**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 12, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

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| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement  v.  Residents Energy, LLC |  | M-2017-2511372 |

**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 May 12, 2017, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Residents Energy, LLC (Residents or Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. The Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Settlement at 14. For the reasons set forth herein, we shall approve the proposed Settlement, consistent with this Opinion and Order.

**History of the Proceeding**

This matter concerns an alleged electric generation “slamming” incident committed by a sales agent of Residents.[[1]](#footnote-1) The Commission’s Bureau of Consumer Services (BCS) received the allegation from a residential customer of Duquesne Light Company (Duquesne) who claimed that Residents switched her electric generation service without her authorization.[[2]](#footnote-2) BCS referred the matter to I&E which determined that the allegation warranted further investigation to examine whether the actions of Residents or the third-party vendor hired by the Company violated the Commission’s Regulations or Orders. By letter dated February 18, 2016, I&E submitted data requests to Residents related to the slamming allegation and Residents timely complied with the requests. 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 May 12, 2017.

**Background**

The slamming allegation stems from an informal complaint filed by a residential customer of Duquesne on September 28, 2015. In the informal complaint, the customer alleged that a male individual came to the customer’s door and stated that he was enrolling customers in a Customer Assistance Program (CAP) designed to assist low income individuals. The customer was interested in CAP and agreed to enroll in the program. It was determined that the male individual was employed as a sales agent by a third-party contractor hired by Residents to solicit EGS service on behalf of the Company. After meeting with the customer, the sales agent began the third-party verification (TPV) process to switch the customer’s EGS service to Residents. Settlement at 4.

During the TPV phone call, the customer asked whether her EGS service was being switched and the TPV provider confirmed that the customer’s agreement would result in the switching of her service. In response, the customer stated that she did not want to switch her EGS service and the call ended. Although she did not complete the TPV process, the customer’s EGS service was switched to Residents. By letter dated September 22, 2015, Duquesne confirmed the switch. Residents provided EGS service to the customer for seventeen days, from September 25, 2015, to October 11, 2015. After receiving Duquesne’s confirmation letter, the customer filed her informal complaint with BCS alleging the unauthorized switch in service. *Id.* at 3-5.

In response to the informal complaint, Residents investigated two separate TPV calls regarding the customer’s EGS service. Upon review of the first recording, Residents determined that the first TPV call confirmed the customer’s informal complaint allegations that she refused to authorize a switch of her EGS service. In the second TPV recording, however, an individual, purporting to be the customer, authorized the switch to Residents. As part of its internal investigation, the Company played the second recording to the customer who stated that she was not the person on the call making the authorization. Residents determined that the second TPV recording was fraudulent and therefore an invalid TPV authorization. *Id.* at 5.

After receiving the referral from BCS, I&E initiated the informal investigation to determine whether Residents enrolled the customer in its EGS service without authorization, contrary to the Commission’s Regulations at 52 Pa. Code §§ 57.171-179. I&E reviewed the Company’s responses to the data requests and concluded that the second TPV call was fraudulent and thus could not satisfy the Commission’s requirements for switching EGS service. Settlement at 6.

In its investigation, I&E determined that the door-to-door sales agent was Jeremy Neal, an independent contractor of Energy Group Consultants, the third-party vendor hired by the Company to conduct its door-to-door sales and solicit customers to switch their EGS service to Residents. According to the Parties, Mr. Neal conducted door-to-door sales on behalf of Residents from September 15, 2015, to September 29, 2015. It is alleged that Mr. Neal was involved in a scheme, without the Company’s knowledge, to obtain third-party verifications by directing the TPV’s to an accomplice posing as a customer and enrolling the accounts. Although audio recordings of TPVs were conducted, it is alleged that the authorizing party on the other end was not the actual customer. *Id.* at 6-7.

After completing its internal investigation, the Company instructed Energy Group Consultants to remove Mr. Neal from conducting any marketing on behalf of Residents and made Mr. Neal ineligible for rehire for any employment with Residents. Additionally, Residents refunded to the customer the amount of $3.14 that represented the cost difference between the rate charge by Residents for the seventeen days of service and Duquesne’s default service rate. Id. at 7-8.

