



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

November 19, 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.
National Gas & Electric, LLC
Docket No. M-2020-2637688
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 (3) Appendix C – the Statement in Support of National Gas & Electric, LLC.

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,

A handwritten signature in black ink, appearing to read "K. Myers", written over a white background.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494
(717) 705-4366
komyers@pa.gov

Enclosure

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-2637688
	:	
National Gas & Electric, LLC	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and National Gas & Electric, LLC (“NG&E” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement,” “Settlement Agreement,” or “Petition”) to resolve all issues related to the above-docketed informal investigation.

As part of this Settlement Agreement, I&E and NG&E (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement without modification. An appendix entitled Proposed Ordering Paragraphs is attached hereto as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and NG&E 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, with offices at 400 North Street, Harrisburg, PA 17120 and National Gas & Electric, LLC, with its principal place of business at 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

2. The 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 (the "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 or regulation 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, or both. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s). 66 Pa.C.S. § 3301.

7. NG&E is a jurisdictional electric generation supplier (“EGS”)¹ licensed by the Commission at Docket No. A-2015-2517744 to operate in all of the electric distribution company services territories throughout the Commonwealth of Pennsylvania.

8. NG&E, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Code, 66 Pa.C.S. § 102, for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.

9. NG&E, as a licensed provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey, and comply with the Commission’s regulations and orders pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c).

10. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of NG&E in its capacity as an EGS serving consumers in Pennsylvania.

11. Pursuant to 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, Commission staff has the authority to conduct informal investigations or informal

¹ “Electric generation supplier” is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 (“Competition Act”). *See also*, 52 Pa. Code § 57.171.

proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

12. I&E instituted an informal investigation of NG&E based on information referred to I&E by the Commission's Office of Competitive Market Oversight ("OCMO"). The Director of OCMO notified I&E that he received a postcard in the mail from NG&E that allegedly contained confidential information of a PPL Electric Utilities ("PPL") customer, misrepresented savings with NG&E, and included outdated information regarding PPL's rate. I&E determined that these allegations warranted that a further investigation be conducted to examine whether the actions of NG&E violated Commission regulations and orders.

13. As a result of successful negotiations between I&E and NG&E, the Parties have reached an agreement on an appropriate outcome to the informal investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

II. BACKGROUND

14. On December 1, 2017, Daniel Mumford, Director of OCMO, received a postcard in the mail from NG&E. *See* Exhibit 1.

15. The postcard was headlined “**NOTICE OF PPL ELECTRIC RATE INCREASE**” and stated that “PPL’s residential default electric rate **increased 14%** effective June 1st 2017”² and that customers could “**Save 25%** compared to PPL’s higher June-November 2017 rate” (emphasis in original).

16. The postcard also referenced a PPL customer’s name and the last four (4) digits of the customer’s PPL account number.

17. On December 5, 2017, OCMO contacted NG&E regarding the postcards in question and advised NG&E to cease sending the postcards and to review all enrollments resulting from the inaccurate and outdated information on the postcards to ensure that its customers clearly understood the pricing of the NG&E offer and its comparative relationship to the June-November 2017 PPL default rate as well as to the new December 2017 default rate.

18. In response, NG&E informed OCMO that NG&E had already ceased mailing the postcards in question and that it had instructed its agents to point out to customers the date range on the postcard, June-November 2017, and to inform customers of PPL’s new December 2017 default rate of 7.463 cents and the accurate percentage of savings to NG&E’s lowest offer, which became 17% savings instead of the 25% savings based upon the quoted June-November 2017 PPL default rate.

² On June 1, 2017, PPL’s default rate for June through November 2017 increased to 8.493 cents. However, on December 1, 2017, PPL’s default rate for December 2017 through May 2018 decreased to 7.463 cents.

19. NG&E alleged that the printing of confidential customer information on the postcards occurred as a result of a mail merge error on the part of the vendor that NG&E used for printing and mailing services.

20. NG&E also alleged that the postcards accurately represented the savings compared to the quoted PPL price to compare from June-November 2017, but mis-stated savings with NG&E compared to the new PPL price to compare effective December 1, 2017, and that the postcards contained outdated information about PPL's price to compare because the delivery schedule for the postcards was inadvertently delayed by the same vendor. According to the Company, the delay is what caused some prospective customers to receive the postcards after PPL's December 1, 2017 price to compare decrease.

21. OCMO subsequently referred the matter involving NG&E to I&E for an informal investigation.

22. Through NG&E's responses to I&E's Data Requests, I&E determined that on November 22, 2017, NG&E mailed a total of 155,252 postcards to prospective customers.

23. Approximately 90,634 of NG&E's prospective customers received a postcard that contained a PPL customer's name and the last four digits of the customer's PPL account number.

