the Settlement are reasonable and in the public interest for the following reasons:

I. BACKGROUND

On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Commission, pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission’s regulations, 52 Pa.

Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA)¹ The Joint Complaint includes seven separate counts and alleges that Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E or the Company) violated Pennsylvania law and Commission Orders and regulations.² With respect to relief, the Joint Complainants requested that the Commission find that PaG&E violated the Public Utility Code, the Consumer Protection Law and the TRA, and the Commission's regulations and Orders; provide restitution to Respondent's customers; impose a civil penalty; order Respondent to make various modifications to its practices and procedures; and revoke or suspend Respondent's Electric Generation Supplier (EGS) license, if warranted.

Pursuant to the litigation schedule adopted at the August 25, 2014 Initial Prehearing Conference in this matter, Joint Complainants timely served the ALJs and the parties on November 7, 2014, with consumer direct testimony, consisting of testimony in question-and-answer form and exhibits of 245 consumer witnesses and encompassing six volumes, totaling 1365 pages. The testimony relates to each consumer's firsthand experience with PaG&E's marketing, billing and customer service practices. Hearings for the cross-examination of the consumer witnesses were scheduled for March 9 through 13, 2015.

A Second Prehearing Conference was convened on January 27, 2015, at which time the ALJs adopted a further litigation schedule for the submission of, *inter alia*, Joint Complainants'

¹ For the sake of brevity, Joint Complainants are summarizing the procedural history in this Statement in Support. A fully detailed background and procedural history are set forth in Section I of the Joint Petition to which this Statement in Support is attached.

² The seven separate counts in the Joint Complaint are as follows: I) misleading and deceptive promises of savings; II) slamming; III) misleading and deceptive welcome letter; IV) lack of good faith handling of complaints; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; and VII) failure to comply with the Telemarketer Registration Act.

expert testimony regarding PaG&E's marketing and billing practices. Joint Petitioners reached a settlement on all issues prior to the commencement of hearings for the cross-examination of Joint Complainants' consumer witnesses. As such, Joint Complainants did not move the consumer testimonies into the record during the week of March 9-13, 2015.

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Joint Petitioners held a series of settlement discussions. These discussions resulted in the Joint Petition, which addresses the numerous complex issues raised in this case and applies to residential and small business customers. The Joint Complainants submit that the terms and conditions of the Joint Petition satisfactorily address the broad range of issues raised in the Joint Complaint. Joint Complainants submit that the provisions of the Joint Petition, taken as a whole, constitute a reasonable compromise of the complex issues presented. In this Statement in Support, Joint Complainants address those areas of the Settlement that specifically relate to most salient issues and submit that the Joint Petition is in the public interest and in the interests of past, present and future PaG&E customers. Additionally, the Settlement supports the continued development of the retail choice market in Pennsylvania. Joint Complainants request that Commission approve the Joint Petition on an expedited basis without modification.

II. SETTLEMENT TERMS

A. Introduction.

Joint Complainants submit that this Joint Petition results from compromises of the factual allegations in the Formal Complaint, which the Joint Complainants intended to prove and which the Company has disputed. Although the Joint Complainants and the Company may disagree with respect to the allegations regarding the conduct of the Company's employees and agents, all

acknowledge the importance of the matters at issue to Pennsylvania consumers and to the retail market. Full and accurate information and disclosures to consumers, as well as fair and transparent marketing and billing practices, are of paramount importance both to consumer protections and the continued development of a retail choice market. The Joint Complainants recognize that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. Joint Complainants submit that the Settlement is comprehensive, appropriate and reasonable under the circumstances and in the public interest. As such, Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis and without modification.

B. Refunds, Civil Penalty and Contribution to Electric Distribution Companies' (EDCs) Hardship Funds. (Joint Petition at ¶¶ 33-43, 45, 46)

As alleged in the Joint Complaint, on or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. Joint Complaint at ¶ 17. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts, and approximately 826 or 34% were from customers of PaG&E. Joint Complaint at ¶¶ 18, 19. Further, from February 27, 2014 to June 4, 2014, OAG received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs, and of the 7,503 consumer complaints received by BCP, 1,762 or approximately 23% were against PaG&E. Joint Complaint at ¶ 20.

In Count I of the Joint Complaint, Joint Complainants alleged that PaG&E's salespeople provided misleading and deceptive promises of savings to consumers in order to gain their business. See Joint Complaint at Count I. Specifically, Joint Complainants alleged that

PaG&E's salespeople promised that the rate charged by PaG&E would always be less than or equal to the consumer's applicable Price to Compare (PTC) or would always be less than the applicable PTC. Joint Complaint at ¶¶ 23, 25, 26. Additionally, Joint Complainants alleged that PaG&E's salespeople led consumers to believe the Company would provide them a guaranteed rate. Joint Complaint at ¶ 24. Joint Complainants alleged that PaG&E then charged customers prices in early 2014 that were at least two or three times the PTC and some as high at \$0.41 per kWh for electricity. Joint Complaint at ¶¶ 23-26, 64. Also as alleged in the Joint Complaint, PaG&E is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 27. Joint Complainants further alleged that PaG&E's salespeople engaged in activities that are fraudulent and deceptive by promising savings that may not, and for many consumers did not, materialize in violation of the Commission's regulations at 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 28-30. Also, Joint Complainants alleged that PaG&E failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 31.

In Count III of the Joint Complaint, Joint Complainants alleged that the Company's Welcome Letter sent to its customers thanks the customer "for enrolling in our highly competitive electricity supply program" and goes on to state that the Respondent is "committed to helping you lower your total energy costs." See Joint Complaint at ¶ 41 and App. A. Joint Complainants further alleged PaG&E's claims in its Welcome Letter represent benefits of its services that it did not provide to its customers, and the claims were and are deceptive, which created and continues to create a likelihood of confusion and misunderstanding for PaG&E's

customers in violation of 52 Pa. Code § 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 42, 44 and 45.

