**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 11, 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.Great American Power, LLC |  |  M-2018-2617335 |

**Opinion and Order**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Settlement Agreement (Settlement) filed on October 29, 2018, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Great American Power, LLC (Great American or Company)[[1]](#footnote-1) (collectively, the Parties), with respect to an informal investigation conducted by I&E regarding alleged marketing and sales practices by Great American, an EGS in Pennsylvania. The investigation was initiated in response to allegations that during the period from October 2015 through June 2017, sales agents on behalf of Great American were going door-to-door attempting to sell electricity, without the required solicitation permits and without properly notifying the Commission’s Bureau of Consumer Services (BCS). Such activities occurred in Millersburg, Dauphin County, PA; Mount Joy, Lancaster County, PA; Cumru Township, Berks County, PA; and Lower Milford Township, Lehigh County, PA. Both Parties submitted Statements in Support of the Settlement.[[2]](#footnote-2) I&E submits that the terms of the proposed Settlement reflect a carefully balanced compromise of the interests of the Parties in the proceeding and in the public interest. Great American submits that it agreed to all of the terms and conditions of the Settlement, including the monetary penalty amount and that approval of the Settlement is in the public interest. For the reasons set forth herein, we shall adopt the Settlement Agreement, consistent with this Opinion and Order.

**Background**

 On June 27, 2017, BCS became aware of a Facebook post by the Millersburg Borough Police Department (MBPD) regarding multiple residents who complained that two sales agents were going door-to-door attempting to sell electricity in Millersburg, PA (hereinafter referred to as “Millersburg incident”). When questioned, the agents told MBPD Officers that they were working for Great American. The officers issued citations to both agents for conducting door-to-door marketing in Millersburg without the required solicitation permits. Settlement at 4.

 On June 29, 2017, BCS contacted Great American regarding the Millersburg incident and requested that the Company review its sales force and practices in Millersburg to determine if the agents in question did in fact work for Great American. BCS also informed Great American that it had no record of being notified by Great American about its door-to-door marketing and sales activities as required by Section 111.4(a) of the Commission’s Regulations, 52 Pa. Code § 111.14(a). Settlement at 4-5.

 Great American responded to BCS that upon its investigation it determined that those agents, who were obtained through a third-party vendor, had been working on door-to-door marketing campaigns on behalf of the Company. However, since its third-party vendor provides agents to other EGSs, Great American could not confirm that the agents in question were marketing on behalf of Great America during the day of the Millersburg incident. Great American alleged that Millersburg was not a targeted area for its June 2017 door-to-door marketing campaign and did not find any such activity in Millersburg during that time period. Great American also agreed to begin notifying BCS of its door-to-door marketing activities on a monthly basis. Settlement at 5.

 Subsequently, BCS referred this matter to I&E for an investigation whereupon I&E instituted an informal investigation of Great American. Based on the information provided by BCS, I&E determined that the BCS allegations warranted further investigation to examine whether the actions of Great American or the agents of Great American violated any Commission Regulations and Orders. Accordingly, I&E submitted data requests to Great American related to the Millersburg incident.

 Based on Great American’s responses to I&E’s several sets of data requests, I&E determined that the Company actually began its door-to-door marketing in October 2015 and had conducted seventeen door-to-door marketing and sales campaigns in Millersburg as well as other areas of the state between October 2015 to June 2017. Great American confirmed that the marketing and sales campaign were conducted without notifying BCS and local electric distribution companies (local EDCs)[[3]](#footnote-3) of those activities. Settlement at 5.

 I&E also determined that the Millersburg incident was not the only incident where agents were found engaging in door-to-door marketing on behalf of Great American without the proper solicitation permits for a particular area. I&E discovered that in January 2017, Great American’s third-party vendor received a complaint from the Borough of Mount Joy, Lancaster County, PA regarding agents engaging in door-to-door marketing on behalf of Great American without the required solicitation permits for that area. Additionally, in June 2017, Great American received two similar complaints from Lower Milford Township, Lehigh County, PA and Cumru Township, Berks County, PA. Settlement at 6.

 I&E’s investigation concluded that Great American acknowledged it conducted internal investigations into all five incidents where agents were found engaging in door-to-door marketing on behalf of Great American without the proper solicitation permits, but that the Company did not produce any formal written investigative report regarding these incidents. Great American claimed that it cannot provide the exact number of agents who were found engaging in door-to-door marketing on behalf of Great American in Mount Joy Borough, Lower Milford Township, and Cumru Township, Pennsylvania. Great American resumed door-to-door marketing and began notifying the BCS and the local EDCs about its door-to-door marketing and sales activities on a monthly basis. *Id.*

 I&E concluded from its investigation that the third-party agents acting on behalf of Great American violated provisions of Chapter 111 of the Commission’s Regulations concerning the Marketing and Sales Practices for the Retail Residential Energy Market. I&E was prepared to contend by the filing of a formal complaint that Great American’s conduct violated Section 111.9 of our Regulations, 52 Pa. Code § 111.9, on five counts because Great American failed to comply with local ordinances while conducting door-to-door marketing and sales activities. In addition, I&E would have averred that Great American violated Section 111.14(a)-(b) of our Regulations, 52 Pa. Code § 111.14(a)-(b), on seventeen counts because Great American failed to notify the BCS and the local EDCs about the scheduled door-to-door marketing and sales activities. Great American acknowledges its errors and has put into effect appropriate measures that have been approved by I&E to ensure such oversight is not likely to reoccur. I&E Statement in Support at 4.

