PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held March 14, 2019

Commissioners Present:

Gladys M. Brown, 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.  Vista Energy Marketing, L.P. |  | M-2018-2624484 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Settlement Agreement (Settlement) filed on November 29, 2018, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Vista Energy Marketing, L.P. (Vista or Company)[[1]](#footnote-1) (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 Settlement is in the public interest and request that the Commission approve the Settlement, including the terms and conditions thereof, without modification. The Parties also 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 13. For the reasons set forth herein, we shall modify the Settlement, consistent with this Opinion and Order.

**History of the Proceeding**

This matter involves an informal investigation initiated by I&E, 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 allegations that Vista failed to comply with the Marketing and Sales Practices for the Retail Residential Energy Market[[2]](#footnote-2) by allowing an agent of a third-party vendor, Platinum Advertising II LLC (Platinum),[[3]](#footnote-3) to engage in door-to-door marketing without a proper criminal background investigation being first conducted. Settlement at 3.

The Office of Competitive Market Oversight (OCMO) learned about the suspected agent through a local news story and I&E determined that the information warranted that a further investigation should be conducted to examine whether the criminal background investigation practices of Vista or its third-party vendor, Platinum, violated any Commission regulations or orders. Settlement at 4.

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 November 29, 2018. By Order entered January 17, 2019 (*January 2019 Order*), the Commission provided interested parties with the opportunity to file comments within twenty days of the date of entry of the *January 2019 Order*, or by February 6, 2019. No comments have been filed.

**Background**

On August 30, 2017, a local television station posted an article to its website which reported that a local twenty-three-year-old man “was charged last week by Bensalem police with rape and indecent assault of a young woman.” Settlement at 4. The report stated that the suspect told officers that “he was working for Platinum Advertising going door-to-door trying to convince homeowners to change their energy company.” *Id*. According to the Settlement, the suspect was not working; nor was he engaged in work-related activities when the incident occurred. It was also reported in the article that the suspect previously pleaded guilty to the following offenses: aggravated assault in 2015; providing false identification to a law enforcement officer in 2014; and criminal trespass and break-in in 2013. *Id*.

After learning of the article, OCMO contacted Platinum to inquire whether or not the information in the story was correct. Platinum informed OCMO that the suspect was an independent contractor of Platinum who was selling electric generation services on behalf of Vista. Platinum claimed that it had initiated a criminal background check on the suspect on March 23, 2017; however, due to a “clerical error” it issued an ID and allowed the agent to work in the field to market/sell electrical generation services on behalf of Vista. *Id.* at 5. Platinum also claimed that on April 14, 2017, it became aware of the suspect’s criminal past and immediately terminated its relationship with him upon conducting a regular audit. Platinum stated that the suspect later reapplied as an independent contractor at another sales office under an assumed name and again began selling electric generation services on behalf of Vista from May 15, 2017 to August 18, 2017. After the local television station posted its story about the rogue agent Platinum again terminated its relationship with him. *Id.*

OCMO referred the matter to I&E which initiated an informal investigation into whether Platinum’s criminal background investigation practices complied with Section 111.4 of the Commission Regulations. As a result of its investigation, I&E determined that Platinum had entered into a contract with Vista as a third-party vendor to hire and train sales agents to market electric generation services on behalf of Vista, and as such, was an agent of Vista, a licensed EGS in the Commonwealth of Pennsylvania.[[4]](#footnote-4) Consequently, I&E also conducted a separate but simultaneous investigation of Vista’s criminal background investigation practices. Settlement at 5.

I&E alleges that Vista failed to comply with Sections 111.1 – 111.14 of the Commission’s Regulations pertaining to the Marketing and Sales Practices for the Retail Residential Energy Market in that it: (1) conditionally approved agents to sell EGS services on its behalf while their Pennsylvania Access to Criminal History (PATCH) reports were pending; (2) permitted the alleged suspect to sell EGS services on its behalf while his PATCH report was pending, during which time the alleged suspect made approximately one hundred and nine sales attempts, but only enrolled forty residential customers; (3) conditionally approved another agent whose completed PATCH report revealed that a prior conviction should have precluded him from selling EGS services on its behalf; and (4) conditionally approved another one hundred and twenty-two agents to sell EGS services on its behalf while their PATCH reports were pending. I&E Statement in Support at 5-6.

