PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held June 13, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

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| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement  v.  Astral Energy, LLC |  | M-2018-2529738 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Settlement Agreement (Settlement) filed on June 25, 2018, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Astral Energy, LLC[[1]](#footnote-1) (Astral or Company) (collectively, the Parties), with respect to an Informal Investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. For the reasons set forth herein, we will approve the Settlement as filed.

**History of the Proceeding**

This matter involves an informal investigation I&E initiated, consistent with Sections 331(a) and 506 of the Public Utility Code (the Code), 66 Pa. C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s Regulations, 52 Pa. Code § 3.113. The informal investigation focused on an allegation of slamming[[2]](#footnote-2) raised in an informal complaint that the Commission’s Bureau of Consumer Services (BCS) received and an electric distribution company’s (EDC) telephone call to Commission staff.

As part of the investigation, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. As a result of those negotiations, the Parties filed the instant Settlement on June 25, 2018.

By Order entered December 20, 2018 (*December 2018 Order*), the Commission provided interested parties with twenty days from the entry date of the *December 2018 Order* to file comments concerning the Settlement. No comments have been filed.

**Background**

During the summer of 2015, FirstEnergy conducted electronic data interchange (EDI)[[3]](#footnote-3) testing with Astral’s third-party vendors, Latitude Technologies (Latitude) in conjunction with Agility CIS (Agility) (collectively, third-party vendors). FirstEnergy provided Astral with an EDI test plan that set forth different test scenarios for customer enrollment before engaging in the EDI testing. In addition to the test plan, FirstEnergy provided Astral with seven account numbers to use during EDI testing (test account numbers). Settlement at 5; I&E Statement in Support at 2. Six out of the seven numbers were active customer account numbers and one was fictitious and inactive. Settlement at 4; I&E Statement in Support at 2. Neither Astral nor its third-party vendors were notified that some of the test account numbers were actual customer account numbers. Settlement at 5; I&E Statement in Support at 3. Furthermore, FirstEnergy does not have any record of notifying Astral or its third-party vendors that some of the test account numbers were associated with active customer accounts. Settlement at 5; I&E Statement in Support at 2-3.

Astral’s third-party vendors used the test account numbers to complete the customer enrollment test scenarios with FirstEnergy, which included creating and sending enrollment requests, rejecting enrollment requests, dropping enrollment requests, rescinding drop requests, and reinstating enrollments. Astral’s third-party vendors sent each type of request to FirstEnergy’s test environment only and not to its live system. Settlement at 5. On August 24, 2015, Astral successfully completed all EDI testing scenarios with FirstEnergy and Astral’s production connectivity, which provided the Company with the ability to enroll customers, was subsequently established on September 1, 2015. Settlement at 5; I&E Statement in Support at 3.

On October 22, 2015, Astral’s third-party vendors mistakenly submitted the seven test account numbers for enrollment to FirstEnergy’s live system. On that same day, six of the seven test accounts were enrolled with Astral. Settlement at 5; I&E Statement in Support at 3.

By October 29, 2015, the Company had dropped the enrollments for each affected account because Astral took immediate corrective action once it became aware of the mistaken enrollments. Astral and its third-party vendors also conducted a system-wide audit to ensure that no other accounts had been accidentally enrolled. Astral determined that all six affected accounts were non-residential accounts. In addition, Astral did not charge the affected customers for electric generation supply service as a result of these unauthorized enrollments. Settlement at 6.

On November 16, 2015, FirstEnergy informed the Commission’s Office of Competitive Market Oversight (OCMO) that it had received several calls to its call center from customers who complained that Astral switched their EGS without proper authorization in October 2015. Settlement at 6; I&E Statement in Support at 3. A review of BCS records indicated that on October 28, 2015, an informal complaint had been filed against Astral regarding an allegation of slamming. Settlement at 4.

After FirstEnergy alerted Astral of the issue, Astral voluntarily investigated the enrollments in question and found that its third-party vendors had mistakenly enrolled six customers whose actual account numbers had been provided to Astral by FirstEnergy for EDI testing purposes. Settlement at 4. Subsequently, BCS referred the matter involving Astral to I&E for an informal investigation. Settlement at 6; I&E Statement in Support at 3. At the time of the referral to I&E, BCS had not received any additional unauthorized enrollment complaints regarding Astral and, in fact, this was the first informal complaint and compliance issue with Astral. Settlement at 6.

Through its investigation I&E was prepared to contend that the actions of the Company or its agents initiated the process of switching the EGS on six accounts without the customers’ authorization. Settlement at 6. If proven, this would be a violation of the Code and Commission Regulations, specifically, the Electricity Generation Customer Choice and Competition Act at 52 Pa. Code §§ 54.42(a)(9) and 54.43(f); the Standards for Changing a Customer’s Electricity Generation Supplier at 52 Pa. Code §§ 57.171-179 (multiple counts); and a violation of 66 Pa. C.S. § 1501 (multiple counts). Settlement at 7. I&E acknowledges that Astral fully cooperated with I&E’s investigation and promptly complied with I&E’s requests for information and documentation and provided I&E with records, correspondences, and other documents I&E requested. Settlement at 8. Moreover, throughout the entire investigatory process, Astral and I&E remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation. Settlement at 8.

