



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY
PLEASE REFER
TO OUR FILE
M-2020-3006647

September 29, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Reliant Energy Northeast LLC d/b/a Reliant Energy,
NRG Business Solutions, Reliant-NRG, NRG Residential Solutions,
NRG Retail Solutions, NRG Home and NRG Business
Docket No. M-2020-3006647

Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B - the Bureau of Investigation and Enforcement’s Statement in Support; and (2) Appendix C - the Statement in Support of Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

SMW/jfm
Enclosure

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email only*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2020-3006647
	:	
Reliant Energy Northeast LLC	:	
d/b/a Reliant Energy,	:	
NRG Business Solutions, Reliant-NRG,	:	
NRG Residential Solutions,	:	
NRG Retail Solutions,	:	
NRG Home and NRG Business,	:	
Respondent	:	

SETTLEMENT AGREEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business (“NRG Home”¹ or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based on

¹ The Company conducted marketing and sales activities at in-person retail events across Pennsylvania in 2018 under its trade name, NRG Home.

information provided by the Commission’s Bureau of Consumer Services (“BCS”), which had received informal complaints from residential consumers alleging that NRG Home enrolled their electricity accounts to receive the Company’s electric generation supply without authorization.

As part of this Settlement Agreement, I&E and NRG Home (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and NRG Home are attached hereto as Appendix B and Appendix C, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120, and NRG Home with a principal place of business at 3711 Market Street, Suite 1000, Philadelphia, PA 19104.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (“Code”), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S.

§ 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus*

and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, regulation or order that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations and orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. NRG Home is a licensed electric generation supplier ("EGS") as defined by 66 Pa.C.S. § 2803. On or about May 19, 2011, at Docket No. A-2010-2192350, the Company was granted Commission approval to begin to offer, render, furnish or supply electricity or electric generation services as a generator and supplier of electric power to the public within the Commonwealth of Pennsylvania.

8. NRG Home, as a licensed provider of electric generation supply service, is subject to the power and authority of the Commission pursuant to Sections 501 and 2809 of the Code, 66 Pa.C.S. §§ 501, 2809.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of

NRG Home in its capacity as an EGS serving customers in Pennsylvania.

10. This matter involves the actual and attempted enrollments of residential accounts by NRG Home and/or agents of NRG Home.

11. A review of the resulting informal consumer complaints to BCS led to an informal investigation initiated by I&E prosecutory staff based on information referred to I&E by BCS. BCS received allegations from residential consumers alleging that their electricity accounts had been switched to receive electric generation supply provided by NRG Home without the customers' authorizations. Many of the unauthorized switching allegations stemmed from NRG's marketing activities at public retail locations, such as big box stores, where NRG agents were utilizing the eligible customer list ("ECL") to obtain the information of prospective customers.

12. As a result of negotiations between I&E and NRG Home, the parties have reached an agreement on an appropriate outcome to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement as submitted as being in the public interest.

II. BACKGROUND

13. Between April and September 2018, BCS received approximately six (6) informal complaints submitted by residential customers alleging that their electricity accounts had been switched to receive electric generation service supplied by NRG Home without their authorization.

14. BCS' review of these informal complaints determined that the alleged unauthorized enrollments were effectuated by agents who used the ECL at public retail locations, such as big box stores. BCS became concerned that NRG agents were improperly using the ECL, which contains customer information, to switch customers to NRG Home without the customers' consent.

15. On August 14, 2018, representatives from the Company met with representatives from the Commission's Office of Competitive Market Oversight ("OCMO") and self-reported that in some situations, NRG Home agents² improperly used the ECL to enroll customers with NRG's electric generation supply service without authorization. NRG Home advised that it terminated all agents involved in this scheme and that the Company took corrective actions to prevent misuse of the ECL from occurring in the future.

16. Based on the seriousness of the allegations set forth in the informal complaints, BCS referred the matter to I&E.

17. By letter dated September 26, 2019, I&E notified NRG Home that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. I&E advised NRG Home that its investigation would focus on the Company's marketing, sales and enrollment practices as an EGS in Pennsylvania, which were brought to I&E's attention as a result of several informal

² The Company contracted with five third-party staffing partners and directly employed a small in-house team of sales agents to conduct in-person sales at retail events across Pennsylvania in 2018.

complaints filed with BCS in 2018 alleging that customers did not enroll with NRG Home and yet were notified that they were being switched to receive electric generation service supplied by NRG Home.

18. I&E served NRG Home with two (2) sets of data requests on September 26, 2019, and May 6, 2020, respectively.

19. NRG Home timely responded to I&E's Data Requests – Set I on November 7, 2019 and provided supplemental responses on November 18, 2019. NRG Home timely responded to I&E's Data Requests – Set II on May 26, 2020.

20. The results of I&E's investigation, which included a review of the Company's responses to I&E's data requests, formed the basis for the instant Settlement Agreement.

21. I&E found that between January 1, 2018 and December 31, 2018, NRG Home or agents acting on behalf of NRG Home³ enrolled 168 residential or small business customers to receive electric generation supply provided by the Company without the customers' authorization, with such enrollments originating from NRG Home's in-person retail and event solicitations.

22. NRG Home placed each of the alleged 168 unauthorized enrollments into three different categories: (1) Disputed enrollments, where NRG Home explains that the customer alleges that he or she did not enroll with an NRG Home agent, never spoke to an NRG Home agent or did not sign an enrollment tablet. Disputed enrollments total 71;

³ A supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent. See 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.3.