24. It is estimated that approximately 2,500 of the prospective customers received the postcard in question after PPL's December 1, 2017 price to compare decrease.

25. In response to the postcards, seventy (70) customers enrolled with NG&E.

26. NG&E avers that the breakdown of the seventy (70) enrollments is as follows:

A. Forty (40) customers enrolled prior to December 1, 2017 and received 25% savings for at least some period;

B. Five (5) customers enrolled between December 1 and December 4, 2017 and received 17% savings;

C. Thirteen (13) customers enrolled between December 5 and December 20, 2017 and received 17% savings; and

D. Twelve (12) customers enrolled in January 2018 and received 17% savings.

III. ALLEGED VIOLATIONS

27. I&E concluded from its investigation that NG&E violated provisions of Chapter 54 of the Pennsylvania Code concerning Electricity Generation Customer Choice, 52 Pa. Code § 54.43(d), with regard to the 90,634 postcards that contained the confidential and personal information of a customer.

28. I&E also concluded that NG&E violated provisions of Chapter 111 of the Pennsylvania Code concerning the Marketing and Sales Practices for the Retail Residential Energy Market, 52 Pa. Code § 111.12(d), with regard to the approximately 2,500 postcards that may have been received after December 1, 2017 and therefore misrepresented savings with NG&E and/or provided inaccurate and untimely information regarding PPL's price to compare.

29. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations and relevant statutes, I&E was prepared to contend by the filing of a formal complaint that NG&E committed the following violations:

A. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 54.43(d), in that the Company failed to maintain the confidentiality of a consumer's personal information by mailing postcards to prospective customers that contained a PPL customer's name and the last four digits of the customer's PPL account number.

If proven, this would be a violation of 52 Pa. Code § 54.43(d) (multiple counts).

B. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 111.12(d)(2) in that the Company misrepresented savings offered by NG&E by mailing postcards to prospective customers that represented an incorrect savings percentage for NG&E customers by the time the prospective customers actually received the postcards.

If proven, this would be a violation of 52 Pa. Code § 111.12(d)(2) (multiple counts).

C. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 111.12(d)(4) in that the Company provided inaccurate and untimely information about PPL's rates being offered by mailing postcards to prospective customers that contained inaccurate and outdated information about PPL's price to

compare by the time the prospective customers actually received the postcards.

If proven, this would be a violation of 52 Pa. Code § 111.12(d)(4) (multiple counts).

D. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 111.12(d)(1) in that the postcards that potentially misrepresented savings with NG&E and provided inaccurate and untimely information about PPL's rates resulted in customer enrollments with NG&E.

If proven, this would be a violation of 52 Pa. Code § 111.12(d)(1) (multiple counts).

30. NG&E understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges the errors of its mailhouse vendor for which NG&E would be legally responsible, and has put into effect appropriate measures that have been approved by I&E to ensure that such issues would not be likely to reoccur.

31. As a mitigating factor to the above allegations, I&E acknowledges that NG&E fully cooperated with I&E's investigation. During the investigatory process, NG&E fully complied with I&E's requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E.

IV. SETTLEMENT TERMS

32. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,³ I&E and NG&E held a series of discussions that

³ See 52 Pa. Code § 5.231(a).

culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E's informal investigation and to settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident.

33. NG&E does not dispute I&E's allegations above and fully acknowledges the seriousness of those allegations as well as the need to prevent the reoccurrence of the distribution of marketing materials that disclose confidential customer information, misrepresent savings compared to other competing products, and provide inaccurate and untimely information about rates being offered.

34. I&E and NG&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. NG&E will pay a civil penalty in the amount of One Hundred and Twenty Thousand Dollars (\$120,000.00). Said payment shall be made within thirty (30) days of the entry 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." The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, 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) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. In addition to the civil penalty above, NG&E will contribute the amount of Thirty Thousand Dollars (\$30,000.00) into PPL's hardship fund. Said contribution shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. NG&E shall file a verification with the Commission showing its compliance with this settlement term within sixty (60) days of the date of entry of the Final Order in this proceeding.

C. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future distribution of marketing materials that disclose confidential customer information, misrepresent savings, and provide inaccurate and untimely information about rates being offered. The pertinent portions of NG&E's modified procedures are briefly described as follows:

- i. NG&E shall continue its quality and control measures that require NG&E to review and authorize a proof of all marketing materials that are to be printed by a third-party vendor before the mailing occurs;

ii. NG&E shall be required to mail out any time-sensitive marketing materials at least two (2) months before an EDC's price to compare change goes into effect to ensure that prospective customers receive information that is accurate and timely;

iii. For the next three (3) years, NG&E will provide any future mailing material intended for Pennsylvania customers to I&E for review at least fifteen (15) days prior to printing;

iv. NG&E will continue to utilize tracking methods to determine how many customers enrolled in response to each unique mailer, so the scope and impact of any future problems can be quickly identified; and

v. NG&E's customer service and sales scripts related to the utility price to compare shall continue to specifically state the end date of the current utility price to compare.

