**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 :

:

v. : C-2014-2427656

:

Energy Services Providers, Inc. d/b/a :

Pennsylvania Gas & Electric :

**INITIAL DECISION**

Before

Elizabeth H. Barnes

Administrative Law Judge

Joel H. Cheskis

Administrative Law Judge

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I. INTRODUCTION

This Decision approves a Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) filed on March 24, 2015, resolving a formal Complaint filed by the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, and Tanya J. McCloskey, Acting Consumer Advocate against an electric generation supplier (EGS). The Complaint averred that the EGS, among other things, engaged in misleading and deceptive practices, switched customers without their consent, and failed to provide accurate pricing information. The Settlement requires the EGS to pay a substantial amount of refunds to customers, pay a civil penalty, contribute to electric distribution companies’ (EDCs) hardship funds and make numerous corrective changes to its business practices. The Settlement is adopted in its entirety and without modification because it is in the public interest.

II. HISTORY OF THE PROCEEDING

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as “the Joint Complainants”) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E or “the Company”), at Docket Number C-2014-2427656. The Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by PaG&E, including approximately 23 formal complaints filed by consumers at the Commission. The Joint Complainants further averred that PaG&E used a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan. As a result, the Joint Complainants averred seven separate counts against PaG&E, including, but not limited to, making misleading and deceptive promises of savings, slamming, and failing to provide accurate pricing information. The Joint Complainants made several requests for relief, including providing restitution and prohibiting deceptive practices in the future. The Joint Complainants provided several attachments to their Complaint.

On July 10, 2014, PaG&E filed an Answer and New Matter in response to the Complaint. In its Answer, PaG&E admitted or denied the various averments made by the Joint Complainants. 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. PaG&E averred that, on the contrary, its variable pricing followed the wholesale price of electricity in precisely the manner disclosed by PaG&E and agreed to by its customers.

In its New Matter, which was accompanied by a Notice to Plead, PaG&E averred, among other things, that the Commission previously reviewed and approved PaG&E’s Disclosure Statement and that at all times during the period covered by the allegations in the Complaint, PaG&E’s pricing was consistent with the Disclosure Statement, except to the extent that PaG&E voluntarily absorbed extremely high wholesale electricity prices. PaG&E also averred that its customer service department historically was staffed with approximately ten individuals and had a very favorable response time for calls. PaG&E averred thirteen affirmative defenses and concluded by requesting that the Commission dismiss the Complaint with prejudice.

Also on July 10, 2014, PaG&E filed Preliminary Objections in response to the Complaint. In its Preliminary Objections, which was also accompanied by a Notice to Plead, PaG&E sought dismissal of each Count of the Complaint for various reasons, including insufficient specificity, lack of Commission jurisdiction and legal insufficiency.

Also on July 10, 2014, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and a Public Statement formally intervening into the proceeding.

On July 21, 2014, the Joint Complainants filed an Answer to PaG&E’s Preliminary Objections. In their Answer, the Joint Complainants asserted that PaG&E’s Preliminary Objections are unsupported and should be overruled. The Joint Complainants added that it is clear and free from doubt that the Joint Complaint is sufficiently pleaded and seeks that the Commission make determinations pursuant to its jurisdiction and powers. More specifically, the Joint Complainants averred that the Commission has jurisdiction to hear cases brought pursuant to the Unfair Trade Practices/Consumer Protection Law (UTP/CPL) and the Telemarketer Registration Act (TRA).

On July 30, 2014, the Joint Complainants filed an Answer to PaG&E’s New Matter. In its Answer, the Joint Complainants specifically denied the averments made in PaG&E’s New Matter, including that the Commission reviewed and approved PaG&E’s Disclosure Statement and denied that the stated information in any way absolves PaG&E of the violations alleged in the Complaint. The Joint Complainants further responded to each of the Affirmative Defenses raised by PaG&E and concluded by requesting that the Commission enter judgment against PaG&E and in their favor.

Also on July 30, 2014, the Commission issued a Prehearing Conference Notice establishing an Initial Prehearing Conference for this matter for Monday, August 25, 2014 at 11:00 a.m. in Hearing Room 1 of the Commonwealth Keystone Building in Harrisburg and assigning us as Presiding Officers.

On July 31, 2014, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention.

On August 8, 2014, a Prehearing Conference Order was issued setting forth various requirements regarding the Initial Prehearing Conference established for August 25, 2014.

On August 15, 2014, PaG&E filed a Petition for a Protective Order. PaG&E set forth various reasons why it believed that a Protective Order should be implemented for this proceeding and noted that no party opposed the issuance of the proposed Protective Order. As such, an Order Granting Petition for Protective Order was issued on August 22, 2014.

On August 20, 2014, an Order Granting in Part and Denying in Part Preliminary Objections was issued. Six Counts of the Complaint were stricken in part because the Commission lacks jurisdiction to hear complaints under the TRA and UTP/CPL and the Commission lacks jurisdiction to consider the equitable remedy of restitution. All other issues averred were allowed to proceed to a hearing.

The Initial Prehearing Conference convened on August 25, 2014, as scheduled. The following counsel were present: Todd Stewart, Esquire, and Christopher Lewis, Esquire on behalf of PaG&E; John Abel, Esquire, Nicole DiTomo, Esquire, and Margarita Tulman, Esquire on behalf of the OAG; Candis A. Tunilo, Esquire and Kristine E. Robinson, Esquire on behalf of the OCA; Stephanie M. Wimer, Esquire and Michael L. Swindler, Esquire, on behalf of I&E; and Sharon Webb, Esquire, on behalf of OSBA.

During the Initial Prehearing Conference, various procedural issues were discussed. Following the Initial Prehearing Conference, Procedural Order #2 was issued establishing: 1) that the Joint Complainants would submit written direct testimony of consumer witnesses it intends to present in this proceeding by Friday, November 7, 2014; 2) that the evidentiary hearings for purposes of admitting the written direct testimony of the consumer witnesses subject to cross examination and timely objections will be held on December 15-19, 2014; and 3) a Further Prehearing Conference will be held in this matter on January 8, 2015.

On September 2, 2014 and September 8, 2014, PaG&E and the Joint Complainants, respectively, filed with the Commission separate Petitions for Interlocutory Review and Answer to a Material Question. These Petitions were filed in response to the Order Granting in Part and Denying in Part PaG&E’s Preliminary Objections issued on August 20, 2014. The parties subsequently filed various briefs in support of or opposing the Petitions for Interlocutory Review.

On October 20, 2014, PaG&E filed a Motion in Limine to Restrict Introduction of Evidence. On November 10, 2014, the Joint Complainants filed an Answer to PaG&E’s Motion. PaG&E’s Motion was denied via Order dated December 1, 2014.

On November 7, 2014, the Joint Complainants pre-served written direct testimony of over two hundred consumers.

On November 25, 2014, PaG&E filed a Motion for Continuance of the evidentiary hearings. That Motion was unopposed and granted by Order dated December 5, 2014 in which the evidentiary hearings scheduled for December 15-19, 2014 were cancelled and rescheduled for February 24-27, 2015 and the Further Prehearing Conference scheduled for January 8, 2015 was cancelled. On January 9, 2015, a Further Prehearing Conference Order was issued to reschedule the Further Prehearing Conference to Tuesday, January 27, 2015 beginning at 11:00 in Hearing Room 4 of the Commonwealth Keystone Building in Harrisburg.

The Further Prehearing Conference was held on January 27, 2015, as scheduled. On January 29, 2015, Procedural Order #4 was issued memorializing those matters agreed to during the Further Prehearing Conference, including establishing a schedule and a process for the admission of pre-served, written consumer testimony, subject to cross-examination and timely motions, during the evidentiary hearings scheduled for February 24-27, 2015 and establishing a schedule for the submission of expert testimony, hearings and briefs.

On February 12, 2015, the parties indicated that a settlement in principle had been reached and requested that the litigation schedule be suspended. A conference call was held regarding that request and an Order Suspending Litigation Schedule was issued on February 24, 2015. A Further Prehearing Conference was also held on February 24, 2015 to discuss the various procedural aspects pertaining to the Settlement.

On March 24, 2015, PaG&E, the Joint Complainants and I&E (“Settling Parties”) submitted a Joint Petition for Approval of Settlement. Each of the parties included a Statement in Support of the Settlement with the Settlement. The OSBA indicated that it does not join the Settlement but does not oppose the Settlement. Attached to the Settlement as Exhibit A was a Stipulation of Facts in Support of Settlement that the parties agreed to for the purpose of supporting the approval of the proposed Settlement and that will be admitted into the record as part of this Decision.

