



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

February 28, 2019

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-2019- 2633094
(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.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE
HARRISBURG, PA

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and	:	
Enforcement	:	
v.	:	Docket No. M- 2019- <u>2633094</u>
	:	
Vista Energy Marketing, L.P.	:	
	:	

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.

4. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (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 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).

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

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 Bureau of Consumer Services ("BCS"). BCS received allegations from residential customers that their electric generation service had been switched to Vista without the customers' authorization and that one of Vista's agents was engaged in door-to-door sales in an unauthorized area. I&E determined that the information warranted that a further investigation be conducted to examine whether the actions of Vista or its agents 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. In August, September, and October 2017, BCS received several informal complaints against Vista. These complaints were filed as BCS Nos. 3551377, 3553113, 3563403, 3563467, 3569005, and 3572249. In all but one of the complaints, the Complainants alleged that Vista enrolled their residential accounts to receive electric generation supply service without proper customer authorization (“slamming”). The other complaint alleged that one of Vista’s agents engaged in door-to-door sales in a senior citizen community where signs were clearly posted stating “No Solicitation.”

13. The complaints filed with BCS are summarized as follows:

- a. BCS# 3551377 was received by BCS on August 7, 2017. The Complainant alleged that she was visited by one of Vista’s agents on July 25, 2017. Despite claiming that she told the agent that she was not interested in enrolling her account with Vista, she was enrolled anyway. After accepting the Complainant’s representation of what happened, Vista cancelled Complainant’s account on August 7, 2017, and charges were credited back to her. The agent involved was terminated.
- b. BCS# 3553113 was received by BCS on August 14, 2017. The Complainant alleged that on July 25, 2017, her mother was enrolled

at a rate higher than her current rate by an agent who was conducting door-to-door sales on behalf of Vista in a senior citizen community with marked signs advising “No Solicitation.” Vista re-rated the account, but verified that Complainant’s mother participated in a third-party verification. The agent was no longer active at the time of I&E’s investigation.

- c. BCS# 3563403 was received by BCS on September 18, 2017. The Complainant alleged that on September 9, 2017, her mother’s account was enrolled with Vista without receiving proper authorization. Complainant alleged such because her mother could not speak due to a health condition and no one else was present to provide such authorization. However, a third-party verification was obtained from a person who claimed they were authorized to switch services on behalf of the Complainant’s mother. Vista accepted the Complainant’s claim and cancelled the account. No charges were assessed, and the agent was deactivated.
- d. BCS# 3563467 was received by BCS on September 20, 2017. The Complainant alleged that on September 12, 2017, he was enrolled with Vista without his consent. Through its own investigation, Vista concluded that the Complainant’s daughter had enrolled the account, but after discussing it with her father, they decided to cancel the

account with Vista. Vista credited the Complainant with any charges that appeared on his account and cancelled the account accordingly.

- e. BCS# 3569005 was received by BCS on October 10, 2017. The Complainant alleged that her account was enrolled with Vista on September 15, 2017. The Complainant claims that she lives alone and was out-of-town on the day her account was enrolled. Vista accepted the Complainant's claim and cancelled her account. No charges were assessed, and the agent was eventually terminated.
- f. BCS# 3572249 was received by BCS on October 23, 2017. The Complainant alleges that her account was enrolled with Vista on October 13, 2017, without her consent. Vista accepted the Complainant's claim and cancelled her account. No charges were assessed to her, and the agent was eventually terminated.

14. In each complaint, once Vista became aware of the mistaken enrollments, it took immediate corrective action, including cancelling the Complainants' enrollment with Vista, ensuring that no charges were assessed to the Complainants, and punishing the agents accordingly.

15. BCS requested that I&E review the matter. An informal investigation was initiated by I&E into whether Vista enrolled customers in their electric generation service without proper authorization, which would be contrary to the Commission's regulations

related to the “Standards for Changing a Customer’s Electricity Generation Supplier” at 52 Pa. Code §§ 57.171-179.

16. By letters dated February 16, 2018, and April 18, 2018, I&E requested that Vista provide responses to data requests related to the above-mentioned slamming allegations.² Vista timely complied with I&E’s requests.