35. In consideration of NG&E's payment of a monetary civil penalty and contribution to PPL's hardship fund and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees that its informal investigation relating to NG&E's conduct as described in the Settlement Agreement shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification and receipt of the civil penalty and the verification acknowledging that payment has been made to PPL's hardship fund.

36. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NG&E at

the Commission with respect to the allegations which were the subject of I&E's instant investigation.

37. I&E and NG&E jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 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 that are the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and NG&E, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

38. 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 involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

39. 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 this Settlement Agreement 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) business days after entry of an Order modifying the Settlement.

40. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this complaint proceeding. It is further understood that, by entering into this Settlement Agreement, NG&E 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 this Settlement Agreement.

41. 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.

42. 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 Agreement 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 but is conclusive in this proceeding and may not be reasserted in any other

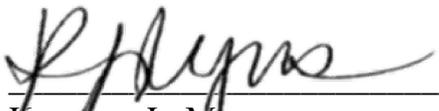
proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

43. 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 National Gas & Electric, LLC 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

By: 
Kourtney L. Myers
Prosecutor

Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
717.705.4366
komyers@pa.gov

Date: November 19, 2020

National Gas & Electric, LLC


By: _____
Michael A. Gruin, Esq.

Stevens & Lee
17 North Second Street
16th Floor
Harrisburg, PA 17101
mag@stevenslee.com

Counsel for National Gas & Electric, LLC

Date: November 19, 2020

Exhibit 1

NOTICE OF PPL ELECTRIC RATE INCREASE

PPL's residential default electric rate **increased 14%** effective June 1st 2017.

Recipient: [REDACTED]

PPL acct ending in: [REDACTED]

PPL June-November 2017 rate increase: YES

Qualifies for NG&E offer: YES

Lowest qualifying rate: 6.37¢/kWh

Consumer Options:

1. Take no action. You will remain a PPL default service customer and subject to further changes in PPL default service rates.
2. Choose a lower rate from competitive supplier, National Gas & Electric, and opt out of PPL's rate changes. **Save 25%** compared to PPL's higher June -November 2017 rate.

ACTION REQUIRED
to opt out of PPL rate changes:
CALL: 888-254-4337

Lowest qualifying rate: **6.37¢/kWh**
Terms available: **Up to 24 months**

Time Sensitive - Respond before 12/21/2017

*Savings claim percentage is calculated by comparing the offer rate of \$0.0637/kWh to PPL's default service rate found on PPLelectric.com and assumes your meter is on "Rate Schedule R - Regular Residential Service" and billed at the current published utility rates for June-Nov 2017 of: PPL \$0.08493/kWh. This offer is only available to new customers. Offered Rate is only available to addressee of this mailer. This is a limited time offer. Short and long term plans available with terms ranging from three to twenty-four billing cycles. National Gas & Electric operates under PA Electricity License No. A-2015-2377433. DOC-XPA1412

IMPORTANT DISCLOSURE

Notice PPL Electric rate increase

FINAL NOTICE

ACTION REQUIRED TO AVOID PPL RATE CHANGE



*****AUTO**5-DIGIT 17110
52271 -- 2 T41 P2

FIRST-CLASS MAIL
Presorted
U.S. Postage
PAID
Rochester, MN
Permit No. 270



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-2637688
	:	
National Gas & Electric, LLC	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on November 19, 2020 between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and National Gas & Electric, LLC is approved in its entirety without modification.

2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, National Gas & Electric, LLC shall pay a civil penalty of One Hundred and Twenty Thousand Dollars (\$120,000.00). 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. That the civil penalty shall not be tax deductible nor passed through as an additional charge to National Gas and Electric, LLC’s customers in Pennsylvania.

4. That, within thirty (30) days of the date this Order becomes final, National Gas & Electric, LLC shall pay Thirty Thousand Dollars (\$30,000.00) to PPL Electric Utilities' hardship fund. National Gas & Electric, LLC shall file a verification with the Commission showing its compliance with this settlement term within sixty (60) days of the date of entry of the Final Order in this proceeding.

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

6. That the above-captioned matter shall be marked closed upon receipt of the civil penalty of \$120,000.00 and the verification acknowledging that payment of \$30,000.00 has been made to PPL Electric Utilities' hardship fund.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2020-2637688
 :
National Gas & Electric, LLC :

**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") 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 National Gas & Electric, LLC ("NG&E" or "Company").¹ 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.