On March 27, 2015, Thomas Sobiech, a former customer of PaG&E, filed a Notice of Intervention and Public Statement. The parties were informed by email dated March 31, 2015 that the filing would be considered a Petition to Intervene and that any Answers would be due on April 16, 2015. On April 16, 2015, PaG&E filed an Answer in Opposition to Intervention and Reply Comments to the Petition to Intervene. On April 16, 2015, Joint Complainants filed an Answer and I&E filed a letter indicating it had no response. The Petition to Intervene was granted via Order dated April 23, 2015 giving Mr. Sobiech until May 13, 2015 to file an *Amicus Curiae* brief and the other parties an additional 10 days thereafter to file reply briefs. On May 13, 2015, Mr. Sobiech filed an *Amicus Curiae* brief. On May 22, 2015, PaG&E filed a Reply *Amicus Curiae* brief. On May 26, 2015, the Joint Complainants filed a Reply *Amicus Curiae* brief.

The record in this case closed on May 26, 2015, when the Reply *Amicus Curiae* briefs were submitted. This matter is ripe for a decision. For the reasons discussed below, we hereby approve the Settlement in its entirety without modification because it is in the public interest.

III. FINDINGS OF FACT

Many of the Findings of Fact are drawn in whole or in part from the Stipulation of Facts submitted as Exhibit A to the Settlement by the Settling Parties.

1. The Complainants in this case are Kathleen G. Kane, the Attorney General who is the chief law officer of the Commonwealth of Pennsylvania and is authorized to initiate and maintain this action pursuant to the Commonwealth Attorneys Act, and Tanya J. McCloskey, the Acting Consumer Advocate who is authorized by law to represent the interests of utility consumers before the Commission.
2. The Respondent in this case is Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric, a New York corporation that is licensed by the Commission to supply electric generation service to residential, small commercial, large commercial, industrial and governmental consumers in the service territories of various electric distribution companies in Pennsylvania.
3. On June 20, 2014, the Joint Complainants filed a formal Complaint at Docket No. C-2014-2427656 against PaG&E averring that they had received numerous contacts and 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. Exh. A.
4. The Joint Complainants averred that PaG&E offers variable rate electric generation service to customers and uses a variety of marketing and advertising mediums to solicit residential customers for its variable rate plans, including telephonic, internet, mass direct mail, and print solicitations.
5. Joint Complainants averred seven separate counts against PaG&E, including, but not limited to, making misleading and deceptive promises of savings, slamming and failing to provide accurate pricing information, and made several requests for relief, including providing restitution and prohibiting deceptive practices in the future.
6. 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 Statement; and (iv) PaG&E’s telemarketing practices did not conform with the requirements of the Telemarketer Registration Act. Exh. A.
7. 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.

Exh. A.

1. 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. Exh. A.

9. On July 10, 2014, PaG&E filed an Answer and New Matter in response to the Complaint admitting or denying the various averments made by the Joint Complainants, including, in particular, denying that any of its actions violated Pennsylvania law or the orders and regulations of the Commission or that it misled or deceived any of its customers regarding the price customers would pay for their electricity to their harm or detriment and that, on the contrary, its variable pricing followed the wholesale price of electricity in precisely the manner disclosed by PaG&E and agreed to by its customers. Exh. A.

10. 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”[[1]](#footnote-2) 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. Exh. A.

11. On July 10, 2014, PaG&E filed Preliminary Objections in response to the Complaint seeking dismissal of each Count of the Complaint for various reasons, including insufficient specificity, lack of Commission jurisdiction and legal insufficiency.

12. On July 10, 2014, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and a Public Statement formally intervening into the proceeding.

13. On July 21, 2014, the Joint Complainants filed an Answer to PaG&E’s Preliminary Objections asserting that PaG&E’s Preliminary Objections are unsupported and should be overruled because it is clear and free from doubt that the Joint Complaint is sufficiently pleaded and seeks that the Commission make determinations pursuant to its jurisdiction and powers.

14. On July 30, 2014, the Joint Complainants filed a Reply to PaG&E’s New Matter denying the averments contained in PaG&E’s New Matter, including that the Commission reviewed and approved PaG&E’s Disclosure Statement and denying that the stated information in any way absolves PaG&E of the violations alleged in the Complaint. Exh. A.

15. On July 31, 2014, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention.

16. On August 20, 2014, an Order Granting in Part and Denying in Part Preliminary Objections was issued striking in part six Counts of the Complaint because the Commission lacks jurisdiction to hear complaints under the TRA and UTP/CPL and the Commission lacks jurisdiction to consider the equitable remedy of restitution.

17. An Initial Prehearing Conference was convened on August 25, 2014.

18. On September 2, 2014 and September 8, 2014, PaG&E and the Joint Complainants, respectively, filed with the Commission separate Petitions for Interlocutory Review and Answer to a Material Question in response to the Order Granting in Part and Denying in Part PaG&E’s Preliminary Objections dated August 20, 2014.

19. On November 7, 2014, the Joint Complainants pre-served written direct testimony of over two hundred consumers. Exh. A.

20. 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 and 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. Exh. A.

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

22. Approximately 27 Customer Witness statements contain complaints about PaG&E’s charges for electric generation service provided during periods prior to January – March 2014. Exh. A.

23. 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”). Exh. A.

24. Approximately 91 Customer Witnesses averred that the PaG&E sales representatives had guaranteed PaG&E’s rate. Exh. A.

25. Approximately 141 Customer Witnesses averred that the PaG&E sales representatives had guaranteed savings over the EDC’s PTC. Exh. A.

26. Approximately 139 Customer Witnesses averred that PaG&E’s telemarketing representative had made misleading or confusing statements. Exh. A.

27. Approximately 19 Customer Witnesses averred that PaG&E’s Welcome Letter contained misleading or confusing statements. Exh. A.

28. Approximately 11 Customer Witnesses averred that PaG&E’s Price Disclosure was misleading or confusing. Exh. A.

29. Approximately 55 Customer Witnesses averred that PaG&E’s use of the term “competitive” to describe its service was misleading. Exh. A.

30. Approximately 43 Customer Witnesses averred that PaG&E’s use of the phrase “variable rate” was misleading. Exh. A.

31. Approximately 93 Customer Witnesses averred that PaG&E’s rates were excessive. Exh. A.

32. Approximately 43 Customer Witnesses averred that the Customer Witness’s electric generation service was switched to PaG&E without the Customer Witness’s authorization. Exh. A.

33. Approximately 55 Customer Witnesses averred that the Customer Witness was unable to contact PaG&E to complain about their charges. Exh. A.

34. Approximately 59 Customer Witnesses averred that the Customer Witnesses’ complaints were mishandled by PaG&E. Exh. A.

35. Approximately 2 Customer Witnesses averred that PaG&E did not provide the Customer Witnesses PaG&E’s current variable rate when requested. Exh. A.

36. Many Customer Witnesses averred that they suffered financial difficulties after receiving PaG&E’s charges – 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. Exh. A.

37. On November 25, 2014, PaG&E filed a Motion for Continuance of the evidentiary hearings that was unopposed and granted by Order dated December 5, 2014.

38. 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. Exh. A.

39. On January 26, 2015, PaG&E filed a motion to strike each Customer Witness’ statement in part and several statements in their entirety. Exh. A.

40. A Further Prehearing Conference was held on January 27, 2015.

41. On February 12, 2015, the parties indicated that a Settlement in principle had been reached and requested that the litigation schedule be suspended.

42. An Order Suspending Litigation Schedule was issued on February 24, 2015.

43. A Further Prehearing Conference was held on February 24, 2015 to discuss the various procedural aspects pertaining to the Settlement in principle.

44. Because 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, the presiding officers have not yet ruled on PaG&E’s motion to strike and it is now moot, and the Joint Complainants have not moved into the record the written direct testimonies of the Customer Witnesses. Exh. A.

45. If a settlement had not been reached between the signatory parties and hearings would have been held: (a) Joint Complainants would have moved for admission of the Customer Witnesses direct testimony into the record; (b) PaG&E would have challenged the admissibility and accuracy of the allegations made by the Customer Witnesses through cross-examination exhibits; (c) Joint Complainants would have served and moved into evidence expert testimony in support of the 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. Exh. A.

46. On March 24, 2015, PaG&E, the Joint Complainants and I&E submitted a Joint Petition for Approval of Settlement with each of the parties including with the Joint Petition Statements in Support of the Settlement.

47. Although the OSBA is a non-signatory party, it filed a letter of non-opposition.

48. On March 27, 2015, Thomas Sobiech, a former customer of PaG&E, filed a Notice of Intervention and Public Statement averring that the Commission lacks jurisdiction to approve the Settlement and that it is not in the public interest.

