



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
C-2016-2547502

October 7, 2016

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Fair View Energy, Inc.
Docket No. C-2016-2547502

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Settlement Petition along with Appendix A, which consists of Proposed Ordering Paragraphs, and Appendices B and C, the Statements in Support of the Bureau of Investigation and Enforcement and Fair View Energy, Inc., respectively, in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Step M Wimer".

Stephanie M. Wimer
Prosecutor
PA Attorney I.D. No. 207522

Enclosure

cc: RA-OSA@pa.gov
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT,	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2016-2547502
	:	
FAIR VIEW ENERGY, INC.,	:	
Respondent	:	

JOINT SETTLEMENT PETITION

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Fair View Energy, Inc. (“Fair View” or “Company”) hereby submit this Joint Settlement Petition (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed I&E Complaint proceeding involving allegations that Fair View operated as an electric generation supplier (“EGS”) broker without a license granted by the Commission. As part of this Settlement Agreement, I&E and Fair View (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and Fair View are attached hereto as Appendix B and Appendix C, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting attorneys, P.O. Box

3265, Harrisburg, PA 17105-3265, and Fair View Energy, Inc., with a principal place of business at 7782 West Ridge Road, Fairview, PA 16415.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (“Code”), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code, the Commission’s regulations, or both. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s).

7. Fair View meets the definition of an EGS that acts as a broker or marketer in that from June 1, 2015 to May 26, 2016, it served as an agent or intermediary in the sale and purchase of electric energy, but did not take title to electric energy.¹

8. During the time in question, Fair View was not licensed by the Commission as a broker or marketer of electric energy.

9. The Commission regulates EGSs acting as brokers and marketers pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2815, and Commission regulations related to EGS licensing, 52 Pa. Code §§ 54.31-54.43.

10. Brokers and marketers are required to be licensed by the Commission prior to engaging in the business of an EGS in the Commonwealth of Pennsylvania. *See* 66 Pa.C.S. § 2809 and 52 Pa. Code § 54.32(a).

11. Licensed brokers and marketers are required to comply with various regulatory requirements including the reporting of gross receipts pursuant to 52 Pa. Code § 54.39, the payment of a minimum annual assessment fee pursuant to 66 Pa.C.S. § 2809(g) and the Commission's Order at *Implementation of Act 155 of 2014*, Docket No. M-2014-2448825 (Final Implementation Order entered April 24, 2015), and the furnishing of a bond or other financial security approved by the Commission pursuant to 52 Pa. Code § 54.40.

12. Fair View, as an entity that acted as an intermediary in the sale and purchase of electric energy, is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders pursuant to Sections 501(c) and 2809 of the Code, 66 Pa.C.S. §§ 501(c), 2809.

13. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and actions of Fair View in

¹ *See* 66 Pa.C.S. § 2803 (related to the definition of "electric generation supplier") and 52 Pa. Code § 54.31 (related to the definitions of "broker" and "marketer").

its capacity as an EGS that acted as an intermediary in the sale and purchase of electric energy in Pennsylvania pursuant to Sections 2807 and 2809 of the Code, 66 Pa.C.S. §§ 2807, 2809.

II. BACKGROUND

14. By letter dated February 25, 2016, I&E advised Fair View that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. I&E initiated the informal investigation as a result of receiving a complaint from a confidential source that Fair View was potentially acting as an unlicensed EGS broker.

15. In the February 25, 2016 letter, I&E notified Fair View that its investigation would focus on whether Fair View was acting as an unlicensed EGS broker in the Commonwealth of Pennsylvania.

16. I&E served Fair View with two sets of data requests on February 25, 2016 and March 22, 2016, respectively.

17. Fair View responded to I&E's two sets of data requests on March 16, 2016 and April 11, 2016, respectively.

18. In its responses to I&E's data requests, Fair View confirmed that it became incorporated in the Commonwealth of Pennsylvania on April 10, 2015 and, shortly thereafter, began acting as an intermediary in the sale and purchase of electric energy in Pennsylvania with its first sale occurring on June 1, 2015.

19. In its responses to I&E's data requests, Fair View indicated that it brokered or marketed EGS service to commercial customers in all electric distribution company ("EDC") service territories in the Commonwealth of Pennsylvania.

20. In its responses to I&E's data requests, Fair View confirmed that it does not take title to electric energy in Pennsylvania.

21. In its responses to I&E's data requests, Fair View provided that it did not broker EGS service to residential customers in Pennsylvania.

22. I&E's investigation found that Fair View receives commissions from licensed EGSs consisting of a margin that is added to a customer's base supply from the supplier. The commission amount is calculated by multiplying Fair View's margin by a customer's monthly kilowatt hour ("kWh") consumption, the calculation of which is deemed confidential by the Company.

23. I&E's investigation found that two of the corporate officers of Fair View, Jay A. Snyder and Michael P. McCormick, were previously associated as either employees or independent contractors with other EGSs who are or were licensed by the Commission.

(a) Mr. McCormick was employed at Glacial Holdings, Inc. ("Glacial") from May 2009 to September 2013, where he served as regional director for sales. Mr. Snyder was employed at Glacial as the business development manager starting in August 2010 for approximately three months and thereafter worked as an independent contractor through March 2011. Glacial Energy of Pennsylvania, Inc. became a licensed EGS in Pennsylvania on July 23, 2009 at Docket No. A-2009-2109572. The Commission approved the abandonment of Glacial Energy of Pennsylvania, Inc.'s EGS license by Secretarial Letter dated February 17, 2016 at Docket No. A-2015-2505175.

(b) Mr. McCormick worked as an independent contractor at Front Line Power Solutions, LLC ("Front Line") from October 2013 through April 2015 as the president of sales. Mr. Snyder was employed at Front Line from October 2014 through February 2015 where he performed work for the

Mid-Atlantic region, including Pennsylvania. Front Line became licensed by the Commission to offer services to commercial customers in Pennsylvania on August 15, 2013 at Docket No. A-2013-2360865.

