**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held September 15, 2016

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

John F. Coleman, Jr.

Robert F. Powelson

David W. Sweet, Statement

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| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement  V.  Great American Power, LLC |  | M-2016-2536806 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Settlement Agreement (Settlement) filed on March 28, 2016, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Great American Power, LLC (Great American or Company) (collectively, the Parties), with respect to an Informal investigation conducted by I&E. Both Parties submitted a Statement in Support of the Settlement Agreement. I&E submits that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. I&E Statement in Support at 7-10. We will direct the Parties to file supplemental statements in support, consistent with this Opinion and Order.

**History of the Proceeding**

This matter concerns an informal investigation initiated by I&E regarding Great American’s marketing practices as an electric generation supplier (EGS) in Pennsylvania. By letter dated October 29, 2013 (Investigation Letter), I&E instituted an investigation of the Company in follow-up to the Commission’s Order in *William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Order entered October 18, 2013) (*Towne*).[[1]](#footnote-1) In *Towne* we noted that customers may have been subjected to aggressive marketing tactics similar to that experienced by the complainant in that proceeding and found the conduct of Great American “to be potentially detrimental to the ongoing enhancements and the ultimate success of Pennsylvania’s retail electric market.” *Towne* at 22. Thus, we determined that the Company’s actions may merit closer attention by the Commission and referred the matter to I&E for such further action as deemed appropriate. *Id.* at 25, 28.

The Investigation Letter requested documents and information from Great American regarding its EGS marketing procedures. I&E sent further data requests on March 7, 2014. By letter dated October 6, 2015, I&E informed the Company of the conclusion of the informal investigation and indicated the gathering of sufficient data to substantiate allegations of one or more violations of the Public Utility Code (Code) and/or other applicable statutes and regulations which warranted formal action by the Commission. Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. The Parties filed the instant Settlement on March 28, 2016.

**Background**

Great American is a jurisdictional EGS licensed by the Commission to operate within the service territories of PPL Electric Utilities Corporation, PECO Energy Company, Metropolitan Edison Company and Duquesne Light Company. In response to I&E’s data requests, Great American explained that its primary marketing vehicles for EGS services in Pennsylvania were telemarketing, the Commission’s PAPowerSwitch website, and the Company’s own website. Regarding the telemarketing services, Great American asserted that it utilized a single outside vendor to provide outbound sales calls within the guidelines provided by the Company. Settlement at 2, 4.

In further response to I&E’s inquiries, Great American provided a confidential internal customer log listing Pennsylvania customer complaints received by the Company from December 2012 to November 2013. According to the Settlement, the log contained thirty-seven marketing related complaints initiated by Pennsylvania consumers and received by the Company for that period. Each of the individual log entries contained a log number, date, brief description of the customer’s complaint, research conducted by Great American and any findings and actions taken by the Company. On seventeen occasions the Company determined that its outside vendor’s telemarketing sales representatives (TSRs) exhibited unacceptable or questionable marketing practices on behalf of Great American. Of these seventeen instances, the Company noted that its review of each complaint resulted in cancellation of the customer’s enrollment or enrollment request and/or the retraining of the particular TSR. *Id.* at 4-5.

I&E also reviewed customer disputes received and investigated by the Commission’s Bureau of Consumer Services (BCS). In three additional instances involving BCS, Great American determined that its outside telemarketing efforts resulted in unacceptable third-party verification calls or that the Company had failed to maintain the proper documentation. *Id.* at 5.[[2]](#footnote-2)

Regarding these twenty incidences – the seventeen received by the Company and the three received and investigated by BCS – Great American assessed each as it occurred and determined that four merited refunds, which the Company has already provided. However, the Company determined that sixteen did not warrant any refund or credit. The Parties explained that in thirteen of the sixteen incidents, the customer’s enrollment was cancelled or never processed and the customer was not invoiced by the Company for any charges. Thus, in those instances, no credit or refund was warranted. Further, two of the three remaining instances involved a clerical error and a misunderstanding between the agent and a returning customer who elected to remain enrolled with the Company. As to the last remaining incident, the customer was billed for one billing cycle but the billed charges were actually less than what the customer would have otherwise paid. Nevertheless, Great American attempted to refund the charges on that single invoice. However, according to the Settlement, Great American was unable to locate a forwarding address for the customer, who was ninety-five years old at the time, and three years have passed since the occurrence. *Id*. at 5.

