



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

June 25, 2018

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. Astral Energy, LLC  
Docket No. M-2018-\_\_\_\_\_  
**(Settlement Agreement)**

Dear Secretary Chiavetta:

Enclosed for filing is the original of the Settlement Agreement of the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission and Astral Energy, LLC along with Appendix A, which consists of Proposed Ordering Paragraphs and Appendices B and C, the Statements in Support of I&E and Astral Energy, LLC, respectively, in the above-reference 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.

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PA PUC  
SECRETARY'S BUREAU  
FRONT DESK

Sincerely,

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Prosecutor for the Bureau of  
Investigation and Enforcement

Enclosures

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 :  
 : Docket No. M-2018-  
 v. :  
 :  
 Astral Energy, LLC :

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**SETTLEMENT AGREEMENT**

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Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Astral Energy, LLC hereby submit this Settlement Agreement to resolve all issues related to the above-docketed informal investigation.

**I. INTRODUCTION**

1. The Parties to this Settlement Agreement ("Settlement" or "Settlement Agreement") are the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E"), by its prosecuting attorney, P.O. Box 3265, Harrisburg, PA 17105-3265 and Astral Energy, LLC ("Astral" or "Company"), with a principal place of business at 580 Sylvan Avenue, Suite 2J, Englewood Cliffs, NJ 07632.

2. The 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 (the “Code”), 66 Pa.C.S. §§ 101, *et seq.*

3. 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.

4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities.

*Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities,*

Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 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 (Order entered August 11, 2011) at 5 (transferring authority to prosecute assessment cases to I&E).

5. 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).

6. Astral is a jurisdictional electric generation supplier (“EGS”)<sup>1</sup> certificated by the Commission to operate within the FirstEnergy Pennsylvania Companies’ (“FirstEnergy”) service territories (e.g. Metropolitan Edison Company, Pennsylvania

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<sup>1</sup> “Electric generation supplier” is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S §§ 2801-2812 (“Competition Act”); *See also* 52 Pa. Code § 57.171.

Electric Company), among others.<sup>2</sup>

7. Astral is a public utility as defined by 66 Pa.C.S. § 102, only for the limited purposes as described in Sections 2809 and 2810 of the Competition Act.

8. Astral, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Code.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Astral in its capacity as an EGS serving consumers in Pennsylvania.

10. I&E instituted an informal investigation of Astral 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. This informal investigation focused on an allegation of slamming<sup>3</sup> raised in an informal complaint received by the Commission's Bureau of Consumer Services ("BCS") and a call from an electric distribution company ("EDC") to Commission staff.

11. As a result of negotiations between I&E and Astral (hereinafter referred to as the "Parties"), the Parties have agreed to resolve their difference as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set

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<sup>2</sup> Astral was granted Commission approval to operate as an EGS on February 26, 2015 at Docket No. A-2014-2439632. Astral began marketing electricity generation supply in Pennsylvania in March 2016.

<sup>3</sup> "Slamming" is an unauthorized change made to a customer's supply service. *HIKO Energy LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079, 1090 (Pa. Cmwlth. 2017).

forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

## **II. BACKGROUND**

12. On or about November 16, 2015, FirstEnergy informed the Commission's Office of Competitive Market Oversight ("OCMO") that it had received several calls to its call center from customers who complained that their EGS was switched by Astral without proper authorization in October 2015.

13. A review of BCS' records demonstrated that on October 28, 2015, an informal complaint had also been filed against Astral regarding an allegation of slamming.

14. When FirstEnergy alerted Astral of the issue, Astral voluntarily investigated the enrollments in question and found that its third-party vendors, Latitude Technologies ("Latitude") in conjunction with Agility CIS ("Agility") (hereinafter referred to as "third-party vendors"), had mistakenly enrolled six customers, whose actual account numbers had been provided to Astral by FirstEnergy for electronic data interchange ("EDI")<sup>4</sup> testing purposes.