Regarding variable rate pricing, PaG&E's Disclosure Statement states:

Price. Your rate for the Commodity Charges will be a variable rate that changes daily and includes Transmission Charges and estimated total state taxes, including gross receipts tax, but excludes applicable state and local tax. Each month your rate will reflect your cost of electricity, including energy, other wholesale market services, the associated transmission and distribution charges and other market-related factors for your utilities transmission zone within the PJM ISO, plus all applicable taxes, fees, charges, costs, expenses and margins. The price assigned to you may not be the same price assigned to another variable rate account. Each month your bill for energy will be calculated by multiplying the Commodity Charges by the amount of energy used in the billing cycle plus applicable taxes. You may contact PaG&E each month at (866) 706-7361 to obtain your current rate for that day.

Joint Complaint at ¶ 53 and App. B. As alleged in Count VI of the Joint Complaint, upon information and belief, PaG&E's prices charged to consumers in early 2014 were not reflective of the cost to serve residential customers, as PaG&E charged some of its variable rate customers prices at least as high as \$0.41 per kWh for electricity.³ Joint Complaint at ¶¶ 64, 65. Joint Complainants would have proven these allegations through the testimony and accompanying exhibits of customer witnesses and expert witnesses.

By way of relief, Joint Complainants requested, *inter alia*, that the Commission impose a civil penalty and direct PaG&E to provide appropriate restitution, including without limitation,

³ Joint Complainants attached an affidavit from Dr. Steven L. Estomin to the Joint Complaint. See Joint Complaint at App. C. Dr. Estomin conducted an analysis of day-ahead and real-time market prices for electric energy in order to address variable rate pricing in Pennsylvania for residential consumers in the winter of 2014. Joint Complaint at App. C, ¶ 2. Dr. Estomin conducted analyses for residential consumers in the territories served by PaG&E in Pennsylvania using the types of costs identified by PaG&E in its Disclosure Statement for four separate 4-week billing cycles in 2014 (Jan. 1 – Jan. 30; Jan. 8 – Feb. 6; Jan. 15 – Feb. 13; Jan. 22 – Feb. 20). Joint Complaint at App. C, ¶ 4-6. Dr. Estomin concluded:

The results obtained from this analysis suggest that the cost to serve residential consumers covering any of the four billing cycles examined would not be more than \$0.23 per kWh in any of the six EDC zones examined, even under the assumption that all supply were procured on the PJM spot markets.

Joint Complaint at App. C, ¶ 9.

refunding all charges to its customers that were over and above the PTC in the customers' respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or other such penalties charged to customers as a result of the Company's charges. Joint Complaint at 16, ¶¶ C, D.

Pursuant to the partial litigation schedule adopted in this proceeding at the Initial Prehearing Conference, Joint Complainants served the direct testimony of 245 consumer witnesses. Most of the consumer witnesses challenged PaG&E's charges for January, February or March 2014. Joint Petition at Exh. A, ¶ 13.⁴ Of the 245 customer witnesses, approximately 110 customer witnesses averred that PaG&E's sales representatives had promised them rates less than or equal to the PTC; approximately 141 customer witnesses averred that the PaG&E salesperson guaranteed savings over the price to compare; and approximately 91 customer witnesses averred that the PaG&E salesperson guaranteed their rate. See Joint Petition at Exh. A, ¶¶ 15-17. Additionally, approximately 139 customer witnesses averred that they had been misled or confused by PaG&E's telemarketing representatives; approximately 30 customer witnesses specifically averred that they were misled or confused about the Company's Disclosure Statements and/or Welcome letter; and approximately 55 customer witnesses averred that they were confused by the Company's use of the term "competitive;" and approximately 43 customer witnesses averred that they were confused by the Company's use of the term "variable rate." See Joint Petition at Exh. A, ¶¶ 18-22. Further, pursuant to the partial litigation schedule adopted at the Second Prehearing Conference, Joint Complainants intended to submit expert testimony regarding PaG&E's misleading and deceptive promises of savings and charges to

⁴ Joint Complainants and PaG&E entered into a Stipulation of Facts in Support of Settlement, which is attached to the Joint Petition as Exhibit A.

customers in early 2014 that did not conform to the Company's variable pricing provision in its Disclosure Statement.

In the Settlement, PaG&E will provide refunds of at least \$6,836,563. Joint Petition at ¶ 33. Of the total sum, PaG&E has voluntarily provided \$4,511,563 in cash refunds directly to customers, and the Company will deposit \$2,325,000 into a Refund Pool (Net Refund Pool) with a Settlement Administrator within five days after Joint Complainants identify to PaG&E the Settlement Administrator that has been retained. Joint Petition at ¶¶ 33, 36. Additionally, PaG&E will honor all commitments to customers enrolled in its rebate programs and honor all other commitments to customers, including but not limited to, guaranteed introductory rates, service agreements for repair and maintenance, and incentive offers. Joint Petition at ¶ 41.

PaG&E will fully and timely cooperate with Joint Complainants and the Settlement Administrator by providing all customer information necessary to calculate each customer's refund amount. Joint Petition at ¶ 37. Joint Complainants shall determine which of the Company's customers were affected by PaG&E's conduct as alleged in the Joint Complaint and determine how much restitution to offer any individual customer. Joint Petition at ¶ 34. Joint Complainants will determine refund amounts to offer eligible PaG&E's customers based on the individual customer's usage, price charged and refund amounts already received directly from PaG&E. Id. As Joint Complainants alleged in the Joint Complaint, PaG&E's prices charged in early 2014 did not conform to its variable rate pricing provision in its Disclosure Statement, and PaG&E did not provide the savings or benefits promised to customers by its salespeople and contained in its Welcome Letter. As such, Joint Complainants intend to provide some level of refund to all PaG&E customers on variable rate plans and billed for usage in January, February or March 2014. Joint Complainants' refund determinations will be designed to fully utilize the

Net Refund Pool. Joint Petition at ¶ 34. The Settlement Administrator will use best efforts to distribute the Net Refund Pool within 180 days of the Commission's final order in this proceeding and will provide monthly reports of funds distributed to Joint Complainants, PaG&E and designated Commission staff. Joint Petition at ¶ 38.

