



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

November 29, 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. Vista Energy Marketing, L.P.
Docket No. M-2018- 2624484
(Settlement Agreement)

Dear Secretary Chiavetta:

Enclosed for filing is the Settlement Agreement between the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission and Vista Energy Marketing, L.P., in the above-captioned proceeding. The Settlement Agreement consists of the Agreement and Appendices A through C consisting of: Appendix A – Proposed Ordering Paragraphs; Appendix B – Statement in Support of the Bureau of Investigation and Enforcement; Appendix C – Statement in Support of Vista Energy Marketing, L.P.

Copies have been served on the parties of record in accordance with the enclosed Certificate of Service. Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Timothy K. McHugh, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
(717) 772-8582
timchugh@pa.gov

Enclosure

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

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HARRISBURG, PA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement <p style="text-align: center;">v.</p> Vista Energy Marketing, L.P.	: : : : : : :	Docket No. M- 2018- <u>2624 484</u>
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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The parties to this Settlement Agreement (“Settlement Agreement” or “Agreement”) are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), by its prosecutors, P.O. Box 3265, Harrisburg, PA 17105-3265, and Vista Energy Marketing, L.P. (“Vista”), by its counsel, Bevan, Mosca & Giuditta, P.C., with offices located at 222 Mount Airy Road, Suite 200, Basking Ridge, NJ 07920.

2. The Pennsylvania Public Utility Commission (“Commission”) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within this Commonwealth pursuant to the Public Utility Code (“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.

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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) (delegating authority to initiate enforcement actions to I&E).

5. Vista is a licensed electric generation supplier (“EGS”) as defined by 66 Pa.C.S. § 2803. Vista is engaged in offering and furnishing electric generation services in territories as authorized by its license within the Commonwealth of Pennsylvania.¹

6. Vista, as a licensed provider of electric generation service, is subject to the power and authority of the Commission pursuant to Sections 501(c) and 2809(e) of the Code, 66 Pa.C.S. §§ 501(c) and 2809(e).

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over Vista’s actions as an EGS that serves customers in Pennsylvania.

8. 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 or Commission regulations, or

¹ Vista was granted Commission approval to operate as an EGS on December 22, 2016, at Docket No. A-2016-2569804.

both. Section 3301 of the Code further allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

9. Pursuant to 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, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

10. This matter concerns an informal investigation initiated by I&E prosecutory staff based on information referred to I&E by the Commission's Office of Competitive Market Oversight ("OCMO"). OCMO became aware of a local news story whereby an agent of Platinum Advertising II LLC's ("Platinum"), a third-party vendor authorized to hire and train sales agents to market/sell electric generation services on behalf of Vista, was apparently permitted to engage in door-to-door marketing without a proper criminal background investigation being first conducted. I&E determined that the information warranted that a further investigation be conducted to examine whether the criminal background investigation practices of Vista or its third-party vendor, Platinum, violated Commission regulations and orders.

11. As a result of negotiations between Vista and I&E (hereinafter referred to collectively as "Parties" or individually as "Party"), the Parties have reached an agreement on an appropriate outcome to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Parties

agree to the settlement terms set forth herein and urge the Commission to approve the Agreement as submitted as being in the public interest. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and Vista are attached hereto as Appendix B and Appendix C, respectively.

II. BACKGROUND

12. On August 30, 2017, a local television station posted an article on its website entitled “Suspect in rape case worked for local company going door-to-door.” The article reported that a local 23-year-old man (“the suspect”) “was charged last week by Bensalem police with rape and indecent assault of a young woman.” It was reported that the suspect told police officers that “he was working for Platinum Advertising going door-to-door trying to convince homeowners to change their energy company.” The suspect was not working nor was he engaged in work-related activities when the incident occurred. The article also reported that the assailant had previously pled guilty to the following: aggravated assault in 2015; providing false identification to a law enforcement officer in 2014; and criminal trespass and break-in in 2013.

13. After learning about the article, OCMO contacted Platinum to inquire whether the information reported in the story was correct. Platinum informed OCMO that the suspect was an independent contractor of Platinum selling electric generation services on behalf of Vista. Platinum claimed that it had initiated a criminal background check on the suspect on March 23, 2017; however, a “clerical error” allowed the suspect

to be issued an ID and work as an agent in the field marketing/selling electrical generation services on behalf of Vista.