49. The Petition to Intervene was granted via Order dated April 23, 2015.

50. On May 13, 2015, Thomas Sobiech filed an *Amicus Curiae* brief.

51. On May 23, 2015, PaG&E filed a Reply *Amicus Curiae* brief.

52. On May 26, 2015, the Joint Complainants filed a Reply *Amicus Curiae* brief.

IV. DISCUSSION

**A. Legal Standard**

In this case, the signatory parties submitted a Settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n, *et al*. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al*. (Opinion and Order entered July 14, 2011) (Lancaster). The Commission must review proposed settlements to determine whether the terms are in the public interest. Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation, M-2009-2058182(Opinion and OrderNovember 23, 2009*);* Pa. Pub. Util. Comm’n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that “these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.” 52 Pa.Code § 69.1201(a). The Policy Statement notes that “when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases 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). These factors and standards are as follows:

(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.

52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

**B. Terms of the Settlement**

The settling parties have submitted a comprehensive Settlement. The Settlement includes three primary areas: 1) refunds, 2) penalties and contributions to Hardship Funds, and 3) injunctive relief. The text of the settlement terms, with the original paragraph numbers maintained, is as follows:

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 [Bureau of Consumer Protection] 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 [forth] 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 it 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 EGSs;

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 reliefthat 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.

Settlement at 8-31.

The Settlement is conditioned upon additional terms and conditions typically found in most settlements presented to the Commission for approval. For example, the Settlement is conditioned upon the Commission’s approval of the terms and conditions without modification and the parties reserve the right to withdraw from the Settlement if any of its terms are modified. Id. at 32. The parties also reserved their right to continue litigation if the Commission does not approve the Settlement and note that the Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in subsequent litigation. Id. at 33. The Settlement also does not preclude the parties from taking other positions in other proceedings involving electric generation supplier (EGS) marketing and billing practices. Id. Finally, the parties waive their right to file exceptions if the Settlement is adopted without modification. Id. There is no discussion in the Settlement regarding the Petitions for Interlocutory Review filed in this proceeding on September 2, 2014 and 8, 2014 that remain outstanding.

**C. Public Interest**

In the Settlement the signatory parties indicated that the Settlement is in the public interest because it was achieved after extensive investigation into PaG&E’s marketing and billing practices, including formal and informal discovery. The parties indicated that the agreed upon provisions regarding refunds and comprehensive injunctive relief provide reasonable relief for PaG&E’s current and former customers affected by the alleged conduct. The parties also discussed why they believe the Settlement is in the public interest in their respective Statements in Support of the Settlement. Separately, Thomas Sobiech, a former customer of PaG&E, submitted an *Amicus Curiae* brief alleging that the Settlement is not in the public interest and should, therefore, be rejected.

**1. Positions of the parties**

a. Joint Complainants

In their Statement in Support of the Settlement, the Joint Complainants provided extensive discussion of the various provisions of the settlement in support of their position that the Joint Petition is in the public interest and should be adopted without modification. Specifically, Joint Complainants contend that the Joint Petition is in the public interest because the terms and conditions of the Joint Petition satisfactorily address the broad range of issues raised in the Joint Complaint and that the Joint Petition, taken as a whole, constitutes a reasonable compromise of the complex issues presented. The Joint Complainants stated that the Joint Petition supports the continued development of the retail choice market in Pennsylvania. The Joint Complainants noted that 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 added that the Joint Petition is in the public interest because the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation, given the inherent unpredictability of the outcome of a contested proceeding.

More specifically, the Joint Complainants noted in their Statement in Support of the Settlement that the Joint Petition is in the public interest because, among other things, it imposes a civil penalty on PaG&E and directs PaG&E to provide appropriate restitution, including without limitation, refunding all charges to its customers that were over and above the EDC’s PTC, as well as any late, cancellation and/or termination fees and/or other such penalties charge to customers. These refunds total $6,836,563, of which PaG&E has already voluntarily provided $4,511,563 directly to customers. The Joint Complainants also specifically noted in their Statement in Support of the Settlement that the Joint Petition is in the public interest because PaG&E will pay a civil penalty of $25,000 to the General Fund and make a total contribution of $100,000 to EDCs’ Hardship Funds. The Joint Complainants addressed each factor in the Commission’s Policy Statement regarding civil penalties in support of their position that the Settlement is in the public interest and should be approved. The Joint Complainants noted that PaG&E has agreed to injunctive relief that will result in modifications to its business practices and that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future. The Joint Complainants note that the Settlement is in the public interest because it will help to ensure compliance with regulatory standards. The Joint Complainants noted that the injunctive relief will help protect PaG&E’s current and future customers and will better inform customers of the products and services provided by PaG&E. As noted above, the Joint Complainants provided extensive additional detail in support of their position that the Joint Petition addresses the concerns raised in the Joint Complaint, is in the public interest and should be adopted without modification.

b. Pennsylvania Gas & Electric

In its Statement in Support of the Settlement, PaG&E stated that the Joint Petition is in the public interest and should be adopted without modification because it is significant in both its scope and precedential nature as the first resolution of a series of similar complaints brought against other EGSs by the Joint Complainants. PaG&E noted the total of $6,836,563 the Company agreed to provide to customers as refunds, as well as $100,000 to pay for the administration of the refund pool, $100,000 to EDC Hardship Funds and a civil penalty of $25,000. PaG&E noted the injunctive relief in the form of requirements on its product offerings, marketing practices, third-party verification procedures, Disclosure Statement, sales representative training, compliance monitoring, reporting and customer service as reasons why the Joint Petition is in the public interest. PaG&E also discussed in its Statement in Support of the Settlement the various factors regarding civil penalties but noted in particular that the most significant aspects of the Settlement go beyond the criteria enumerated in the Policy Statement: 1) the refunds and injunctive relief will be provided much sooner pursuant to the Settlement instead of through the uncertainties and delays inherent in administrative and appellate litigation, and 2) the Settlement provides a model for resolution of similar disputes in the EGS industry, thus potentially multiplying the substantial public benefits generated by the Settlement. PaG&E concluded by submitting that the Settlement is in the public interest and should be approved without modification.

c. Bureau of Investigation and Enforcement

In its Statement in Support of the Settlement, I&E stated that the Joint Petition is in the public interest and should be adopted without modification because it will resolve all issues related to the Joint Complaint involving allegations of inappropriate sales, marketing, billing and disclosure practices of PaG&E and the Company has been cooperative and proactive with identifying corrective actions which can enhance the experience of customers and reduce the risk of similar consumer complaints in the future. I&E further noted that the Settlement is in the public interest because it serves to maintain the integrity of the retail electric market in Pennsylvania. I&E noted the refund provisions, the contribution to the Hardship Funds, the civil penalty and the various injunctive relief provisions as reasons why it believes that the Settlement is in the public interest and should be approved without modification. I&E also noted that the Commission promotes settlements and discussed the various factors considered with regard to civil penalties. I&E specifically noted that the Company has agreed not to offer variable rate plans for a period of 18 months and that the substantial total amount of refunds serves as a sufficient deterrent from future violations. I&E concluded that 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, noting that the Settlement is in the public interest because it avoids the necessity of further administrative and potentially appellate proceedings at what would have created substantial cost to the parties. I&E requested that the Settlement be approved in its entirety without modification.

d. Office of Small Business Advocate

As noted above, the OSBA neither joins nor opposes the Settlement.

e. Thomas Sobiech

In his *Amicus Curiae* brief, Mr. Sobiech objects to the Settlement arguing that it is a “sweetheart deal” for the EGS because the refund amount is tied to a release of claims in other jurisdictions. Thus, in order for a customer to receive potentially a more expedient refund, he/she must execute a “release of claims” wherein the customer agrees, in exchange for funds, to release, acquit and forever discharge the Company and all of it current and former officers, shareholders, and employees from any and all claims arising from or related to the conduct alleged in the Joint Complaint. Mr. Sobiech argued that this will have the potential effect of reducing the number of complainants in a federal or state class action against the Company outside the scope of the instant proceeding.

Mr. Sobiech contends the Commission lacks jurisdiction to grant the relief requested. Further, he contends the Settlement is insufficient to show how many customers the company defrauded. Although Mr. Sobiech agrees with Joint Complainants that the resulting consequence of the conduct at issue was of a serious nature, he is concerned the Company is reluctant to accept responsibility for the resulting consequences of its conduct to its customers who faced terminations, shut-offs and economic distress. Mr. Sobiech argued that the proposed civil penalty of $25,000 does little to deter the Company or other EGSs from engaging in similar behavior in the future. Also, in citing to the Stipulation of Facts in Support of the Settlement that accompanied the Settlement, Mr. Sobiech contends the refunds are inadequate and do not completely reimburse customers for their financial losses sustained as a result of the misconduct. Mr. Sobiech further contends that the Joint Petition impermissibly gives access to refunds to only those customers of the Company on a variable rate plan during the months of January – March, 2014 for relief from misconduct, to the exclusion of all other customers of PaG&E.