PaG&E will also provide an additional refund method to customers that do not receive or accept an offer of funds from the Net Refund Pool. Joint Petition at ¶ 42. Customers may contact the Company directly with complaints and requests for refunds, and PaG&E shall use its best efforts to investigate a customer's complaint and negotiate an agreement pursuant to which the customer will agree to accept a refund in exchange for a release of any claims or causes of action the customer may have against the Company. Joint Petition at ¶ 42. PaG&E will provide quarterly reports to Joint Complainants and designated Commission staff for one year after the Commission's final order setting forth the names of complainants, the general nature of the complaints, and the disposition thereof. Id.

Additionally, the Joint Petition provides that PaG&E shall pay a civil penalty in the amount of \$25,000 to the General Fund and make a total contribution of \$100,000 to the EDCs' hardship funds. See Joint Petition at ¶¶ 45-46. For the reasons discussed below, Joint Complainants submit that these amounts are appropriate, especially in light of the other terms and conditions outlined in the Joint Petition.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors (Rossi Factors) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest. When applied in settled cases, the

factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa. Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. Id. The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

With regard to the first Rossi Factor, Joint Complainants submit that the allegations that PaG&E charged prices to its variable rate customers in early 2014 that did not conform to the Company's Disclosure Statement and the misleading and deceptive promises of savings made to customers by PaG&E's salespeople and contained in PaG&E's Welcome Letter are of a serious nature. See 52 Pa. Code § 69.1201(c)(1). This Commission has made it clear that it will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania. See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc., Docket No. M-2012-2201861, Order at 5 (May 3, 2012). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." See 52 Pa. Code § 69.1201(c)(1).

With regard to the second Rossi Factor, Joint Complainants submit that the resulting consequences of PaG&E's alleged conduct in early 2014 resulted in harm to Pennsylvania's consumers and the retail electricity market in Pennsylvania. See 52 Pa. Code § 69.1201(c)(2). Many consumer witnesses detailed their hardships in the consumer testimony pre-served by Joint Complainants. Specifically, approximately 9 Customer Witnesses averred that they received Shut-Off Notices from their EDCs after receiving PaG&E's charges; approximately 35 Customer Witnesses averred that they entered into a payment plan or paid off the charges over several months; approximately 5 Customer Witnesses averred that they borrowed money in order to pay

the charges; and approximately 38 Customer Witnesses averred that they were on a limited or fixed income or generally had difficulty paying the charges. See Joint Petition at Exh. A, ¶ 28.

Given the serious nature of the alleged violations and the resulting consequences, Joint Complainants submit that refunds to customers, a contribution to the EDCs' hardship funds and a civil penalty are appropriate, reasonable and in the public interest. Joint Complainants submit that the disbursement of the Net Refund Pool to PaG&E's eligible customers will assist these affected customers in restoring some portion of their financial losses incurred as a result of PaG&E's alleged conduct. The \$100,000 contribution that will be allocated to the EDCs' hardship funds based on the number of PaG&E customers in each EDC territory as of January 1, 2014, will assist consumers who have experienced difficulties as a result of high electric bills. As further discussed in the analysis of the other Rossi factors below, Joint Complainants submit that \$25,000 is the appropriate civil penalty amount, in light of the other comprehensive relief provided in the Joint Petition.

The fourth Rossi Factor⁵ is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the Settlement, PaG&E voluntarily provided \$4,511,563 in cash refunds directly to customers. The Settlement provides for additional refunds in the Net Refund Pool to PaG&E's customers that were allegedly charged prices in early 2014 that did not conform to PaG&E's Disclosure Statement and were affected by PaG&E's salespeople allegedly making deceptive and misleading promises of savings, which were also allegedly contained in the Welcome Letter. Pursuant to the Settlement, PaG&E will also work in good faith with customers that were not offered or did not accept a refund from the Net Refund

⁵⁵ Joint Complainants submit that the third Rossi Factor pertains only to the evaluation of litigated cases, and therefore, it does not apply to this Settlement. See 69 Pa. Code § 1201(c)(3).

Pool and contact the Company with a complaint. Thus, Joint Complainants submit that the refunds, \$25,000 civil penalty and contributions to EDCs' hardship funds are reasonable appropriate and in the public interest. Additionally, as detailed *infra*, PaG&E has also agreed to injunctive relief that will result in modifications to its business practices, and Joint Complainants submit that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future.

The fifth Rossi Factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Joint Complainants alleged that as of May 5, 2014, the OCA had received approximately 826 contacts from PaG&E customers regarding variable rates, and as of June 4, 2014, BCP had received approximately 1,762 contacts from PaG&E customers regarding variable rates. See Joint Complaint at ¶¶ 19-20. Further, of the approximately 203 Formal Complaints against EGSs that were filed by consumers with the Commission that OCA had reviewed by May 5, 2014, approximately 23 or 11% were filed against PaG&E. See Joint Complaint at ¶ 21. This Commission has recognized that where there is one complaint made to the Commission, there are likely substantially more of the same nature that have not been formally made. See e.g. Arthur Rand v. GTE North, 1999 Pa. PUC LEXIS 55, *9-10 (March 19, 1999). Hence, Joint Complainants submit that the majority, if not all, of PaG&E's customers on variable rate plans in early 2014 were affected by PaG&E's alleged actions. Joint Complainants submit that the number of customers who were impacted by the Company's conduct as alleged in the Joint Complaint is significant. Accordingly, Joint Complainants submit that the refunds, \$25,000 civil penalty and the \$100,000 contribution to the EDCs' hardship funds are reasonable and in the public interest when considered along with the injunctive relief outlined in the Joint Petition.

The sixth Rossi Factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* Joint Complainants submit that the Company’s compliance history poses no barrier to approval of the proposed Settlement. Additionally, as discussed in Section C, *infra*, Joint Complainants submit that the injunctive terms of the Settlement will help to ensure compliance with regulatory standards.

The seventh Rossi Factor is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). Joint Complainants submit that PaG&E cooperated in the investigation in this matter, including cooperating in formal and informal discovery and settlement negotiations. The ability of the parties to comprehensively resolve this matter prior to extensive litigation demonstrates the level of cooperation.

The eighth Rossi Factor is the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8). Joint Complainants submit that the Settlement comprehensively addresses their allegations in the Joint Complaint. The civil penalty along with the contributions to the EDCs’ hardship funds, the refunds to customers and the injunctive relief in the form of modifications to PaG&E’s business practices outlined in the Settlement are sufficient to deter similar future conduct.