17. Vista had internal controls in place and required all vendors and agents to abide by them, including monitoring agents for compliance, daily review of all third-party verifications³ (“TPV” or “TPVs”), and regular audits of enrollments. In addition, Vista employs internal quality assurance (“QA”) agents whose responsibility was to review one hundred percent of the TPVs. When doing so, they are instructed to reject an enrollment even if it had cleared TPV if the customer sounded uncertain, confused, or suspicious in any way. If the QA agent deemed that the TPV was questionable, s/he would follow up by contacting the customer to verify his/her intent to enroll with Vista.

18. Vista acknowledges that due to the success of its event marketing enrollments, its increased sales volume challenged its QA resources. As a result, it developed what it considered to be a more risk-oriented approach to QA by utilizing

² During the initial phases of this investigation, I&E was also conducting a separate investigation regarding Vista’s criminal background investigation practices. I&E did not want to complicate or cause confusion between the two (2) separate investigations, so proceeded first with the investigation that culminated in I&E and Vista agreeing to the terms of a settlement agreement at Docket No. M-2018-2624484. Once that settlement agreement was signed and filed with the Commission, I&E continued with this current investigation.

³ Verification is a process used to confirm that the customer authorized the transfer of the account to the supplier. All TPVs performed over the telephone are recorded.

algorithms that were designed to identify higher risk sales. This approach to QA was used in limited circumstances when higher sales volume prevented one hundred percent QA review of TPVs. On January 25, 2018, Vista resumed its previous practice of having one hundred percent of TPVs reviewed by a QA agent.

19. After completing its investigation, I&E concluded that that the Complainants who filed BCS Nos. 3551377, 3563403, 3569005, and 3572249 had their electric generation supplier switched to Vista without the authorization of the customers. I&E found that this likely occurred as a result of Vista incorporating its risk-oriented approach to QA, as discussed in Paragraph 18, above. I&E's investigation did not reveal any other instances where residential customers had their electric generation service switched to Vista without the customer's authorization.

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. The action of Vista or its agents initiated the process of switching the electric generation supplier on four (4) accounts without the authorization of the customers.

- b. If proven, this would be a violation of the Electric 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).

22. Vista understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges its error in switching to a risk-oriented QA approach that likely resulted in residential accounts being enrolled to receive electric generation supply service from Vista without proper authorization, 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 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. Vista has implemented its own extensive internal policies to prevent slamming and has its own internal "zero-tolerance" policy.

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 four thousand dollars (\$4,000) to resolve all allegations of slamming 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. 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 the unauthorized switch of customer accounts initiated by a third-party vendor. Specifically, Vista has terminated its relationship with the agents whose actions are the cause of this present matter and has instructed its third-party vendors not to assign the agents to any Vista accounts or contracts. Additionally, once Vista became aware of the mistaken enrollments, it took immediate corrective action, including cancelling the Complainants’ enrollment with Vista and ensuring that no charges were assessed to the Complainants.

Furthermore, Vista implemented the following quality control measures, with I&E’s approval, to address this issue in the future:

- i. For each third-party vendor with whom Vista seeks to engage in business, Vista will affirmatively inquire about whether the agents, whose actions are the cause

of this present matter, is employed by or associated with the company.

- ii. Vista shall continue to ensure that its agents are reminded of the Commission's regulations regarding consumer protection, with an emphasis on those prohibiting slamming.
 - iii. Vista shall provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS.
 - iv. Vista will continue to respond to all consumer inquiries and complaints relating to fraudulent, deceptive, or otherwise unlawful acts in the process of marketing supplier products and/or services in accordance with BCS requirements, including providing to BCS staff a copy of the customer contract and any audio recordings of the verification call, when such recordings are available to Vista.
 - v. For a term of twelve (12) months starting after the date of entry of the Commission's order approving settlement in this matter, Vista shall provide to BCS staff, in the first week of each calendar quarter, a report for the prior quarter that captures the following data concerning customer complaints filed directly with Vista: (1) the number of complaints by category, i.e. slamming, do-not-call list violations, incorrect charges, etc.; and (2) any process improvements, organizational changes, etc. that were implemented to reduce or eliminate similar complaints going forward.
- c. In exchange for the action taken by Vista 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. 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 settlement typically are different from payments resulting from a litigated proceeding.

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 unauthorized customer enrollments, 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 four thousand dollars (\$4,000) 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.