14. Platinum claimed that on April 14, 2017, as a result of conducting a regular audit, it became aware of the suspect's criminal past and immediately terminated its relationship with him.

15. Platinum claimed that the suspect later reapplied as an independent contractor at another sales office under an assumed name and began selling electric generation services on behalf of Vista again from May 15, 2017 to August 18, 2017. Once the local television station posted its story about the suspect, Platinum again terminated its relationship with him.

16. OCMO referred the matter to I&E. An informal investigation was initiated by I&E into whether Platinum's criminal background investigation practices were in compliance with Section 111.4 of the Commission's regulations, 52 Pa. Code § 111.4. I&E determined that Platinum had entered into a contract with Vista as a third-party vendor to hire and train sales agents to market electric generation services on behalf of Vista and, as such, was an agent of Vista, a licensed EGS.² Therefore, I&E conducted a separate, but simultaneous investigation of Vista's criminal background investigation practices as well.

² "A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives." 52 Pa. Code § 54.43(f); *See also* 52 Pa Code § 111.3.

17. After sending multiple data requests to both Platinum and Vista,³ I&E concluded that it was not a “clerical error,” as Platinum alleged, that allowed the suspect in question to be issued an ID and work as an agent in the field. Beginning on or around March 8, 2017, and ending on or around April 18, 2017, Vista, at Platinum’s request, agreed to allow some door-to-door marketers, including the suspect, to be conditionally approved while their Pennsylvania Access to Criminal History (“PATCH”) reports were pending. On April 18, 2017, Vista informed Platinum that it would no longer conditionally approve any more agents until their PATCH reports were received and cleared.

18. During the course of its investigation, I&E concluded that a total of one hundred and twenty-four (124) agents were conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. Once the PATCH reports were received for the conditionally approved agents, Vista terminated two (2) agents due to the results of their PATCH reports, including the suspect. The suspect was permitted to sell EGS services on behalf of Vista from March 23, 2017 to April 19, 2017, and made one hundred and nine (109) sales attempts during that time, but he only enrolled forty (40) residential customers. The other agent who was later terminated once his PATCH report was received and reviewed was permitted to sell EGS services on behalf of Vista from April 21, 2017 to April 27, 2017. I&E was neither able to determine whether any

³ I&E sent three (3) sets of data requests to Platinum and two (2) sets of data requests to Vista during the course of this informal investigation(s).

sales attempts were made by this agent, nor quantify the sales attempts made by the rest of the one hundred and twenty-two (122) agents who were also conditionally approved before their PATCH reports were received and cleared by Platinum and Vista.

19. On or about August 31, 2017, upon learning about the incident involving the suspect, Vista terminated its relationship with Platinum due to its concerns that only agents with clear criminal background checks be allowed to sell EGS services on its behalf.

20. Vista has cooperated fully and promptly with I&E's investigation into this matter.

III. ALLEGED VIOLATIONS

21. Based on the information obtained through its investigation as described above and a review of the Code and Commission regulations, I&E was prepared to allege in a formal complaint that:

- a. Vista failed to comply with the Marketing and Sales Practices for the Retail Residential Energy Market, 52 Pa. Code §§ 111.1-111.14, in that it conditionally approved agents to sell EGS services on its behalf while their PATCH reports were pending. More specifically, Vista permitted the suspect to sell EGS services on its behalf while his PATCH report was pending, during which time the suspect made approximately one hundred and nine (109) sales attempts and enrolled forty (40) residential customers. Additionally, it

conditionally approved another agent whose completed PATCH report revealed that a prior conviction should have precluded him from selling EGS services on its behalf. Finally, it conditionally approved another one hundred and twenty-two agents (122) to sell EGS services on its behalf while their PATCH reports were pending.

b. If proven, this would have violated 52 Pa. Code § 111.4(b).

22. Vista understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges its error in conditionally approving agents to sell EGS services on its behalf while their PATCH reports were pending, and has put into effect appropriate measures that have been approved by I&E to ensure that such oversight is not likely to reoccur.

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

24. Throughout the entire investigatory process, I&E and Vista 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

25. Vista and I&E desire to: (i) terminate I&E's investigation; and (ii) settle this matter completely without litigation.