24. I&E's investigation found that Fair View is regulated by the Public Utilities Commission of Ohio ("PUCO") as a "power broker," which is defined as a person certified by PUCO who provides power brokerage. *See* Ohio Admin. Code 4901:1-21-01(CC)(2016). "Power brokerage" is defined as assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in the state without taking title to the electric power supplied. *See* Ohio Admin. Code 4901:1-21-01(DD)(2016). I&E determined that Ohio's definition of "power broker" is similar to Pennsylvania's definition of "broker" found in the Commission's regulations at 52 Pa. Code § 54.31.

25. On May 25, 2016, I&E filed a Formal Complaint ("Complaint") at the above docket. In the Complaint, I&E alleged that Fair View violated 66 Pa.C.S. § 2809 and 52 Pa. Code § 54.32(a) by brokering electric energy to commercial customers in Pennsylvania without a license. I&E averred that Fair View's unlicensed brokering resulted in the sale of numerous commercial customer accounts to three licensed EGSs² that would, in turn, provide the customers with electric supply. I&E alleged that Fair View earned approximately \$30,000 in revenues between July 1, 2015 up to and including March 2016. I&E further alleged that Fair View knew or should have known that it was required to be licensed by the Commission prior to brokering EGS service in Pennsylvania given the employment history of its corporate officers and the Company's regulatory compliance in other jurisdictions.

² The EGSs are ConEdison Solutions, Inc., NextEra Energy Services Pennsylvania, LLC and SFE Energy.

26. I&E's Complaint requests that the Commission:

- (a) impose a "per violation" civil penalty, pursuant to 66 Pa.C.S. § 3301, during each month that each electricity account was served retail electric supply resulting from Fair View's unlicensed brokering – I&E identified 449 violations and requested \$200 per violation for a cumulative civil penalty total of \$89,800;
- (b) direct Fair View to provide a refund to commercial customers and/or other EGSs for money received in exchange for the unlawful brokerage service it rendered;
- (c) pay the minimum annual assessment fee of \$350 related to Fair View's brokering or marketing operation during the 2015 calendar year; and
- (d) order such other remedy as the Commission may deem to be appropriate, including the addition of a "per violation" civil penalty during each month that each electricity account was served retail electric supply resulting from Fair View's unlicensed brokering from April 1, 2016 until Fair View secures the requisite license from the Commission.

27. Fair View stopped brokering electric generation supply on the same day that I&E's Complaint was served – May 26, 2016.

28. On June 15, 2016, Fair View timely filed an Answer and New Matter in response to I&E's Complaint. Fair View admitted that it had engaged in unlicensed EGS brokering activities that generated approximately \$30,000 in revenues from 27 commercial customers entering into supply contracts with licensed EGSs. Fair View alleged that the EGSs "got exactly what they paid for"³ and neither the EGSs nor commercial customers complained. Fair View

³ See Fair View's Answer at p. 1.

further alleged that although the Company knew that the Commission issued EGS licenses to some brokers, it was not aware of Pennsylvania's legal requirement for brokers to obtain EGS licenses. The Company further averred that if Fair View had known that a license was a legal requirement in Pennsylvania, it would have filed an application with the Commission, just as it did with PUCO – when licensed suppliers made this demand. Fair View also pointed to variations in the Ohio and Pennsylvania designations, including the issuance of different types of licenses to suppliers and brokers in Ohio. In addition, Fair View averred that its principals' prior experience with licensed EGSs did not involve compliance duties or require knowledge about the Commission's licensing requirements for brokers. Fair View further expressed its willingness to comply with those requirements and noted that it had initiated the application process in Pennsylvania shortly after receiving notice of I&E's informal investigation. Fair View argued that the Commission's Policy Statement at 52 Pa. Code § 69.1201 does not support the imposition of a \$89,800 civil penalty, which would bankrupt the Company. Fair View further asserted that the continuing "per violation" civil penalty sought by I&E is not supported by the conduct and argued that the act of brokering occurred one time for each of the commercial customers and ended with the customers' enrollment with the EGSs. Fair View averred that the Commission lacks authority to direct EGSs to issue refunds of payments made to other EGSs pursuant to private contracts.

29. On July 5, 2016, I&E filed a timely Reply to Fair View's New Matter denying all the material averments made therein. I&E particularly disputed that the principals of Fair View lacked knowledge of the Commission's licensing requirement. Rather, I&E asserted that they maintained a level of awareness regarding regulatory compliance well beyond that of a layperson as evidenced by their experience in the industry and Fair View's status as a regulated power broker in Ohio. I&E also disputed that Fair View's activities as an unlicensed broker should be

construed as a one-time violation, as opposed to continuing violations, given that the commercial accounts brokered by Fair View continue to be served and Fair View continues to receive revenues for each month in which those accounts remained enrolled with the EGS.

30. Also on July 5, 2016, I&E propounded Interrogatories and Requests for Production of Documents – Set I directed to Fair View. Fair View timely responded to the entirety of I&E’s Set I Interrogatories and Requests for Production of Documents on July 25, 2016.

31. Subsequent to the filing of I&E’s Complaint, I&E discovered that Fair View earned additional revenue related to commercial customer accounts that had been previously enrolled with other EGSs as a result of Fair View’s brokering, but did not receive supply service from the EGSs until after the filing of I&E’s Complaint. Fair View confirmed that it did not broker or enroll any new commercial customer accounts subsequent to the service of the Complaint.

32. I&E also discovered that Fair View does not directly invoice or receive money from the Company’s commercial customers. Rather, the EGSs with whom Fair View contracts pay Fair View commissions.

33. On July 18, 2016, a Secretarial Letter was served on the parties in this proceeding advising of receipt of an *ex parte* email communication from a non-party to the proceeding, John Holmes, Chief Executive Officer (“CEO”) of Front Line Power Solutions, LLC. Fair View filed a Motion to Strike the *Ex Parte* Communication on July 28, 2016, asking that the email communication from a non-party be stricken from the formal record and removed from the Commission’s website. On August 4, 2016, I&E filed a letter response noting that it did not oppose Fair View’s Motion to Strike, which is still pending before the Commission.