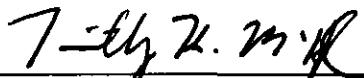
38. If the Commission fails to approve by tentative and final order this Settlement Agreement, including any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Settlement Agreement by filing a withdrawal in response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

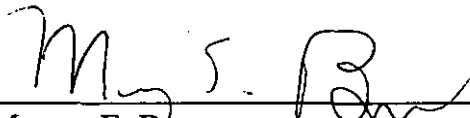
WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Vista Energy Marketing, L.P. respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement in their entirety as being in the public interest.

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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Date: 2/27/19

Date: 2/26/19

Appendix A

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FRONT DESK

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<p>Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement</p> <p style="text-align: center;">v.</p> <p>Vista Energy Marketing, L.P.</p>	<p>: : : : : : :</p>	<p>Docket No. M-2019-</p>
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PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on February 28, 2019, 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 Four Thousand Dollars (\$4,000). 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.

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<p>Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement</p> <p style="text-align: center;">v.</p> <p>Vista Energy Marketing, L.P.</p>	<p>: : : : : : :</p>	<p>Docket No. M- 2019- _____</p>
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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, if approved, fully resolves all issues related to I&E’s investigation into the enrollment of residential customers to receive electric generation supply service from Vista without obtaining proper authorization, a practice known as “slamming.” 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

In August, September, and October 2017, BCS received several informal complaints against Vista. These complaints were filed as BCS Nos. 3551377, 3553113, 3563403, 3563467, 3569005, and 3572249. In all but one of the complaints, Complainants alleged that Vista enrolled their residential accounts to receive electric generation supply service without proper customer authorization. The other complaint alleged that one of Vista's agents engaged in door-to-door sales in a senior citizen community where signs were clearly posted stating "No Solicitation."

The complaints filed with BCS are summarized as follows:

- a. BCS# 3551377 was received by BCS on August 7, 2017. Complainant alleged that she was visited by one of Vista's agents on July 25, 2017. Despite claiming that she told the agent that she was not interested in enrolling her account with Vista, she was enrolled anyway. After accepting Complainant's representation of what happened, Vista cancelled Complainant's account on August 7, 2017, and charges were credited back to her. The agent involved was terminated.

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

- b. BCS# 3553113 was received by BCS on August 14, 2017. Complainant alleged that on July 25, 2017, her mother was enrolled at a rate higher than her current rate by an agent who was conducting door-to-door sales on behalf of Vista in a senior citizen community with marked signs advising “No Solicitation.” Vista re-rated the account, but verified that Complainant’s mother participated in a third-party verification. The agent was no longer active at the time of I&E’s investigation.
- c. BCS# 3563403 was received by BCS on September 18, 2017. Complainant alleged that on September 9, 2017, her mother’s account was enrolled with Vista without receiving proper authorization. Complainant alleged such because her mother could not speak due to a health condition and no one else was present to provide such authorization. However, a third-party verification was obtained from a person who claimed they were authorized to switch services on behalf of Complainant’s mother. Vista accepted Complainant’s claim and cancelled the account. No charges were assessed, and the agent was deactivated.
- d. BCS# 3563467 was received by BCS on September 20, 2017. Complainant alleged that on September 12, 2017, he was enrolled with Vista without his consent. Through its own investigation, Vista

concluded that Complainant's daughter had enrolled the account, but after discussing it with her father, they decided to cancel the account with Vista. Vista credited Complainant with any charges that appeared on his account and cancelled the account accordingly.

e. BCS# 3569005 was received by BCS on October 10, 2017.

Complainant alleged that her account was enrolled with Vista on September 15, 2017. Complainant claims that she lives alone and was out-of-town on the day her account was enrolled. Vista accepted Complainant's claim and cancelled her account. No charges were assessed, and the agent was eventually terminated.

f. BCS# 3572249 was received by BCS on October 23, 2017.

Complainant alleges that her account was enrolled with Vista on October 13, 2017, without her consent. Vista accepted Complainant's claim and cancelled her account. No charges were assessed to her, and the agent was eventually terminated.

In each complaint, once Vista became aware of the mistaken enrollments, it took immediate corrective action, including cancelling Complainants' enrollment with Vista, ensuring that no charges were assessed to Complainants, and punishing the agents accordingly.

BCS requested that I&E review the matter. An informal investigation was initiated by I&E into whether Vista enrolled customers in their electric generation service

without proper authorization, which would be contrary to the Commission's regulations related to the "Standards for Changing a Customer's Electricity Generation Supplier" at 52 Pa. Code §§ 57.171-179.