(2) Unauthorized enrollments, which NRG Home explains include enrollments completed by someone other than the account holder who lives at the same address, was known to the account holder, and attested that they were authorized to make changes on the account when in fact they lacked such authorization. Unauthorized enrollments total 14; and (3) Enrollment processing errors, where NRG Home agents inadvertently selected the incorrect customer account when enrolling the customer or where the agent failed to advise the customer that he or she was switching suppliers until after the enrollment was signed. Enrollment processing errors total 83.

23. Additionally, I&E's investigation found that 28 customer accounts were in the process of being switched to receive electric generation supplied by NRG Home, but that the switch was terminated by NRG Home before the accounts were "on flow" or actually received electric generation service provided by NRG Home.

24. I&E's investigation further determined that the Company undertook a number of corrective measures designed to prevent similar occurrences in the future. Most notably, NRG Home eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. The tool now only permits searching for a specific name and populates information if a match is located. NRG Home has also since deployed a technology solution to authenticate customers' identities, thereby narrowing the ECL search results. Finally, NRG Home tightened its discipline policy for agents found to have committed ECL errors.

III. ALLEGED VIOLATION

25. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that NRG Home committed the following violation:

- NRG Home agents initiated the process of switching the electric generation supplier on at least one hundred ninety-six (196) customer accounts in 2018 and resulted in physically switching the electric generation supplier on one hundred sixty-eight (168) of those accounts without the authorization of the customers.

If proven, I&E alleges that such conduct would have violated 52 Pa. Code §§ 54.42(a)(9), and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-180 (multiple counts).

- I&E would have argued that the Commission has a zero tolerance policy regarding the unauthorized switching of customer accounts.
- I&E would have sought the maximum civil penalty of \$1,000 per violation for each of the one hundred sixty-eight (168) accounts that were switched without the authorization of the customers.

26. Had this matter been litigated, NRG Home would have raised defenses to this allegation and defended against the same at hearing, as follows:

- NRG Home would have presented evidence to show that in many instances the switches were authorized and that NRG Home complied with the Commission's regulations in enrolling the customers;
- For unauthorized switches that occurred, NRG Home would have argued for the imposition of a civil penalty lower than \$1,000 per violation based upon several factors, including:
 - NRG Home's self-reporting of the instances in which it learned that agents had used the ECL to improperly enroll customers without their consent;
 - The actions that NRG Home took to avoid a recurrence;
 - The small percentage of NRG Home's total customer base in Pennsylvania that is the subject of this investigation;
 - The unintentional nature of many unauthorized switches that occurred;
 - NRG Home's history of compliance with the Commission's regulations, as well as its cooperation with I&E's investigation; and
 - The programs that NRG has in place, and continuously improves, to train sales agents, monitor agent performance, enforce agent compliance with requirements, complete enrollment verifications, and conduct quality assurance activities.

IV. SETTLEMENT TERMS

27. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. I&E and NRG Home desire to: (i) terminate I&E's informal investigation; and (ii) settle this matter completely without litigation. Although NRG Home disputes or disagrees with the allegations described above, it fully acknowledges the seriousness of the allegations and recognizes the need to prevent similar allegations from reoccurring. Moreover, the Parties recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms and conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

28. I&E and NRG Home, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

- A. NRG Home will pay a civil penalty in the amount of One Hundred Seventy-Five Thousand Dollars (\$175,000), pursuant to 66 Pa.C.S. § 3301, to resolve all allegations of unauthorized switching, and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations and Orders arising from, or related to, the conduct investigated herein. The civil penalty represents the following: One Hundred Sixty-Eight Thousand Dollars (\$168,000) for the 168 customer accounts that were physically switched to and received electric generation supply from NRG Home; and Seven Thousand Dollars (\$7,000) for the twenty-eight (28) customer accounts where the process of switching to NRG

Home had been initiated but not completed. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. NRG Home will provide to each of the customers, who had one or more of the (168) accounts physically switched to NRG Home, a refund for the entire electric generation supply portion on the customer's bill for the first two (2) billing periods that the customers were switched to NRG Home, pursuant to 52 Pa. Code § 57.177(b). NRG Home will issue the customer refunds within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NRG Home will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.
- C. NRG Home shall refund any cancellation fee or early termination fee incurred by any of the aforementioned customers from another EGS as a result of the unauthorized switch to NRG Home, pursuant to 52 Pa. Code § 57.177(c), provided that the customer supplies documentation of incurring the fee.
- D. NRG Home reserves the right to seek proprietary treatment of information that would disclose trade secrets or commercially sensitive information in any description of the corrective actions taken by NRG Home in NRG Home's Statement in Support of the instant Settlement.

- E. NRG Home agrees to continue its current level of quality assurance monitoring efforts for one year, which includes random in-person visits by NRG Home employees. NRG Home reserves the right to seek proprietary treatment of the details of its quality assurance program that would disclose trade secrets or commercially sensitive information in NRG Home's Statement in Support of the instant Settlement.

- F. After the entry of a final Commission Order in this matter, NRG Home will provide I&E with a monthly report by the 30th of each month, for a period of one year, detailing complaints from Pennsylvania consumers that were received by the Company from BCS, the Pennsylvania Attorney General's Office, the Better Business Bureau and/or complaints directed to the Company related to allegations of unauthorized switching that originated from in-person retail and event solicitations. The monthly report to I&E shall include the following details: the complaint/incident date, customer sign-up date, utility account number, a synopsis of the complaint or incident, and the results of NRG's investigation of the incident.