Additionally, per the Settlement, Astral acknowledges the Commission’s 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. Although Astral disputes that the actions of its third-party vendor constitute slamming, Astral fully acknowledges the seriousness of slamming and recognizes the need to prevent the recurrence of similar situations. Settlement at 8. Furthermore, Astral apologizes that the Commission had to open an investigation and notes that there was a breakdown in process between Astral and its third-party vendors. Astral Statement in Support at 1. Astral further notes that it has since improved its internal process to prevent this type of incident from happening in the future. Settlement at 8; Astral Statement in Support at 2.

# **Terms of the Settlement**

The Parties filed the Settlement in order to terminate I&E’s informal investigation and to resolve this matter completely and without litigation. The Parties urge the Commission to approve the Settlement as being in the public interest.

Pursuant to the proposed Settlement, Astral will pay a civil penalty of $6,000. Settlement at 9. The Parties acknowledge that the Company has since taken corrective action and implemented revisions to its operating procedures that will act as safeguards against the transmission of erroneous or otherwise improper EGS enrollment data to the EDC. Specifically, Astral has modified its procedures to address this issue in the future, as follows:

1. Astral has designated one staff member, who is knowledgeable and experienced in EDI testing, to be solely responsible for EDI testing with EDCs and third-party vendors engaging in EDI testing on Astral’s behalf;
2. Astral and its third-party agents have agreed to treat any and all account numbers provided to it for EDI testing purposes as active customer account numbers and will take special care to ensure that customer accounts are not slammed as a result of EDI testing;
3. Astral has established a Quality Control Department to follow-up with new and prospective customers and to monitor the performance of all marketing activity;
4. Astral has agreed to continue to ensure that its employees, agents, and vendors are reminded of the Commission’s regulations regarding consumer protection, with an emphasis on those prohibiting slamming;
5. Astral has established a Customer Complaint System wherein the Company:

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

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

1. Attempts to resolve customer issues during the initial call, but no more than 5 business days of any customer inquiries;
2. Responds to customer requests to speak to a supervisor within 3 to 6 business days; and
3. Maintains internal resolution records.
4. Astral has established a BCS Complaint System, which is set forth as follows:
5. Astral has designated its compliance manager as the singlepoint of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS;
6. Upon receipt of a complaint from BCS, the compliance manager of Astral investigates the complaint and makes contact with the complainant to determine if there is any additional information that requires further investigation and to work toward a resolution;
7. After investigation of the complaint, a written response is provided to the complainant, which includes a brief summary of the issue and the resolution to the complaint; and
8. A written response is also provided to BCS within 10 days upon receipt of the BCS complaint, if not sooner, which will include a summary of the complaint, Astral’s policy regarding the issue, the resolution, and

all information pertaining to enrollment of the complainant's account and end of service date.

Settlement at 9-12.

The Settlement provides that I&E will agree to forbear from initiating a formal complaint relative to the allegations that are the subject of the Settlement. The Settlement will not, however, affect the Commission’s authority to receive and resolve any formal or informal complaints filed by any affected party regarding the subject of the allegations of I&E’s informal investigation, except that no civil penalties beyond the civil penalty amount agreed to in the Settlement may be imposed by the Commission for any actions identified in the Settlement. Settlement at 12.

Additionally, the Parties indicate that the Settlement is conditioned on the Commission’s approval of the Settlement terms and conditions, without modification. The Parties reserve the right to withdraw from the Settlement if it is modified. *Id*. at 13.

Further, none of the provisions of the Settlement or the statements in support of the Settlement shall be considered an admission of any fact or culpability. *Id.*at 13-14*.* The Settlement is presented without prejudice to any positions that the Parties may have advanced in this proceeding or may advance in future proceedings. *Id*. at 14.

**Discussion**

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Based on our review of the Settlement terms and conditions, we find that the Settlement is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor we may consider is whether the conduct at issue is of a serious nature. 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*. In this case, because the alleged violations involve slamming allegations, we find that Astral’s conduct is of a serious nature and warrants a higher penalty under the application of this factor. This finding is consistent with our prior decisions addressing the Commission’s “zero tolerance” policy regarding slamming.[[4]](#footnote-4)

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Here, there is no indication that the alleged violations resulted in personal injuries or property damage. Additionally, the six non-residential customers who were enrolled with Astral without their authorization do not appear to have suffered any financial harm. Rather, Astral provided these customers with electricity free of charge during the seven days that Astral provided EGS service to these customers. Settlement at 6. We take seriously all consequences resulting from an EGS’ unauthorized enrollment of customers; however, under the circumstances, this factor does not warrant a higher penalty.