26. Vista does not dispute the allegations above, fully acknowledges the seriousness of conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending, and recognizes the need to prevent the reoccurrence of a similar situation.

27. The Parties further recognize the benefits of amicably resolving the disputed issues. The Parties do not believe that there are any other potentially affected parties with respect to the subject matter of this Settlement Agreement who should directly receive notice hereof.

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

- a. Vista will pay a total civil penalty in the amount of thirty-seven thousand, five hundred dollars (\$37,500) to resolve all alleged violations of Chapter 111 of the Commission's regulations concerning agent criminal background investigations and to fully and finally settle all possible liability and claims of alleged violations of the Code and Commission regulations arising from, or related to, the conduct investigated herein. The civil penalty

represents the following: (i) twenty-seven thousand, five hundred dollars (\$27,500) for the approximately one hundred and nine (109) sales attempts made by the suspect who was conditionally approved to sell EGS services on Vista's behalf while his PATCH reports were pending; (ii) one thousand dollars (\$1,000) for the other agent who was conditionally approved to sell EGS services on behalf of Vista and who was also terminated once his PATCH report was received and reviewed; and (iii) nine thousand dollars (\$9,000) for the rest of the one hundred and twenty-two (122) agents who were also conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. Said payment shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and forwarded to the Commission through the prosecuting attorney within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement. The civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- b. Vista has taken corrective action and is committed to diligently applying its policies, which will act as a safeguard against failing to comply with agent criminal background investigation requirements,

pursuant to 52 Pa. Code § 111.4. Specifically, Vista has designed and implemented the following quality control measures, with I&E's approval, to address this issue in the future:

- i. A commitment to cease granting conditional approval for agents to sell EGS services on Vista's behalf while their PATCH reports are pending;
 - ii. Revision to Vista's sales and marketing policies and procedures, as well as revisions to any and all training materials to ensure that Vista and/or its agents strictly adhere to the criminal background investigation requirements of Section 111.4 of the Commission's regulations, 52 Pa. Code § 111.4. The revisions specifically address the fact that agents may not be conditionally approved while their PATCH reports are pending; and
 - iii. Train internal and external (if applicable) sales and marketing representatives on the revised sales and marketing training materials, as referenced above.
- c. In exchange for the action taken by Vista described above, I&E agrees not to institute any formal complaint or take any other action in the nature of enforcement before the Commission or in any other forum relating to Vista conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending with

the Commission that is the subject of this 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.

- d. The terms and conditions in this Settlement Agreement cannot and shall not be used by any Party hereto and will not be introduced or admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system, or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by Vista.

V. CONDITIONS OF SETTLEMENT

29. 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 lesser sum to avoid the possibility of a larger fine or penalty resulting from litigation. This settlement represents a compromise by both Vista and I&E. Any fines and penalties resulting from a litigated proceeding typically are different from payments resulting from a settlement.

30. The Settlement Agreement meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201, which are more fully addressed in the Parties' respective Statements in Support. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses the issue of Vista conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending, which was the subject of I&E's investigation, avoids the time and expense of litigation, which entails hearings, travel for witnesses and Parties, and the preparation and filing of testimony, briefs, exceptions, reply exceptions, and possible appeals.

31. Upon the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest, Vista agrees to pay a civil penalty in the amount of \$37,500 within thirty (30) days of the date of the order approving this Settlement Agreement and timely implement the non-monetary terms set forth above in Paragraph 28, to completely resolve the allegations raised, or that could have been raised, by I&E's investigation.

32. This Settlement Agreement is a complete and final resolution of I&E's investigation related to the issues as described above.

33. Vista and I&E have agreed to this settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

34. Vista and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is

subject to all applicable administrative and common law treatments of settlements, settlement offers and/or negotiations, including, without limitation, the inadmissibility of unaccepted/unapproved settlements in accordance with the provisions of 52 Pa. Code § 5.231. The validity of this Settlement Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. Accordingly, this Settlement Agreement is made without any admission against or prejudice to any position which any Party might adopt during litigation of this case if this settlement is rejected by the Commission or withdrawn by any of the Parties as provided below. This Settlement Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of the terms and conditions contained herein without modification or amendment.