- G. NRG Home agrees to retain customer signatures placed on enrollment tablets used at retail and event locations for a period of one (1) year starting after the entry of a final Commission Order in this matter, and will provide such records to BCS and I&E upon request.

- H. NRG Home agrees to retain any audio recordings of verifications taken at retail and event locations for a period of one (1) year starting after the entry of a final Commission Order in this matter if alternative forms of verification, *i.e.* electronic customer signatures, are not utilized.

29. Upon Commission approval of the Settlement in its entirety without modification and in consideration of the Company's payment of the total civil penalty in the amount of One Hundred Seventy-Five Thousand Dollars (\$175,000), disbursement of customer refunds and compliance with the other terms of this Settlement, as specified herein, I&E agrees that its informal investigation relating to NRG Home's conduct as described in this Settlement Agreement shall be terminated and marked closed.

30. Upon Commission approval of the Settlement in its entirety without modification, I&E agrees to forgo the institution of any formal complaint against the Company at the Commission with respect to allegations of unauthorized enrollments committed by NRG Home agents at in-person retail locations during the time period in question.

31. I&E and NRG Home jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations, and avoids the time and expense of litigation, which entails hearings, travel for the Company's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals.

32. Attached as Appendices B and C are Statements in Support submitted by I&E and NRG Home, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

33. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

34. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this 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 (20) days after entry of an Order modifying the Settlement.

35. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, NRG Home has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in the Settlement.

36. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

37. If either party should file any pleading, including comments, in response to a tentative or final order of the Commission, the other party shall have the right to file a reply.

38. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding.

39. The Parties arrived at the Settlement after conducting informal discovery and engaging in discussions over several months. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

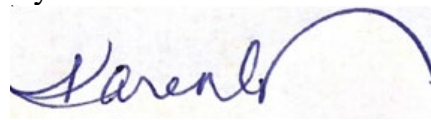
Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business

By:



Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
stwimer@pa.gov

By:



Karen O. Moury
Attorney for Reliant Energy Northeast LLC
d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com



Christopher M. Andreoli
Prosecutor
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
chandreoli@pa.gov

Date: September 29, 2020

Date: September 29, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2020-3006647
	:	
Reliant Energy Northeast LLC	:	
d/b/a Reliant Energy,	:	
NRG Business Solutions, Reliant-NRG,	:	
NRG Residential Solutions,	:	
NRG Retail Solutions,	:	
NRG Home and NRG Business,	:	
Respondent	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on September 29, 2020 between the Commission’s Bureau of Investigation and Enforcement and Reliant Energy Northeast, LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business (hereinafter referred to as “NRG Home”) is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of the date this Order becomes final, NRG Home shall pay a civil penalty of One Hundred Seventy-Five Thousand Dollars (\$175,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. Within thirty (30) days of the date this Order becomes final, NRG Home shall provide to each of the customers who had one or more of the 168 accounts physically switched to receive its service, a refund for the entire electric generation supply portion on the customers' bills for the first two (2) billing periods that the customers were switched, pursuant to 52 Pa. Code § 57.177(b). Following payment of the refunds, NRG Home shall file with the Commission a verification acknowledging that all refund payments have been disbursed.

4. NRG Home shall refund any cancellation fee or early termination fee charged by another electric generation supplier and incurred by a customer impacted by the unauthorized switching that is the subject of this proceeding, pursuant to 52 Pa. Code 57.177(c), if the customer supplies documentation of incurring the fee.

5. Upon entry of this Order, NRG Home shall provide the Bureau of Investigation and Enforcement with a monthly report by the 30th of each month, for a period of one year, detailing complaints from Pennsylvania consumers that were received by the Company from BCS, the Pennsylvania Attorney General's Office, the Better Business Bureau and/or complaints directed to the Company related to allegations of unauthorized switching that originated from in-person retail and event solicitations.

6. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

7. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and verification indicating that all customer refunds have been disbursed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2020-3006647
	:	
Reliant Energy Northeast, LLC	:	
d/b/a Reliant Energy,	:	
NRG Business Solutions, Reliant-NRG,	:	
NRG Residential Solutions,	:	
NRG Retail Solutions,	:	
NRG Home and NRG Business,	:	
Respondent	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business (“NRG

Home,” “Respondent” or “Company”).⁴ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

I. BACKGROUND

By letter dated September 26, 2019, I&E notified NRG Home that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113(a). I&E advised NRG Home that its investigation would focus on the Company’s marketing, sales and enrollment practices as an electric generation supplier (“EGS”) in Pennsylvania, which were brought to I&E’s attention as a result of six (6) informal complaints filed with Bureau of Consumer Services (“BCS”) in 2018 alleging that customers did not enroll with NRG Home and yet were notified that they were being switched to receive electric generation service supplied by NRG Home. BCS’ review of these informal complaints determined that the alleged unauthorized enrollments were effectuated by agents who used the eligible customer list (“ECL”) at public retail locations, such as big box stores including Sam’s Club and Wal-Mart. BCS became concerned that NRG agents were improperly using the ECL, which contains customer information, to switch customers to NRG Home without the customers’ consent.

I&E’s investigation primarily consisted of service and review of two (2) sets of data requests to NRG Home. I&E determined that between January 1, 2018 and

⁴ I&E and NRG Home are collectively referred to herein as the “Parties.”