The third factor pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3). Because this proceeding was settled, this factor is not applicable to this Settlement.

The fourth factor is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, when FirstEnergy alerted Astral of the issue, Astral responded immediately to voluntarily investigate the customer enrollments in questions, to correct the issue, and to institute practices and procedures to prevent similar issues in the future. Settlement at 4. By October 29, 2015, Astral dropped the enrollments for each of the six accounts, and Astral and its third-party vendors conducted a system-wide audit to ensure that no other accounts were accidentally enrolled. *Id*. at 6.

Additionally, Astral has taken corrective action and implemented revisions to its internal operating procedures to safeguard against the transmission of erroneous or otherwise improper EGS enrollment data to the EDC, as set forth in detail in the Settlement. *Id*. at 9-10. Astral’s modified procedures include designating an experienced Astral staff member to be solely responsible for EDI testing with EDCs and third-party vendors engaging in EDI testing on Astral’s behalf; treating all account numbers as active customer account numbers for EDI testing purposes; establishing a Quality Control Department to follow-up with new and prospective customers and to monitor all marketing activity; and establishing a Customer Complaint System. *Id*. at 10-11. Astral has also established a detailed BCS Complaint System to assist in resolving customer inquiries and/or complaints that BCS receives. *Id*. at 11-12. We conclude that Astral’s corrective measures support a lower civil penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). As part of its investigation, I&E determined that six non-residential accounts were switched to receive electric generation from Astral without the customers’ authorization. Astral provided EGS service to each customer at no charge for approximately seven days. I&E Statement in Support at 11-12. Considering the limited customer impact and relatively short duration of the violations, we find this factor supportive of a lower civil penalty.

We may also consider the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.*  Here, the Commission has not conducted any proceedings in which it has made findings of violations against Astral. This is also the first investigation concerning Astral. Accordingly, we determine that the Company’s compliance history is satisfactory and poses no barrier to approval of the Settlement between the Parties.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, the Company fully cooperated throughout all phases of the investigation and settlement process. I&E Statement in Support at 12.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). I&E states that the Settlement sets forth a civil penalty of $1,000 for each account that was switched to Astral’s supply service without authorization, for a total civil penalty of $6,000. I&E submits that this amount is substantial and is a sufficient deterrent for the Company in order to prevent similar future conduct. I&E Statement in Support at 12-13. We agree and find that the proposed civil penalty, in combination with the Company’s pledged corrective actions, is appropriate and represents a fair and reasonable outcome of this proceeding. We also find that the outcome in this proceeding is consistent with our prior decisions pertaining to settlement agreements involving slamming allegations. *See, e.g.,* *Pa. PUC v. Residents Energy, LLC*, Docket No. M-2017-2511372 (Order entered July 12, 2018); *Energy Services*.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). We believe that it is in the public interest to settle this matter so as to avoid the expense of litigation.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Upon review, we find that the Settlement between I&E and Astral is in the public interest and merits approval, consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Settlement Agreement filed on June 25, 2018, by the Commission’s Bureau of Investigation and Enforcement and Astral Energy, LLC, is approved.

2. That within thirty (30) days of entry of this Order, Astral Energy, LLC, shall pay a civil penalty in the amount of $6,000. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

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

4. That after Astral Energy, LLC, remits the civil penalty as set forth in Ordering Paragraph No. 2, the Secretary’s Bureau shall mark this proceeding closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 13, 2019

ORDER ENTERED: June 13, 2019

1. Astral is an electric generation supplier (EGS) licensed by the Commission to operate in the FirstEnergy Pennsylvania Companies’ (FirstEnergy) service territories, among others. Astral received its Pennsylvania EGS license on February 26, 2015, at Docket No. A-2014-2439632. [↑](#footnote-ref-1)
2. “Slamming” is an unauthorized change made to a customer’s supply service. *HIKO Energy LLC v. Pa. PUC*, 163 A.3d 1079, 1090 (Pa. Cmwlth. 2017). [↑](#footnote-ref-2)
3. Electronic data interchange is an electronic communication method that transfers structured data, by agreed message standards, from one company’s computer system to another, in or out of the country, without human intervention. Michael Kanto & James H. Burrows, Electronic Data Interchange (EDI) *National Institute of Standards and Technology,* Apr. 29, 1996. [↑](#footnote-ref-3)
4. *See, e.g., Pa. PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.* (*Energy Services*), Docket No. M-2013-2325122 (Order entered October 2, 2014); *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013); *Pa. PUC v. AP Gas & Electric, LLC, d/b/a APG&E*, Docket No. M-2013-2311811 (Order entered October 17, 2013); and *Pa. PUC v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013). [↑](#footnote-ref-4)