35. This Settlement Agreement reflects the terms and conditions of the Parties' settlement of this matter in their 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 Agreement shall be construed and interpreted under Pennsylvania law.

36. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or of any culpability or liability. I&E acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Code and the Commission's regulations.

37. If either Party should file exceptions to the tentative or final order of the Commission, the other Party shall have the right to file a reply to the exceptions.

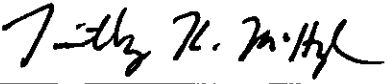
38. If the Commission fails to approve this Settlement Agreement by tentative and final order, including any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Settlement Agreement by filing a withdrawal in response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. 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.


WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and Vista Energy Marketing, L.P. respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

Respectfully submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

Vista Energy Marketing, L.P.

By: 
Timothy K. McHugh
Prosecutor
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Bureau of Investigation and Enforcement
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Date: 11/29/18

Date: 11/28/18

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Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement <p style="text-align: center;">v.</p> Vista Energy Marketing, L.P.	: : : : : : : : : :	Docket No. M-2018-2624484
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PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on November 29, 2018, between the Commission’s Bureau of Investigation and Enforcement and Vista Energy Marketing, L.P. (“Vista”) 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, Vista shall pay Thirty-Seven Thousand, Five Hundred Dollars (\$37,500). 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. Upon completion of the payment of its civil penalty, Vista shall, pursuant to the Commission’s regulations, 52 Pa. Code § 5.591, file notice of compliance with the Commission’s Secretary’s Bureau.

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

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement <p style="text-align: center;">v.</p> Vista Energy Marketing, L.P.	: : : : : : : : : :	Docket No. M- 2018- <u>2624484</u>
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**STATEMENT IN SUPPORT OF
BUREAU OF INVESTIGATION AND ENFORCEMENT**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) hereby submits this Statement in Support of the Settlement Agreement that was entered into by I&E and Vista Energy Marketing, L.P. (“Vista”) in the above-captioned matter. The Settlement Agreement fully resolves all issues related to I&E’s investigation into Vista’s criminal background investigation practices. I&E respectfully submits that the Settlement Agreement is in the public interest and requests that the Commission approve the Settlement Agreement, including the terms and conditions thereof, without modification.

I. BACKGROUND

This matter involves Vista, a licensed electric generation supplier (“EGS”) as defined by 66 Pa.C.S. § 2803. Vista is engaged in offering and furnishing electric

generation services in territories as authorized by its license within the Commonwealth of Pennsylvania.¹

On August 30, 2017, a local television station posted an article on its website entitled “Suspect in rape case worked for local company going door-to-door.” The article reported that a local 23-year-old man (“the suspect”) “was charged last week by Bensalem police with rape and indecent assault of a young woman.” It was reported that the suspect told police officers that “he was working for Platinum Advertising going door-to-door trying to convince homeowners to change their energy company.” The suspect was not working nor was he engaged in work-related activities when the incident occurred. The article also reported that the assailant had previously pled guilty to the following: aggravated assault in 2015; providing false identification to a law enforcement officer in 2014; and criminal trespass and break-in in 2013.

After learning about the article, the Commission’s Office of Competitive Market Oversight (“OCMO”) contacted Platinum to inquire whether the information reported in the story was correct. Platinum informed OCMO that the suspect was an independent contractor of Platinum selling electric generation services on behalf of Vista. Platinum claimed that it had initiated a criminal background check on the suspect on March 23, 2017; however, a “clerical error” allowed the suspect to be issued an ID and work as an agent in the field marketing/selling electrical generation services on behalf of Vista. On

¹ Vista was granted Commission approval to operate as an EGS on December 22, 2016, at Docket No. A-2016-2569804.

April 14, 2017, Platinum claimed that as a result of conducting a regular audit, it became aware of the suspect's criminal past and immediately terminated its relationship with him. Furthermore, it alleges that the suspect later reapplied as an independent contractor at another sales office under an assumed name and began selling electric generation services on behalf of Vista again from May 15, 2017 to August 18, 2017. Once the local television station posted its story about the suspect, Platinum again terminated its relationship with him.