Through its investigation and multiple data requests to both Platinum and Vista, I&E concluded that it was not “clerical error,” as alleged by Platinum, that allowed the suspect to be issued an ID and to work as an agent in the field. Settlement at 6; I&E Statement in Support at 3-4. From on or around March 8, 2017, through on or around April 18, 2017, Vista, at Platinum’s request, agreed to allow some door-to-door marketers, including the alleged suspect, to be conditionally approved while their Pennsylvania Access to Criminal History (PATCH) reports were pending. On April 18, 2017, Vista informed Platinum that it would no longer conditionally approve any more agents until their PATCH reports were received and cleared. Settlementat 6; I&E Statement in Support at 4. As part of its investigation, I&E concluded that: (1) a total of one hundred and twenty-four agents were conditionally approved to sell EGS services on behalf of Vista pending the results of their PACTH reports; (2) once the PATCH reports were received, Vista terminated two agents, including the alleged suspect, due to the results of their PATCH reports; (3) the alleged suspect was permitted to sell EGS services for Vista from March 23, 2017 to April 19, 2017 and made 109 sales attempts but only enrolled forty residential customers; and (4) the other agent, who was later terminated after Vista received and reviewed the PATCH report, sold EGS services from April 21, 2017 to April 27, 2017.[[5]](#footnote-5) On or about August 31, 2017, Vista terminated its relationship with Platinum due to its concerns that only agents with clear criminal background checks be allowed to sell EGS services on its behalf upon learning about the incident involving the alleged suspect. Settlementat 7; I&E Statement in Support at 3-4.

At the end of its investigation, I&E was prepared to allege in a formal complaint that:

a. Vista failed to comply with the Marketing and Sales Practices for the Retail Residential Energy Market, 52 Pa. Code §§ 111.1-111.14, in that it conditionally approved agents to sell EGS services on its behalf while their PATCH reports were pending. More specifically, Vista permitted the suspect to sell EGS services on its behalf while his PATCH report was pending, during which time the suspect made approximately one hundred and nine (109) sales attempts and enrolled forty (40) residential customers. Additionally, it conditionally approved another agent whose completed PATCH report revealed that a prior conviction should have precluded him from selling EGS services on its behalf. Finally, it conditionally approved another one hundred and twenty-two agents (122) to sell EGS services on its behalf while their PATCH reports were pending.

b. If proven, this would have violated 52 Pa. Code § 111.4(b).

## Settlement at 7-8.

Vista understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges its error in conditionally approving agents to sell EGS services on its behalf while their PATCH reports were pending and has put into effect appropriate measures that have been approved by I&E to ensure that such oversight is not likely to reoccur. Settlement at 8. In addition, Vista stated that it is committed to ensuring compliance with all regulatory requirements and is committed to upholding high-standards for its marketing vendors. Vista Statement in Support at 1. Furthermore, it has taken steps to ensure that the circumstances that led to this investigation will not and cannot be repeated. *Id.*

I&E acknowledges that Vista 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 as requested by I&E. Settlement at 8; I&E Statement in Support at 5. Moreover, 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. Settlement at 8.

# **Terms of the Settlement**

The Parties filed the proposed Settlement 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, Vista will pay a civil penalty of $37,500. Settlement at 9-10. The Settlement acknowledges that the Company has since taken corrective action and steps to ensure that the circumstances that led to the investigation will not and cannot happen again. Vista modified its procedures to address this issue in the future. The specific terms of the Settlement are as follows:

a. Vista will pay a total civil penalty in the amount of thirty-seven thousand, five hundred dollars ($37,500) to resolve all alleged violations of Chapter 111 of the Commission’s regulations concerning agent criminal background investigations 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 following: (i) twenty-seven thousand, five hundred dollars ($27,500) for the approximately one hundred and nine (109) sales attempts made by the suspect who was conditionally approved to sell EGS services on Vista’s behalf while his PATCH reports were pending; (ii) one thousand dollars ($1,000) for the other agent who was conditionally approved to sell EGS services on behalf of Vista and who was also terminated once his PATCH report was received and reviewed; and (iii) nine thousand dollars ($9,000) for the rest of the *one* hundred and twenty-two (122) *agents* who were also conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. 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 with agent criminal background investigation requirements, pursuant to 52 Pa. Code § 111.4. Specifically, Vista has designed and implemented the following quality control measures, with I&E’s approval, to address this issue in the future:

i. A commitment to cease granting conditional approval for agents to sell EGS services on Vista’s behalf while their PATCH reports are pending;

ii. Revision to Vista’s sales and marketing policies and procedures, as well as revisions to any and all training materials to ensure that Vista and/or its agents strictly adhere to the criminal background investigation requirements of Section 111.4 of the Commission’s regulations, 52 Pa. Code § 111.4. The revisions specifically address the fact that agents may not be conditionally approved while their PATCH reports are pending; and

iii. Train internal and external (if applicable) sales and marketing representatives on the revised sales and marketing training materials, as referenced above.

c. In exchange for the action taken by Vista described above, I&E agrees not to institute any formal complaint or take any other action in the nature of enforcement before the Commission or in any other forum relating to Vista conditionally approving agents to sell EGS services on its behalf while their PATCH reports are pending with the Commission that is 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.

Settlement at 9-12.

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 14.

The Parties agree that 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 14*.* The Settlement is presented without any admission against or prejudice to any position that the Parties may have advanced in this proceeding. *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).

Upon review, we note that based on I&E’s investigation and the Settlement, 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 PATCH queries were pending. The Settlement shows *inter alia,* that 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. Settlementat 6-7.

In the Settlement, Vista agrees to pay a civil penalty of $37,500, acknowledges that it 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. Settlement at 9-12. 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 that:

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 . . .

52 Pa. Code §§ 111.1-111.14.

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, 20104). After a review of the terms of the Settlement, we find that it is not in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code §  69.1201 that sets forth ten factors, the *Rosi* standards[[6]](#footnote-6), 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. The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code §69.1201(b).

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code §69.1202(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.*  According to I&E’s investigation, Vista allowed a total of 124 door-to-door marketers to be conditionally approved to sell EGS services on its behalf while their PATCH reports were pending. Once the PATCH reports were received for the conditionally approved agents, Vista terminated two agents due to the results of their PATCH reports, including the individual involved in the incident. The suspect was permitted to sell EGS services on behalf of Vista from March 23, 2017 to April 19, 2017, and made 109 sales attempts during that time, but only enrolled forty residential customers. I&E submits that Vista’s failure to adhere to the Commission’s regulations at 52 Pa. Code § 111.4 regarding criminal background investigation requirements is of a serious nature for two reasons: first, due to the potential for significant harm to residential customers and second, due to the Commission’s zero-tolerance policy concerning inappropriate and unlawful EGS marketing practices. I&E submits that the allegations here are of a more serious nature and were considered in reaching the civil penalty in the Settlement Agreement. I&E Statement in Support at 11.

In reviewing the record, we find 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 theses violations in error but rather permitted the violations to occur at the request of a sub-contractor, Platinum Advertising II LLC. The regulations 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. For these reasons, Vista’s conduct warrants a greater civil penalty under these circumstances than the amount agreed to in the Settlement Agreement.

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.*  I&E’s investigation determined that the resulting consequences of the conduct in question, more specifically non-compliance with the Commission’s criminal background investigation requirements at 52 Pa. Code §111.4, were not of a serious nature because there is no evidence to demonstrate that Vista’s actions caused personal injury or property damage nor was there any evidence that a residential customer was subjected to the alleged criminal conduct. Consequently, I&E asserts that the resulting consequences of Vista’s conduct were not of a serious nature. Statement in Support at 12.