Mr. Sobiech further contends that the internal corrective action plan may help to prevent the conduct alleged from occurring again, but there needs to be a more substantial civil penalty in order to assure the misconduct does not reoccur. Mr. Sobiech argued that the Company has already shown a poor compliance history with Commission regulations regarding slamming in the case of Pa. Pub. Util. Comm’n v. Energy Service Providers d/b/a Pa. G&E*,* Docket No. M-2013-2325122, slip op. (Pa. PUC Oct. 2, 2014), 2014 Pa. PUC LEXIS 707. Therefore, Mr. Sobiech contends the Settlement as a whole is not in the public interest. As discussed further below, Mr. Sobiech also discussed each of the factors that the Commission uses to examine whether a Settlement is in the public interest.

**D. Disposition**

As an initial matter, we commend the signatory parties for reaching an extensive Settlement on the various issues. The public importance of this matter is evident in the seriousness and substantiality of the terms of the Settlement. The parties are commended for putting forth what are clearly significant efforts to reach an accord of the various issues raised in the Joint Complaint and we note that such efforts are consistent with the Commission policy to promote settlement and are appreciated. We thank Mr. Sobiech for his intervention in the instant proceeding, as it assists with evaluating whether to approve, modify, or reject the instant settlement.

1. Refund Pool

With regard to the first aspect of the Settlement, refunds, we find these provisions in the Settlement to be in the public interest and support adopting the Settlement without modification. The Settlement provides that PaG&E agrees to pay the total sum of $6,836,563 into a refund pool. This amount includes $4,511,563 the Company voluntarily paid previously in cash refunds to customers and an additional $2,325,000 that will be included in the pool upon the effective date of the Commission’s order in this proceeding. The Settlement provides that the OAG and OCA will determine which customers were affected by the Company’s conduct alleged in the Joint Complaint and determine how much restitution to offer to any individual consumers based on the individual customer’s usage, price charged and refund amount already received.

The Settlement further provides for the establishment of a third-party administrator of the refund pool to administer and distribute the refunds with the costs and expenses of the administration of the pool paid by PaG&E. The administrator will use best efforts to distribute the funds from the pool within 180 days of the Commission’s final order in this proceeding and provide monthly reports to the Joint Complainants, the Company and designated Commission staff until all fund monies are distributed and the fund is exhausted and terminated.[[2]](#footnote-3)

Any funds remaining in the pool after all refund disbursements are issued will be divided and issued in their *pro rata* share to EDCs’ hardship funds allocated by the ratio of the Company’s customers in the EDC’s territory to the total amount of customers of the Company in Pennsylvania as of January 1, 2014. Any unclaimed funds from the refund pool will be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customers entitled to the refund. The Settlement further requires that the Company honor all commitments to customers enrolled in the Company’s rebate programs and provides that customers can also contact PaG&E directly with any requests for a refund.

The Settlement requires that customers who are paid from the refund pool sign a “release of claims” discharging the Company from any and all claims arising from or related to the conduct alleged in the Joint Complaint. The Settlement also requires the parties to the proceeding sign a similar release.

These provisions of the Settlement are in the public interest in part because approximately 240 customers who complained to OCA and OAG will be afforded some financial relief from PaG&E in the form of refunds. The Joint Complainants averred in the Complaint that they received approximately 2,500 calls from consumers on variable rate plans regarding the rates they were charged, including misleading and deceptive promises of savings. The Joint Complainants averred that approximately 240 consumers complained that they were guaranteed a certain rate or were promised savings over their EDC’s price to compare. The Joint Complainants averred that the Company’s actions violated various provisions of the Commission’s regulations. For relief, the Joint Complainants sought, among other things, that PaG&E be directed to provide appropriate restitution, including refunding all charges to its customers that were over and above the price to compare in the customer’s respective service territories beginning January 1, 2014, as well as any late, cancellation or termination fees and any other such penalties charged to customers. The refund provisions in the Settlement are consistent with Commission precedent.

The Commission is authorized to direct refunds to complainants who are customers of EGSs. 66 Pa.C.S. §501. However, in the instant case, the customers themselves are not the complainants in the cause of action. Rather, Joint Complainants are statutory advocates for consumers in Pennsylvania. We infer from this Settlement that Joint Complainants have the legal authority to issue a request for proposals (RFP) or request for qualifications (RFQ) and hire an independent third-party Administrator, which would collect and distribute the fund monies. This would give the affected consumers financial relief.

Similar to the OCA and OAG, the Commission, as a governmental agency, has issued RFPs and RFQs to hire third-party administrators pursuant to various regulatory provisions in the past. *See*, Implementation of the Alternative Energy Portfolio Standards Act of 2004*,* Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator*,* April 12, 2006. Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; *see also*, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.* Thus, in the interest of assisting the OAG and OCA to obtain relief on behalf of consumers who it is alleged were harmed by violations of various Commission regulations, we approve this term of the Settlement as it appears to be mutually advantageous to the Commission and the OAG and OCA to expedite refund and injunctive relief to customers in Pennsylvania. As discussed further below, nothing in this Decision prohibits an individual complainant customer who has not signed a release from pursuing a claim in another jurisdiction. Thus, we see no harm to the individual customer by approving this Settlement.

Joint Complainants initially contended that PaG&E violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTP/CPL) at 73 P.S. § 201-1 – 201-9. On August 20, 2014, six Counts of the Complaint were stricken in part because we held that the Commission lacks jurisdiction to hear complaints under the TRA and UTP/CPL and the Commission lacks jurisdiction to consider the equitable remedy of restitution because we are not a court of law, rather an agency. Although this interim order was appealed for interlocutory review on September 2, 2014 and September 8, 2014, by PaG&E and the Joint Complainants, respectively, the Commission has not yet ruled on the petitions for interlocutory review.

Therefore, it is worth noting that under Section 201-4.1 of the UTP/CPL, whenever any court issues a permanent injunction to restrain and prevent violations of the act, the court may in its discretion direct that the defendant restore to any person in interest any moneys or property which may have been acquired by means of violation of the act, under terms and conditions established by the court.

If the Commission were to apply this standard to the instant case, inferring that we as an agency have similar discretionary powers, we find that it is in the public interest, given the high number of complaints related to PaG&E’s bills in January – April 2014, and given that the Settlement enjoins PaG&E from violating the Commission’s regulations which incorporate aspects of the UTP/CPL, to approve the terms of Settlement directing PaG&E to refund moneys acquired by means of violations of the Commission’s regulations under the terms and conditions set forth in the Settlement.

Furthermore, in Commonwealth of Pa, *et al*. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014) (IDT Order), the Commission responded to a Petition for Interlocutory Review questioning, among other things, whether the Commission has authority under Section 1312 of the Public Utility Code to order EGSs to issue refunds to customers. In answering the question in the negative, the Commission relied on its plenary authority under Section 501 of the Public Utility Code to direct an EGS to issue a credit or refund for an over bill. Id. at 17, *citing*, 66 Pa.C.S. § 501 (“in addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof”). The Commission noted that its “powers have been interpreted broadly to include both the express powers conferred by the Code and those implied powers necessarily implicit in the Code” and stated:

Directing a billing adjustment for an EGS over bill of supply charges is within the Commission’s Section 501 powers to carry out the consumer protections in the Electric Competition Act that are applicable to competitive electricity generation supply service.

These consumer protections include the Section 2809(b) requirement that EGSs comply with the Commission’s regulations, including the Chapter 54 billing and disclosure regulations.

Id. The Commission concluded that “ordering EGS billing adjustments for an over bill of supply charges is fully consistent with the policy objectives of the Electric Competition Act as well.” Id. at 18.

Similarly, 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.[[3]](#footnote-4) *See*, Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric and U.S. Gas and Electric d/b/a Pennsylvania Gas and Electric, Docket No. M-2013-2325122 (Order entered October 2, 2014) (October, 2014 Order). In that decision, PaG&E paid a $150,200 civil penalty, and refunded the entire electric generation or natural gas supply portion of the bill for the period of time the 10 customers with 108 slammed accounts were served by PaG&E. Id. at 3. The Commission ordered the Company to directly issue the refunds on the 108 slammed accounts, rather than through a third-party administrator. The Company issued refunds in excess of $67,000 in that case. Id. at 5. We find the refund pool established in the settlement to be consistent with the IDT Order and the October, 2014 Order, as well as other Commission precedent.