 Thereafter, 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. The Parties filed the instant Settlement on October 29, 2018. By Order entered March 28, 2019, the Commission issued the Settlement for comments. No comments have been filed.

**Terms of the Settlement**

 Pursuant to the proposed Settlement, Great American will pay a civil penalty of $13,500, within thirty days of the Commission’s final order approving the Settlement, to resolve all allegations of unauthorized door-to-door marketing and sales practices and to fully and finally settle all possible liability and claims of alleged violation of the Commission’s Regulations arising from, or related to, the unauthorized door-to-door marketing and sales practices. The Company will not recover any portion of the civil penalty payment from Pennsylvania consumers.

 The Settlement acknowledges that the Company has since taken corrective action and revised its marketing practices and implemented revisions to its operating procedures which will act as safeguards against future unauthorized EGS marketing and sales practices by its employees, agents and the Company’s third-party vendors. The settlement recites the Company’s modified procedures as follows:

i. Great American shall continue notifying BCS and LDCs of the Company’s door-to-door marketing and sales activities on a monthly basis, which shall include general, non-proprietary information about the activity, the period involved, and a general description of the geographical area in accordance with 52 Pa. Code § 111.14(a)-(b), respectively;

ii. In addition to Great American’s initial training of its internal marketing and sales representatives and third-party marketing and sales agents, the Company shall revise its Code of Conduct for Agents, Quality Assurance Program, and any and all training materials to require subsequent refresher training on current Commission regulations, statutes, policies, and orders on at least a quarterly basis;

iii. Great American shall revise its Code of Conduct for Agents, Quality Assurance Program, and any and all training materials provided to its internal marketing and sales representatives and third-party marketing and sales agents to emphasize compliance with local ordinances regarding door-to-door marketing and sales activities to ensure that the Company and its representatives and third-party agents properly adhere to 52 Pa. Code § 111.9(a);

iv. Great American shall self-report [footnote omitted] to the Commission any instance where the Company receives notice that anyone acting or purporting to act on its behalf receives a citation from law enforcement or a complaint, notification, report, or warning from a local municipality or township regarding the Company’s and/or agent’s failure to comply with local ordinances regarding door-to-door marketing and sales activities;

v. If Great American and/or its internal or third-party marketing and sales agent, acting on behalf of the Company, receives a citation from law enforcement or a complaint, notification, report, or warning from a local municipality or township regarding the Company’s and/or agent’s failure to comply with local ordinances regarding door-to-door marketing and sales activities, Great American shall conduct its own internal investigation and prepare a formal written investigative report, which shall include the Company’s findings, conclusions, and all corrective measures taken by the Company in response to the incident.

vi. Great American shall employ additional quality control measures for the Company and its third-party vendors to ensure that the Company and its third-party marketing and sales agents, acting on the Company’s behalf, comply with local ordinances regarding door-to-door marketing and sales activities. Those quality control measures shall include, but are not limited to, keeping records, in compliance with Great American’s records retention policy, of the locations where Great American and/or third-party vendors have obtained the required solicitation permits for door-to-door marketing and sales activities and comparing the locations of enrollments and sales to the Company’s records reflecting the locations where the Company and/or third-party vendors have acquired the necessary solicitation permits.

Settlement at 11-13.

 In exchange for the actions taken by Great American, as described above, I&E agrees to forbear from initiating any formal complaint relating to the unauthorized door-to-door marketing and sales activities that are the subject of the proposed 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 penalties beyond the $13,500 civil penalty amount agreed here may be imposed by the Commission for any action identified in the Settlement. *Id.* at 13.

 The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission modifies the proposed Settlement, either Party may elect to withdraw from the Settlement and may proceed with litigation and, in such event the settlement agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty business days after entry of an Order modifying the Settlement*.* Settlement 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). After a review of the terms of the Settlement, we find that it 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. Although, we do not have to adhere strictly to all of the standards in settled cases as in litigated cases, many of the same factors are considered giving flexibility in reaching amicable resolution to the Complaint when the settlement is in the public interest. 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*. The allegations against Great American relate to its marketing practices for EGS services in Pennsylvania. According to I&E, the violations involving non-compliance with local ordinances regarding door-to-door marketing and sales campaigns are of serious nature in light of the Commission’s zero-tolerance policy concerning inappropriate and unlawful EGS marketing practices. However, I&E submits that the violation involving allegation of Great American’s failure to notify BCS and LDSs of the Company’s door-to-door marketing activities are of a less serious nature and are more characteristic of an administrative or technical error.