OCMO referred the matter to I&E. An informal investigation was initiated by I&E into whether Platinum's criminal background investigation practices were in compliance with Section 111.4 of the Commission's regulations, 52 Pa. Code § 111.4. I&E determined that Platinum had entered into a contract with Vista as a third-party vendor to hire and train sales agents to market electric generation services on behalf of Vista and, as such, was an agent of Vista, a licensed EGS.² Therefore, I&E conducted a separate, but simultaneous investigation of Vista's criminal background investigation practices as well.

After sending multiple data requests to both Platinum and Vista,³ I&E concluded that it was not a "clerical error," as Platinum alleged, that allowed the suspect in question to be issued an ID and work as an agent in the field. Beginning on or around March 8,

² "A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives." 52 Pa. Code § 54.43(f); *See also* 52 Pa Code § 111.3.

³ I&E sent three (3) sets of data requests to Platinum and two (2) sets of data requests to Vista during the course of this informal investigation(s).

2017, and ending on or around April 18, 2017, Vista, at Platinum's request, agreed to allow some door-to-door marketers, including the suspect, to be conditionally approved while their Pennsylvania Access to Criminal History ("PATCH") reports were pending. On April 18, 2017, Vista informed Platinum that it would no longer conditionally approve any more agents until their PATCH reports were received and cleared.

During the course of its investigation, I&E concluded that a total of one hundred and twenty-four (124) agents were conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. Once the PATCH reports were received for the conditionally approved agents, Vista terminated two (2) agents due to the results of their PATCH reports, including the suspect. The suspect was permitted to sell EGS services on behalf of Vista from March 23, 2017 to April 19, 2017, and made one hundred and nine (109) sales attempts during that time, but he only enrolled forty (40) residential customers. The other agent who was later terminated once his PATCH report was received and reviewed was permitted to sell EGS services on behalf of Vista from April 21, 2017 to April 27, 2017. I&E was neither able to determine whether any sales attempts were made by this agent, nor quantify the sales attempts made by the rest of the one hundred and twenty-two (122) agents who were also conditionally approved before their PATCH reports were received and cleared by Platinum and Vista.⁴ On or about August 31, 2017, upon learning about the incident involving the suspect, Vista terminated

⁴ Based on documents provided by Vista, it does appear, however, that the majority of these agents did not make any sales attempts.

its relationship with Platinum due to its concerns that only agents with clear criminal background checks be allowed to sell EGS services on its behalf.

In making a determination that the instant Settlement Agreement was appropriate, I&E acknowledges that Vista fully cooperated with I&E's investigation. Vista promptly responded to I&E's communications regarding the informal investigation. Moreover, throughout the entire investigatory process, Vista and I&E (hereinafter referred to collectively as "Parties" or individually as "Party") 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.

II. TERMS OF SETTLEMENT

I&E alleges that Vista failed to comply with the Marketing and Sales Practices for the Retail Residential Energy Market, 52 Pa. Code §§ 111.1-111.14, in that it conditionally approved agents to sell EGS services on its behalf while their PATCH reports were pending. More specifically, Vista permitted the suspect to sell EGS services on its behalf while his PATCH report was pending, during which time the suspect made approximately one hundred and nine (109) sales attempts, but he only enrolled forty (40) residential customers. Additionally, Vista conditionally approved another agent whose completed PATCH report revealed that a prior conviction should have precluded him from selling EGS services on its behalf. Finally, it conditionally approved another one hundred and twenty-two (122) agents to sell EGS services on its behalf while their

PATCH reports were pending.⁵ Section 111.4(b) of the Commission's regulations requires, in part, that a criminal history record from the Pennsylvania State Police be obtained and reviewed before a person is permitted to conduct door-to-door sales and marketing activities on behalf of an EGS. 52 Pa. Code § 111.4(b). Therefore, by conditionally approving agents to sell EGS services on its behalf while their PATCH reports were pending, I&E submits that Vista is legally responsible for the alleged violations in this matter.