The Company indicates that it has subsequently implemented the following quality control measures for reviewing the actions of its third-party representatives:

* requiring outbound sales calls to be monitored;
* conducting live monitoring of outbound sales calls for a total of ten to twenty hours per month;
* validating outbound sales call enrollments by a third-party verification company;
* providing federal and state Do-Not-Call (DNC) lists to its vendor and requiring the vendor to scrub DNC list numbers from its sales lead lists;
* maintaining an internal DNC list generated from contacts made directly to Great American and requiring its vendor to scrub these numbers from the sales lead list twice per week; and
* sending a welcome package to every enrolling customer.

*Id.* at 5-6.

Additionally, Great American indicated that it requires all of its outside contractors to follow all federal, state and local rules and regulations but recognized that there may be occasions in which agents do not adhere to these standards. In those instances, the Company stated that it immediately conducts its own investigation. Furthermore, Great American asserted that it takes full responsibility for the actions of its outside sales agents related to the twenty incidences at issue in this proceeding. *Id.* at 6.[[3]](#footnote-3)

After its investigation, I&E concluded that outside sales agents acting on behalf of Great American engaged in marketing conduct and sales practices that failed to meet the established standards and practices for marketing and sales activities for EGSs and their agents to ensure the fairness and integrity of the competitive residential market pursuant to Commission Regulations. Specifically, I&E concluded that the Company violated provisions of Chapters 54 and 111 of our Regulations concerning “Standards for Changing a Customer’s Electricity Generation Supplier” and other Statutes and Regulations regarding telemarketing activity by the outside agents. Settlement at 7-8.

I&E was prepared to allege in a formal complaint proceeding that Great American failed to comply with Chapter 54 of our Regulations, 52 Pa. Code §§ 54.1 *et seq.*, in that the Company, its agents, or its third-party vendor engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing the Company’s services to Pennsylvania consumers. According to I&E, if proven, these actions would have violated 52 Pa. Code § 54.43(f) on twenty counts.[[4]](#footnote-4) Settlement at 8.

Additionally, I&E was prepared to allege in a formal complaint that Great American, its agents or its third-party vendor failed to comply with Chapter 111 of our Regulations, 52 Pa. Code §§ 111.1 *et seq.* I&E would have averred that Great American, its agents or its third-party vendor failed to properly conduct telemarketing sales resulting in fraudulent, deceptive or otherwise unlawful acts in the process of marketing EGS service in Pennsylvania. I&E contends that, if proven, these allegations would have violated 52 Pa. Code § 111.7, pertaining to customer authorization to transfer account, transaction, verification and documentation, and 52 Pa. Code § 111.10, pertaining to telemarketing, on twenty counts. Settlement at 8.[[5]](#footnote-5)

However, I&E acknowledged that Great American recognized the shortcomings of its outside sales agents in response to I&E’s inquiries and fully cooperated with the investigation. I&E considered the Company’s cooperation to be a mitigating factor to the allegations. As noted above, the Parties have agreed to resolve the matter by settlement in order to avoid the necessity for I&E to prove the elements of each violation. Settlement at 9, 12.

The proposed Settlement has been filed by the Parties in order to resolve allegations of EGS marketing violations. The Parties urge the Commission to approve the Settlement as being in the public interest. Settlement at 15.

**Terms of the Settlement[[6]](#footnote-6)**

Pursuant to the proposed Settlement, Great American will pay a civil penalty of $18,000, of which no portion shall be recovered from Pennsylvania consumers by any future proceeding, device or manner whatsoever. Settlement at 12-13.