By letters dated February 16, 2018, and April 18, 2018, I&E requested that Vista provide responses to data requests related to the above-mentioned slamming allegations.² Vista timely complied with I&E's requests.

Vista had internal controls in place and required all vendors and agents to abide by them, including monitoring agents for compliance, daily review of all third-party verifications³ ("TPV" or "TPVs"), and regular audits of enrollments. In addition, Vista employs internal quality assurance ("QA") agents whose responsibility was to review one hundred percent of the TPVs. When doing so, they are instructed to reject an enrollment even if it had cleared TPV if the customer sounded uncertain, confused, or suspicious in any way. If the QA agent deemed that the TPV was questionable, s/he would follow up by contacting the customer to verify his/her intent to enroll with Vista.

Vista acknowledges that due to the success of its event marketing enrollments, its increased sales volume challenged its QA resources. As a result, it developed what it

² During the initial phases of this investigation, I&E was also conducting a separate investigation regarding Vista's criminal background investigation practices. I&E did not want to complicate or cause confusion between the two (2) separate investigations, so proceeded first with the investigation that culminated in I&E and Vista agreeing to the terms of a settlement agreement at Docket No. M-2018-2624484. Once that settlement agreement was signed and filed with the Commission, I&E continued with this current investigation.

³ Verification is a process used to confirm that the customer authorized the transfer of the account to the supplier. All TPVs performed over the telephone are recorded.

considered to be a more risk-oriented approach to QA by utilizing algorithms that were designed to identify higher risk sales. This approach to QA was used in limited circumstances when higher sales volume prevented one hundred percent QA review of TPVs. On January 25, 2018, Vista resumed its previous practice of having one hundred percent of TPVs reviewed by a QA agent.

After completing its investigation, I&E concluded that Complainants who filed BCS Nos. 3551377, 3563403, 3569005, and 3572249 had their electric generation supplier physically switched to Vista without the authorization of the customers. I&E found that this likely occurred as a result of Vista incorporating its risk-oriented approach to QA, as discussed above. I&E's investigation did not reveal any other instances where residential customers had their electric generation service switched to Vista without the customer's authorization.

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 in connection with these slamming incidents, Vista 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 § 54.45(f); *See also* 52 Pa. Code § 111.3(b). As such, I&E submits that Vista 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 Vista to pay a civil penalty in the amount of four thousand dollars (\$4,000) and implement measures that Vista 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 Agreement, I&E and Vista have agreed as follows:

- a. Vista will pay a civil penalty in the amount of four thousand dollars (\$4,000) to resolve all allegations of slamming 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 action of Vista and/or its agents that initiated the process of switching the electric generation supplier on four (4) accounts without the authorization of the customers. 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 against the unauthorized switch of customer accounts initiated by a third-party vendor. Specifically, Vista has terminated its relationship with the agents whose actions are the cause of this present matter and has instructed its third-party vendors not to assign the agents to any Vista accounts or contracts. Additionally, once Vista became aware of the mistaken enrollments, it took immediate corrective action, including cancelling Complainants' enrollment with Vista and ensuring that no charges were assessed to Complainants. Furthermore, Vista implemented the following quality control measures, with I&E's approval, to address this issue in the future:
- i. For each third-party vendor with whom Vista seeks to engage in business, Vista will affirmatively inquire about whether the agents, whose actions are the cause of this present matter, are employed by or associated with the company.
 - ii. Vista shall continue to ensure that its agents are reminded of the Commission's regulations regarding consumer protection, with an emphasis on those prohibiting slamming.
 - iii. Vista shall provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS.
 - iv. Vista will continue to respond to all consumer inquiries and complaints relating to fraudulent, deceptive, or otherwise unlawful acts in the process of marketing supplier products and/or services in accordance with BCS requirements, including providing to BCS staff a copy of the customer contract and any audio recordings of the verification call, when such recordings are available to Vista.
 - v. For a term of twelve (12) months starting after the date of entry of the Commission's order approving settlement in this matter, Vista shall provide to BCS staff, in the first week of each calendar quarter, a report for the prior quarter that captures the following

data concerning customer complaints filed directly with Vista: (1) the number of complaints by category, i.e. slamming, do-not-call list violations, incorrect charges, etc.; and (2) any process improvements, organizational changes, etc. that were implemented to reduce or eliminate similar complaints going forward.