The ninth Rossi Factor is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). Joint Complainants submit that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings against EGSs that this Commission has decided. This Commission, however, has approved settlements involving EGSs that involve

refunds, civil penalties and injunctive relief. See e.g. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric And U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. M-2013-2325122, Order (Oct. 2, 2014) (The Commission approved a Settlement that required PaG&E to pay a civil penalty, refunds to its customers affected by the conduct complained of, and implement revisions to its operating procedures). Joint Complainants submit that the Settlement is comprehensive *vis a vis* the allegations in the Joint Complaint and is therefore, reasonable and in the public interest.

The tenth Rossi Factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). Joint Complainants submit that it has been a year since PaG&E’s alleged actions and omissions bringing rise to the Joint Complaint. Pursuant to the remaining litigation schedule adopted at the Second Prehearing Conference, it is unlikely that a Commission decision could have been entered until at least the end of 2015 had this action been fully litigated. Additionally, there is inherent uncertainty in the outcomes of fully litigated proceedings. The Settlement will ensure that PaG&E’s customers will receive refunds, and the customers will receive them much sooner. Additionally, the Settlement saves costs and resources of the parties and Commission.

Joint Complainants submit that based on the foregoing Rossi Factor analysis, the refund, civil penalty and contribution to EDCs’ hardship funds provisions in the Settlement are reasonable and in the public interest. The refunds that PaG&E provided directly to customers combined with the Net Refund Pool will help restore some of the financial losses incurred by PaG&E’s consumers that were alleged to have been charged extraordinarily high prices in early 2014. Additionally, PaG&E will provide an additional refund method for customers that are not

offered or do not accept a refund from the Net Refund Pool. The Settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The civil penalty is appropriate to deter similar future conduct, and the contribution to EDCs' hardship funds will assist customers in need with payment of their electric bills. Further, Joint Complainants submit that the robust injunctive relief in the Settlement, discussed *infra*, will help protect PaG&E's current and future customers and will better inform customers of the products and services provided by PaG&E.

C. Injunctive Relief/Modifications to Business Practices. (Joint Petition at ¶¶ 47(a)-(h))

In Count I of the Joint Complaint, Joint Complainants alleged that PaG&E's salespeople provided misleading and deceptive promises of savings to consumers in order to gain their business. See Joint Complaint at Count I. Specifically, Joint Complainants alleged that PaG&E's salespeople promised that the rate charged by PaG&E would always be less than or equal to the consumer's applicable PTC or would always be less than the applicable PTC. Joint Complaint at ¶¶ 23, 25, 26. Additionally, Joint Complainants alleged that PaG&E's salespeople led consumers to believe the Company would provide them a guaranteed rate. Joint Complaint at ¶ 24. Joint Complainants alleged that PaG&E then charged customers prices in early 2014 that were at least two or three times the PTC and at least as high at \$0.41 per kWh for electricity. Joint Complaint at ¶¶ 23-26, 64. As alleged in the Joint Complaint, PaG&E is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 27. Joint Complainants further alleged that PaG&E's salespeople engaged in activities that are fraudulent and deceptive by promising savings that may not, and for many consumers did not, materialize in violation of the Commission's regulations at 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See

Joint Complaint at ¶¶ 28-30. Also, Joint Complainants alleged that PaG&E failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 31.

In the Joint Complaint, Joint Complainants alleged that the Company's Welcome Letter sent to its customers thanks the customer "for enrolling in our highly competitive electricity supply program" and goes onto state that the Respondent is "committed to helping you lower your total energy costs." See Joint Complaint at ¶ 41 and App. A. Joint Complainants further alleged that PaG&E's claims in its Welcome Letter represent benefits of its services that it did not provide to its customers, and the claims were and are deceptive, which created and continues to create a likelihood of confusion and misunderstanding for PaG&E's customers in violation of 52 Pa. Code § 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 42, 44 and 45.

Joint Complainants also alleged that PaG&E's employees, agents and representatives engaged in slamming by switching consumers to PaG&E without the consumers' consent in violation of 66 Pa. C.S. § 2807(d)(1) and 52 Pa. Code § 54.42(a)(9). See Joint Complaint at Count II.

Joint Complainants also alleged that PaG&E's Disclosure Statement regarding variable pricing failed to include the conditions of variability and the limits on price variability in violation of 52 Pa. Code § 54.5(c), and PaG&E failed to disclose all material terms of its services such that the Company's customers could not determine from the Disclosure Statement the price that they would or could be charged or how the price would be calculated by PaG&E. See Joint Complaint at ¶¶ 54, 61. Further, Joint Complainants alleged PaG&E did not "provide accurate information about their electric generation services using plain language and common terms in communications with consumers" or provide information to consumers "in a format that enables

consumers to compare the various electric generation services offered and the prices charged for each type of service” in violation of 52 Pa. Code § 54.43(1). See Joint Complaint at ¶¶ 56, 60.

In the Joint Complaint, Joint Complainants alleged that PaG&E failed to adequately staff its call center, failing to provide reasonable access to the Company’s representatives for purposes of submitting complaints, failing to properly investigate consumer disputes, failing to properly notify its consumers of the results of the Company’s investigation into a dispute when such investigation was conducted, and failing to utilize good faith, honesty and fair dealings with consumers. See Joint Complaint at ¶ 51. Joint Complainants alleged that these actions and omissions violated the Commission’s regulations at 52 Pa. Code §§ 56.1(a), 56.141(a), 56.151, and 56.152 and PaG&E’s Licensing Orders. See Joint Complaint at ¶¶ 49-51. See also License Application of Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier and Aggregator of Retail Electric Power, Docket No. A-2010-2212421, Order at 3-4 (May 9, 2011).