December 31, 2018, NRG Home or agents acting on behalf of NRG Home enrolled 168 residential or small business customers to receive electric generation supply provided by the Company without the customers' authorization, with such enrollments originating from NRG Home's in-person retail and event solicitations. NRG Home categorized each of the 168 unauthorized enrollments into one of three different types: (1) Disputed enrollments, where the customer alleges that he or she did not enroll with an NRG Home agent, never spoke to an NRG Home agent or did not sign an enrollment tablet. Disputed enrollments total 71; (2) Unauthorized enrollments, which NRG Home explains include enrollments completed by someone other than the account holder who lives at the same address, was known to the account holder, and attested that they were authorized to make changes on the account when in fact they lacked such authorization. Unauthorized enrollments total 14; and (3) Enrollment processing errors, where NRG Home agents inadvertently selected the incorrect customer account when enrolling the customer or where the agent failed to advise the customer that he or she was switching suppliers until after the enrollment was signed. Enrollment processing errors total 83.

Additionally, I&E's investigation determined that 28 customer accounts were in the process of being switched to receive electric generation supplied by NRG Home, but that the switch was terminated by NRG Home before the accounts were "on flow" or actually received electric generation service provided by NRG Home.

Had this matter been litigated, I&E was prepared to allege that agents acting on behalf of NRG Home initiated the process of switching the electric generation supplier on at least one hundred ninety-six (196) customer accounts in 2018, and resulted in physically switching the electric generation supplier on one hundred sixty-eight (168) of

those accounts without the authorization of the customers. I&E was prepared to allege that such conduct would have violated 52 Pa. Code § 54.42(a)(9), and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-180 (multiple counts).

I&E's investigation further found that the Company undertook a number of proactive, corrective measures designed to prevent similar occurrences in the future. Most notably, NRG Home eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. The tool now only permits searching for a specific name and populates information if a match is located. NRG Home has also since deployed a technology solution to authenticate customers' identities, thereby narrowing the ECL search results. Furthermore, in August 2018, representatives of NRG Home self-reported the unauthorized switching incidents falling under the "disputed enrollment" category, explained *supra.*, to the Commission's Office of Competitive Market Oversight ("OCMO"). Finally, NRG Home tightened its discipline policy for agents found to have committed ECL errors.

On September 29, 2020, the Parties filed a Joint Settlement Petition resolving all issues between I&E and NRG Home in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation involving allegations that NRG

Home, through its agents, switched customers to receive electric generation service without their authorization. Notably, NRG Home promptly took actions to address the unauthorized switching allegations prior to the initiation of I&E's investigation.

I&E intended to prove the factual allegations set forth in its investigation at hearing, to which the Company would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and NRG Home may disagree with respect to I&E's factual allegations, NRG Home recognizes the seriousness of the allegations and commits to fully complying with the Commission's regulations in the future.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and NRG Home have agreed as follows:

- I. NRG Home will pay a civil penalty in the amount of One Hundred Seventy-Five Thousand Dollars (\$175,000), pursuant to 66 Pa.C.S. § 3301, to resolve all allegations of unauthorized switching, and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations and Orders arising from, or related to, the conduct investigated herein. The civil penalty represents the following: One Hundred Sixty-Eight Thousand Dollars (\$168,000) for the 168 customer accounts that were physically switched to and received electric generation supply from NRG Home; and Seven Thousand Dollars (\$7,000) for the twenty-eight (28) customer accounts where the process of switching to NRG

Home had been initiated but not completed. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- J. NRG Home will provide to each of the customers, who had one or more of the (168) accounts physically switched to NRG Home, a refund for the entire electric generation supply portion on the customer's bill for the first two (2) billing periods that the customers were switched to NRG Home, pursuant to 52 Pa. Code § 57.177(b). NRG Home will issue the customer refunds within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NRG Home will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.
- K. NRG Home shall refund any cancellation fee or early termination fee incurred by any of the aforementioned customers from another EGS as a result of the unauthorized switch to NRG Home, pursuant to 52 Pa. Code 57.177(c), provided that the customer supplies documentation of incurring the fee.
- L. NRG Home reserves the right to seek proprietary treatment of information that would disclose trade secrets or commercially sensitive information in any description of the corrective actions taken by NRG Home in NRG Home's Statement in Support of the instant Settlement.

- M. NRG Home agrees to continue its current level of quality assurance monitoring efforts for one year, which includes random in-person visits by NRG Home employees. NRG Home reserves the right to seek proprietary treatment of the details of its quality assurance program that would disclose trade secrets or commercially sensitive information in NRG Home's Statement in Support of the instant Settlement.
- N. After the entry of a final Commission Order in this matter, NRG Home will provide I&E with a monthly report by the 30th of each month, for a period of one year, detailing complaints from Pennsylvania consumers that were received by the Company from BCS, the Pennsylvania Attorney General's Office, the Better Business Bureau and/or complaints directed to the Company related to allegations of unauthorized switching that originated from in-person retail and event solicitations. The monthly report to I&E shall include the following details: the complaint/incident date, customer sign-up date, utility account number, a synopsis of the complaint or incident, and the results of NRG's investigation of the incident.
- O. NRG Home agrees to retain customer signatures placed on enrollment tablets used at retail and event locations for a period of one (1) year starting after the entry of a final Commission Order in this matter, and will provide such records to BCS and I&E upon request.
- P. NRG Home agrees to retain any audio recordings of verifications taken at retail and event locations for a period of one (1) year starting after the entry of a final Commission Order in this matter if alternative forms of verification, *i.e.* electronic customer signatures, are not utilized.