Based on these allegations, I&E requests that the Commission approve the terms of the Settlement Agreement, which includes directing Vista to pay a civil penalty in the amount of thirty-seven thousand, five hundred dollars (\$37,500), and implement appropriate measures approved by I&E to prevent Vista from conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending in the future. Under the terms of the Settlement Agreement, the Parties have agreed as follows:

- a. Vista will pay a total civil penalty in the amount of thirty-seven thousand, five hundred dollars (\$37,500) to resolve all alleged violations of Chapter 111 of the Commission's regulations concerning agent criminal background investigations and to fully and finally settle all possible liability and claims of alleged violations of the Code and Commission regulations arising from, or related to, the conduct investigated herein. The civil penalty represents the following: (i) twenty-seven thousand, five hundred dollars (\$27,500) for the approximately one hundred and nine (109) sales attempts made by the suspect who was conditionally approved to sell EGS services on Vista's behalf while his PATCH report was pending; (ii) one thousand dollars (\$1,000) for the other agent who was conditionally approved to sell EGS services on behalf of Vista and who was also terminated once his

⁵ Please see Footnote 4, above.

PATCH report was received and reviewed; and (iii) nine thousand dollars (\$9,000) for the rest of the one hundred and twenty-two (122) agents who were also conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. Said payment shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and forwarded to the Commission through the prosecuting attorney within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement. The civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- b. Vista has taken corrective action and is committed to diligently applying its policies, which will act as a safeguard against failing to comply with agent criminal background investigation requirements, pursuant to 52 Pa. Code § 111.4. Specifically, Vista has designed and implemented the following quality control measures, with I&E’s approval, to address this issue in the future:
 - i. A commitment to cease granting conditional approval for agents to sell EGS services on Vista’s behalf while their PATCH reports are pending;
 - ii. Revision to Vista’s sales and marketing policies and procedures, as well as revisions to any and all training materials to ensure that Vista and/or its agents strictly adhere to the criminal background investigation requirements of Section 111.4 of the Commission’s regulations, 52 Pa. Code § 111.4. The revisions specifically address the fact that agents may not be conditionally approved while their PATCH reports are pending; and
 - iii. Train internal and external (if applicable) sales and marketing representatives on the revised sales and marketing training materials, as referenced above.
- c. In exchange for the action taken by Vista described above, I&E agrees not to institute any formal complaint or take any other action in the nature of enforcement before the Commission or in any other forum relating to Vista conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending with the Commission that is the subject of this 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.

- d. The terms and conditions in this Settlement Agreement cannot and shall not be used by any Party hereto and will not be introduced or admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system, or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by Vista.

The terms of the Settlement Agreement are designed to act as an additional safeguard, beyond Vista's existing internal controls, to prevent conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending in the future. Consequently, the terms of the Settlement Agreement will benefit EGS markets and its corresponding customers.

III. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements decrease 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. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket No. 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. *See Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

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

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

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, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.* I&E alleges that the conduct in this case is as follows: Beginning on or around March 8, 2017, and ending on or around April 18, 2017, Vista, at Platinum’s request, allowed a total of one hundred and twenty-four (124) door-to-door marketers to be conditionally approved to sell EGS services on its behalf while their PATCH reports were pending. Once the PATCH reports were received for the conditionally approved agents, Vista terminated two (2) agents due to the results of their PATCH reports, including the suspect. The suspect was permitted to sell EGS services on behalf of Vista from March 23, 2017 to April 19, 2017, and made one hundred and nine (109) sales attempts during that time, but he only enrolled forty (40) residential customers. The other agent who was later terminated once his PATCH report was received and reviewed was permitted to sell EGS

services on behalf of Vista from April 21, 2017 to April 27, 2017.⁶ I&E submits that the violations involving failing to adhere to the Commission's regulations at 52 Pa. Code § 111.4 regarding criminal background investigation requirements is of a serious nature, in part, due to the potential for significant harm to residential customers. Furthermore, I&E acknowledges the Commission's zero-tolerance policy concerning inappropriate and unlawful EGS marketing practices. Therefore, I&E submits that the allegations stated above are of a more serious nature and were considered in arriving at the civil penalty in this Settlement Agreement.

The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). Section 69.1201(c)(2) of the Commission's regulations states that "[w]hen consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* I&E's investigation has determined that the resulting consequences of the conduct in question, more specifically non-compliance with the Commission's criminal background investigation requirements at 52 Pa. Code § 111.4, were not of a serious nature. There is no evidence to demonstrate that Vista's actions caused personal injury or property damage, nor was there any evidence to suggest that a residential

⁶ As stated earlier and in Paragraph 18 of the Settlement Agreement, I&E was neither able to determine whether any sales attempts were made by this agent, nor quantify the sales attempts made by the rest of the one hundred and twenty-two (122) agents who were also conditionally approved before their PATCH reports were received and cleared by Platinum and Vista. Based on documents provided by Vista, it does appear, however, that the majority of these agents did not make any sales attempts.

customer was subjected to the alleged criminal conduct of the suspect. Accordingly, I&E asserts that the resulting consequences of Vista's conduct were not of a serious nature.