15. In the Summer of 2015, FirstEnergy conducted EDI testing with Astral's third-party vendors. Before engaging in EDI testing, FirstEnergy provided Astral with an EDI test plan that set forth different test scenarios for customer enrollment.

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<sup>4</sup> Electronic data interchange is an electronic communication method that transfers structured data, by agreed message standards, from one company's computer system to another, in or out of the country, without human intervention. Michael Kantor & James H. Burrows, *Electronic Data Interchange (EDI)*, National Institute of Standards and Technology, Apr. 29, 1996.

16. Along with the test plan, FirstEnergy also provided Astral with seven account numbers to be utilized during EDI testing (hereinafter referred to as “test account numbers”). Out of the seven test account numbers, six were active, customer account numbers and one was fictitious and inactive

17. Neither Astral nor its third-party vendors were notified that some of the test account numbers were actual, customer accounts numbers and FirstEnergy does not have any record of notifying Astral or its third-party vendors that some of the test account numbers were associated with active customer accounts.

18. During testing, Astral’s third-party vendors utilized the test account numbers to complete the customer enrollment test scenarios with FirstEnergy, which included creating and sending enrollment requests, rejecting enrollment requests, dropping enrollment requests, rescinding drop requests, and reinstating enrollments. Each type of request was sent by Astral’s third-party vendors to FirstEnergy’s test environment only (as compared to FirstEnergy’s live system).

19. On August 24, 2015, Astral successfully completed all EDI testing scenarios with FirstEnergy and Astral’s production connectivity, which provided the Company with the ability to enroll customers, was subsequently established on September 1, 2015.

20. On October 22, 2015, Astral’s third-party vendors mistakenly submitted the seven test account numbers for enrollment to FirstEnergy’s live system. That same day, six of the seven test accounts were enrolled with Astral.

21. Once Astral became aware of the mistaken enrollments, it took immediate corrective action. By October 29, 2015, the Company had dropped the enrollments for each affected account. Astral and its third-party vendors also conducted a system-wide audit to ensure that no other accounts had been accidentally enrolled. It was further determined by Astral that the six affected accounts were all non-residential accounts. No customers were charged for electric generation supply service as a result of these unauthorized enrollments.

22. BCS subsequently referred the matter involving Astral to I&E for an informal investigation. As BCS explained in its referral memorandum to I&E,

[w]hile we appreciate Astral's actions to rescind the mistaken enrollments and understand that the problem appears to have been inadvertent (we have no information indicating otherwise) we still believe that it is appropriate to bring this matter to the attention of I&E.

23. At the time this matter was referred to I&E from BCS, no additional unauthorized enrollment complaints had been received by BCS. Moreover, this was the first informal complaint and compliance issue with Astral.

### **III. ALLEGED VIOLATIONS**

24. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations, I&E was prepared to contend by the filing of a formal complaint that Astral violated certain provisions of Title 52 of the Pennsylvania Code, as well as the Public Utility Code in that:

A. The action of the Company or agents of the Company initiated the

process of switching the electric generation supplier on six accounts without the authorization of the customers.

If proven, this would be a violation of the Electricity Generation Customer Choice and Competition Act at 52 Pa. Code §§ 54.42(a)(9) and 54.43(f) and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-179 (multiple counts).

B. The Company failed to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the provision of service as an electric generation supplier in that the Company or agents of the Company failed to comply with the Electricity Generation Customer Choice and Competition Act at 52 Pa. Code §§ 54.42(a)(9) and 54.43(f) and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-177.

If proven, this would be a violation of 66 Pa.C.S. § 1501 (multiple counts).

25. If the matter had been litigated Astral would have contended:

A. During the time period at issue, Astral was not operating or marketing electric generation supply service to any customer in Pennsylvania.

B. Astral never acquired the test account numbers on its own as the test account numbers were provided to Astral from FirstEnergy for testing purposes and Astral had no reason to believe that the test account numbers were associated with active accounts.