As a result of its informal investigation, I&E concluded that there was sufficient data to substantiate allegations of violations of our Regulations. Specifically, I&E was prepared to allege in a formal complaint that, as an agent for Residents, Mr. Neal engaged in fraudulent and deceptive marketing during a door-to-door sales visit with a prospective customer.[[3]](#footnote-3) If proven, this would have violated 52 Pa. Code §§ 54.43(f), 111.9(d)(1), and 111.12(d). Additionally, I&E would have alleged that Mr. Neal conspired with an accomplice to provide a fraudulent TPV to switch a customer’s EGS service to Residents despite the customer’s prior refusal to authorize the switch. If proven, this would have violated 52 Pa. Code §§ 54.43(f) and 111.12(d) and the Standards for Changing a Customer’s Electricity Generation Supplier at 52 Pa. Code §§ 57.171-177. Lastly, I&E would have alleged that Mr. Neal initiated a process of switching and causing the actual switching of the EGS service of one customer account without the customer’s authorization which resulted in the customer being supplied EGS service by Residents for a period of seventeen days. If proven, this would have violated 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 §§ 57.171-177. Settlement at 8-9.

The proposed Settlement was filed by the Parties to resolve allegations of EGS marketing violations. The Parties urge the Commission to approve the Settlement as being in the public interest. Settlement at 14.

By Order entered March 1, 2018 (*March 2018 Order*), the Commission provided interested parties with the opportunity to file comments. In order to be considered timely, comments were due within twenty days of the date of entry of the *March 2018 Order*. No comments were filed.

**Terms of the Settlement**

Pursuant to the proposed Settlement, Residents will pay a civil penalty of $6,000 within sixty days of entry of a Commission Order approving the Settlement. Settlement at 10. The Settlement acknowledges that the Company has taken corrective action and is diligently applying its policies to safeguard against the unauthorized switch of customer accounts by a third-party vendor. Residents has also terminated its relationship with Mr. Neal and has instructed its third-party vendor not to assign him to any of Residents’ accounts or contracts. The Settlement notes the refund provided to the affected customer in the amount of $3.14 and further directs a refund for the entire EGS service portion of the customer’s bill for the entire seventeen days that the customer was served by Residents. The Settlement explains that the Company charged the customer $12.36 and has already refunded $3.14 to the customer. Thus, the remaining refund owed to the customer would be $9.24. Settlement at 11-12.

The Settlement also requires that Residents inquire with each third-party that it seeks to engage in business, whether Mr. Neal is employed by or associated with the third-party vendor. Further, the Company will ensure that its agents are reminded of the Commission’s consumer protection regulations, with emphasis on the prohibitions on slamming, and will provide a single point of contact to Commission staff for resolution of consumer inquiries or complaints received by BCS. *Id.* at 12.

The Settlement mandates reporting requirements for a twelve-month term beginning after the entry of the Commission’s final Order approving the Settlement. Residents would be required to provide to Commission staff, in the first week of each calendar quarter, a report for the prior quarter capturing the following customer complaint data filed directly with the Company by category, *i.e.*, slamming, do-not call list violations, and incorrect charges. The quarterly report would also provide an explanation of the process improvements and organizational changes that were implemented to reduce or eliminate similar complaints going forward. *Id.* at 13.

In response, I&E agrees to forbear from initiating a formal complaint relative to the allegations 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. *Id.*

The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. *Id.* at 16.

**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. 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 in this matter involve a fraudulent and willful act of slamming by a sales agent of Residents. 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.*, M-2012-2201861 (Order entered May 3, 2012) at 5. Furthermore, on numerous occasions we have noted the Commission’s “zero tolerance” policy on slamming.[[4]](#footnote-4) Although the allegations appear to have involved a one-time incident by a rogue agent, they involve conduct of a serious nature that warrants warranting a higher penalty under the application of this factor.

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 customer who was impacted by the actions of the Company’s agent does not appear to have suffered any financial harm. As explained in the Settlement, the Company has provided a refund of the difference between the amount charged by Residents and the amount the customer would have been charged if the EGS service had not been switched to Residents. 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).