- c. In exchange for the action taken by Vista 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. 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 safeguard against the unauthorized switch of customer accounts initiated by a third-party vendor. 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 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 Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten (10) 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 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 "zero tolerance" with regards to slamming. Therefore, I&E submits that Vista's conduct is of a serious nature and was 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). I&E's investigation has determined that four (4) residential customers had their electric generation service physically switched to Vista without proper authorization. However, once made aware of the situation, Vista promptly rectified the situation by cancelling Complainants' enrollment with Vista, ensuring that no charges were assessed to Complainants, and punishing the responsible agents accordingly. Nevertheless, the enrollment was unauthorized and the act of enrolling customers to receive electric generation service without proper customer authorization has been recognized by the Commission as a serious consequence. *See Pa. Pub. Util. Comm'n Bureau of Investigation and Enforcement v. 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 Vista or its agents was 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). When the issue of the unauthorized enrollment was brought to Vista's attention, Vista promptly rescinded the enrollments

and took action to ensure that no charges were assessed to Complainants. In addition, 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 to prevent this type of error from recurring in the future. 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). I&E's investigation determined that four (4) residential customer accounts were physically switched to receive electric generation from Vista without authorization. The customers received EGS services from Vista for approximately ten (10), eleven (11), fourteen (14), and twenty-seven (27) days.

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 been one (1) other proceeding initiated against Vista regarding its criminal background investigation practices that culminated in I&E and Vista agreeing to the terms of a settlement agreement at Docket No. M-2018-2624484.

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 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). I&E submits that a civil penalty in the amount of \$4,000 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). The Settlement Agreement between I&E and Vista provides a civil penalty of \$1,000 for each account that was physically switched to Vista's supply service without authorization, for a total civil penalty of \$4,000. 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, Vista has since undertaken additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future. 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.

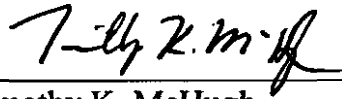
Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was

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 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: February 27, 2019

Appendix C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2019-
	:	
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 investigation. 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 be repeated. Specifically, Vista took immediate corrective action once it became aware of the mistaken enrollments at issue in this matter. Vista ensures that no charges were assessed to any of the Complainants and removed the agents responsible for the mistaken enrollments. Moreover, Vista implemented increased quality assurance (“QA”) protocols in response to the complaints to prevent unauthorized sales from becoming actual enrollments.

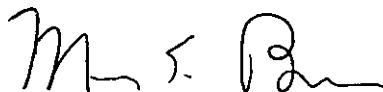
As fully explained in the Settlement Agreement, Vista has also taken steps to amend its policies and procedures to prevent reoccurrence. Vista requires review of 100% of its third-party verifications (“TPVs”) to ensure that customers are voluntarily switching to Vista. Vista regularly audits all of its enrollments to ensure compliance with Pennsylvania regulations and requirements. As such, Vista is in compliance with the Commission’s regulations and has taken substantial action to prevent future potential violations of Commission regulations.

Vista’s voluntary agreement to pay a civil penalty of four thousand dollars (\$4,000.00) represents a reasonable redress of the present investigation while recognizing that Vista took corrective action even before I&E began its investigation. The computation of this penalty is set forth in I&E’s papers. This settlement amount is reasonable and is 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 implemented corrective and remedial measures prior to the I&E investigation; 2) Vista continued to update its policies throughout the investigation; and 3) Vista has voluntarily agreed to pay a reasonable civil penalty. Vista also agrees to increased monitoring of its complaints and process improvements so that PUC staff can continue to monitor Vista’s activities. 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: Feb. 27, 2019

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

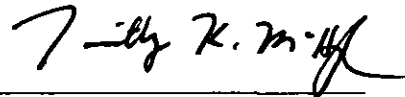
Pennsylvania Public Utility Commission, :	:	
Bureau of Investigation and Enforcement, :	:	
	:	
Complainant	:	
v.	:	Docket No. M-2019-
	:	
Vista Energy Marketing, L.P.	:	
	:	
Respondent	:	

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:

Murray E Bevan, Esq.
John D. Coyle, Esq.
Bevan, Mosca & Giuditta, P.C.
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Timothy K. McHugh
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Dated: February 28, 2019

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