The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). This factor is only to be considered when evaluating litigated cases. *Id.* Therefore, this factor does not apply to the present case because this proceeding is a settled matter.

The fourth factor to be considered is whether Vista made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As previously stated, Vista has taken corrective action and implemented revisions to its operating procedures, as described in Paragraph 28 of the Settlement Agreement, which will act as a safeguard against ensuring that it no longer conditionally approve agents to sell EGS services on its behalf while their PATCH reports are pending and prevent this type of violation from reoccurring. As such, Vista has taken appropriate action to address concerns and decrease the likelihood of similar incidents in the future.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). In this matter, it was possible that hundreds of residential customers could have been affected.⁷ The duration of the violation began on

⁷ As stated earlier and in Paragraph 18 of the Settlement Agreement, a total of one hundred and twenty-four (124) agents, including the suspect, were conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. The suspect alone made one hundred and nine (109) sales attempts between March 23, 2017 and April 19, 2017, but he only enrolled forty (40) residential customers. I&E was not, however, able to determine whether any sales attempts were made by the other one hundred and twenty-three (123) agents who were also conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending.

or around March 8, 2017, and ended on or around April 18, 2017. On April 18, 2017, Vista notified Platinum that it would no longer conditionally approve any more agents until their PATCH reports were received and cleared. However, since there is no evidence to suggest that a residential customer was subjected to the alleged criminal conduct of the suspect, I&E concludes that this factor does not necessarily support a higher penalty.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant company may result in a lower penalty.” *Id.* A review of Vista’s compliance history reveals that there has only been one (1) customer complaint against Vista, and it was satisfied. There have been no proceedings in which the Commission has made findings of violations against Vista. Therefore, I&E submits that the compliance history of Vista poses no barrier to approval of the Settlement between the Parties.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). Throughout this investigation, the Parties have remained active in communications and informal discovery. Vista fully cooperated in the process, maintained ongoing communication, and responded to I&E’s requests for information and documentation. Therefore, I&E

However, based on documents provided by Vista, it appears that the majority of these agents did not make any sales attempts.

submits that Vista cooperated with I&E throughout all phases of this investigation and settlement process.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The agreement between I&E and Vista provides a civil penalty of \$27,500 for the approximately one hundred and nine (109) sales attempts made by the suspect who was conditionally approved to sell EGS services on Vista's behalf while his PATCH report was pending, \$1,000 for the other agent who was conditionally approved to sell EGS services on behalf of Vista and who was also terminated once his PATCH report was received and reviewed, and \$9,000 for the rest of the one hundred and twenty-two (122) agents who were also conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending, for a total civil penalty of \$37,500. I&E submits that a civil penalty in the amount of \$37,500 is substantial and sufficient under the circumstances to deter Vista from committing future violations.

The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that there are no past Commission decisions directly responsive to the situation in this instant matter, which involves an I&E investigation of an EGS conditionally approving agents to sell EGS services while their PATCH reports are pending.⁸ Vista has, however, undertaken additional non-monetary corrective actions

⁸ In *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. SFE Energy Pennsylvania, Inc.*, Docket No. M-2016-2546422 (Order entered February 8, 2018), the Commission imposed a \$5,000 civil penalty after an EGS's data entry error committed when performing an initial criminal background check allowed an agent to market EGS services door-to-door on its behalf despite a later criminal background check revealing that the agent had a criminal history that should have

designed to prevent similar violations of the Commission's regulations from occurring in the future. Therefore, I&E requests that the Commission approve the civil penalty in full, without modification. For all of these reasons, I&E submits that this Settlement Agreement is consistent with past Commission actions and presents a fair and reasonable outcome.

Finally, the tenth factor considers any other relevant factor. 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.