The Company asserts that it began taking immediate action in response to the incident by terminating the customer’s enrollment, issuing the customer a partial refund, and prohibiting the offending agent from conducting any marketing on behalf of Residents or from being rehired in any capacity by Residents. Residents Statement in Support at 5. Additionally, I&E submits that the Company had internal controls in place, including monitoring sales agents for compliance, daily review of all TPV’s, and regular audit of enrollments. I&E further notes that Residents employs a full-time quality control team whose sole responsibility is to contact recently enrolled customers to ensure proper sales and enrollment procedures have been followed. According to I&E, the Company operates under a set of “Core Values” applicable to all employees and vendors and has pledged to strenuously enforce these principles and procedures to help prevent similar conduct in the future. I&E Statement in Support at 10.

In the Settlement, the Company agrees to provide quarterly status reports to the Commission for a period of one year concerning customer complaints filed directly with Residents. These status reports will help provide a measure of whether the Company’s procedures are resulting in proper sales activities and enrollment practices of customers. In consideration of the Settlement terms and the assurances of the Parties, we find that the application of the fourth factor is supportive of 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). Here, it is alleged that the EGS service for one account of a single customer was switched to Residents for a period of seventeen days. Considering the limited customer impact and relatively short duration of the violation, we deem this factor as being 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, there have been no proceedings in which the Commission has made findings of violations against Residents. We determine that the Company’s compliance history has been 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 11.

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 contends that it identified multiple violations related to this incident and that a $1,000 civil penalty per violation would be appropriate. However, I&E asserts that the Commission should also consider the mitigating actions of the Company, including the prompt identification of the agent, the severing of business relations with him, and the prompt issuance of a refund to the customer. I&E submits that a $6,000 civil penalty is appropriate under circumstances. I&E Statement in Support at 11-12. Likewise, the Company argues that the civil penalty is proportionate to the nature of the incident and the number of customers affected and will serve to deter future violations. Residents Statement in Support at 6. We agree and find that the proposed civil penalty is appropriate and presents a fair and reasonable outcome of this proceeding.

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. Based on our review of the record in this case, we find that the proposed Settlement between I&E and Residents is in the public interest and merits approval. We will therefore approve the Settlement consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Settlement Petition filed on May 12, 2017, between the Commission’s Bureau of Investigation and Enforcement and Residents Energy, LLC, is approved.

2. That, within sixty (60) days of entry of this Order, Residents 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 within thirty (30) days of entry of this Order, Residents Energy, LLC, shall refund the affected customer the entire electric generation supply portion of the customer’s bill for the seventeen (17) days that the customer was served by Residents Energy, LLC, pursuant to 52 Pa. Code § 57.177(b), and provide documentation to the Bureau of Investigation and Enforcement that such refund has been made. The amount of the refund may take into account the refund that Residents Energy, LLC, already provided, which represented the difference between Residents Energy, LLC’s electric generation supply rate and the default service rate.

4. That for a term of twelve (12) months starting after the entry of this Order, Residents Energy, LLC, shall provide a quarterly report to the Commission’s Bureau of Technical Utility Services, in the first week of each calendar quarter, capturing the following data from the prior quarter concerning customer complaints filed directly with Residents Energy, LLC: (a) the number of complaints by category, *i.e.*, slamming, do-not-call violations, incorrect charges, *etc.*; and (b) any process improvements, organizational changes, *etc.*, that were implemented to reduce or eliminate similar complaints going forward.

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

6. That, after Residents 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: July 12, 2018

ORDER ENTERED: July 12, 2018

1. “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-1)
2. Residents is an electric generation supplier (EGS) licensed by the Commission to operate within several service territories including the territory of Duquesne. [↑](#footnote-ref-2)
3. The Parties acknowledge that the Commission’s Regulations expressly place liability for any violations of the Code or the Commission’s Regulations committed by third-party contractors on the licensed utility, regardless of the utility’s knowledge of the third-party contractor’s actions. Settlement at 7 (citing 52 Pa. Code §§ 54.43(f) and 111.3). [↑](#footnote-ref-3)
4. *See, e.g., Pa. PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.*, 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 (PA), 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)