In consideration of NRG Home's payment of a monetary civil penalty and performance of the above-described terms, I&E agrees that its informal investigation relating to NRG Home's conduct as described in the Settlement Agreement referenced herein shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement in its entirety.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NRG Home at the Commission with respect to the unauthorized switching allegations and misleading marketing practices that are the subject of I&E's instant investigation.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (“Policy Statement”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty

for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the conduct in this matter involves unauthorized switching performed by NRG Home agents at retail and event locations where the ECL was accessible to the agents. Some instances of the unauthorized switching were inadvertent, such as selecting the incorrect customer from the ECL. Other unauthorized switching instances involved a scheme conducted by NRG Home agents to improperly use the information contained in the ECL to enroll customers with NRG’s electric generation supply service without authorization. Therefore, I&E submits that the violations averred in its investigation are of a serious nature in that they involve changing a customer’s electric generation supplier without consent. Consequently, the seriousness of these violations was considered in arriving at the civil penalty in the Settlement.

The second factor considered is whether the resulting consequences of NRG Home's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations. Nevertheless, the consequences of the alleged violations may have resulted in customers, who received electric generation supplied by NRG Home, being charged a more expensive rate than the local electric distribution company's price-to-compare ("PTC") or the rate of another generation supplier. Accordingly, I&E avers that some customers may have experienced financial consequences as a result of the actions of NRG Home agents and such consequences should be deemed serious.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether NRG Home's alleged conduct was intentional or negligent does not apply since this matter is being resolved via settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). NRG Home has extensive practices and procedures in place to vet potential new vendors, train agents and conduct quality assurance. NRG Home has agreed to continue its current level of quality assurance monitoring efforts for one year, which includes random in-person visits to retail and event sales locations by NRG Home employees. Furthermore, NRG Home has eliminated the ability for sales agents to scroll

through the ECL to locate a certain customer. The tool now only permits searching for a specific name and populates information if a match is located.

NRG Home has also agreed to provide I&E with a monthly report by the 30th of each month, for a period of one year, detailing complaints from Pennsylvania consumers that were received by the Company from BCS, the Pennsylvania Attorney General's Office, the Better Business Bureau and/or complaints directed to the Company related to allegations of unauthorized switching that originated from in-person retail and event solicitations. Thus, heightened scrutiny will continue to be placed on NRG Home's sales activities at retail and event locations.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E's investigation revealed that 168 customer accounts were switched to receive electric generation service provided by NRG Home without the customers' authorization. An additional 28 customer accounts were in the process of being switched to NRG Home before the Company terminated the transactions. The incidents of unauthorized enrollments originating from NRG Home sales activities at retail and event locations occurred during the 2018 calendar year. Some customers detected the unauthorized enrollment, promptly contacted NRG Home to complain and were served by NRG Home for less than a billing cycle. Other customers received electric generation supply provided by NRG Home for a couple of months prior to being switched back to default service or another EGS.

The sixth factor to be considered relates to the compliance history of NRG Home. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company

may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Numerous formal complaints have been filed by consumers against NRG Home, all of which resulted in the filing of Certificates of Satisfaction pursuant to 52 Pa. Code § 5.24.⁵ Accordingly, no formal complaints have been sustained against the Company. Additionally, the instant matter is the first case involving an I&E enforcement action brought against NRG Home and is the first instance in which NRG Home would pay a civil penalty imposed by the Commission.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that NRG Home cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions. Furthermore, the Company self-reported the slamming incidents to OCMO in August 2018.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$175,000, which is not tax deductible, in combination with the issuance of customer refunds is substantial and sufficient to deter NRG Home from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Settlement Agreement between I&E and NRG Home provides a civil penalty of \$1,000 for each of the 168 customer accounts that were physically switched to and received electric generation supply service from NRG

⁵ One consumer complaint proceeding is pending. See *Christina Knotts v. Reliant Energy Northeast LLC t/a NRG Residential Solutions*, Docket No. F-2020-3020303.

Home. This per account civil penalty is identical to the \$1,000 per account penalty imposed by the Commission in previous slamming matters where a customer's account was switched and received electric generation supply service from a company without the customer's authorization. *See Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013); and *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014) (hereinafter referred to as the *PaG&E Order*).

The Settlement also provides for a \$250 per account penalty for the twenty-nine (28) customers whose accounts were in the process of being switched to NRG Home. This per account civil penalty is similar to the \$200 per account penalty imposed by the Commission in the *PaG&E Order* where the switching process had been initiated but not completed.

I&E submits that the instant Settlement Agreement should be viewed on its own merits as there are no past Commission decisions that are directly responsive to an identical situation concerning unauthorized switching at retail and event locations. However, in looking at the relevant factors that are comparable to other matters involving allegations of unauthorized switching, and comparing the allegations to the relief provided in the Settlement - specifically, a civil penalty and customer refunds - this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully 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 while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

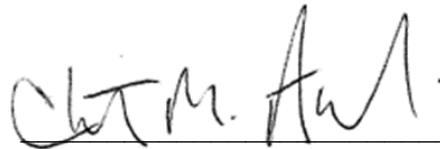
In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522
stwimer@pa.gov



Christopher M. Andreoli
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 85676
chandreoli@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: September 29, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2020-3006647-
	:	
Reliant Energy Northeast LLC	:	
d/b/a Reliant Energy,	:	
NRG Business Solutions, Reliant-NRG,	:	
NRG Residential Solutions,	:	
NRG Retail Solutions,	:	
NRG Home and NRG Business,	:	
Respondent	:	

**STATEMENT OF RELIANT ENERGY NORTHEAST LLC
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF SETTLEMENT**

Pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code §§ 5.231, 5.232 and 69.1201, Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business (“NRG Home”) files this Statement in Support of the Joint Petition for Approval of Settlement (“Settlement”) filed by NRG Home and the Commission’s Bureau of Investigation and Enforcement (“I&E”). In support of the Settlement, NRG Home offers the following information for the Commission’s consideration.