We have made clear that unlawful activity that threatens to harm Pennsylvania’s consumers and the burgeoning retail electricity market in Pennsylvania will not be tolerated. *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered May 3, 2012) at 5. Despite the various corrective measures taken by the Company, we believe the non-compliance with local ordinances alleged in the Settlement, constituted conduct of a serious nature warranting a higher penalty.

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.* There is no indication that the alleged violations resulted in personal injuries or property damage. In addition, the customers impacted by the actions of the Company’s agents do not appear to have suffered any financial harm. Accordingly, 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). As outlined in the Settlement, when Great American became aware that its third party agents involved in the Millersburg incident, the MBPD gave the Company citations for soliciting without the proper permits. In response, the Company immediately ceased its door-to-door marketing until it changed its internal procedures regarding marketing and notifying BCS and local EDCs. Settlement at 5-6. We consider the Company’s corrective measures to be a significant improvement over its prior procedures. Thus, this factor supports a lower penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). The Company acknowledged that it conducted multiple campaigns in which its agents conducted door-to-door marketing of customers in violation of our Regulations. However, it is unknown how many customers were actually affected by the action of Great American and its third-party agents. Nonetheless, I&E’s investigation determined that no customers were enrolled with Great American as a result of the Company’s unauthorized door-to-door marketing activities. Accordingly, we consider this factor as supportive of a lower 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.* On April 20, 2017, we entered an Order at Docket No. M‑2016-2536806 (April 2017 Settlement), in which we approved a Settlement Agreement of Great American and I&E, which resulted in imposition of a civil penalty of $18,000.[[4]](#footnote-4) Other than the *Towne* proceeding and the April 2017 Settlement, there have been no proceedings in which the Commission has made findings of violations against Great American. We determine that the Company’s compliance history has been fair and poses no barrier to approval of the Settlement based on the circumstances of this proceeding. Thus, this factor supports a lower penalty.

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, throughout the investigation Great American fully cooperated in the process, maintained ongoing communication, and responded to I&E’s request for information and documentation. I&E Statement in Support of Settlement at 14. Thus, this factor supports a lower penalty.

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). According to I&E, the civil penalty of $13,500 addresses the alleged past violations while also deterring future violations. I&E explains that the monetary fine equals a payment of $1,000 for each of the five incidents where agents of Great American were found engaging in door-to-door marketing on behalf the Company without the proper solicitation permits, a civil penalty of $250 or each of the seventeen door-to-door marketing and sales campaign that Great American conducted from October 2015 to June 2017 without notifying BCS of those activities and a civil penalty of $250 for each for each of the seventeen door-to-door marketing and sales campaign that Great American conducted from October 2015 to June 2017 without notifying local EDCs of those activities. I&E Statement in Support of Settlement at 14. We find that this amount will be sufficient to deter future violations and is consistent with our prior decisions as well as the Code.

I&E submits that there are no past Commission decisions directly responsive to the similar situation such as the instant matter, which involved an I&E Investigation of the EGS’s non-compliance with local ordinances regarding door-to-door marketing and failure to notify BCS and local EDCs of door-to-door marketing activities. According to I&E this matter should be viewed on its own merits. I&E Statement in Support of Settlement at 16. We find that this violation would support a higher penalty.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). We believe that a settlement avoids the necessity for I&E to prove elements of each allegations. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiated from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a 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. 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, upon our review of the terms of the Settlement, we conclude that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and 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. Based upon our review of the record in this case, we find that the proposed Settlement between I&E and Great American is in the public interest and merits approval. Accordingly, we shall approve the Settlement consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Settlement Agreement filed on October 29, 2018, between the Commission’s Bureau of Investigation and Enforcement and Great American Power, LLC is approved.

2. That, within thirty (30) days of the date of entry of this Opinion and Order, Great American Power, LLC shall pay a civil penalty in the amount of $13,500. 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 Great American Power, 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: July 11, 2019

ORDER ENTERED: July 11, 2019

1. Great American is a jurisdictional Electric Generation Supplier (EGS) licensed by the Commission to operate within the service territories of PPL Electric Utilities “Corporation, PECO Energy Company, Metropolitan Edison Company and Duquesne Light Company. [↑](#footnote-ref-1)
2. *See* Appendix B to Settlement, Statement In support of Bureau of Investigation and Enforcement; and Appendix C, Great American Power, LLC’s Statement in Support of Settlement Agreement of Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement. [↑](#footnote-ref-2)
3. We note that the Settlement refers to EDCs as local distributions companies or LDCs. However, we will refer to the entities as local EDCs consistent with the terminology in Chapter 111 of our regulations. [↑](#footnote-ref-3)
4. In 2013, I&E instituted an investigation as a follow-up to the Commission’s Order in *William Towne v. Great America Power LLC,* Docket No. C‑2012-2307991, (*Towne*) (Order entered October 18, 2013). In *Towne* we sustained the complaint and imposed a civil penalty of $10,000 and placed certain conditions on the Company’s EGS license. The April 2017 Settlement involved allegations of sales agents being rude or misleading or providing inaccurate information, which resulted in the cancellation of multiple customer enrollments. [↑](#footnote-ref-4)