

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

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

v.

Vista Energy, L.P.

**Public Meeting held March 14, 2019
2624484-OSA**

Docket No. M-2018-2624484

MOTION OF CHAIRMAN GLADYS M. BROWN

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Settlement Agreement (Settlement) filed November 9, 2018 by the Commission's Bureau of Investigation and Enforcement (I&E) and Vista Energy Marketing, L.P. (Vista or Company) (collectively, the Parties) with respect to an Informal Investigation conducted by I&E. The investigation was sparked from a news report concerning a suspect allegedly committing criminal activities while marketing generation supplier (EGS) services door-to-door.

Here, I&E and Vista concluded that from approximately March 8, 2017 to April 18, 2017 the Company permitted sub-contracted door-to-door marketers to operate while their Pennsylvania Access to Criminal History (PATCH) queries were pending. The Settlement shows that, *inter alia*, a total of 124 individuals were conditionally approved to sell EGS services on behalf of Vista pending results of their PATCH reports. The Settlement indicates that two individual PATCH reports resulted in the termination of two employees whom both had made sales on behalf of Vista.

In the Settlement, Vista agrees to pay a civil penalty of \$37,500, acknowledges that the Company has taken corrective action to ensure similar events will not recur, and agrees to modify its operational procedures in an effort to further assure similar events do not recur.

When reviewing applicable regulations and the record in this proceeding, it seems apparent that the Company did not comply with 52 Pa. Code §§ 111.1-111.14. These regulations, in pertinent part state....

A supplier may not permit a person to conduct door-to-door sales and marketing activities until it has obtained and reviewed a criminal history record from the Pennsylvania State Police and from every other state in which the person resided for the last 12 months....

I am not convinced the settled upon civil penalty of \$37,500 is in the public interest. The Commission has some latitude in the process by which it may calculate a civil penalty in accordance with our long-standing Rose standards. Generally, the method is to first determine the number of violations of a statute, order, or regulation. Subsequently, each of these violations can

be multiplied by a value between \$0 and \$1,000 which reflects the severity of the violation.¹ In the instant proceeding, the Company committed, at a minimum, 124 violations of Commission regulations by permitting 124 sub-contractors to offer EGS marketing services without having first completed background checks. Under the existing civil penalty this equates to a fine of \$302.42 per violation.

I submit that, pursuant to the Commission's policy statement for the evaluation of settled violation proceedings, this amount per violation is not in the public interest. It is apparent from the record that these violations are of a serious nature. While it is not prudent to speculate, it is reasonably logical to conclude that temporarily authorizing personnel to market door-to-door without fully completing criminal background reviews may result in serious consequences and irreparable public harm. Further, the record exhibits that the Company did not commit these violations in error but rather permitted the violations to occur at the request of a sub-contractor, Platinum Advertising II LLC (Platinum).

I will note there are some components in this record mitigating the necessity for a maximum fine. The Company has exhibited a good faith effort to remedy these violations and has cooperated with I&E.

Balancing all these variables, it is imperative to establish a penalty which will deter future violations from this Company, and, send a proper signal to the Commonwealth's marketplace on the severity of violations of this nature. The regulations in this instance are clear, permitting any person to conduct door-to-door marketing or sales activities without having obtained and reviewed a background check is a violation. It is unfortunate, but necessary to ensure that this fact is made abundantly clear to Vista as well as other EGSs and natural gas suppliers. The Commission's most similar case involving violation of background check requirements involved a data-entry error which allowed one agent to pass a background check in error.² That case resulted in a \$5,000 civil penalty.

Therefore, I believe it necessary to increase the civil penalty to \$52,700. This represents a per violation fine amount of \$425 applied to each of the 124 violations and a total increase in the fine of \$15,200, or 40%. This increase is in the public interest since it more appropriately recognizes the severity and gravity of the actions. Further, the remainder of all settlement provisions should be retained by the Parties.

THEREFORE, I MOVE THAT:

1. The Settlement Agreement between Vista Energy, L.P. and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement is modified consistent with this Motion.
2. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.

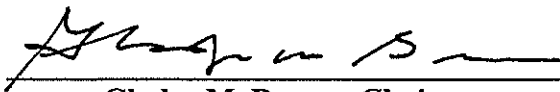
¹ §3301(a) offers a maximum per violation amount of \$1,000. §69.1201 offers guidance in determining the number between \$0 and \$1,000.

² *PUC I&E v. SFE Energy Pennsylvania, Inc.*, Docket No M-2016-2546422 Order entered February 8, 2018.

3. The Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Vista Energy, L.P. shall have 45 days from issuance of an Opinion and Order to indicate by letter whether it intends to withdraw from the Settlement.
4. Should either the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement or Vista Energy, L.P. inform the Commission of its withdrawal from the Settlement, this proceeding shall be referred to the Office of Administrative Law Judge for appropriate hearings.

March 14, 2019

Date



Gladys M. Brown, Chairman