The Settlement also acknowledges the corrective actions of the Company and the implementation of revised operating procedures that will act as safeguards against future unauthorized EGS marketing practices of employees or agents of Great American. The Settlement recites a portion of the Company’s modified procedures as follows:

* hiring in-house counsel and additional compliance personnel;
* actively engaging outside counsel for compliance matters;
* instituting a revised internal compliance policy;
* terminating its relationship with the third-party marketer involved in the violations;
* contracting with a new compliant third-party marketer; and
* improving upon training materials for third-party marketers.

Settlement at 11.

The Settlement also requires Great American to confirm its single point of contact for BCS staff for resolution of customer inquiries and/or complaints received by the Commission. *Id.*

In response, I&E agrees to forbear from initiating a formal complaint relative to the allegations that are the subject of the proposed Settlement. The proposed Settlement will not, however, affect the Commission’s authority to receive and resolve any formal or informal complaints filed by any affected party, except that no further penalties beyond the agreed civil penalty may be imposed by the Commission for any actions identified in the Settlement. *Id.*

The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement, or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. *Id.* at 13-14.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). It is expected that a petition seeking approval of a proposed settlement will provide the Commission with sufficient information upon which to make that determination. *Pa. PUC v. ATX Licensing, Inc.*, Docket No. C-20031394 (Order entered March 4, 2004) at 3.

In this proceeding, we do not believe that we have enough information to evaluate whether the civil penalty and corrective actions are sufficient to address the alleged violations. Neither the Settlement nor the statements in support contain sufficiently clear information about the referenced twenty incidences – the seventeen received by the Company and the three received and investigated by BCS.[[7]](#footnote-7) As such, we seek further information related to the dates, descriptions of the complaints, the research conducted by the Company, and the findings and actions taken by the Company or by BCS. *See e.g., Pa. PUC v. ResCom Energy LLC,* Docket No. M-2013-2320112 (Order entered March 19, 2014).

The Parties should, therefore, within thirty days of the entry date of this Opinion and Order, file supplemental statements in support providing this information as well as any other information they deem to be relevant.

**Conclusion**

For the foregoing reasons, the Parties are directed to file supplemental statements in support of the proposed Settlement at this docket, consistent with this Opinion and Order. The supplements will be considered timely if filed within thirty days of the date of entry of this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

That the Bureau of Investigation and Enforcement and Great American Power, LLC shall, within thirty (30) days of the entry of this Opinion and Order, file supplemental statements in support of the proposed Settlement Agreement, consistent with this Opinion and Order.

**** **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 15, 2016

ORDER ENTERED: September 15, 2016

1. In *Towne* we determined that the Company contacted the complainant fourteen times over a twenty-six day period despite repeated requests by the complainant to stop calling. We sustained the complaint as to the following violations: Great American’s failure to properly identify itself as an independent energy supplier, to promptly place the complainant on a do-not-call list and to provide a caller ID. We imposed a civil penalty of $10,000 and placed certain conditions on the Company’s EGS license. *Id.* at 25. [↑](#footnote-ref-1)
2. The Settlement does not provide the total number of customer disputes against the Company received and investigated by BCS. [↑](#footnote-ref-2)
3. Great American believed that in nine of the twenty instances the sales agents did not provide prompt and courteous customer service. However, according to the Company, such actions as reflected in the recordings of the third-party verifications did not violate the Commission’s Regulations or requirements. Nonetheless, in the interest of resolving all of the matters and recognizing that it has implemented training and compliance protocols that were not in place during the investigation, the Company stated that it is willing to enter into the Settlement. *Id.* at 6-7. [↑](#footnote-ref-3)
4. The standards of conduct for EGSs provide, in part, that a “licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employes, agents or representatives.” 52 Pa. Code

   § 54.43(f). [↑](#footnote-ref-4)
5. We note that the Settlement does not provide details of the alleged actions occurring in the twenty incidents at issue in this proceeding. [↑](#footnote-ref-5)
6. The terms are set forth in greater detail in the Settlement at pages 9-14. [↑](#footnote-ref-6)
7. We note that the Settlement references thirty-seven marketing related customer complaints. Other than describing seventeen of these incidents as involving unacceptable or questionable marketing practices, there is no further description of the occurrences. The circumstances surrounding the three additional incidents received and investigated by BCS are similarly unclear. [↑](#footnote-ref-7)