26. As a mitigating factor to the above allegations, I&E acknowledges that Astral fully cooperated with I&E's investigation. During the investigatory process, Astral promptly complied with I&E's requests for information and documentation and provided I&E with records, correspondences, and other documents as requested by I&E.

27. Throughout the entire investigatory process, I&E and Astral remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in this Settlement Agreement.

#### **IV. SETTLEMENT TERMS**

28. The purpose of this Settlement Agreement is to terminate I&E's informal investigation and settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident.

29. Astral acknowledges that the Commission has a long-standing "zero-tolerance" policy concerning slamming, that the Commission has penalized companies that have slammed or are alleged to have slammed customers, and that the Commission has made it clear that such acts will not be tolerated. Astral has implemented its own extensive internal policies to prevent slamming and also has its own internal "zero-tolerance policy."

30. Although Astral disputes that the actions of its third-party vendor constitute slamming, Astral fully acknowledges the seriousness of slamming and recognizes the

need to prevent the recurrence of similar situations.

31. The Parties recognize that their positions and claims are disputed and given that the precise outcome of a contested proceeding is uncertain, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement.

32. I&E and Astral, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. Astral will pay a civil penalty amount of six thousand dollars (\$6,000.00) to resolve all allegations of slamming and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations and the Code arising from, or related to, the accidental transmission, on or about October 22, 2015, of the six (6) active customer accounts. No portion of this civil penalty payment shall be recovered from Pennsylvania consumers by any future proceeding, device, or manner whatsoever. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to:

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

B. Astral has taken corrective action and implemented revisions to its

operating procedures which will act as safeguards against the transmission of erroneous or otherwise improper EGS enrollment data to the EDC. The pertinent portions of Astral's modified procedures are briefly described as follows:

i. Astral has designated one staff member, who is knowledgeable and experienced in EDI testing, to be solely responsible for EDI testing with EDCs and third-party vendors engaging in EDI testing on Astral's behalf;

ii. Astral and its third-party agents have agreed to treat any and all account numbers provided to it for EDI testing purposes as active customer account numbers and will take special care to ensure that customer accounts are not slammed as a result of EDI testing;

iii. Astral has established a Quality Control Department to follow-up with new and prospective customers and to monitor the performance of all marketing activity;

iv. Astral has agreed to continue to ensure that its employees, agents, and vendors are reminded of the Commission's regulations regarding consumer protection, with an emphasis on those prohibiting slamming;

v. Astral has established a Customer Complaint System wherein the Company:

1. Records all calls made to the Company's customer

specific line for quality assurance and training and stores such calls for up to a month;

2. Attempts to resolve customer issues during the initial call, but no more than 5 business days of any customer inquiries;

3. Responds to customer requests to speak to a supervisor within 3 to 6 business days; and

4. Maintains internal resolution records.

vi. Astral has established a BCS Complaint System, which is set forth as follows:

1. Astral has designated its compliance manager as the single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS;

2. Upon receipt of a complaint from BCS, the compliance manager of Astral investigates the complaint and makes contact with the complainant to determine if there is any additional information that requires further investigation and to work toward a resolution;

3. After investigation of the complaint, a written response is provided to the complainant, which includes a brief summary of the issue and the resolution to the complaint; and

4. A written response is also provided to BCS within 10 days upon receipt of the BCS complaint, if not sooner, which will

include a summary of the complaint, Astral's policy regarding the issue, the resolution, and all information pertaining to enrollment of the complainant's account and end of service date.

33. In exchange for the actions taken by Astral, as described above, I&E agrees not to institute any formal complaint relating to the unauthorized customer enrollments that are the subject of this Settlement Agreement.

34. In consideration of the Company's payment of a monetary civil penalty and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees to forgo the institution of any formal complaint that relates to the Company's conduct as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.

35. I&E and Astral jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for 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 slamming that is the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, travel for out-of-state witnesses, and the

preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and Astral, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

**V. CONDITIONS OF SETTLEMENT**

36. 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.

37. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Settlement Petition without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement 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) business days after entry of an Order modifying the Settlement.

38. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all

proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

39. 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 issues raised in this proceeding.

40. 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 Agreement does not preclude the parties from taking other positions in any other proceeding.

41. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably 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.

**WHEREFORE**, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Astral Energy, LLC respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

By: 

Kourtney L. Myers  
Prosecutor

Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105  
717.705.4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

Date: 6/15/18

Astral Energy, LLC

By: 

Ashton Fox  
Chief Operating Officer

Astral Energy, LLC  
580 Sylvan Ave Suite 2J  
Englewood Cliffs NJ 07632  
201.384.5552

Date: 6-15-2018



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement :  
 : Docket No. M-2018-  
v. :  
 :  
Astral Energy, LLC :

**PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Settlement Petition filed on June 25, 2018, between the Commission's Bureau of Investigation and Enforcement and Astral Energy, LLC is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of the date this Order becomes final, Astral Energy, LLC shall pay Six Thousand Dollars (\$6,000), which consists of the entirety of the civil penalty settlement amount. Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

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

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

4. That the above-captioned matter shall be marked closed.

**RECEIVED**

JUN 25 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

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Docket No. M-2018-

v.

Astral Energy, LLC

**RECEIVED**

JUN 25 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

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TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

**I. INTRODUCTION**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Statement in Support of the Settlement Agreement (“Settlement”) entered into by I&E and Astral Energy, LLC (“Astral” or “Company”) (collectively, the “Parties”) in the above-captioned proceeding. The Settlement, if approved, fully resolves all issues related to I&E’s informal investigation into the enrollment of non-residential customers to receive electric generation supply service from Astral without obtaining proper authorization, a practice known as “slamming.”

I&E submits that the Settlement, which was amicably reached by the Parties after extensive negotiations and careful consideration, balances the duty of the Commission to protect the public interest, including the Company’s customers and all electric consumers

in Pennsylvania, with the interests of the Company. Accordingly, I&E respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

## **II. BACKGROUND**

This matter involves Astral, an electric generation supplier (“EGS”) licensed by the Commission to operate within FirstEnergy Pennsylvania Companies’ (“FirstEnergy”) service territories (e.g. Metropolitan Edison Company, Pennsylvania Electric Company), among others. Astral received its Pennsylvania EGS license on February 26, 2015 at Docket No. A-2014-2439632.

In the Summer of 2015, Astral’s third-party vendors, Latitude Technologies in conjunction with Agility CIS (hereinafter referred to as “third-party vendors”), engaged in electronic data interchange (“EDI”) testing with FirstEnergy.<sup>1</sup> Prior to EDI testing, FirstEnergy provided Astral with an EDI test plan that set forth different test scenarios for customer enrollment, along with seven account numbers to be utilized during EDI testing (hereinafter referred to as “test account numbers”). Six of those test account numbers were active, customer account numbers and one account number was fictitious. Astral and its third-party vendors were unaware that some of the test account numbers were associated with active, customer account numbers and FirstEnergy has no record of

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<sup>1</sup> FirstEnergy’s supplier registration process requires an EGS to engage in EDI testing prior to an EGS conducting EDI transactions in FirstEnergy’s service territories.

notifying Astral or its third-party vendors that some of the test account numbers were active, customer accounts.<sup>2</sup>

Astral successfully completed EDI testing with FirstEnergy on August 24, 2015 and Astral's production connectivity, which provided the Company with the ability to enroll customers, was established on September 1, 2015. On October 22, 2015, Astral's third-party vendors inadvertently submitted the seven test account numbers, which FirstEnergy provided to Astral for EDI testing purposes, for enrollment to FirstEnergy's live system. Six of those test account numbers were enrolled with Astral on October 22, 2015.