34. Fair View filed an Application on July 25, 2016 docketed at A-2016-2558553 for approval to offer, render, furnish or supply EGS service as a broker/marketer to the public in the Commonwealth. A protest was filed to the Application and the matter was assigned to the Commission's Office of Administrative Law Judge ("OALJ"). Fair View submitted a request to the OALJ on August 26, 2016 for the expedited scheduling of a hearing and processing of the application. OALJ expeditiously scheduled a hearing for September 26, 2016. Upon subsequent withdrawal of the protest, the OALJ issued an Order dated September 26, 2016 transferring the uncontested application to the Bureau of Technical Utility Services ("TUS") where it is currently pending. By letter dated October 3, 2016, Fair View reiterated its request for expedited processing of the uncontested application. Approval of the application, if granted, would not be retroactive and thus would not include the time frame in which Fair View operated as an unlicensed EGS broker.

35. Fair View takes full responsibility for operating without an EGS broker license and commits to fully complying with the Code and regulatory requirements in the future.

III. ALLEGED VIOLATIONS

36. Had this matter been fully litigated, I&E would have submitted evidence and legal argument to demonstrate the following:

A. Between June 1, 2015 and May 26, 2016, Fair View brokered electric energy to commercial customers in the Commonwealth of Pennsylvania without a license. Fair View's unlicensed brokering activities resulted in the sale of numerous commercial customer accounts to three EGSs and Fair View receives commissions from the EGSs for each month that each commercial account remains enrolled. A violation occurs for each month that a commercial customer

account was enrolled to be served and/or was served by another EGS as a result of Fair View's unlicensed brokering.

If proven, this would be a violation of 66 Pa.C.S. § 2809 and 52 Pa. Code § 54.32(a) (449 counts).

B. Fair View's principals were fully aware of the Commission's EGS licensing requirement for brokers prior to the initiation of I&E's investigation and I&E was prepared to present testimonial and documentary evidence to substantiate the same.

C. Fair View continued brokering EGS service without a license after being notified by I&E of the initiation of I&E's investigation.

D. I&E's investigation revealed that approximately 32 commercial customers were enrolled by Fair View's unlicensed brokering activities.

E. Fair View continues to receive commissions from the commercial accounts it enrolled prior to the time it ceased brokering EGS service.

37. As a mitigating factor to the above allegations, I&E acknowledges that Fair View subsequently filed an Application for approval to offer, render, furnish or supply EGS services as a broker/marketer to the public in the Commonwealth and has obtained a bond pursuant to 52 Pa. Code § 54.40. In addition, Fair View fully cooperated with I&E's investigation.

38. Had this matter been fully litigated, Fair View would have submitted evidence and legal arguments to demonstrate the following:

A. Its principals were unaware of a legal requirement in Pennsylvania for entities operating as brokers to obtain an EGS license and first became aware of the possibility of needing an EGS license to lawfully operate as a broker when I&E initiated its informal investigation. Within two weeks of the initiation of the

informal investigation, Fair View began the application licensing process by obtaining a bond in the amount of \$10,000.

B. Fair View ceased engaging in activities requiring an EGS license in Pennsylvania immediately upon service of the I&E Complaint on May 26, 2016. Thereafter, Fair View completed the necessary steps for filing an application, including publication of a notice in several newspapers, and filed the application on July 25, 2016.

C. The 27 commercial customers referenced in the I&E Complaint obtained electric generation supply services from licensed EGSs and did not complain to the Commission or any other forum about the brokering services they received from Fair View.

D. The three EGSs referenced in the I&E Complaint paid commissions to Fair View in exchange for the enrollment of the 27 commercial customers referenced therein and did not complain to the Commission or any other forum about the brokering services they received from Fair View pursuant to private contracts.

E. The act of brokering occurred one time for each of the 27 commercial customers referenced in the Complaint. The fact that these commercial customers remained with the EGSs with whom they enrolled for several months thereafter does not equate to separate violations of the Public Utility Code.

F. The imposition of a civil penalty in the magnitude proposed by I&E would bankrupt Fair View and would constitute an improper application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201 when various circumstances are considered, including: (i) no adverse consequences

resulted from the conduct; (ii) the violations were not intentional; (iii) the Company has modified its internal practices to address the conduct at issue; (iv) no customers were adversely impacted by the violations; (v) Fair View has never before been involved in an enforcement proceeding or been directed to cease and desist from engaging in certain conduct; (vi) the Company fully cooperated with I&E's investigation; (vii) the Company is extremely small; and (viii) the Company's willingness to comply with the law weighs against the need for a deterrent.

IV. TERMS AND CONDITIONS OF SETTLEMENT

39. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,⁴ the Parties held a series of discussions that culminated in this Settlement. The terms and conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

A. SPECIFIC SETTLEMENT PROVISIONS

40. I&E and Fair View, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

a. Fair View will pay a total amount of Twenty-Five Thousand Dollars (\$25,000) to resolve the allegations of unlicensed EGS brokering in order to fully and finally settle all possible liability and claims of alleged violations of the Code and/or Commission regulations arising from, or related to, the unlicensed EGS brokering operation complained of herein. Fifteen Thousand Dollars (\$15,000) of the total civil penalty settlement amount shall be paid within sixty (60) days of the date the Commission's Order approving the Settlement becomes final. Ten Thousand Dollars (\$10,000) of the total civil penalty settlement amount shall be paid within one hundred twenty (120) days of the date the Commission's Order approving the Settlement becomes final. Said payments shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

⁴ See 52 Pa. Code § 5.231(a).