With regard to Mr. Sobiech’ s contention that it is not in the public interest to require the harmed customers of PaG&E to sign releases in order to receive a refund under this Settlement agreement, we disagree. If a customer is an active plaintiff in a separate proceeding (*i.e*. averring breach of contract) against PaG&E, he or she has the choice of 1) receiving the refund amount offered to him/her as determined by the third party Administrator of the Refund pool in the instant case and releasing PaG&E from further claims against the company, or 2) refusing the offered refund amount and pursuing a separate claim in another concurrent jurisdiction, *i.e.*, federal or state trial court. That decision is at the discretion of the consumer. Some consumers might want the more expedient resolution by accepting a refund amount from the Administrator of the Refund Pool. Others may hold out for a resolution in a separate lawsuit.

Admittedly, the Commission does not normally require as a part of refund relief, that a *pro se* residential or small business customer sign a release of claims in order to receive a refund. We are not compelled to delve deeply in to the mechanics or functioning of the refund pool, especially in light of the overall benefits provided in the remainder of the Settlement. This is a unique complaint in that the OAG and OCA are statutory advocates for consumers in Pennsylvania and the Joint Complainants in this case. They have negotiated a large lump sum refund pool amount for the benefit of those customers that complained directly to OAG or OCA about PaG&E, as well as other aggrieved customers who may not have come forward yet. However, other than Mr. Sobiech, no individual customers of PaG&E have intervened in the instant case. Some may have pending disputes in other jurisdictions or even before the Commission in the informal or formal stage. Whether this release clause would be enforceable in another jurisdiction if a customer both accepted the refund, and then also pursued a separate cause of action despite having signed the release, is an issue for another jurisdiction.

Normally, the Commission does not require customers to waive any other rights the party may have to pursue criminal charges or civil causes of actions they might have against a utility as a contingency to receiving a refund. However, nothing precludes a party from agreeing to perform under a settlement that which the party may not necessarily be legally obliged to do under law. *See e.g.,* Pa.P.U.C., Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation, Docket No. M-2009-205812 (Opinion and Order entered September 10, 2009) (PPL Order) (approving a settlement prohibiting Friday terminations). It is apparent that the Settlement benefits consumers, although maybe financially not to the extent Mr. Sobiech contends they ought to benefit, it protects PaG&E from some potential future legal claims against the Company and is apparently a manageable enough refund amount such that the Company can continue to conduct business in Pennsylvania. The Settlement may also reduce the size of class action law suits as customers sign the release and collect a refund from the refund pool.

We have no interest in exceeding our authority by attempting to limit any cause of action that may be brought in another jurisdiction, and do not believe that we are doing so by approving the Settlement in its entirety without modification. If a consumer elects to pursue the remedy created in this Settlement or somewhere else, he or she is free to do so. Such a result is within the Commission’s authority to approve as part of a larger settlement.

In the instant case, we find the refund pool is in the public interest because those consumers who paid more than they believed that they would be required to pay for electric generation service based on their interactions with PaG&E will be remunerated for the additional amount they paid above their EDC’s PTC, which is a reasonable amount. It may not be an amount punitive in nature or compensatory for damage claims resulting from the misconduct, but financially reimburses the customers a reasonable amount of money.

In order for the market for the competitive provision of electric generation service to flourish in Pennsylvania, consumers must have confidence that the price they are paying is the price they were told they would be paying. While the Settlement does not provide that the averments in the Complaint are true, the Settlement compensates numerous consumers for amounts they believe they were overcharged and provides a level of assurance to the marketplace that the EGSs’ actions will be watched and any inappropriate actions will be raised with the Commission. The Commission takes seriously its role in the development the competitive provision of electric generation service and this Settlement is in the public interest because the refund provisions aid in that development.

As such, we find that the refund provisions contained in the Settlement agreement are in the public interest and support adopting the Settlement in its entirety without modification.

2. Penalty and Contribution to EDC Hardship Funds

The Commission’s authority for imposing civil penalties is at 66 Pa.C.S. § 3301 which provides in pertinent part:

**§ 3301. Civil penalties for violation.**

1. General rule. – If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding $1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth.

66 Pa.C.S. § 3301(a). We find that the provisions of the Settlement imposing a civil penalty of $25,000 that PaG&E cannot claim as a tax deduction, is consistent with Section 3301 as well as applicable Commission precedent and is in the public interest.

In particular, we note that, in the October, 2014 Order, the Commission found that a civil penalty of $1,000 for the 108 accounts physically switched to PaG&E without customer consent, for a total of $108,000 was appropriate. This amount was similar to the Commission’s decision in cases involving slamming intentional in nature where $1,000 civil penalties per account switched were imposed. Pa. Pub. Util. Comm’n v. ACN Energy Inc., Docket No. M-00021618 (April 18, 2000); Pa. Pub. Util Comm’n, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc., Docket No. M-2012-2201861 (August 29, 2013); Pa. Pub. Util Comm’n, Bureau of Investigation and Enforcement v. Public Power, LLC Docket No. M-2012-2257858 (December 19, 2013) (penalties less than $1,000 per account were levied for accounts not yet physically switched, but in the process).

Similarly, in Pa. Pub. Util. Comm’n Bureau of Investigation and Enforcement v. IDT Energy, Inc., M-2013-2314312 (Opinion and Order entered October 17, 2013) (IDT 2013 Order), the Commission approved a settlement between I&E and IDT Energy, LLC. That case was initiated after an informal investigation which identified thirty-nine violations among twenty-one Bureau of Consumer Services (BCS) complaints between 2010 and 2012. In three instances, an agent or agents of the Company failed to obtain direct oral confirmation or written authorization from the customer to change the EGS, resulting in physically switching the electric generation supplier of those accounts without authorization of the consumer or without proper verification. The Commission directed IDT to pay a civil settlement amount of $39,000 to the Commonwealth General Fund.

With regard to the provision in the Settlement that the Company will make a total contribution of $100,000 to the EDC’s Hardship Funds with the contribution 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, we find this provision of the Settlement is also in the public interest and supports adopting the Settlement without modification. This is particularly true because of the strain placed on Hardship Funds and low-income consumers as a result of the increased bills consumers paid during the months at issue in this case. The Hardship Funds benefit all low-income consumers in the EDCs’ territories, not solely the customers of PaG&E.

As a result, we find the $25,000 civil penalty taken in consideration with a $100,000 contribution to EDCs’ Hardship Funds to be reasonable and a pragmatic compromise between the parties allowing them to more expeditiously implement the agreed upon remedial actions.

These two provisions of the Settlement are in the public interest because the Joint Complainants averred in the Complaint numerous violations of Commission regulations that, if proven true, would warrant the imposition of a civil penalty. As such, the Joint Complainants requested in the Complaint that the Commission impose a civil penalty on PaG&E. In light of the magnitude of the violations averred, a $25,000 civil penalty, coupled with a $100,000 contribution to EDC’s Hardship Funds, is reasonable and in the public interest. As discussed further below, the Commission’s Policy Statement on factors regarding civil penalties supports the $25,000 civil penalty. When applying those various factors to the specifics of this Settlement, it is clear that a $25,000 civil penalty is reasonable and in the public interest. For the same reasons as why the Settlement overall complies with the factors in the Commission’s Policy Statement, so too do the factors in the Commission’s Policy Statement support finding that the imposition of the $25,000 civil penalty is reasonable.

Additionally, the $100,000 contribution to EDC’s Hardship Funds is reasonable and in the public interest in light of the financial difficulties experienced by numerous customers as a result of the actions of PaG&E as averred in the Complaint. These difficulties include some customers facing threats of termination for failure to pay bills, or in fact being terminated, after having received bills with charges from PaG&E that they could not pay. It is reasonable that a consequence of the actions of PaG&E as averred in the Complaint caused undue strain on EDC’s Hardship Funds as the demand for financial support increased when the variable rate increased. It is reasonable, as proposed in the Settlement, that the total contribution of $100,000 be allocated by the ratio of PaG&E customers in the EDC’s territory to the total amount of PaG&E customers in Pennsylvania to ensure that those EDC Hardship Funds that were affected the most receive the most benefit from this provision of the Settlement.

These provisions in the Settlement are responsive to the issues raised in the Joint Complaint and constitute a reasonable resolution of those issues. The provisions of the Settlement regarding the civil penalty and contribution to EDCs Hardship Funds are consistent with Commission precedent and will aid in the development of a competitive market for the provision of electric generation service while aiding low income customers.