On or about November 16, 2015, the Commission's Office of Competitive Market Oversight ("OCMO") learned about complaints that FirstEnergy received concerning incidents of slamming, which involved non-residential electric accounts. The complaints indicated that Astral may have enrolled accounts without proper authorization to do so, contrary to the "Standards for Changing a Customer's Electricity Generation Supplier" regulations at 52 Pa. Code §§ 57.171-179. A review of the records of the Commission's Bureau of Consumer Services ("BCS") demonstrated that an informal complaint had also been filed against Astral regarding an allegation of slamming on October 28, 2015.

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<sup>2</sup> In response to I&E's investigation, FirstEnergy provided that it removes all account information such as name, phone number, social security number, contact names, etc. when the account numbers are provided to an EGS in the EDI Test Plan. FirstEnergy uses active account numbers to permit suppliers to test all EDI functionality since fictitious account numbers cannot be used for all facets of EDI testing. In addition, enrollment cannot be processed through FirstEnergy's system until the EGS has completed EDI testing and established production connectivity.

BCS requested that I&E review the matter and subsequently, an informal investigation was initiated by I&E. I&E's informal investigation concluded that sufficient data had been gathered to substantiate alleged violations of the Public Utility Code (the "Code") and Commission's regulations in connection with the customer complaints made to FirstEnergy's call center and the informal complaint filed with BCS.

Upon investigation, I&E determined that Astral's third-party vendors were responsible for the unauthorized switching of six non-residential electric accounts to receive electric supply service from Astral. When Astral became aware of the actions of its third-party vendors, Astral immediately took steps to drop the unauthorized enrollments and conducted an extensive internal investigation. No customers were charged for electric generation supply service as a result of the unauthorized enrollments.

While the source of the issue appears to have been the actions of third-party vendors, Commission precedent holds the licensed entity responsible for the actions of its employees, agents, vendors, or contractors. *See* 52 Pa. Code § 54.43(f). In making a determination that the instant Settlement was appropriate, I&E weighed the Commission's clear "zero tolerance" policy regarding slamming against various mitigating circumstances that are present here. Importantly, I&E acknowledges that Astral fully cooperated with I&E's investigation. Astral promptly responded to I&E's requests for information regarding the allegations of slamming and provided I&E with records, correspondence, and other documents associated with the unauthorized enrollments. Moreover, throughout the entire investigatory process, Astral and I&E

remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

### **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 investigation into the enrollment of non-residential customers to receive electric generation supply service from Astral without obtaining proper authorization. Notably, the civil penalty component of the Settlement serves to address I&E's allegations of slamming.

I&E intended to prove the factual allegations set forth in its investigation at hearing, to which the Company would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and Astral may disagree with respect to I&E's factual allegations, Astral recognizes the serious concerns related to slamming and commits to fully complying with 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**

I&E alleges that in connection with this slamming incident, Astral committed violations of the Public Utility Code and the Commission's regulations. While the alleged slamming was committed by an agent or employee of a third-party vendor, the Commission's regulations hold licensees liable for the conduct of third-party vendors. *See* 52 Pa. Code § 54.43(f); *See also* 52 Pa. Code § 111.3(b). As such, I&E submits that Astral is legally responsible for the alleged violations in this matter.

Based on I&E's allegations, I&E requests that the Commission approve the terms of the Settlement, which include directing Astral to pay a civil penalty in the amount of six thousand dollars (\$6,000.00) and implement measures that Astral has agreed to perform in order to prevent slamming conducted by a third-party vendor from happening in the future.

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

A. Astral will pay a civil penalty amount of six thousand dollars (\$6,000.00) to resolve all allegations of slamming and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations and the Code arising from, or related to, the accidental transmission, on or about October 22, 2015, of the six (6) active customer accounts. No portion of this civil penalty payment shall be recovered from Pennsylvania consumers by any future proceeding, device, or manner whatsoever. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to:

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

B. Astral has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against the transmission of erroneous or otherwise improper EGS enrollment data to the EDC. The pertinent portions of Astral's modified procedures are briefly described as follows:

i. Astral has designated one staff member, who is knowledgeable and experienced in EDI testing, to be solely responsible for EDI testing with EDCs and third-party vendors engaging in EDI testing on Astral's behalf;

ii. Astral and its third-party agents have agreed to treat any and all account numbers provided to it for EDI testing purposes as active customer account numbers and will take special care to ensure that customer accounts are not slammed as a result of EDI testing;

iii. Astral has established a Quality Control Department to follow-up with new and prospective customers and to monitor the performance of all marketing activity;

iv. Astral has agreed to continue to ensure that its employees, agents, and vendors are reminded of the Commission's regulations regarding consumer protection, with an emphasis on those prohibiting slamming;

v. Astral has established a Customer Complaint System wherein the Company:

1. Records all calls made to the Company's customer specific line for quality assurance and training and stores such calls for up to a month;

2. Attempts to resolve customer issues during the initial call, but no more than 5 business days of any customer inquiries;

3. Responds to customer requests to speak to a supervisor within 3 to 6 business days; and

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vi. Astral has established a BCS Complaint System, which is set forth as follows:

1. Astral has designated its compliance manager as the single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS;
2. Upon receipt of a complaint from BCS, the compliance manager of Astral investigates the complaint and makes contact with the complainant to determine if there is any additional information that requires further investigation and to work toward a resolution;
3. After investigation of the complaint, a written response is provided to the complainant, which includes a brief summary of the issue and the resolution to the complaint; and
4. A written response is also provided to BCS within 10 days upon receipt of the BCS complaint, if not sooner, which will include a summary of the complaint, Astral's policy regarding the issue, the resolution, and all information pertaining to enrollment of the complainant's account and end of service date.

In consideration of Astral's payment of a monetary civil penalty, in combination with the corrective actions undertaken by Astral, I&E agrees that its informal investigation relating to Astral's conduct as described in the Settlement Agreement 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 Astral at the Commission with respect to slamming during the time period examined by I&E's investigation.

## 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 Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

The 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). I&E submits that the violations at issue in this matter are of a serious nature in that they involve allegations of slamming and the Commission has stated that it maintains a “zero tolerance” regarding slamming. Therefore, I&E submits that Astral’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 Astral’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’s investigation has determined that six non-residential accounts were affected by Astral’s conduct. However, the customers who received electricity from Astral before being switched back their EGS of choice benefited because Astral provided those customers with electricity free of charge. Nevertheless, the enrollments were unauthorized and the act of enrolling customers to receive electric generation supply service without proper customer authorization has been recognized by

the Commission as a serious consequence. *See Pa. Pub. Util. Comm'n v. Energy Services, Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014).

Accordingly, I&E asserts that the resulting consequence of the actions of Astral or its agent, inadvertent or not, was of a serious nature.

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 Astral’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties. However, I&E submits that the unintentional nature of the conduct in question is a valid mitigating factor in this case.

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). When the issue of the unauthorized enrollments was brought to Astral’s attention, Astral promptly rescinded the improper enrollments. Additionally, Astral voluntarily modified its internal operating procedures to prevent this type of error from recurring in the future, as described in Paragraph 32(B) of the Settlement Agreement. Therefore, the Company has taken appropriate action to address concerns and decrease the likelihood of similar incidents in the future.

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 six non-residential customer accounts were

physically switched to receive electric generation from Astral without authorization. Each customer received EGS service from Astral at no charge for about seven days.

The sixth factor to be considered relates to the compliance history of Astral. 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.* This slamming incident was the first infraction on Astral's otherwise clean compliance history in Pennsylvania.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Throughout this investigation, the Parties remained active in communications and informal discovery. Astral fully cooperated in the process, maintained ongoing communication, and promptly responded to I&E's requests for information and documentation. Therefore, I&E submits that Astral cooperated with I&E throughout all phases of this investigation and settlement process.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$6,000 is substantial and sufficient to deter Astral from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The agreement between I&E and Astral provides a civil penalty of \$1,000 for each account that was physically switched to Astral's supply service without authorization, for a total civil penalty of \$6,000. This amount is similar

to the Commission's decision in *Pa. Pub. Util. Comm'n v. Energy Services, Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014) where a \$1,000 civil penalty per account switched was imposed. Further, just as was the case in previous slamming matters, Astral has since undertaken additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future.