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

b. Within sixty (60) days of the date the Commission's Order approving the Settlement becomes final, Fair View will pay a total amount of Three Hundred Fifty Dollars (\$350) related to the annual assessment fee for EGSs serving as brokers for Fair View's brokering operations that occurred during the 2015 calendar year. Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

c. On August 26, 2016, Fair View filed a letter in its EGS license application proceeding docketed at A-2016-2558553 requesting that OALJ treat the matter expeditiously by promptly scheduling a hearing and issuing an Initial Decision shortly after the close of the evidentiary record. By Order dated September 26, 2016, OALJ transferred the application to TUS where it is pending. By letter dated October 3, 2016, Fair View reiterated its request for expedited processing of the now unprotested application. Subsequent to the filing of this Settlement Agreement, I&E agrees to file a pleading supporting the expedited treatment of the proceeding docketed at A-2016-2558553.

d. Upon entry of the Commission's Order approving the Settlement, the July 18, 2016 Secretarial Letter and accompanying *ex parte* email communication received in this proceeding shall be stricken, removed from the formal record in this proceeding and unpublished from the Commission's website at the docket number for this proceeding, if the Commission so rules.

41. Fair View fully acknowledges the seriousness of I&E's allegations and recognizes the need to prevent the reoccurrence of unlicensed EGS brokering activities.

42. In consideration of the Company's payment of a monetary civil penalty and annual EGS assessment fee, I&E agrees that its informal investigation relating to Fair View's conduct as described in this Settlement Agreement and in the Complaint referenced herein shall be terminated and marked closed upon approval by the Commission of this Settlement Agreement in its entirety.

43. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any further complaints or initiate other action against the Company at the Commission with respect to Fair View's unlicensed EGS licensing operations during the time period in question.

B. GENERAL SETTLEMENT PROVISIONS

44. The purpose of this Settlement Agreement is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in the instant Complaint proceeding docketed at C-2016-2547502.

45. The Parties recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement.

46. The Parties submit that a settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement agrees to pay a monetary settlement amount to, in part, avoid the possibility of a larger fine or penalty resulting from litigation and the substantial expenses associated with litigation. This Settlement represents a compromise by both I&E and Fair View of their respective litigation positions. Any fines and penalties resulting from a litigated proceeding typically are different from payments resulting from a settlement.

47. I&E and Fair View have agreed to this Settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

48. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issue raised in this proceeding.

49. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

50. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement Agreement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Parties within twenty (20) days after entry of an Order modifying the Settlement. None of the provisions of this Settlement Agreement shall be considered an admission of fact or law or be binding upon the Parties if one of them files a withdrawal.

51. Nothing contained in this Settlement Agreement shall affect the Commission's authority to receive and resolve any future formal or informal complaints filed by any affected party regarding Fair View, except that no civil penalties beyond the settlement amount agreed-to herein may be imposed by the Commission for any actions identified herein. Nothing contained in this Settlement Agreement shall affect the Commission's authority to receive and resolve any future formal or informal complaints filed by any affected party regarding Fair View that are unrelated to the actions addressed in the Settlement Agreement.

52. None of the provisions of the Settlement Agreement or statements made herein shall be considered an admission of any fact or culpability. The Parties acknowledge that this Settlement Agreement is entered into with the express purpose of settling the asserted, disputed

claims regarding the specific alleged violations of the Code and Commission's regulations, and the relief requested in the Complaint.

53. If either party should file any pleading in response to a tentative or final order of the Commission, the other party shall have the right to file a reply.

54. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding.

55. I&E and Fair View jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations of unlicensed EGS brokering activities that are the subject of I&E's Complaint, and avoids the time and expense of litigation, which entails hearings, travel for Fair View's witnesses, and the preparation and filing of briefs, reply briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and Fair View, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

56. The Parties arrived at the Settlement after conducting discovery and engaging in discussions over several months. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonable negotiated compromises on the

issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201 wherein the Commission recognizes that parties are permitted greater flexibility to reach resolutions in matters that are settled rather than litigated.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Fair View Energy, Inc. respectfully request that the Commission enter a Final Opinion and Order approving the terms of this Joint Settlement Petition in their entirety as being in the public interest.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

By: 
Stephanie M. Wimer
Prosecutor
Kourtney L. Myers
Prosecutor
Michael L. Swindler
Deputy Chief Prosecutor

Bureau of Investigation and Enforcement
P.O. Box 3265
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Date: 10/7/2016

Respectfully Submitted,

Fair View Energy, Inc.

By: 
Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

Counsel for Fair View Energy, Inc.

Date: 10/7/16

entered April 24, 2014), within sixty (60) days of the date this Order becomes final, Fair View Energy, Inc. shall pay Three Hundred Fifty Dollars (\$350) related to the annual fee for electric generation suppliers acting as brokers for Fair View Energy, Inc.'s brokering operations that occurred during the 2015 calendar year. Said payment shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

4. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

Pennsylvania, with the interests of the Company. The Settlement also seeks to safeguard Pennsylvania's robust retail electricity market as it sends a clear message that unlicensed EGS brokering operations will not be tolerated. Accordingly, I&E respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

By letter dated February 25, 2016, I&E notified Fair View that it had initiated an informal investigation of the Company pursuant to Sections 331(a) and 506 of the Public Utility Code ("Code"), 66 Pa.C.S. § 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113, that would focus on whether Fair View acted as an unlicensed EGS broker in the Commonwealth of Pennsylvania. I&E initiated the investigation as a result of receiving a complaint from a confidential source that Fair View was potentially acting as an unlicensed EGS broker.

I&E served Fair View with two sets of data requests on February 25, 2016 and March 22, 2016, respectively. Fair View provided I&E with responses to the two sets of data requests on March 16, 2016 and April 11, 2016, respectively.

In its responses to I&E's data requests, Fair View confirmed that it became incorporated in the Commonwealth of Pennsylvania on April 10, 2015 and, shortly thereafter, began acting as an intermediary in the sale and purchase of electric energy in Pennsylvania with its first sale occurring on June 1, 2015. Fair View confirmed that it brokered or marketed EGS service to commercial customers in all electric distribution company ("EDC") service territories in the Commonwealth of Pennsylvania, but did not take title to electric energy and did not broker or market EGS service to residential customers in Pennsylvania.

I&E's investigation determined that Fair View receives commissions from three licensed EGSs in Pennsylvania¹ consisting of a margin that is added to a customer's base supply from the supplier. The commission amount is calculated by multiplying Fair View's margin by a customer's monthly kilowatt hour ("kWh") consumption, the calculation of which is deemed confidential by the Company.