In support of the allegations in the Joint Complaint, Joint Complainants pre-served the written, direct testimony of approximately 245 customer witnesses. Joint Petition at Exh. A, ¶ 11. Of the 245 customer witnesses, approximately 110 customer witnesses averred that PaG&E’s sales representatives had promised them rates less than or equal to the PTC, approximately 141 customer witnesses averred that the PaG&E salesperson guaranteed savings over the price to compare, and approximately 91 customer witnesses averred that the PaG&E salesperson guaranteed their rate. See Joint Petition at Exh. A, ¶¶ 15-17. Additionally, approximately 139 customer witnesses averred that they had been misled or confused by PaG&E’s telemarketing representatives, approximately 30 customer witnesses specifically averred that they were misled or confused about the Company’s Disclosure Statements and/or

Welcome letter, and approximately 55 customer witnesses averred that they were confused by the Company's use of the term "competitive," and approximately 43 customer witnesses averred that they were confused by the Company's use of the term "variable rate." See Joint Petition at Exh. A, ¶¶ 18-22. Approximately 43 customer witnesses averred that PaG&E switched their electric generation service without their consent. Joint Petition at Exh. A, ¶ 24. Further, approximately 55 customers averred that they were unable to contact PaG&E to complain about their charges. See Joint Petition at Exh. A, ¶ 25. Approximately 59 of the customer witnesses averred that their complaints were mishandled by PaG&E. See Joint Petition at Exh. A, ¶ 26.

The Settlement includes comprehensive injunctive relief that requires PaG&E to implement various modifications to its business practices to address the allegations in the Joint Complaint. See Joint Petition at ¶ 47. Specifically, the required modifications to business practices are as follows:

- Product offering: PaG&E will offer only fixed rate products of at least six-month durations for eighteen months beginning March 1, 2015. Further, PaG&E will not charge customers cancellation or termination fees for variable rate products when such products are offered in accordance with the fixed rate product provision of the Settlement. See Joint Petition at ¶ 47(a).
- Marketing: PaG&E specifically commits to complying with all Pennsylvania laws and Commission regulations, Orders and policies. See Joint Petition at ¶ 47(b)(1). Further, PaG&E commits that the Company and its agents, employees and representatives shall not make misrepresentations to residential or small business customers. See Joint Petition at ¶ 47(b)(2). To that end, the Settlement provides specific restrictions regarding representations to consumers about

savings as compared to an applicable PTC; use of the terms “risk free,” “competitive,” “guaranteed,” “trial period,” “introductory rate,” and “special programs;” and representations about the PTC being a variable rate or how an EDC purchases electricity. See Joint Petition at ¶¶ 47(b)(3)-(7). Additionally, PaG&E specifically commits to complying with 52 Pa. Code § 57.175 and not enter into a sales agreement that is not personally accepted by the EDC’s Customer of Record or a person purporting to be authorized to act on behalf of the Customer of Record. See Joint Petition at ¶ 47(b)(8). The Settlement also imposes requirements regarding PaG&E’s salespeople’s communications with consumers, including a specific statement that the salesperson does not work for or represent the consumer’s electric utility; that if the consumer switches to PaG&E, he or she will still receive one bill from his or her electric utility; and for variable rates, when permitted under the Settlement, that the consumer may cancel at any time, which cancellation will be handled promptly, but it may take several days to switch suppliers. See Joint Petition at ¶¶ 47(b)(9),(10) and (12). Further, the Settlement provides required disclosure language regarding variable rate products, when permitted under the Settlement, which must be provided to consumers in all sales contacts for variable rate products before the consumer agrees to switch to PaG&E. See Joint Petition at ¶¶ 47(b)(11) and (14). The Settlement also contains requirements for the contents of PaG&E’s Disclosure Statement; the prompt provision thereof to customers, and maintenance of adequate records regarding the provision of documents to customers. See Joint Petition at ¶¶ 47(b)(15)-(18). Finally, the Settlement contains specific

requirements regarding PaG&E's advertising to consumers. See Joint Petition at ¶¶ 47(b)(19)-(20).

- Third party verifications (TPVs): The Settlement contains specific requirements for PaG&E's TPVs, including specific language to be used prior to beginning the TPV process and specific questions that must be asked during TPVs. See Joint Petition at ¶¶ 47(c)(1)-(2). Further, the Settlement requires that all TPVs be performed outside the presence of the PaG&E salesperson, and the in-person salesperson must leave a consumer's premises during a TPV in accordance with the Commission's regulations. See Joint Petition at ¶ 47(c)(3). Finally, the Settlement prohibits PaG&E salespeople from prompting consumers' responses to TPV questions or instructing consumers in the manner in which to answer TPV questions. See Joint Petition at ¶ 47(c)(4).
- Disclosure statement: Specifically with regard to PaG&E's Disclosure Statement, the Settlement requires that within ten days of the Commission's final order, the Company provide to BCP and OCA its current Disclosure Statement and Schumer Box drafted pursuant to the Commission's Final-Omitted Rulemaking and provide any subsequently amended Disclosure Statements to the OCA and the Commission for a period of five years. See Joint Petition at ¶¶ 47(d), (d)(1). Further, the Company will include specific language in its Disclosure Statement and if possible, Schumer Box regarding PaG&E's variable rate products and cancellation/early termination fees. See Joint Petition at ¶ 47(d)(2). The Settlement also provides for specific restrictions if PaG&E represents to consumers in the Company's variable rate programs that the price PaG&E will

charge will be “market-based” or set on “market conditions.” See Joint Petition at ¶ 47(d)(3). Finally, the Settlement requires PaG&E to notify its current customers on variable rate programs about the availability of a fixed rate with PaG&E and direct the customers to review PaG&E’s updated Disclosure Statement. See Joint Petition at ¶ 47(d)(4).

- Training: The Settlement requires that PaG&E implement a new training program for its sales and customer service representatives and provide a description of the new training plan to BCP, OCA and the Commission within 60 days of the Commission’s final order and then meet with BCP, OCA and designated Commission staff to review and discuss the training. See Joint Petition at ¶¶ 47(e)(1)-(2). The Settlement requires PaG&E’s new training program to accurately and comprehensively cover the applicable requirements of the Public Utility Code, Consumer Protection Law, TRA and the Commission’s regulations, Order and policies and specifically cover requirements related to door-to-door sales. See Joint Petition at ¶ 47(e)(3)(i)-(iii). The new training program must also warn PaG&E’s sales and customer service representatives that deceptive sales practices will not be tolerated by PaG&E’s management and describe the remedial steps that will be taken if the representatives violate any terms of the Settlement or otherwise engage in improper sales practices. See Joint Petition at ¶ 47(e)(3)(iv)-(v). The Settlement requires that PaG&E implement the provisions of the Settlement in a timely manner, provide initial training of its sales and customer service representatives in the new training program and subsequent

refresher training on at least a quarterly basis and require individual marketers to successfully complete the training program. See Joint Petition at ¶¶ 47(e)(4)-(7).