As such, we find that the provisions contained in the Settlement agreement requiring PaG&E to pay a $25,000 civil penalty to the General Fund and contribute $100,000 to EDC Hardship Funds are in the public interest and support adopting the Settlement in its entirety without modification.

3. Injunctive Relief

With regard to the third aspect of the Settlement, injunctive relief, we find these provisions of the Settlement are also in the public interest and support adopting the Settlement without modification. The Settlement provides extensive injunctive relief provisions requiring numerous modifications to PaG&E’s business practices. The Settlement provides significant detail regarding changes to PaG&E’s product offering, marketing practices, third party verifications, Disclosure Statement, training of internal and external sales representatives, compliance monitoring, reporting and customer service. These provisions address many of the issues raised in the Complaint.

For example, in the Complaint, the Joint Complainants averred that PaG&E made misleading and deceptive promises of savings as more than 300 consumers complained that they understood that their rate would always be lower than or equal to the PTC or that they would be provided a particular rate. The Settlement addresses this issue by prohibiting PaG&E from making misrepresentations, either directly or by implication, about, among other things, savings that consumers may realize by switching to the Company. The Settlement also prohibits PaG&E from using certain terms in their variable rate marketing campaigns, such as “risk free,” “competitive” and “guaranteed” or other terminology that the price offered will always be lower than the EDC’s PTC.

Additionally, in the Complaint, the Joint Complainants averred that some customers complained that they were switched to PaG&E without their consent – *i.e.*, slammed. The Joint Complainants requested in the Complaint that PaG&E cease and desist from switching consumers to its electric generation service without their explicit consent. The Settlement addresses this issue by requiring Company representatives to provide specific information during the third party verification including that the consumer is not required to switch to PaG&E in order to continue receiving electric generation service and ensure that the consumer is the customer of record or authorized to act on behalf of the customer of record. The Settlement also requires the third party verification process to be performed outside of the physical presence of the PaG&E sales representative and that PaG&E sales representatives shall not prompt consumers’ responses to such questions.

With regard to the allegations regarding PaG&E’s charging prices that fail to conform to the Disclosure Statement, in the Complaint the Joint Complainants averred that PaG&E’s prices charged to consumers in early 2014 were not reflective of the cost to serve residential customers and that the prices do not conform to the variable rate pricing provision of PaG&E’s Disclosure Statement. The Settlement addresses these concerns by requiring that PaG&E include a “Price Structure” in 12-point bold font on the Disclosure Statement certain language regarding the variability of the price to be paid. The Settlement also prohibits the use of certain language in the Disclosure Statement and requires a website be provided so that the Disclosure Statement can be viewed online or a telephone number to call so a hard copy can be requested.

Finally, with regard to the allegations that PaG&E lacked good faith when handling complaints, the Joint Complainants noted in the Complaint that PaG&E failed to adequately staff its call center, failed to provide reasonable access to its representatives for purposes of submitting complaints, failed to properly investigate consumer disputes, failed to notify customers of the results of complaint investigations and failed to utilize good faith, honesty and fair dealing in its dealings with customers. As a result, the Joint Complainants requested that PaG&E be directed to implement proper consumer dispute procedures and adequately train staff, and train and monitor all employees and agents in such procedures. The Settlement addresses these issues by requiring PaG&E to maintain a customer service staff that can answer calls so that the average hold time is no more than 10 minutes during normal business hours and that emails are answered within 24 hours. The Settlement also requires PaG&E to respond to voice mail messages within 24 hours. PaG&E is also required to develop and implement an action plan for handling periods of high call volumes, including adding additional customer service staff or temporary services.

As such, the provisions in the Settlement are responsive to the issues raised in the Joint Complaint and constitute a reasonable resolution of those issues. Section 2807 of the Electricity Generation Customer Choice and Competition Act, for example, requires that “the Commission establish regulations to ensure that an EDC does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” 66 Pa.C.S. § 2807(d)(1). As a result, Section 54.42 of the Commission’s regulations prohibits a licensed EGS from “transferring a customer without the customer’s consent.” 52 Pa.Code § 54.42(a)(9). Additionally, the Commission’s regulations provide standards of conduct and disclosure for EGSs that make EGSs responsible for any fraudulent or deceptive or other unlawful marketing or billing acts performed by the EGS, its employees, agents or representatives. 52 Pa.Code § 54.43(f); *see also*, 52 Pa.Code § 111.12(d)(1) (“a supplier may not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order.”). Finally, the Commission has several regulations requiring the use of “good faith, honesty and fair dealings” and requiring EGSs to investigate a dispute, including providing the consumer with information necessary to make an informed judgment and issue a report within 30 days. 52 Pa.Code §§ 56.1(a), 56.141(a), 56.151 and 56.152. The various provisions of the Settlement are in the public interest and should be adopted without modification because they seek to ensure PaG&E’s compliance with these, and other, Commission regulations.

Furthermore, the injunctive relief provisions of the Settlement are consistent with other Commission decisions approving settlements that included modifications to a utility’s business practices. In PPL Order, *supra*, the Commission approved a settlement that included, among other things, extensive modifications to customer service representative procedures, call scripts, training and supervision, in addition to the imposition of a civil penalty and contributions to low-income programs. Id. at 11-16. Similarly, in Pa.P.U.C., Law Bureau Prosecutory Staff v. UGI Utilities, Inc., Docket No. C-20066664 (Opinion and Order entered Feb. 6, 2009) (UGI Order), the Commission approved a settlement that required procedural revisions and training and education programs, in addition to the payment of a civil penalty, and other related issues. Id. at 6-8. The provisions included in the Settlement at issue in this proceeding are consistent with these prior Commission decisions.

All of the injunctive relief provisions in the Settlement incorporate various changes to PaG&E’s business practices that address the various issues raised in the Complaint and support adopting the Settlement as being in the public interest without modification. As noted above, the Settlement contains various other provisions not discussed herein that also warrant finding that the Settlement is in the public interest and should be adopted without modification. The parties should be commended for entering into a comprehensive and extensive settlement. The Settlement is in the public interest as filed because it implements significant actions that will allow PaG&E to be a viable and vibrant competitor for the provision of electric generation service in Pennsylvania while ensuring numerous protections for consumers. The Settlement incorporates substantial actions that further the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market,” 66 Pa.C.S. § 2802(3), and should be adopted without modification.

As such, we find that the injunctive relief provisions contained in the Settlement agreement are in the public interest and support adopting the Settlement in its entirety without modification.

4. Application of the Policy Statement Factors

As noted above, Section 69.1201 of the Commission’s regulations provides a Policy Statement containing factors and standards to be used when evaluating litigated and settled proceedings. *See,* 52 Pa.Code § 69.1201, *supra*. The Policy Statement notes that “these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.” 52 Pa.Code § 69.1201(a). The factors in the Policy Statement are applied to both the Settlement in general and the civil penalty specifically. A review of the factors articulated in the Policy Statement, as applied to both the Settlement and the civil penalty, as well as the various positions of the parties with regard to each of the factors, supports finding that the Settlement should be adopted without modification as being in the public interest.

With regard to the first factor, whether the conduct was of a serious nature, all signatories to the Settlement agree that the violations alleged in the Complaint were of a serious nature. We agree. It has long been the policy of the Commonwealth to promote the competitive provision of electric generation service and various parties, including the General Assembly, the Commission, the public advocates, EDCs, EGSs and others, have expended a substantial amount of resources in making the marketplace successful. Such success requires that no misleading and deceptive promises of savings, among other things, be made that may undermine competition. The actions averred in the Complaint would reverse the years of efforts to promote competition and are quite serious. Certainly, the allegations made in the Complaint do not comprise less egregious conduct, such as an administrative filing or technical errors, which would warrant less stiff treatment. Rather, the conduct at issue was of a serious nature and warrants adopting the Settlement in its entirety without modification, along with the civil penalty included therein, as being in the public interest.

With regard to the second factor, whether the resulting consequences of the conduct at issue were of a serious nature, although there was no personal injury or property damage that occurred as a result of the alleged actions, we believe that the resulting consequences of the conduct averred in the Complaint are of a serious nature. To begin, the dollar values, both individually and collectively, are substantial. That is, some consumers experienced increases in their monthly bills of four or five times the normal amount. Additionally, the total size of the refund pool – $6,861,563 – supports finding that the resulting consequences were of a serious a nature. Some consumers had their service terminated and other consumers were placed on payment agreements to pay off the outstanding balance. Such consequences strained family budgets and low-income customer assistance programs – both of which are serious consequences. In addition, the violations averred in the 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 market. As noted above, the effective development of the competitive provision of electric generation service requires eliminating misleading and deceptive promises, among other things. As such, we find that the resulting consequences of the conduct at issue were of a serious nature and warrant adopting the Settlement in its entirety without modification, along with the civil penalty included therein, as being in the public interest.