I&E's investigation found that two of the corporate officers of Fair View, Jay A. Snyder and Michael P. McCormick, are experienced professionals in the EGS industry having been associated as either employees or independent contractors with other EGSs who are or were licensed by the Commission.² I&E's investigation also found that Fair View is regulated by the Public Utilities Commission of Ohio ("PUCO") as a "power broker,"³ which I&E determined to be similar to Pennsylvania's definition of "broker" set forth in the Commission's regulations at 52 Pa. Code § 54.31.

I&E's informal investigation concluded that sufficient data had been gathered to substantiate allegations of violations of the Code and Commission regulations. Accordingly, I&E filed a Complaint at the above docket on May 25, 2016. In the Complaint, I&E alleged that Fair View violated Section 2809 of the Code, 66 Pa.C.S. § 2809, and Section 54.32(a) of the Commission's regulations, 52 Pa. Code § 54.32(a), by brokering electric energy to commercial customers in Pennsylvania without a license. I&E averred that Fair View's unlicensed brokering resulted in the sale of numerous commercial customer accounts to three licensed EGSs that, in turn, provided the customers with electric supply. I&E alleged that Fair View earned approximately \$30,000 in revenues between July 1, 2015 and March 2016, and that it was

¹ The EGSs are ConEdison Solutions, Inc., NextEra Energy Services Pennsylvania, LLC and SFE Energy.

² The EGSs are Glacial Energy of Pennsylvania, Inc. and Front Line Power Solutions, LLC.

³ See Ohio Admin. Code 4901:1-21-01(CC)(2016) for the definition of "power broker."

possible that Fair View continued to earn revenues subsequent to April 1, 2016 caused by its unlicensed brokering activities. I&E further alleged that Fair View knew or should have known it was required to be licensed by the Commission prior to brokering EGS service in Pennsylvania given the employment history of its corporate officers and the Company's regulatory compliance in neighboring Ohio.

In the Complaint, I&E made several requests for relief, including that the Commission: (1) impose a "per violation" civil penalty, pursuant to 66 Pa.C.S. § 3301, during each month that each electricity account was served retail electric supply resulting from Fair View's unlicensed brokering – I&E identified 449 violations and requested \$200 per violation for a cumulative civil penalty total of \$89,800; (2) direct Fair View to provide a refund to commercial customers and/or other EGSs for money it received in exchange for the unlawful brokerage service it rendered; (3) pay the minimum annual assessment fee of \$350 related to Fair View's brokering operation during the 2015 calendar year; and (4) order such other remedy as the Commission may deem to be appropriate, including the addition of a "per violation" civil penalty during each month that each electricity account was served retail electric supply resulting from Fair View's unlicensed brokering starting from April 1, 2016.

On the date that I&E's Complaint was served, May 26, 2016, Fair View stopped brokering electric generation supply.

On June 15, 2016, Fair View filed an Answer and New Matter in response to I&E's Complaint. Fair View admitted that it had engaged in unlicensed EGS brokering activities that generated approximately \$30,000 in revenues earned from commissions paid by EGSs. Such commissions were earned by brokering EGS service from June 1, 2015 through March 2016 to commercial customers who entered into supply contracts with the aforementioned three licensed

EGSs. Fair View alleged that neither the EGSs nor commercial customers complained and that no one was harmed by Fair View's actions. Fair View further asserted that shortly after I&E initiated its informal investigation, Fair View's principals took steps to obtain a surety bond in order to initiate the EGS licensing process in Pennsylvania and obtained a bond in the amount of \$10,000 on March 9, 2016.

Fair View maintains that the Company was not aware of Pennsylvania's legal requirement for brokers to obtain EGS licenses. Fair View argues that the Commission's Policy Statement at 52 Pa. Code § 69.1201 does not support the imposition of a civil penalty in the amount of \$89,800. Fair View further asserts that the continuing "per violation" civil penalty sought by I&E in the Complaint is not supported by the conduct and argues that the act of brokering occurred one time for each of the commercial customers, ending with the customer's enrollment with the EGS. Fair View also avers that the Commission lacks authority to direct EGSs to issue refunds of payments made to other EGSs (and not to customers) pursuant to private contracts.

On July 5, 2016, I&E filed a timely Reply to Fair View's New Matter denying all the material averments made therein.

Also on July 5, 2016, I&E propounded Interrogatories and Requests for Production of Documents – Set I directed to Fair View to which Fair View responded on July 25, 2016.

Subsequent to the filing of I&E's Complaint, I&E discovered that Fair View earned additional revenue related to commercial customer accounts that had been previously enrolled with other EGSs as a result of Fair View's unlicensed brokering, but had not yet received supply service when the Complaint was filed. Fair View confirmed that it did not broker or enroll any *new* commercial customer accounts subsequent to the filing of the Complaint. I&E further

discovered that Fair View does not directly invoice or receive money from the Company's commercial customers. Rather, the EGSs with whom Fair View contracts pay Fair View commissions.

On July 25, 2016, Fair View filed an Application docketed at A-2016-2558553 for approval to offer, render, furnish or supply EGS service as a broker/marketer to the public in the Commonwealth. A protest was filed to the Application and the matter was assigned to the Commission's Office of Administrative Law Judge ("OALJ"). On September 26, 2016, the presiding Administrative Law Judge ("ALJ") entered an order transferring the Application proceeding to the Commission's Bureau of Technical Utility Services ("TUS") because the sole protestant withdrew its protest. Fair View's uncontested Application is currently pending in TUS.

On October 7, 2016, the Parties filed a Joint Settlement Petition resolving all issues between I&E and Fair View in the instant matter. This Statement in Support is submitted in conjunction with the Joint Settlement Petition.

III. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's Complaint proceeding involving allegations that Fair View operated as an EGS broker without first holding a license granted by the Commission. Notably, the civil penalty component of the Settlement serves to address I&E's allegations of unlicensed EGS brokering.