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,

A handwritten signature in black ink, appearing to read "K. Myers", is written over a solid horizontal line.

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
PO Box 3265  
Harrisburg, PA 17105-3265  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: June 25, 2018

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility

Commission Bureau of

Investigation and Enforcement

RECEIVED

Docket no. M-2018-

v.

JUN 25 2018

Astral Energy LLC

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT OF ASTRAL ENERGY LLC**

Astral Energy LLC, a limited liability company per t to the laws of the State of New Jersey and a licensed electric generation supplier with the Pennsylvania Public Utility Commission (Astral or the --company") hereby submits its Statement in Support of the Settlement Agreement ("Settlement") or the above-referenced informal investigation by the Bureau of Investigation and Enforcement ("I&E") or the Pennsylvania Public Utility Commission ("Commission").

Astral Energy LLC Respectfully requests the commission approve said settlement without any modification and in further support of this settlement. Astral offers the following statement for the commissions consideration.

Astral has worked very closely with the I&E during the investigation. Astral was able to provide all the requested documents. Astral remained in active communication with all investigators to resolve any and all concerns or questions.

Astral would like to apologize to the state that it had to open an investigation in this matter. This was a breakdown in process Partly on Astral and its billing vendor Agility CIS and Latitude Technologies. Astral prides itself in strict quality control and compliance. Astral staff is committed to proving the best possible service to all its customers. Astral has since improved it internal process to prevent this from happening in the future recognizing that the all utilities could potentially be using active account numbers.

Astral Energy was a new Marketer in the state of Pennsylvania. Astral only began Marketing in Pennsylvania in March of 2016. Astral reviewed its records, Astral did not enroll any customers until April of 2016. During the stated period of July 2015 to August 2015 Astral was in EDI flight testing with the FirstEnergy utilities.

The process is as follows First Energy provides Astral with a EDI test plan, in this test plan Firstenergy includes utility account numbers for testing purposes. Astrals vendors are in direct contact with Firstenergy working back and forth to ensure proper connectivity and a seamless billing and data



transmission process. This testing process is standard across all markets and states to a degree. Some states and markets are stricter on the testing process and others are not.

During this testing process it appears that an error was made and that the "test" account numbers that Firstenergy provided to Astral were sent out to the market after testing was completed with Firstenergy. These were test account numbers provided to Astral from Firstenergy that turned out to be actual customer account numbers.

Astral never billed any customer that was enrolled due to this breakdown in process. Astral, after it was made aware alerted affected customers of the error and that they were being returned to the default service provider.

In conclusion Astral seeks that the commission find this settlement a fair and reasonable resolution of all issues outlined in the investigation, and thus determine that this settlement is in the public interest and approve it as such.

Astral has now refined its internal process to understand that "testing" data provided to Astral from any utility partner be recognized and treated as though it is actual customer data and will be subject to Astral' strict internal customer privacy rules.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Ashton Fox', with a date '6/15/18' written to the right of the signature.

Ashton Fox

Chief Operating Officer

Astral Energy LLC

580 Sylvan Ave Suite 2J

Englewood Cliffs NJ 07632

6-15-2018

RECEIVED

JUN 25 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement

v.

Astral Energy, LLC

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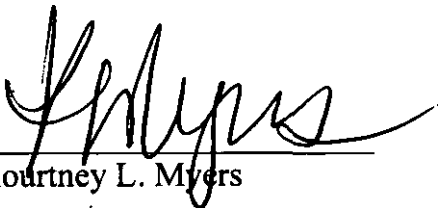
Docket No. M-2018-

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Complaint upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail:

Ashton D. Fox  
Chief Operating Officer  
Astral Energy, LLC  
580 Sylvan Avenue  
Suite 2J  
Englewood Cliffs, NJ 07632

  
Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
717.705.4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: June 25, 2018