I. INTRODUCTION

The Settlement fully resolves issues related to unauthorized switches that were initially self-reported by NRG Home to the Commission’s Office of Competitive Market Oversight (“OCMO”) and other alleged unauthorized switches identified during an investigation by I&E. NRG Home acknowledges that some switches were unauthorized due to agent misuse of the eligible customer list (“ECL”) at public retail locations, such as big box stores. However, other instances of unauthorized switching that I&E examined during the investigation were the result of inadvertent ECL processing errors. NRG Home further believes that an in-depth review of each account that is the subject of this Settlement would reveal that many of those enrollments were properly processed and no violations of the Commission’s regulations occurred. Rather than expending significant resources developing this defense and engaging the Commission in a possibly lengthy process to adjudicate the propriety of many individual enrollments, NRG Home made the practical business decision to enter into the Settlement. By entering into the Settlement, NRG Home also avoids the uncertainty of litigation.

Through this Settlement, NRG Home has agreed to pay a civil penalty of \$1,000 for each switch that I&E has alleged was not authorized, which is the maximum amount that the Commission may impose for a violation of the Public Utility Code or Commission regulations. Additionally, prior to initiation of the investigation by I&E, NRG proactively took measures to avoid agent misuse of the ECL in the future, and further agreed to a number of conditions as part of this Settlement. The conditions, which are detailed below, include refunds to customers, quality assurance monitoring efforts, monthly reporting to I&E, retention of customer signatures on enrollment tablets and retention of audio recordings.

NRG Home believes that the terms and conditions of the Settlement provide for a fair and reasonable resolution of the issues. As such, NRG Home submits that the Settlement is in the public interest and respectfully requests that it be approved without modification.

II. DISCUSSION

A. Summary of Issues

On August 14, 2018, representatives of NRG Home met with representatives of OCMO and self-reported that some NRG Home agents had improperly used the ECL to enroll customers without authorization. NRG Home advised OCMO that it had removed all agents involved in the improper activity from selling for NRG Home and had taken corrective actions to prevent misuse of the ECL from occurring in the future. Most notably, NRG Home eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. The tool now only permits searching for a specific name and populates information if a match is located.

Coupled with the information that NRG Home self-reported, and the filing of six informal complaints with the Bureau of Consumer Services (“BCS”) alleging unauthorized switches, OCMO referred the matter to I&E. By letter dated September 26, 2019, I&E notified NRG Home that it had initiated an informal investigation to focus on NRG’s marketing, sales and enrollment practices as an electric generation supplier (“EGS”) in Pennsylvania. During the investigation, NRG Home responded to two sets of data requests. Through a review of those responses, I&E identified 168 instances in which customers claimed to have been switched without authorization.

NRG Home placed these allegations into three categories, including: (1) 71 disputed enrollments where the customer alleges that he or she did not enroll with NRG Home, never spoke to an NRG Home agent and did not sign an enrollment tablet; (2) 14 alleged unauthorized enrollments, where the transactions were completed by someone other than the account holder

who lives at the same address, was known to the account holder and attested that they were authorized to make changes on the account; and (3) 83 enrollment processing errors where NRG Home agents inadvertently selected the incorrect account or neglected to advise the customer that he or she was switching suppliers until after the enrollment was signed. Another 28 accounts were in the process of being switched but NRG Home terminated the enrollment before electricity flowed to the customer.

B. Key Provisions of Settlement

1. Civil Penalties

Under the Settlement, NRG Home agrees to pay a civil penalty of \$1,000 for each of the 168 instances in which I&E alleged that the switch was unauthorized, for a total of \$168,000. NRG Home further agrees to pay a civil penalty of \$250 for each of the 28 instances in which I&E alleged that the switch was unauthorized but NRG Home cancelled the enrollment and electricity never flowed to the customer, for a total of \$7,000. These civil penalties amount to a total of \$175,000. (Settlement, Para. 28A).

2. Refunds

With respect to refunds, the Settlement obligates NRG Home to refund two months' of supply charges to the 168 customers whose accounts were switched to NRG Home, allegedly without authorization. In addition, NRG Home commits under the Settlement to refund a cancellation or termination fee incurred by any of these 168 customers as a result of being switched to NRG Home, provided that the customer supplies documentation of incurring the fee. (Settlement, Para. 28B and 28C).

3. Quality Assurance

NRG Home further agrees to continue its current level of quality assurance monitoring efforts for one year. These efforts include random in-person visits by NRG Home employees. (Settlement, Para. 28E).

4. Reporting

The Settlement also obligates NRG Home to provide I&E with a monthly report for a period of one year. This report will include details of complaints from Pennsylvania consumers that were received directly by NRG Home and referred to NRG Home by BCS, the Attorney General's Office and the Better Business Bureau related to allegations of unauthorized switching that originated from in-person retail and event solicitations. (Settlement, Para. 28F).

5. Signatures

Under the Settlement, NRG Home agrees to retain customer signatures placed on enrollment tablets used at retail and event locations for a period of one year. Further, NRG Home commits to providing such records to BCS and I&E upon request. (Settlement, Para. 28G).

6. Audio Recordings

The Settlement further obligates NRG Home to retain any audio recordings of verifications taken at retail and event locations for a period of one year. This commitment is applicable only if alternative forms of verification, i.e. electronic customer signatures, are not utilized. (Settlement, Para. 28H).