Subsequent to the service of I&E's Complaint on May 26, 2016, Fair View ceased all brokering activities and applied for an EGS broker's license. Therefore, Fair View is currently

complying with the Code and Commission regulations pertaining to the licensing of EGSs and by applying for a license, Fair View has demonstrated a willingness to submit to the Commission's regulatory oversight of its brokering activities.

I&E intended to prove the factual allegations set forth in its Complaint at hearing, to which the Company has generally disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and Fair View may disagree with respect to some of I&E's factual allegations, Fair View recognizes the concerns related to unauthorized EGS brokering and commits to fully complying with the Code and the Commission's regulations in the future.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

IV. TERMS OF SETTLEMENT

Under the specific terms of the Settlement, I&E and Fair View have agreed as follows:

a. Fair View will pay a total amount of Twenty-Five Thousand Dollars (\$25,000) to resolve the allegations of unlicensed EGS brokering in order to fully and finally settle all possible liability and claims of alleged violations of the Code and/or Commission regulations arising from, or related to, the unlicensed EGS brokering operation complained of in the Complaint. Fifteen Thousand Dollars (\$15,000) of the total civil penalty settlement amount shall be paid within sixty (60) days of the date the Commission's Order approving the Settlement becomes final. Ten Thousand Dollars (\$10,000) of the total civil penalty settlement amount shall be paid within one hundred twenty (120) days of the date the Commission's Order approving the Settlement becomes final. Said payments shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

b. Within sixty (60) days of the date the Commission's Order approving the Settlement becomes final, Fair View will pay a total amount of Three Hundred Fifty Dollars (\$350) related to the annual assessment fee for EGSs serving as brokers for Fair View's brokering operations that occurred during the 2015 calendar year. Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

c. On August 26, 2016, Fair View filed a letter in its EGS license application proceeding docketed at A-2016-2558553 requesting that OALJ treat the matter expeditiously by promptly scheduling a hearing and issuing an Initial Decision shortly after the close of the evidentiary record. By Order dated September 26, 2016, OALJ transferred the application to TUS where it is pending. By letter dated October 3, 2016, Fair View reiterated its request for expedited processing of the now unprotested application. Subsequent to the filing of this Settlement Agreement, I&E agrees to file a pleading supporting the expedited treatment of the proceeding docketed at A-2016-2558553.

d. Upon entry of the Commission's Order approving the Settlement, the July 18, 2016 Secretarial Letter and accompanying *ex parte* email communication received in this proceeding shall be stricken, removed from the formal record in this proceeding and unpublished from the Commission's website at the docket number for this proceeding, if the Commission so rules.

Fair View fully acknowledges the seriousness of I&E's allegations and recognizes the need to prevent the reoccurrence of any unlicensed EGS brokering activity.

In consideration of Fair View's payment of a monetary civil penalty, I&E agrees that its informal investigation relating to Fair View's conduct as described in the Settlement Agreement and in the Complaint referenced herein shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement in its entirety.

Upon Commission approval of the Settlement in its entirety without modification, I&E

will not file any further complaints or initiate other action against the Company at the Commission with respect to Fair View's unlicensed EGS licensing operations during the time period in question.

V. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "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. (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). The violations averred in the Complaint are of a serious nature in that they involve unlicensed EGS brokering service. Consistent with the authority conferred upon it by the General Assembly, the Commission promulgated EGS licensing regulations to protect consumers by requiring that EGSs apply for and be granted licenses prior to rendering service. In the EGS application, the Commission requires applicants to “provide the Commission with adequate information so that *only* technically and financially fit entities are licensed as suppliers.”⁴ Fair View deprived the Commission of any ability to make such a determination about Fair View prior to the time that the Company brokered EGS service to commercial customers.

Additionally, licensed brokers and marketers are required to comply with various regulatory requirements. Specifically, licensed brokers and marketers are required to furnish a bond or other financial security approved by the Commission, the purpose of which is to ensure the licensee’s financial responsibility and pay gross receipts tax. *See* 52 Pa. Code § 54.40(b). Licensed brokers and marketers are also required to report gross receipts pursuant to 52 Pa. Code § 54.39 and pay an annual assessment fee pursuant to 66 Pa.C.S. § 2809(g) and the Commission’s Order at *Implementation of Act 155 of 2014*, Docket No. M-2014-2448825 (Final Implementation Order entered April 24, 2015). Between June 1, 2015 and May 26, 2016, Fair View did not comply with the aforementioned regulations. Therefore, I&E submits that Fair

⁴ *Re: Licensing Requirements for Electric Generation Suppliers; 52 Pa. Code Chapter 54 and § 3.551*, Docket No. L-00970129, 1998 WL 456720 (Pa. P.U.C.) (Final Rulemaking Order entered April 24, 1998) (emphasis added).

View's conduct is of a serious nature and was considered in arriving at the Settlement Agreement.

The second factor considered is whether the resulting consequences of Fair View's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations. Further, I&E is unaware of any consumer complaint related to Fair View's unlicensed brokering activities.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether Fair View's alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). On the day that I&E's Complaint was served in this proceeding - May 26, 2016 - Fair View ceased brokering electric generation supply. In addition, Fair View filed an Application on July 25, 2016 docketed at A-2016-2558553 for approval to offer, render, furnish or supply EGS service as a broker/marketer to the public in the Commonwealth. In its Application, Fair View noted that it filed an original bond in the amount of \$10,000 separately and under the seal of confidentiality. Thus, Fair View has taken steps to become a licensed EGS in compliance with Section 2809 of the Code, 66 Pa.C.S. § 2809, and the Commission's regulations related to EGS licensing at 52 Pa. Code § 54.32.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E's investigation determined that approximately thirty-two (32) commercial customers were enrolled with EGSs as a result of Fair View's unlicensed brokering. Many of those customers had several commercial electric accounts that were enrolled by Fair View. Fair View's unlicensed brokering occurred between June 1, 2015 and May 26, 2016, when Fair View ceased brokering EGS service in response to the Complaint filed by I&E. Additionally, some of the electric accounts of Fair View's commercial customers began receiving supply service after May 26, 2016 despite being enrolled to receive supply service prior to that time.