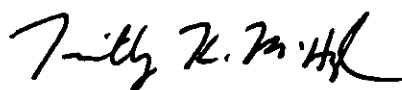
The Parties fully support the terms and conditions of this Settlement Agreement. The foregoing terms of this Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that

prohibited him from selling EGS services. There, however, while actively going door-to-door on behalf of the EGS, the agent engaged in criminal activity and was charged with burglary, criminal trespass, and drug possession. Due to the serious nature of the conduct at issue, the Commission imposed a higher civil penalty than the \$1,000 civil penalty which was agreed to by the parties.

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, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement fully supports the Settlement Agreement and respectfully requests that the Commission adopt an order approving the terms and conditions of this Settlement Agreement in its entirety.

Respectfully submitted,



Timothy K. McHugh
Prosecutor
PA Attorney ID No. 317906

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: November 29, 2018

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Appendix C

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2018-
	:	
Vista Energy Marketing, L.P.	:	

**STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT
OF PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Vista Energy Marketing, L.P. (“Vista”) submits this statement in support of the Settlement Agreement reached with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) Bureau of Investigation and Enforcement (“I&E”) intended to amicably and expeditiously resolve all issues in the above-captioned informal investigation without the need to engage in litigation. Vista believes the Settlement Agreement is a reasonable resolution of this matter. Vista is committed to ensuring compliance with all regulatory requirements and is committed to upholding high standards for its marketing vendors. As explained in the Settlement Agreement, Vista has taken all necessary steps to ensure regulatory compliance and has agreed to pay a reasonable civil penalty to resolve this matter. Approval of the Settlement Agreement is in the public interest and Vista urges the Commission to approve the Settlement Agreement as submitted. In further support of the Settlement Agreement, Vista offers the following additional information for the Commission’s consideration.

Vista has taken steps to ensure that the circumstances that led to this investigation will not and cannot be repeated. First, before I&E initiated its investigation into this matter with respect to

Vista, Vista halted any and all conditional approvals of Platinum agents prior to receipt of all required Pennsylvania background checks. With respect to the individual referenced in the Settlement Agreement, who was a Platinum agent and subject of the news story of August 30, 2017 which led to the investigation, Vista terminated its relationship with that individual as soon as it received a completed background check on April 19, 2017. When it was revealed that this agent had continued marketing activities for Platinum under an assumed name, Vista immediately terminated its relationship with Platinum.

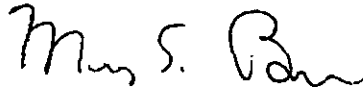
Second, and as fully explained in the Settlement Agreement, Vista has also taken steps to amend its policies and procedures to prevent reoccurrence. Vista has updated its policies regarding completion of criminal background checks and made additional policy changes during the course of the investigation in order to ensure continued and robust regulatory compliance. Vista has affirmatively contacted all of its marketing vendors and required them to acknowledge their understanding of, and compliance with, all of the applicable requirements for marketing, including obtaining the PATCH prior to marketing. All relevant Vista internal staff have undergone training on these requirements. As such, Vista is in compliance with the Commission's regulations and there is little to no potential for on-going or future violations of Commission regulations.

Vista's voluntary agreement to pay a civil penalty of thirty-seven thousand, five hundred dollars (\$37,500.00) represents a reasonable way to redress the present matter while recognizing that Vista took corrective action before I&E began its investigation. The computation of this penalty is set forth in the Settlement Agreement and the amount is reasonable and in the public's interest.

Vista worked diligently throughout the course of this investigation to provide all requested information to I&E and was forthright in its responses. Vista urges the Commission to find that the Settlement Agreement is in the public interest and should be approved for the following reasons: 1)

Vista halted conditional approvals of agents prior to the initiation of this investigation; 2) Vista implemented corrective and remedial measures prior to the I&E investigation and continued to improve its policies throughout the investigation; and 2) Vista has voluntarily agreed to pay a reasonable civil penalty to resolve this matter. Vista believes this Settlement Agreement represents a fair and equitable means of redress and encourages the Commission to adopt it without modification.

Respectfully submitted,



Murray E. Bevan

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Dated: 11/28/18

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :

Complainant

v.

Vista Energy Marketing, L.P.

Respondent

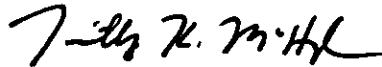
Docket No. M-2018-2624484

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document 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:

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Dated: November 29, 2018

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