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 set forth in the Statement in Support of the Settlement, Vista took corrective action and implemented revisions to its operating procedures which will act as a safeguard to ensure that it no longer conditionally approves agents to sell EGS services on its behalf while their PATCH reports are pending and to prevent this type of violation from reoccurring. Statement in Support at 12. Vista designed and implemented the following quality control measures – (1) a commitment to cease granting conditional approval for agents to sell EGS services on Vista’s behalf while their PATCH reports are pending; (2) revisions to its sales and marketing policies and procedures, as well as its training materials to ensure Vista and its agents strictly adhere to the criminal background investigation; and (3) training of internal and external sales and marketing representatives on the revised sales and marketing training materials. Vista has taken appropriate action to address the issue and thus decrease the likelihood of similar incidents in the future. Therefore, we find that this factor warrants a lower penalty against Vista.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1202(c)(5). I&E’s investigation determined: (1) that although it was possible that hundreds of residential customers could have been affected there was no evidence to suggest that a residential customer was subjected to the alleged criminal conduct of the agent in question; and (2) the duration of the violation was from about March 8, 2017 until about April 18, 2017, when Vista notified Platinum that it would no longer conditionally approve any more agents until their PATCH reports were received and cleared. I&E concludes that this factor does not necessarily support a higher penalty. Statement in Support at 13.

The sixth factor that may be considered is 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, Vista’s compliance history reveals that there has only been one customer complaint against Vista, and it was satisfied. In addition, there have been no proceedings in which the Commission has made findings of violations against Vista. I&E submits that the compliance history of Vista did not pose a barrier to approval of the Settlement. Statement in Support at 13. Thus, we find this factor leans toward a lower penalty.

The seventh factor is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). I&E notes that throughout the investigation Vista remained active in communications and informal discovery. Vista, also fully cooperated in the process, maintained ongoing communication, and responded to I&E’s requests for information and documentation. Statement in Support at 14. Thus, we find this factor leans toward a lower penalty.

The eighth factor we may consider is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1202(c)(8). I&E submits that the civil penalty amount of $37,500 is sufficient under the circumstances. The $37,500 figure is based on a penalty of $27,500 for the approximately 109 sales attempts made by the suspect who was conditionally approved to sell EGS services on Vista’s behalf while his PATCH report was pending; $1,000 for the other agent who was conditionally approved to sell EGS services on behalf of Vista and who was also terminated once his PATCH report was received and reviewed; and $9,000 for the rest of the 122 agents who were also conditionally approved to sell EGS services on behalf of Vista while their PATCH reports were pending. Statement in Support at 14.

We are not convinced that the settled upon civil penalty of $37,500 is in the public interest. We note that we have some latitude in the process by which we may calculate a civil penalty in accordance with the long-standing *Rosi* standards. Generally, our method in determining the appropriate civil penalty 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.[[7]](#footnote-7) 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 backgrounds checks. Under the existing civil penalty this equates to a fine of $302.42 per violation.

Pursuant to the Commission’s policy statement for the evaluation of settled violation proceedings, this amount per violation is not in the public interest. As noted earlier, it is apparent from the record that these violations are of a serious nature. Thus, it is imperative to establish a penalty which will deter future violations from Vista 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 that it is a violation to permit any person to conduct door-to-door marketing or sales activities without first having obtained and reviewed a background check. 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. As we stated previously, Vista has cooperated with I&E and exhibited a good‑faith effort to remedy these violations. Nevertheless, under the circumstances of the severity of the violation, we find it is 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.

The ninth factor we may consider involves past Commission decisions in similar situations. 52 Pa. Code § 69.1202(c)(9). I&E submits that there are no past Commission decisions directly responsive to the situation in this matter. Furthermore, I&E submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome. Statement in Support at 14-15.

Based on our review of similar cases, we have determined that the most comparable case before this Commission involving background check requirements was in *PUC I&E v. SFE Energy Pennsylvania, Inc*., Docket No. M-2016-2546422 (Order entered February 8, 2018) (*SFE Energy*). In *SFE Energy,* a data-entry error allowed one agent to pass a background check in error which resulted in the Commission issuing a civil penalty in the amount of $5,000 against SFE Energy Pennsylvania, Inc. Since this case has 124 sub-contractors who were allowed to offer EGS marketing services without having first completed background checks in violation of our regulations, we conclude that, as discussed in our evaluation of the eighth factor, *supra*, the number of violations warrants a higher civil penalty than the amount agreed upon by the parties.

The tenth factor to consider is other “relevant factors.” 52 Pa Code § 69.1201(c)(10). Notwithstanding that we believe it is in the public interest to settle this matter so as to avoid the expense of litigation, we are also of the opinion that the recommended penalty established in the Settlement is not sufficient based on the severity of Vista’s violations.