C. Settlement is in the Public Interest

1. Applicable Legal Standards

It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231(a). Settlements conserve valuable resources of the Commission and the parties. Importantly, the focus

of inquiry for determining whether a proposed settlement should be approved is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011). Rather, the Commission reviews settlements to determine whether the terms are in the public interest. *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

The Commission’s Policy Statement at 52 Pa. Code § 69.1201, which sets forth various factors and standards that are used in evaluating settled cases, is a codification of the Commission’s decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000). These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest. 52 Pa. Code § 69.1201(a). Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict a fashion to settled cases, and the parties in settled cases are afforded flexibility in reaching amicable resolutions as long as the settlement is in the public interest. 52 Pa. Code § 69.1201(b).

2. NRG Home’s Position

Had this matter been litigated, NRG Home would have presented evidence to show that in many instances that are the subject of this Settlement, the switches were authorized and that NRG Home fully complied with the Commission’s regulations in enrolling customers. However, rather than expending significant resources to perform an in-depth review of each account that I&E alleges was switched without authorization and then defend these allegations in litigation, NRG Home made a practical business decision to enter into the Settlement.

NRG Home would have also advocated for the imposition of a civil penalty of less than \$1,000 per unauthorized switch due to a number of factors. These factors include: (i) NRG Home's self-reporting to OCMO of agent misuse of the ECL, which resulted in some customer accounts being switched to NRG Home without authorization; (ii) NRG Home's modifications to its internal practices to prevent a recurrence of this practice; (iii) the extremely small percentage of NRG Home's total customer base in Pennsylvania that is the subject of this Settlement; (iv) the unintentional nature of other switches that were not authorized by the customer; (v) NRG Home's history of compliance with the Commission's regulations; (vi) NRG Home's cooperation with I&E during the investigation; and (vii) the robust programs that NRG Home has in place, and continuously improves, to train sales agents, monitor agent performance, enforce agent compliance with requirements, complete enrollment verifications, and conduct quality assurance activities. By agreeing to pay a civil penalty of \$175,000, in lieu of advancing these arguments, NRG Home avoided the uncertainty of litigation

3. Application of Policy Statement

a. Seriousness of Allegations

The first factor that is considered under the Policy Statement is whether the allegations were of a serious nature, such as willful fraud or misrepresentation, as opposed to administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). NRG Home acknowledges that allegations of switching customers without authorization are of a serious nature, and that the Commission has established a zero tolerance policy for switching customers without their consent. *See PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013, at 3, 9) (Commission had previously rejected a settlement that called for a civil penalty of \$500 per

unauthorized switch; in approving a settlement providing for a civil penalty of \$1,000 per unauthorized switch, Commission noted its long standing zero tolerance policy for such conduct).

NRG Home has likewise implemented a zero tolerance policy and agrees that switching customers without their consent is a serious violation of the Commission's regulations and NRG Home's policies. Nonetheless, NRG Home notes that the majority of the allegations that are the subject of the Settlement were not of an intentional nature. Indeed, nearly half of the accounts were switched as a result of enrollment processing errors, where NRG Home agents inadvertently selected the incorrect customer account or where the agent failed to advise the customer of the switch until after the enrollment was signed. The negotiated civil penalty of \$1,000 per alleged unauthorized switch and \$250 per alleged unauthorized attempted switch appropriately reflects the seriousness of I&E's allegations. *See MXenergy* at 9.

b. Seriousness of Consequences

The second factor that is evaluated under the Policy Statement is whether the resulting consequences of the alleged actions were of a serious nature, such as whether personal injury or property damage was involved. 52 Pa. Code § 69.1201(c)(2). No allegations have been raised about personal injury or damage. Therefore, the consequences were not serious and this mitigating factor supports the negotiated civil penalty. *See MXenergy* at 10.

c. Intentional vs. Negligent

The third factor identified by the Policy Statement is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). Since this factor is only considered in evaluating litigated cases, it is not relevant in reviewing the Settlement.

d. Modifications to Practices and Procedures

The fourth factor that is considered under the Policy Statement is whether the regulated entity has made efforts to modify its internal practices and procedures to address the allegations at issue and prevent similar conduct in the future. These modifications may include improving company techniques. 52 Pa. Code § 69.1201(c) (4).

Upon learning about agent misuse of the ECL, resulting in unauthorized switches, NRG Home self-reported these instances to OCMO. NRG Home also promptly removed all agents involved in the improper activity and took corrective actions to prevent misuse of the ECL from occurring in the future. Most notably, NRG Home eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. The tool now only permits searching for a specific name and populates information if a match is located. NRG Home has also since deployed a technology solution to authenticate customers' identities, thereby narrowing the ECL search results. Additionally, NRG Home has tightened its discipline policy for agents found to have committed ECL errors.

Further, NRG Home has agreed to issue refunds of two months' of supply charges to all 168 customers whose accounts are alleged by I&E to have been switched without authorization. NRG Home has also agreed to refund any early termination or cancellation fees that those customers incurred as a result of the switch, provided that the customer furnishes documentation.

In addition, NRG Home already has robust programs in place, which it continuously improves, to train sale agents, monitor agent performance, enforce agent compliance with requirements, complete enrollment verifications, and conduct quality assurance activities. Although many elements of these programs exceed the requirements in the Commission's regulations, NRG Home has committed to continuing its current level of quality assurance

monitoring efforts for one year, which includes random in-person visits to the public retail locations by NRG Home employees.