The sixth factor to be considered relates to the compliance history of Fair View. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* I&E is unaware of Fair View having a prior history of non-compliance before this Commission.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that Fair View cooperated in the investigation in this matter, including cooperating in both informal and formal discovery as well as settlement discussions.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil penalty amount of \$25,000 plus \$350 related to the annual EGS broker fee, is substantial and sufficient to deter not

only Fair View from committing future violations, but also other companies from operating as unlicensed EGS brokers.⁵

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant enforcement action, which involves allegations of unlicensed EGS brokering, is a case of first impression. While allegations of unlicensed EGS brokering have been raised before the Commission in other matters, none have involved a Commission decision in an action to enforce the Code or Commission regulations and imposed a civil penalty.

In 2009, the Commission noted that an EGS fully disclosed on its EGS brokerage application that it had brokered EGS service to *one* commercial customer prior to being granted a license. *License Application of Energy Trust LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer*, Docket No. A-2009-2134742, 2009 WL 5062385 (Pa. P.U.C.), (Order entered December 18, 2009). In granting the license, the Commission commended the company for its disclosure and for proactively seeking a license. *Id.* at 3.

In another EGS broker application proceeding, a protestant alleged that the company had been brokering EGS service without a license. *Application of J. Andrews Associates, Inc. d/b/a Seven-Utility Management Consultants, LLC for approval to supply electricity or generation services as a broker/consultant engaged in the business of supplying electricity to the public in the Commonwealth of Pennsylvania*, Docket No. A-2011-2241747 (Recommended Decision dated August 10, 2012; Order adopting Recommended Decision entered December 20, 2012).

⁵ It is important to note, however, that the civil penalty amount reached in this amicable settlement is not based on a precise calculation consisting of a dollar amount multiplied by a number representing the violations. Rather, the civil penalty settlement amount was reached by using a “black box” methodology.

Following an evidentiary hearing, the presiding administrative law judge sustained the protest and denied the application, finding that the applicant was unfit to provide the requested service based, in part, on the unlicensed brokering allegations.

An EGS filed a formal complaint against several individuals claiming, *inter alia*, they arranged for the sale of energy products on behalf of more than one broker/marketer, were unlicensed and, therefore, violated the Commission's EGS licensure requirements. *Unified Energy Alliance, LLC v. Rodger K. Walter, et al.*, Docket No. C-2015-2492473 (Complaint filed July 2, 2015). The matter was resolved with the filing of a Certificate of Satisfaction on March 14, 2016.

Thus, I&E submits that there are no past Commission decisions directly responsive to a similar situation such as the instant complaint proceeding, which involves an I&E investigation of unlicensed brokering activities that spanned several months. For that reason, this case should be viewed on its own merits. However, in looking at the relevant factors that are comparable to other matters involving allegations of uncertificated or unlicensed activities that are subject to the Commission's jurisdiction, and comparing the allegations to the relief provided in the Settlement - specifically, a civil penalty - this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions

resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

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

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



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requirements in the future.¹ This commitment is demonstrated by the termination of activities requiring an EGS license upon service of the I&E Complaint, by the filing of an EGS application to operate as a broker in Pennsylvania, and by agreeing to pay a \$25,000 civil penalty, as well as the \$350 annual broker fee for 2015, under this Settlement.

Fair View submits that the Settlement is consistent with the Commission's policy to encourage settlements.² Settlements conserve valuable resources of the Commission and the parties. Importantly, the focus of inquiry for determining whether a proposed settlement should be approved is not a "burden of proof" standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011). Rather, the Commission reviews settlements to determine whether the terms are in the public interest. *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

The Commission's Policy Statement at 52 Pa. Code § 69.1201, which sets forth various factors and standards that are used in evaluating settled cases, is a codification of the Commission's decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000). These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest.³ Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict a fashion to settled cases, and the parties in settled cases are afforded flexibility in reaching amicable resolutions to complaints as long as the settlement is in the public interest.

¹ Joint Settlement Petition, ¶35.

² 52 Pa. Code § 5.231(a).

³ 52 Pa. Code § 69.1201(a).

An application of the factors and standards set forth in the Commission's Policy Statement shows that the Settlement in this proceeding is in the public interest. While Fair View does not dispute the seriousness of its conduct of engaging in brokering activities without an EGS license,⁴ it submits that a review of the remaining factors in the Policy Statement supports the \$25,000 civil penalty agreed to in the Settlement, which is lower than proposed by the Complaint. Additionally, the payment plan provided by the Settlement will afford Fair View the opportunity to pay the civil penalty without adversely impacting its business operations.

Specifically, Fair View notes that no adverse consequences occurred or have even been alleged as a result of its brokering activities. Indeed, no customers have been harmed.⁵ To the contrary, 32 commercial customers elected to receive electric generation services from three different licensed EGSs under terms and conditions to which they agreed. These customers did not pay any fees directly to Fair View, which received commission payments from the licensed EGSs.⁶ Neither the commercial customers nor the licensed EGSs have complained about the services they received.⁷

Additionally, Fair View would have demonstrated at a hearing that it did not intentionally engage in unlawful conduct.⁸ Specifically, the Company would have offered testimony indicating that it was previously unaware of the legal requirement in Pennsylvania for brokers to obtain EGS licenses.⁹ Although Fair View's principals have been associated as employees or independent contractors with other licensed EGSs, they did not perform compliance functions for those EGSs. Rather, Fair View's principals served in business development and sales positions and did not

⁴ See 52 Pa. Code § 69.1201(c)(1).

⁵ See 52 Pa. Code § 69.1201(c)(2) and (5).

⁶ Fair View Answer and New Matter, ¶¶ 19, 58; Joint Settlement Petition, ¶ 22.

⁷ Fair View Answer and New Matter, ¶¶ 15, 58

⁸ See 52 Pa. Code § 69.1201(c)(3).