The third factor, whether the conduct at issue was deemed intentional or negligent, is not relevant here because this matter is being resolved by settlement of the parties.

With regard to the fourth factor, whether the regulated entity has made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future, PaG&E has agreed as part of the Settlement to make substantial modifications to its business practices. These modifications encompass changes to PaG&E’s product offering, marketing practices, third party verifications, Disclosure Statement, training of internal and external sales representatives, compliance monitoring, reporting and customer service. The Settlement provides significant detail regarding each of these issues. These modifications, as noted above, along with the refund pool, seek to ensure that the conduct alleged in the Complaint is remedied and that such conduct is prevented from occurring in the future. PaG&E has also agreed not to offer variable rate plans for a period of 18 months. Although Mr. Sobiech believes that PaG&E should be prohibited from offering variable rate plans indefinitely, we believe an indefinite suspension is excessive. When viewed in conjunction with the entire Settlement, including the numerous other injunctive provisions, prohibiting PaG&E from offering a variable rate plan for 18 months is reasonable. In part, this time period allows for the implementation of the modifications to the business practices so that a variable rate plan may be a viable competitive option for some customers in the future. Mr. Sobiech’s argument to the contrary will be rejected. In general, the Settlement provides several modifications to PaG&E’s internal practices and procedures that supports adopting the Settlement in its entirety without modification, along with the civil penalty included therein, as being in the public interest.

With regard to the fifth factor, the number of customers affected and the duration of the violation, the Joint Complainants averred that they received approximately 2,500 contacts from PaG&E customers. As such, the number of customers who were impacted by the Company’s conduct as alleged in the Complaint is significant. Furthermore, it is reasonable that all of PaG&E’s variable rate customers may have been affected by the conduct alleged given the allegations, for example, that PaG&E failed to adequately staff its call center, failed to provide reasonable access to representatives for purposes of submitting complaints, failed to utilize good faith, honesty and fair dealing in its dealings with customers. If PaG&E failed to adequately staff its call center, it is likely that more than just those people who were unable to complain to the Company, in fact, were unable to reach the Company. Additionally, given the allegation, for example, that prices failed to conform to the Disclosure Statement, it is likely that more than just those people who were able to complain in fact received prices that failed to conform to the Disclosure Statement as it is unlikely that certain people received a certain Disclosure Statement while others received a different Disclosure Statement. As such, there is sufficient reason to believe that a substantial number of consumers were affected, including many for multiple months during the winter of 2014.

Mr. Sobiech argued that this factor supports rejecting the Settlement because “the Company knows how many of its customers were affected but neglects to disclose the actual number to the Commission.” Mr. Sobiech also argued that the time period in which the Settlement covers is too limited. We disagree with Mr. Sobiech’s arguments regarding this factor. In particular, it is not necessary to know the precise number of people that were affected by the actions covered in the Settlement. The refund pool is substantial and large enough to remunerate those customers who have not yet received a refund from the Company. This issue must also be considered in light of the fact that the Settlement is the result of a compromise and carries with it other benefits in addition to refunds. When viewed in total, it is clear that the Settlement is reasonable and should be adopted in its entirety without modification, along with the civil penalty included therein, as being in the public interest. Mr. Sobiech’s arguments to the contrary will be rejected.

With regard to the sixth factor, PaG&E’s compliance history, it is noted that, in the October, 2014 Order, *supra*, 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. In that decision, PaG&E paid a $150,200 civil penalty, 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 certain various corrective actions designed to prevent similar occurrences in the future. Id. It was egregious of the company to not notify the Commission of its vendor’s agent’s actions in slamming approximately 300 accounts in PECO’s service territory. The fact that Commission staff first became aware of the slamming violations through discussions with PECO showed unwillingness to report and address issues affecting the retail market as a whole. The incidences averred in that complaint occurred before, and are separate and apart from, the incidences that are averred in the Complaint filed in this proceeding by the Joint Complainants. As a result, the incidences averred in the Complaint filed in this proceeding are not “isolated incidents from an otherwise compliant utility,” as is discussed in the Commission’s Policy Statement. To the contrary, the opposite is true. As a result, Mr. Sobiech argued that the October, 2014 Order supports rejecting the Settlement. Yet, the October, 2014 Order, in fact, supports adopting the Settlement because it is so comprehensive. That is, whereas the October, 2014 Order was not sufficient to ensure PaG&E’s compliance, the significant monetary and injunctive provisions of this Settlement will have a greater impact on ensuring that PaG&E becomes a compliant utility. As such, this factor supports adopting the Settlement in its entirety without modification, along with the civil penalty included therein, as being in the public interest because, in particular, of the extensive modifications to the Company’s business practices that are required in the Settlement that were not included in the October, 2014 Order.

With regard to the seventh factor, whether PaG&E cooperated with the Commission’s investigation, all signatories to the Settlement agree that the Company cooperated both formally and informally during litigation and settlement discussions. This proceeding, however, was initiated by a formal complaint and is not a Commission investigation. All the parties should be commended for their level of cooperation in reaching a settlement of these various complex issues. The magnitude of this case, as well as accompanying cases, supports its resolution via settlement and PaG&E, in particular, should be commended for taking the initiative in the EGS industry in considering and agreeing to the injunctive terms of the Settlement. As this proceeding was not a Commission investigation, however, this factor is not relevant in determining whether the Settlement or the civil penalty should be adopted. Mr. Sobiech again argued that PaG&E has not cooperated in this proceeding because they have failed to disclose the total number of affected customers. Even if this factor were relevant to this case, we noted above that it is not necessary to know the precise number of customers affected in order to approve the Settlement as being in the public interest. Mr. Sobiech’s argument will again be rejected.

With regard to the eighth factor, the amount of the civil penalty or fine necessary to deter future actions, we reiterate that the total refund pool, including what PaG&E previously disbursed to consumers and the additional amount agreed to as part of the Settlement, along with the additional monies comprising the $25,000 civil penalty, $100,000 for administration of the refund pools and a $100,000 contribution to EDCs Hardship Funds, are substantial. Although these dollar amounts may be high in part because the number of customers affected is also high, financial penalties of this magnitude, accompanied by the numerous changes to PaG&E’s business practices detailed in the Settlement, are sufficient to deter future violations. As noted above, PaG&E previously had been directed to pay $150,200 in a civil penalty amount as a result of a settlement of alleged slamming violations. October, 2014 Order, *supra*. The dollar amounts in this Settlement are significantly higher. To the extent a $150,200 civil penalty was not sufficient to deter future violations, more than $6 million in total penalties, along with other provisions, should be sufficient to deter future violations. Mr. Sobiech reiterates his position that the Settlement should be rejected because the civil penalty should be substantially increased and PaG&E should be prohibited from selling variable rate products indefinitely. This argument will again be rejected because it fails to consider the Settlement as a whole but looks only at the specific level of the civil penalty. As a whole, the Settlement is substantial and will be adopted in its entirety without modification. Each aspect of the Settlement is not being evaluated individually but as one. When doing so, this factor supports adopting the Settlement in its entirety without modification as being in the public interest. Mr. Sobiech’s arguments to the contrary will be rejected.

With regard to the ninth factor, past Commission decisions in similar situations, the signatories to the Settlement have stated that this Settlement is unprecedented in its scope and its magnitude. We agree. Although there currently are five other proceedings pending involving substantially the same issues and substantially the same parties, each of those proceedings remain active. Therefore, there are no past Commission decisions in exact similar situations. Nonetheless, however, the Commission has issued decisions on individual consumer complaint cases wherein issues regarding variable rate program offerings from EGSs have been an issue as a result of the extreme cold weather during the winter of 2014. *See*, IDT Order, *supra*. Similarly, we have cited above various cases that support imposing injunctive relief, ordering refunds and imposing civil penalties, as we have done here, and rely on those cases as past similar decisions that support approving this Settlement in its entirety without modification as being in the public interest. *See e.g.*, PPL Order, UGI Order, *supra*. These decisions support the steps taken in this Settlement and recognize the seriousness in which the Commission takes protecting consumers as the market for the competitive provision of electric generation service continues to develop. In that regard, this factor supports adopting the Settlement in its entirety without modification as being in the public interest.