- Compliance monitoring: The Settlement contains requirements regarding the recording and reviewing of communications with customers. See Joint Petition at ¶¶ 47(f)(1)-(5). The Settlement also contains requirements regarding PaG&E's investigation into non-complaint sales calls, substantiated consumer complaints about PaG&E sales representatives and violations of the Settlement, Pennsylvania laws or Commission regulations, Orders or policies and remedial steps for identified non-compliant sales calls. See Joint Petition at ¶ 47(f)(5).
- Reporting: The Settlement requires that within 30 days of implementation of the training and compliance monitoring required in the Settlement and semi-annually thereafter for five years, PaG&E provide to the OCA and Commission an explanation of all internal audits and investigations performed and the results thereof and reports of all customer complaints and disputes received by the Company. See Joint Petition at ¶ 47(g).
- Customer service: The Settlement requires that PaG&E continue to employ a Compliance Officer, who will help to ensure compliance with Chapter 56 of the Commission's regulations, fair and timely resolutions of customer complaints, and the proper training of customer service representatives. See Joint Petition at ¶ 47(h)(1). PaG&E is also required to maintain a staff of customer service representatives, who will provide reasonable access to a "live" customer service representative and provide timely responses to any voicemail messages or inquiries made by letter. Joint Petition at ¶ 47(h)(2). Additionally, the Settlement

requires PaG&E to develop and implement an action plan for handling periods of high call volumes and lays out specific factors that must be included in the plan. See Joint Petition at ¶ 47(h)(3). If PaG&E experiences a period of high call volumes in which it does not comply with the provisions of the Joint Petition, PaG&E will provide a report to the Commission and the Joint Complainants. Joint Petition at ¶ 47(h)(4).

Joint Complainants submit that these modifications to PaG&E's business practices are designed to provide accurate information to customers in a clear, direct and understandable manner. For instance, modifications to PaG&E's marketing, TPVs and Disclosure Statement are intended to reduce confusion for customers by, *inter alia*, specifically restricting the use of certain terms and representations by PaG&E's agents, employees and representatives and requiring specific statements be made to customers during all TPVs and in the Company's Disclosure Statement. Further, the Settlement provides for initial and ongoing training for PaG&E's sales and customer service representatives that comprehensively covers the applicable requirements of Pennsylvania law and Commission regulations, Orders and policies. Joint Complainants submit that such training will increase the likelihood of compliance with these requirements and lead to clearer communications with customers about the products that PaG&E offers, which will lead to a better understanding by customers of the products that PaG&E offers. The compliance monitoring requirements of the Settlement are designed to ensure that PaG&E comprehensively monitors its Pennsylvania sales agents and that PaG&E takes timely remedial steps if non-compliance is found. The reporting provisions in the Settlement are designed to provide OCA and the Commission with ongoing information regarding PaG&E's compliance with the Settlement, Pennsylvania law and Commission regulations, Orders and policies.

The customer service requirements in the Settlement are designed to ensure that PaG&E's customers receive prompt access to PaG&E's customer service representatives and prompt and accurate replies to inquiries. Further, the customer service requirements in the Settlement are designed to ensure PaG&E's compliance with Chapter 56 of the Commission's regulations.

Joint Complainants submit that these modifications address many of the concerns raised by consumers to the Joint Complainants and the resulting allegations in the Joint Complaint. By agreeing to these specific modifications, PaG&E will be providing more accurate, full and clear information in its sales process, from the initial sales contact through final enrollment and verification. These modified practices should lead to more fully informed consumers and correspondingly, a better functioning retail choice market. As such, the injunctive relief set out in the Settlement is appropriate, reasonable and in the public interest. Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis without modification.

III. CONCLUSION

For all of the foregoing reasons, Joint Petitioners respectfully request that the Public Utility Commission approve the Joint Petition for Approval of Settlement on an expedited basis without modification.

Respectfully submitted,



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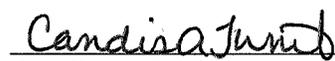
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**STATEMENT IN SUPPORT OF SETTLEMENT OF
ENERGY SERVICES PROVIDERS, INC. d/b/a PENNSYLVANIA GAS & ELECTRIC**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201 and to the February 24, 2015 Order Suspending Procedural Schedule, Respondent, Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (“PaG&E” or the “Company”), by its undersigned attorneys, submits this statement in support of the Settlement Agreement among the parties to the above-captioned matter (the “Settlement”). The Settlement is in the public interest, and thus should be approved by the Commission without delay, for the following reasons.

I. INTRODUCTION

The Settlement is significant, due to both its scope and its precedential nature as the first resolution of a series of similar complaints brought against other electric generation service (“EGS”) providers by the Office of Attorney General (“OAG”) and the Office of Consumer Advocate (“OCA”) (together, the “Joint Complainants”). Upon approval and implementation of

the Settlement without modification, PaG&E shall have paid the total sum of \$6,836,563 in refunds to customers. This amount comprises \$4,511,563 in prior cash refunds voluntarily provided to customers by the Company and an additional, lump-sum payment of \$2,325,000 to be distributed to customers whom the Joint Complainants determine were affected by the Company's conduct as alleged in the Joint Complaint. In addition, the Company has agreed to pay: the first \$100,000 of the cost of administering the refunds; a \$100,000 contribution to EDC hardship funds; and a civil penalty of \$25,000 to the General Fund. The Settlement also provides for significant injunctive relief in the form of requirements governing PaG&E's product offerings (i.e., not selling variable rate products for 18 months and offering flat rate plans with fixed rates for six months or longer), marketing practices, third-party verification procedures, Disclosure Statement, sales representative training, compliance monitoring, reporting, and customer service.