Therefore, for the reasons set forth above, we shall increase the civil penalty from $37,500 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 civil penalty of $15,200, or 40%. This increase is in the public interest since it more appropriately recognizes the severity and gravity of the Company’s actions. We believe that the remainder of the Settlement provisions is in the public interest and should be retained by the Parties.

**Conclusion**

Based on our review of the record in this case, we find that the proposed Settlement between I&E and Vista, only as it pertains to the recommended penalty of $37,500, is not in the public interest. We conclude, however, that a penalty amount of $52,700 is more appropriate in this instance. Accordingly, we shall modify the Settlement by increasing the penalty from $37,500 to $52,700 and provide each of the parties with the option of withdrawing from the Settlement if it disagrees with our modification. Should either party disagree with and opt to withdraw from the Modified Settlement, the matter will be referred to the Office of Administrative Law Judge for such further proceedings as may be necessary. Otherwise the Modified Settlement will be approved without further Commission action; **THEREFORE**,

**IT IS ORDERED:**

1. That the Settlement Agreement between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Vista Energy Marketing, L.P., filed with the Commission on November 29, 2018, is hereby, modified, consistent with the discussion in this Opinion and Order.

2. That, within forty-five (45) days from the date of entry of this Opinion and Order, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Vista Energy, Marketing L.P., shall inform the Commission, by letter, whether it intends to withdraw from the Modified Settlement.

3. That, should either, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement or Vista Energy, L.P., or both, inform the Commission of its withdrawal from the Settlement, pursuant to Ordering Paragraph No. 2, above, this proceeding shall be referred to the Office of Administrative Law Judge for such further proceedings as may be necessary.

4. That, if the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Vista Energy, L.P. do not withdraw from the Modified Settlement, pursuant to Ordering Paragraph No. 2, above, then it is further ordered:

a. That the Modified Settlement is approved.

b. That, within seventy-five (75) days from the date of entry of this Opinion and Order, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, Vista Energy, L.P. shall remit a civil penalty in the amount of Fifty-Two Thousand, Seven Hundred Dollars) ($52,700), payable by certified check or money order, to “Commonwealth of Pennsylvania” with the docket number of this proceeding listed, and sent to the following address:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street, 2nd Floor

Harrisburg, PA 17120

c. That, upon completion of the payment of its civil penalty, Vista Energy, L.P. shall file notice of compliance with the Commission’s Secretary’s Bureau pursuant to the Commission’s regulations, 52 Pa. Code § 5.591.

d. That upon receipt of the payment of $52,700 by Vista Energy, L.P. and notice of compliance as directed in Ordering Paragraph No. 4(c), this proceeding be marked closed.

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

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

### ORDER ADOPTED: March 14, 2019

ORDER ENTERED: March 27, 2019

1. Vista is an electric generation supplier (EGS) licensed by the Commission to operate in the Commonwealth of Pennsylvania. Vista received its Pennsylvania EGS license on December 22, 2016, at Docket No. A-2016-2569804. [↑](#footnote-ref-1)
2. 52 Pa. Code §§ 111.1-111.14. [↑](#footnote-ref-2)
3. Platinum is a third-party vendor authorized to hire and train sales agents to market/sell electric generation services on behalf of Vista. Settlement at 3. [↑](#footnote-ref-3)
4. “A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives.” 52 Pa. Code § 54.43(f); *See also* 52 Pa. Code § 111.3. [↑](#footnote-ref-4)
5. I&E was unable to determine whether this agent made any sales attempts or to quantify the sales attempts made by the rest of the 122 agents who were also conditionally approved before their PATCH reports were received and cleared by Platinum and Vista. I&E Statement in Support at 4. [↑](#footnote-ref-5)
6. *Joseph A. Rosi v. Bell-Atlantic Pa., Inc., Docket No. C-00992409 (Order entered March 16, 2000) Rosi Case.* [↑](#footnote-ref-6)
7. Section 3301(a) of the Code, 66 Pa. C.S. § 3301(a), provides for a maximum $1,000 per violation. Section 69.1202 of our regulations, 52 Pa. Code § 69.1202, provides guidance in determining the amount of penalty per violation between $0 and $1,000. [↑](#footnote-ref-7)