NRG Home has also agreed to provide monthly reports to I&E for a period of one year. These reports will detail complaints that NRG Home receives directly from consumers and complaints that are received from BCS, the Attorney General's Office and the Better Business Bureau relating to allegations of unauthorized switching that originated from in-person retail sales and event solicitations. NRG Home's reports will include the following details: the complaint/incident date, customer sign-up date, utility account number, a synopsis of the complaint or incident, and the results of NRG Home's investigation of the incident.

All of these measures demonstrate NRG Home's commitment to addressing the allegations of unauthorized switching and to avoid similar incidents in the future. Therefore, this mitigating factor supports the negotiated civil penalty. *See MXenergy* at 10.

e. Number of Affected Customers

The fifth factor that is evaluated under the Policy Statement is the number of customers who were affected and the duration of the alleged violations. 52 Pa. Code § 69.1201(c) (5). Here, the 196 customer accounts that are the subject of the Settlement, including the 28 accounts that were not switched, represent a very small fraction of NRG Home's enrollments over the same period and an even more miniscule fraction of NRG Home's total customer base. Looking at it from the standpoint of the number of residential customers who are receiving electricity from an EGS, the percent of affected customers is so negligible as to be *de minimus*.⁶ While NRG Home does not offer this statistic to minimize the experiences of individual consumers whose accounts

⁶ According to the August 2020 statistics, 1,465,442 residential customers are shopping for electricity. https://www.papowerswitch.com/media/zmfzazaf/paps_shoppingnumbers083120.pdf

were switched without consent, this perspective does demonstrate that the proportion of affected customers was not large. *MXenergy* at 11. It also supports NRG Home's assertion that it takes compliance very seriously and has a robust sales performance program aimed at ensuring compliance and rooting out problems.

As to the duration of unauthorized switches, all affected and potentially affected customers are receiving refunds for the first two months' of supply charges, consistent with the Commission's regulations. 52 Pa. Code § 57.177(b). Since customers should have reasonably known of a change in EGS within the first two billing periods, they could have complained and been returned to their prior EGS or default service. Therefore, any duration of an unauthorized switch beyond two months is not relevant. This mitigating factor supports the negotiated civil penalty.

f. Compliance History

The sixth factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c) (6). No formal complaints have been sustained against NRG Home since it was licensed in 2011. When formal complaints are filed, NRG Home works with consumers to reach amicable resolutions that result in the complaints being fully satisfied and withdrawn. NRG Home takes a similar approach in handling informal complaints with BCS. NRG Home's compliance record supports the negotiated civil penalty. *MXenergy* at 11.

g. Cooperation During Informal Investigation

The seventh factor that is considered under the Policy Statement is whether the regulated entity cooperated with the Commission's informal investigation. 52 Pa. Code § 69.1201(c) (7). NRG Home cooperated during the informal investigation, timely responding to I&E's data requests. (Settlement, Para. 18-19). This mitigating factor supports approval of the Settlement. *MXenergy* at 11.

h. Deterrent Nature of Civil Penalty and Consistency with Prior Decisions

The eighth and ninth factors that are evaluated under the Policy Statement are the amount of civil penalty that is necessary to deter future violations and past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c) (8) and (9). The civil penalty of \$1,000 per alleged unauthorized switch is the maximum amount that may be imposed by the Commission. 66 Pa. C.S. § 3301. Also, it is consistent with prior Commission decisions addressing investigations involving allegations of unauthorized switches. *See MXenergy* at 11-12. The lower civil penalty amount negotiated by I&E and NRG Home for the 28 accounts that were not switched is appropriate since NRG Home took the necessary steps to terminate the switch and customers were unaffected. *See PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.* Docket No. M-2013-2325122 (Order entered October 2, 2014, at 5, 12-13).

i. Other Relevant Factors

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c) (10). It is in the public interest to approve the Settlement and avoid the expense and uncertainty of litigation. In addition, the Settlement provides for refunds to affected customers and reflects modifications to NRG Home’s business practices that will provide a public benefit to all prospective customers. *MXenergy* at 12.

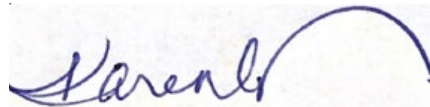
j. Summary

An evaluation of the factors in the Policy Statement shows that the Settlement is in the public interest and that it should be approved without modification. Not only does the Settlement sufficiently address the issues raised in this proceeding, particularly where all affected and potentially affected customers have been fully reimbursed for two months of supply charges, it

avoids the uncertainty and attendant costs of litigation and allows NRG Home to focus on its EGS operations.

WHEREFORE, based upon the foregoing, Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business respectfully requests that the Commission approve the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



Karen O. Moury
I.D. No. 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

Dated: September 29, 2020

Counsel for Reliant Energy Northeast LLC d/b/a
Reliant Energy, NRG Business Solutions, Reliant-
NRG, NRG Residential Solutions, NRG Retail
Solutions, NRG Home and NRG Business

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2020-3006647
	:	
Reliant Energy Northeast LLC d/b/a	:	
Reliant Energy, NRG Business	:	
Solutions, Reliant-NRG, NRG	:	
Residential Solutions, NRG Retail	:	
Solutions, NRG Home and NRG	:	
Business,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail Only:

Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
*Counsel for Reliant Energy Northeast LLC d/b/a Reliant Energy,
NRG Business Solutions, Reliant-NRG, NRG Residential Solutions,
NRG Retail Solutions, NRG Home and NRG Business*



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
717.772.8839
stwimer@pa.gov

Dated: September 29, 2020