As discussed in the following section, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission's regulations set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201. However, the most significant aspects of the Settlement go beyond the criteria enumerated in the Policy Statement. *First*, the Settlement immediately provides for (i) PaG&E's payment of \$2,550,000 in additional refunds to affected customers, refund administration costs, EDC hardship contributions and a civil penalty, and (ii) substantial changes to PaG&E's product offerings and marketing. Even if the Commission ultimately were to order similar relief 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 were 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 provides a model for resolution of similar disputes in the EGS industry. The Settlement is the product of extensive negotiations between an EGS industry leader and the Pennsylvania public advocates. Prompt 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.

II. THE SETTLEMENT SHOULD BE APPROVED AS IN THE PUBLIC INTEREST

It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Pa. P.U.C. Jan. 7, 2004). While such determinations – like all Commission decisions – must be based upon substantial evidence, such evidence need not be in the form of sworn testimony or exhibits of record. Instead, the Commission's rules expressly contemplate the use of factual stipulations and/or representations in statements in support as the basis for consideration and approval of settlements. *See* 52 Pa. Code § 232(a) (settlement petitions may contain stipulations of fact); *id.* § 1201(b) (parties should include in settlement agreement statement(s) in support of settlement explaining how and why the settlement is in the public interest); *see, e.g., Pa. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112, slip op. (Pa. PUC Nov. 13, 2014) (settlement was found to be in the public interest based on settlement agreement, statements in support and supplemental statements in support); *Pa. PUC v. Energy Services Providers, Inc.*

dba Pennsylvania Gas & Elec., Docket No. M-2013-2325122, slip op. (Pa. PUC Oct. 2, 2014) (settlement was found to be in the public interest based on revised settlement agreement and statements in support); *Pa. PUC v. PPL Elec. Utils. Corp.* Docket No. M-2013-2275471, slip op. (Oct. 31, 2013) (same). Furthermore, a settlement need not include any findings of fact or conclusions of law to be approved as in the public interest. *See id.*

The Company submits that the Settlement is in the public interest because it is a complete and final resolution of the Complaint Proceeding, effectively addresses the issues that were the subject of the Joint Complaint, avoids the time and expense of litigation and possible appeals, and provides immediate, concrete benefits to the Company's current and former customers that would otherwise be unavailable in the near term.

PaG&E further submits that approval of this Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi 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. Under this Policy Statement, while many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized 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).

The ten factors of the Policy Statement, as applied to this case, are addressed below.

1. The first factor to be considered under the Policy Statement is whether the alleged actions 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.

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). There is no indication that the alleged violations resulted in personal injuries or property damage. While PaG&E acknowledges that the alleged violations, if true, could have caused customers financial harm, prior to entering into the Settlement, the Company voluntarily provided \$4,511,563 in cash refunds to customers. Pursuant to the Settlement, the Company will pay an additional \$2,325,000 into a Refund Pool, which shall be distributed to remedy any alleged financial harm to customers that remains uncompensated. Thus, within five days after the effective date of the Commission's final order approving this Settlement without modification, the Company shall have paid the total sum of \$6,861,563 in refunds. (Settlement at 9.) Furthermore, 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. Therefore, any financial harm to customers will have been remedied by the Company's actions, both prior to and pursuant to the Settlement.

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 and to offer a fixed rate plan with a minimum initial term of six months for the same period. (Settlement at 14).

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.

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 has a satisfactory compliance history with the Public Utility Code and the Commission's regulations. 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 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).

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 Agreement.

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. 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 Restitution 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 complaining 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.

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. This Settlement is not inconsistent with any interlocutory decision by the Commission in those matters.

10. The tenth factor 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

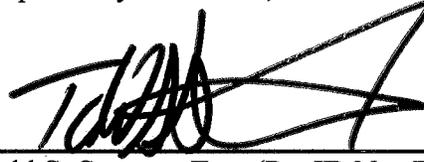
such changes implemented. The Settlement thus provides immediate, concrete benefits to the public that would otherwise be unavailable in the near term. Second, the Settlement is in the public interest because it provides a model for resolution of similar disputes in the EGS industry. The Settlement is the product of extensive negotiations between an industry leader and the Pennsylvania public advocates. Prompt 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.

III. CONCLUSION

PaG&E respectfully submits that the above-captioned Settlement is in the public interest and should be approved and, therefore, requests that the Commission approve such Settlement without modification.

DATED: March 24, 2015

Respectfully submitted,



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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

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
SETTLEMENT PETITION**

PRESIDING ADMINISTRATIVE LAW JUDGES ELIZABETH H. BARNES AND
JOEL H. CHESKIS:

INTRODUCTION:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Statement in Support of the Settlement Agreement and Petition (“Settlement” or “Settlement Petition”) entered into by the Pennsylvania Office of Attorney General (“OAG”), through the Bureau of Consumer Protection, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), I&E and Energy Services Providers, Inc. d/b/a

Pennsylvania Gas & Electric (“PaG&E” or “Company”) (collectively, the “Parties”) in the above-captioned proceeding. The Settlement, if approved, fully resolves all issues related to the OAG and OCA Joint Complaint involving allegations of misleading and deceptive promises of savings, switching customers to receive supply service from PaG&E without the customers’ consent, distributing a misleading and deceptive “welcome letter,” failing to handle consumer complaints in good faith, failing to provide accurate pricing information, charging prices that do not conform to the Company’s disclosure statement and failing to comply with the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.*

I&E respectfully requests that the presiding Administrative Law Judges recommend approval of, and the Commission approve, the Settlement, including the terms and conditions thereof, without modification.

THE PUBLIC INTEREST:

The Settlement, once approved, will resolve all issues related to the OAG and OCA Joint Complaint involving allegations of inappropriate sales, marketing, billing and disclosure practices of PaG&E. The Company has been cooperative and proactive with the Joint Complainants, I&E and OSBA related to identifying “corrective” actions, including marketing practices, product offerings, customer service, training and quality controls, which can be further improved to enhance the experience of PaG&E customers and reduce the risk of similar consumer complaints in the future. Further, the Company has committed to providing customer refunds, which will be placed in a fund that will be administered by a third-party administrator.