⁹ Fair View Answer and New Matter, ¶¶ 25, 60, 67.

become familiar with legal licensing requirements in those roles. While Fair View was aware that brokers in Pennsylvania could obtain an EGS license, it has averred that it did not realize that a legal requirement existed in Pennsylvania for it to apply for an EGS license.¹⁰

Fair View would have further testified that its experience in Ohio did not provide a basis for becoming aware of Pennsylvania's legal requirements. In 2015, Fair View received a "power broker" certificate from the Public Utilities Commission of Ohio ("PUCO") because suppliers in Ohio required the Company to obtain such authority as a prerequisite to entering into contractual agreements. Fair View pointed to the variations in the Ohio and Pennsylvania designations, including the issuance of different types of licenses to suppliers and brokers in Ohio. Moreover, Fair View has indicated that the fact that it obtained a power broker certificate in Ohio demonstrates its willingness to achieve regulatory compliance.¹¹

Importantly, the Company has taken various steps to modify its internal practices to be in compliance with the Commission's requirements.¹² From the outset, Fair View has expressed its willingness to comply with the law and Commission regulations.¹³ Within two weeks of the initiation of I&E's informal investigation, Fair View began the application process by obtaining a bond in the amount of \$10,000.¹⁴ Additionally, Fair View ceased operating as a broker upon service of the I&E Complaint and thereafter filed an application requesting an EGS license to operate as a broker throughout Pennsylvania.¹⁵ Although the application was originally protested by a competitor and scheduled for a hearing, the protest has since been withdrawn and the

¹⁰ Fair View Answer and New Matter, ¶¶ 21-22, 24, 61-62.

¹¹ Fair View Answer and New Matter, ¶¶ 23-24, 63.

¹² See 52 Pa. Code § 69.1201(c)(4).

¹³ Fair View Answer and New Matter, ¶ 25.

¹⁴ Fair View Answer and New Matter, ¶ 60.

¹⁵ Fair View Answer and New Matter, ¶ 26; Joint Settlement Petition, ¶ 27.

application is currently pending review by the Commission's Bureau of Technical Utility Services.¹⁶

In addition, Fair View has no prior history of violating the Commission's regulations and has not been the subject of a cease and desist order.¹⁷ It also fully cooperated with I&E's investigation.¹⁸

As to the sufficiency of the civil penalty to deter future violations,¹⁹ Fair View has averred that a civil penalty of the magnitude originally sought by I&E would bankrupt the Company. Fair View is an extremely small company with Mr. Jay Snyder and Mr. Michael McCormick serving as the principals and only employees. Specifically, Fair View has noted that its gross monthly revenues from engaging in energy consulting activities as agents for licensed brokers, after eliminating the activities that are the subject of this Complaint, are between \$8,000 and \$9,000.²⁰ As the civil penalty in the Settlement is nearly three times the amount of Fair View's current gross monthly revenues, it is more than sufficient to deter future violations.

With respect to past Commission decisions in similar situations, Fair View is not aware of a prior case involving unlicensed EGS brokering.²¹ However, Fair View points to two prior Commission-approved settlements in the energy industry which also involve issues of first impression where the civil penalties were \$25,000. *See Commonwealth of Pennsylvania, et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-2427656 (Tentative Form Opinion and Order entered March 9; 2016, deemed final by its terms on March 16, 2016); *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-

¹⁶ See *Application of Fair View Energy, Inc. for Approval to Offer to Supply Electricity or Electric Generation Services as a Broker/Marketer to the Public in the Commonwealth of Pennsylvania*, Docket No. A-2016-2558553.

¹⁷ Fair View Answer and New Matter, ¶ 74. See 52 Pa. Code § 69.1201(c)(6).

¹⁸ Joint Settlement Petition, ¶ 37. See 52 Pa. Code § 69.1201(c)(7).

¹⁹ See 52 Pa. Code § 69.1201(c)(8).

²⁰ Fair View Answer and New Matter, ¶ 69.

²¹ See 52 Pa. Code § 69.1201(c)(9).

2427657 (Order entered June 30, 2016). Additionally, in situations where small transportation providers have been found to have engaged in unauthorized operations over a period of several years, the Commission has imposed lower civil penalties. *See, e.g., Pa. PUC v. Daniel and Darlene Applegate t/a Independent Security Cab*, 2016 WL 1559265, Docket No. C-2015-2451749 (Initial Decision served April 12, 2016; Final Order entered May 23, 2016); *Pa. PUC v. Brungard t/d/b/a Protean Potentials*, 97 Pa. P.U.C. 189, 2002 WL 31007842, Docket No. A-00113098C0101 (Order entered June 3, 2002). Also, looking at this civil penalty from the perspective of the approximately \$30,000 in revenues earned by Fair View prior to the filing of the Complaint shows that it is reasonable. *See, e.g., Pa. PUC v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) (Commission considered the correlation between EGS's overcharges and amount of civil penalty).

Overall, the Settlement effectively addresses the allegations of unlicensed EGS brokering activities that are the subject of the I&E Complaint. Through the Settlement, Fair View may avoid the uncertainty and costs of formal litigation and move forward in the conduct of business in Pennsylvania.²²

In conclusion, Fair View urges the Commission to find that the Settlement is in the public interest and approve it without modification for the following reasons: (1) the commercial customers and licensed EGSs involved in Fair View's brokering activities were not harmed and have not complained; (2) Fair View ceased providing unauthorized brokering activities upon service of the Complaint; (3) Fair View has explained its prior lack of understanding of the legal requirement for brokers to be licensed as EGSs in Pennsylvania; (4) Fair View obtained a \$10,000 bond and initiated the application process shortly after the commencement of I&E's informal investigation and has since applied for an EGS license authorizing it to operate as a broker

²² *See* 52 Pa. Code § 69.1201(c)(10).

throughout Pennsylvania; and (5) Fair View has voluntarily agreed to pay a substantial and reasonable civil penalty, as well as an annual broker fee for 2015, to resolve this matter and obviate the need for further costly and time-consuming litigation.

Respectfully submitted,



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Date: October 7, 2016