With regard to the tenth factor, other relevant factors, all of the signatory parties noted in their respective Statements in Support of the Settlement that the Settlement should be approved because, in part, doing so will avoid the expenditure of additional resources involved in litigating the case and alleviates the uncertainty associated with fully litigating a case. In this case, in support of the Settlement, the parties have agreed to a stipulation of facts that alleviated the need to present more than 200 witnesses for cross examination during a hearing. Similar hearings have been held in other similar cases but were avoided in this case as a result of the Settlement. Additionally, there is also no need for the submission of pre-served expert testimony, as well as hearings on that testimony, and briefs. Approval of the Settlement will also eliminate the expenditure of any resources if the decision of the Commission is appealed. These are significant factors in support of approving the Settlement in its entirety without modification as being in the public interest.

Furthermore, there is merit as an additional relevant factor that this Settlement constitutes the first resolution of the multiple complaints brought by the Joint Complainants as discussed above involving similar issues arising from the extreme cold weather during the winter of 2014. These cases, individually and collectively, have involved many complex issues. Resolution of those issues via settlement is in the public interest and the fact that this Settlement is the first of those settlements warrants adopting the Settlement in its entirety without modification as being in the public interest.

Finally, Mr. Sobiech reiterated as a relevant factor his prior point that the Settlement should be rejected because releasing the Company of liability arising from private causes of action which are outside the scope of this proceeding and are matters which are not within the jurisdiction of the Commission is not proper or legal. As we noted above, we believe approving this Settlement is within the scope of this proceeding and within the Commission’s jurisdiction because consumers are not obligated to sign the release and accept the remedy established in the Settlement. This Settlement does not preclude a consumer from pursuing a private cause of action that is beyond the Commission’s jurisdiction. We again note that we have no interest in exceeding our authority by attempting to limit any cause of action that may be brought in another jurisdiction, and do not believe that we are doing so by approving the Settlement in its entirety without modification. If a consumer elects to pursue the remedy created in this Settlement or somewhere else, he or she is free to do so. Such a result is within the Commission’s authority to approve as part of a larger settlement. Mr. Sobiech’s argument will again be rejected.

In total, after reviewing the factors and standards enunciated in the Commission’s Policy Statement that will be considered when determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest, we find that the Settlement submitted in this proceeding should be adopted in its entirety and without modification because it is in the public interest.

**E. Conclusion**

In conclusion, this Decision adopts the Joint Petition for Approval of Settlement resolving the formal Complaint filed against PaG&E by the Attorney General and Acting Consumer Advocate in its entirety and without modification because doing so is in the public interest. Commission policy promotes settlement and Settlements will be approved if they are in the public interest. *See*, Lancaster, Warner, *supra*. The settlement is in the public interest because it requires PaG&E to pay a substantial amount of refunds to customers, pay a civil penalty, contribute to hardship funds and make numerous changes to its business practices. The parties are commended for their efforts in resolving this complex proceeding via a comprehensive and detailed settlement. While various provisions of the Settlement provide greater public benefits than other provisions, we recognize that the Settlement is a compromise among the parties regarding many varied and complex issues associated with a matter that caused significant public outcry during the winter of 2014. When viewed as a whole, adopting this Settlement in its entirety without modification satisfies the standards and factors the Commission considers when evaluating settlements and will promote the continued development of the competitive market for the provision of electric generation service.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. Commission policy promotes settlements. 52 Pa.Code § 5.231.
3. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
4. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n, *et al*. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al*. (Opinion and Order entered July 14, 2011).
5. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm’n, *et al*. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al*. (Opinion and Order entered July 14, 2011); *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996).
6. Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201.
7. The factors in the Policy Statement will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a).
8. When applied in settled cases, the factors and standards in the Policy Statement will not be applied in as strict a fashion as in a litigated proceeding but the parties in settled cases 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).
9. The Commission, as a governmental agency, has issued request for proposals and request for qualifications to hire third-party administrators pursuant to various regulatory provisions in the past. *See*, Implementation of the Alternative Energy Portfolio Standards Act of 2004*,* Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator*,* April 12, 2006; Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; *see also*, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.*
10. The Commission has plenary authority under Section 501 of the Public Utility Code to direct an electric generation supplier to issue a credit or refund for an over bill. Commonwealth of Pa, *et al*. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).
11. In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof. 66 Pa.C.S. § 501.
12. By Order entered October 2, 2014, the Commission approved a settlement agreement involving allegations pertaining to the unauthorized switching of commercial electric and natural gas accounts to receive supply service provided by PaG&E. *See*, Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric and U.S. Gas and Electric d/b/a Pennsylvania Gas and Electric, Docket No. M-2013-2325122 (Order entered October 2, 2014).
13. If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited, or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, the utility, person or corporation shall forfeit and pay to the Commonwealth a sum not exceeding $1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth. 66 Pa.C.S. § 3301(a).
14. The Commission has previously approved a settlement where an electric generation supplier was accused of switching consumers’ supplier without authorization or proper verification where the supplier paid a civil penalty of $1,000 for each consumer switched. Pa.Pub. Util. Comm’n Bureau of Investigation and Enforcement v. IDT Energy, Inc., M-2013-2314312 (Opinion and Order entered October 17, 2013).
15. Commission regulations prohibit a licensed EGS from transferring a customer without the customer’s consent. 52 Pa.Code § 54.42(a)(9); *see also*, 66 Pa.C.S.

§ 2807(d)(1).

1. Commission regulations provide standards of conduct and disclosure for electric generation supplier that make electric generation suppliers responsible for any fraudulent or deceptive or other unlawful marketing or billing acts performed by the electric generation suppliers, its employees, agents or representatives. 52 Pa.Code § 54.43(f).
2. An electric generation supplier may not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order. 52 Pa.Code § 111.12(d)(1).
3. Commission regulations require the use of “good faith, honesty and fair dealings” and require electric generation suppliers to investigate a dispute, including providing the consumer with information necessary to make an informed judgment and issue a report within 30 days. 52 Pa. Code §§ 56.1(a), 56.141(a), 56.151 and 56.152.
4. It is the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market.” 66 Pa.C.S. § 2802(3).
5. The Commission has approved settlements that have included, among other things, extensive modifications to customer service representative procedures, call scripts, training and supervision, in addition to the imposition of a civil penalty and contributions to low-income programs. Pa. Pub. Util. Comm’n Law Bureau Staff v. PPL Electric Utilities Corporation, Docket No. M-2009-205812 (Opinion and Order entered September 10, 2009).
6. The Joint Petition for Approval of Settlement submitted in this proceeding on March 24, 2015 should be adopted in its entirety without modification because it is in the public interest.

VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement dated March 24, 2015 and submitted at Docket Number C-2014-2427656 by the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane, Tanya J. McCloskey, Acting Consumer Advocate, Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, and the Bureau of Investigation and Enforcement, is hereby approved in its entirety without modification.
2. That the formal Complaint filed by the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane and Tanya J. McCloskey, Acting Consumer Advocate on June 20, 2014 is hereby marked satisfied.
3. That the Stipulation of Facts in Support of the Settlement submitted on March 24, 2015 as Exhibit A to Joint Petition for Approval of Settlement is admitted into the record of this proceeding.
4. That the two Petitions for Interlocutory Review filed in this proceeding on September 2, 2014 and September 8, 2014 respectively are hereby denied and dismissed as moot.
5. That the Motion to Strike Customer Testimony filed by Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric on January 26, 2015 is hereby denied and dismissed as moot.
6. That Docket No. C-2014-2427656 be marked closed.

Date: June 8, 2015 /s/

Elizabeth H. Barnes

Administrative Law Judge

/s/

Joel H. Cheskis

Administrative Law Judge

1. A polar vortex is a system of upper-level winds that circle around one of the poles. In the northern hemisphere, the arctic polar vortex interacts extensively with the polar jet stream and may affect weather patterns at mid-latitudes. When the arctic polar vortex is strong, it acts to contain the coldest air masses in the polar regions favoring periods of milder winter temperatures in northern North America, Europe and Asia. When the winds of the polar vortex weaken, however, or interact with high-amplitude wave patterns in the jet stream, the shape of the vortex may become distorted. The circulation pattern around the pole may become increasingly asymmetrical, elongated and, in more extreme cases, may even split into two or more patterns. When this happens large incursions of arctic air may follow southward pointing lobes of the jet stream into mid-latitudes causing a period of colder than normal winter temperatures. http://climatechange.cornell.edu/what-is-a-polar-vortex. [↑](#footnote-ref-2)
2. We interpret “Commission staff” to include at a minimum the Commission’s Bureau of Consumer Services and the Office of Administrative Law Judge. These two offices handle informal and formal complaints by consumers, respectively, and should be made aware of the distributions. [↑](#footnote-ref-3)
3. Unauthorized switching is also known as “slamming.” [↑](#footnote-ref-4)