The Settlement is in the public interest and, in particular, serves to maintain the integrity of the retail electric market in Pennsylvania. For these reasons and the reasons set forth below, the Settlement is fair, just and reasonable and, therefore, the Settlement Petition should be approved so that these important public benefits may be realized expeditiously.

TERMS OF SETTLEMENT:

The Settlement includes four major components. First, the Company has agreed to pay customer refunds. The total sum that will be provided as refunds is six million, eight hundred and thirty-six thousand, five hundred and sixty-three dollars (\$6,836,563). This sum includes prior cash refunds provided to customers by the Company in the amount of four million, five hundred and eleven thousand, five hundred and sixty-three dollars (\$4,511,563). The Company has agreed to pay an additional two million five hundred fifty thousand dollars (\$2,550,000) into a refund pool (“net refund amount”). Further, PaG&E has agreed to pay up to \$100,000 of the costs and expenses of the settlement administrator responsible for distributing the net refund amount.

Secondly, PaG&E will contribute \$100,000 to Electric Distribution Company (“EDC”) hardship funds. The contribution will be allocated to each EDC’s hardship fund according to the ratio of the number of PaG&E customers in the EDC’s service territory to the total number of PaG&E customers in Pennsylvania as of January 1, 2014.

Third, PaG&E will pay a civil penalty in the amount of \$25,000. The civil penalty will not be claimed as a tax deduction pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

Lastly, the Company has agreed to various injunctive relief involving modifications to the Company's Disclosure Statement, marketing practices, policies pertaining to third party verifications and customer service procedures. Further, the Company has agreed to implement a training program for its sales representatives and will increase quality control efforts to ensure regulatory compliance. Subsequent to the implementation of the training program and compliance monitoring, PaG&E will report to the Commission and OCA the results of its internal audits and investigations for the next five years. Lastly, PaG&E has agreed not to sell variable rate products in Pennsylvania for a term of 18 months, which is a measure that will cost the Company a substantial sum.

ROSI STANDARDS:

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Petition in the above-captioned matter is consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-*

Pennsylvania, Inc., Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). The violations alleged in the Joint Complaint were of a serious nature in that they involved, among other things, alleged misrepresentations by sales agents regarding pricing information, changing of customers' electric generation supplier without authorization and inaccurate pricing information set forth in the Company's Disclosure Statement and Welcome Letter.

The second factor considered is whether the resulting consequences of PaG&E's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). While no personal injury or property damage is purported to have occurred, the violations alleged in the Joint Complaint should be deemed serious because the alleged conduct could adversely impact the integrity of electric competition and potentially deter participation in the retail electric marketplace.

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.* Whether PaG&E’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). The Settlement Petition provides a wide array of injunctive relief designed to change PaG&E’s practices and procedures to prevent future violations of the kind alleged in the Joint Complaint. Significantly, PaG&E has agreed not to offer variable rate plans for a period of 18 months, a measure which comes at a substantial cost to the Company.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Given the nature of the allegations of the Joint Complaint, potentially all of PaG&E’s current and former customers may have been affected by the alleged conduct since PaG&E received approval to operate as an electric generation supplier (“EGS”) on May 9, 2011.

The sixth factor to be considered relates to the compliance history of PaG&E. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* By Order entered on October 2, 2014, the Commission approved a

settlement agreement between I&E and PaG&E involving allegations pertaining to the unauthorized switching of commercial electric and natural gas accounts to receive supply service provided by PaG&E. PaG&E paid a civil penalty in the amount of \$150,200, refunded the entire electric generation or natural gas supply portion of the bill for the period of time the customers were served by PaG&E and took various corrective actions designed to prevent similar occurrences in the future. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Energy Services, Providers, Inc. d/b/a Pennsylvania Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014). In addition to I&E's case and the instant Joint Complaint, a number of consumers have filed formal complaints against the Company since the winter of 2014. The vast majority of the consumer formal complaints concern variable rate issues.

The seventh factor to be considered relates to whether the Company 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.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Prior to entering into the Settlement, PaG&E voluntarily provided four million, five hundred and eleven thousand, five hundred and sixty-three dollars (\$4,511,563) in cash refunds to customers. Pursuant to the Settlement, the Company has agreed to pay an additional two million five hundred fifty thousand dollars (\$2,550,000), which comprises the net refund amount of two

million, three hundred and twenty-five thousand dollars (\$2,325,000), up to \$100,000 of the cost of administering the refund pool, a \$100,000 contribution to EDC hardship funds and a civil penalty of \$25,000. I&E submits that, particularly in light of PaG&E's prior provision of refunds and rate relief to complaining customers, the additional total payment of \$2,550,000 pursuant to the Settlement is substantial and sufficient to deter PaG&E from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The high volume of consumer complaints received by the Joint Complainants and the Commission's Bureau of Consumer Services regarding variable electric generation rate issues during the winter of 2014 was unprecedented. There are no past Commission decisions responsive to a similar situation, and for that reason, this case should be viewed on its own merits. However, in looking at the relevant factors that are comparable to other incidents, such as the allegations at issue here - namely, misleading and deceptive sales practices, unauthorized switching and inaccurate pricing information - and comparing the allegations to the relief provided in the Settlement - specifically, refunds, injunctive relief, a contribution to EDC hardship funds and a civil penalty - this Settlement is consistent with past Commission actions, and presents a fair and reasonable outcome.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Petition. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the

opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Petition. The terms of the Settlement Petition reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Petition is in the public interest. Acceptance of this Settlement Petition avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

WHEREFORE, the Bureau of Investigation and Enforcement supports the Settlement Petition and respectfully requests that the Honorable Administrative Law Judges Elizabeth H. Barnes and Joel H. Cheskis recommend approval of, and the Commission approve, the Settlement in its entirety, without modification.

Respectfully submitted,



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Dated: March 24, 2015

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Petition for Approval of Settlement along with Exhibit A – Stipulation of Facts in Support of Settlement and Appendices A-C – the Statements in Support of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate, Pennsylvania Gas & Electric and the Bureau of Investigation & Enforcement, in the manner and upon the persons listed below:

Dated this 24th day of March 2015.

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