¹ I&E and NG&E are collectively referred to herein as the "Parties."

I. Background

The Commission's Office of Competitive Market Oversight ("OCMO") initiated a referral to I&E regarding NG&E's marketing material, a postcard, that was headlined "**NOTICE OF PPL ELECTRIC RATE INCREASE**" (emphasis in original). The postcard stated that "PPL's residential default electric rate **increased 14%** effective June 1st 2017"² and that customers could "**Save 25%** compared to PPL's higher June-November 2017 rate" (emphasis in original). The postcard also referenced a PPL customer's name and the last four (4) digits of the customer's PPL account number.

I&E's informal investigation concluded that sufficient data had been gathered to substantiate alleged violations of the Commission's regulations in connection with the marketing material. Upon investigation, I&E determined that NG&E mailed a total of 155,252 postcards to prospective customers on November 22, 2017 and that approximately 90,634 of NG&E's prospective customers received a postcard that improperly contained the confidential and personal information of a PPL customer, including the customer's name and the last four digits of the customer's PPL account number.

I&E also determined that because PPL's default rate for December 2017 through May 2018 had decreased to 7.463 cents on December 1, 2017, the postcard misrepresented savings with NG&E and contained inaccurate and outdated information about PPL's default rate by the time the prospective customers received the postcards.

² On June 1, 2017, PPL's default rate for June through November 2017 increased to 8.493 cents. However, on December 1, 2017, PPL's default rate for December 2017 through May 2018 decreased to 7.463 cents.

Approximately 2,500 of the prospective customers may have received the postcard in question after PPL's December 1, 2017 rate decrease. In response to the postcards, seventy (70) customers enrolled with NG&E.

NG&E advised that the printing of the confidential information on the postcards was due to a mail merge error on the part of the vendor that NG&E used for printing and mailing services. NG&E also alleged that the postcards accurately represented the savings compared to the quoted PPL price to compare from June-November 2017, but mis-stated savings with NG&E compared to the new PPL price to compare effective December 1, 2017, and that the postcards contained outdated information about PPL's price to compare because the delivery schedule for the postcards was inadvertently delayed by the same vendor. According to the Company, the delay is what caused some prospective customers to receive the postcards after PPL's December 1, 2017 price to compare decrease.

Once NG&E was made aware of the issues with its marketing materials, the Company advised that it instructed its agents to point out to customers the date range on the postcard, June-November 2017, and inform customers of PPL's new December 2017 default rate of 7.463 cents and the accurate percentage of savings to NG&E's lowest offer, which became 17% savings instead of the 25% savings based upon the quoted June-November 2017 PPL default rate.

I&E identified four (4) types of potential violations based upon I&E's review of NG&E's marketing material and NG&E's responses to I&E's data requests. Specifically, I&E alleged that NG&E failed to maintain the confidentiality of a consumer's personal

information in violation of 52 Pa. Code § 54.43(d), misrepresented savings offered by NG&E in violation of 52 Pa. Code § 111.12(d)(2), provided inaccurate and untimely information about PPL's rates being offered in violation of 52 Pa. Code § 111.12(d)(4), and as a result of the postcards that misrepresented savings with NG&E and provided inaccurate and untimely information about PPL's rates, customers were enrolled with NG&E in violation of 52 Pa. Code § 111.12(d)(1).

In making a determination that the instant Settlement was appropriate, I&E weighed the seriousness of the disclosure of confidential customer information, misrepresentation of savings with NG&E, inaccurate and untimely information related to PPL's rates, and the customer enrollments against various mitigating circumstances that are present here.

Importantly, I&E acknowledges NG&E's efforts to remediate the situation by addressing the misrepresented savings percentage and inaccurate and untimely information regarding PPL's rates with customers who received the postcards, as explained above. Additionally, the Company has been cooperative with I&E by identifying policies and procedures that can be further improved to assist NG&E in enhancing consumer protection and its marketing materials and to satisfy the commitments that I&E has required in the settlement process.

I&E also acknowledges that NG&E fully cooperated with I&E's investigation. NG&E responded to I&E's requests for information regarding the allegations of the disclosure of confidential customer information, the misrepresentation of savings with NG&E, the inaccurate and outdated information related to PPL's rates, and the customer

enrollments resulting from the postcards. NG&E provided I&E with records, correspondence, and other documents associated with such allegations. Moreover, I&E and NG&E actively explored the possibility of resolving this investigation.

On November 19, 2020, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and NG&E 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.

I&E intended to prove the factual allegations set forth in its investigation at hearing. This Settlement Agreement results from the compromises of the Parties. NG&E recognizes the concerns related to the disclosure of confidential customer information, the misrepresentation of savings, the inaccurate and outdated information related to PPL's rates, and the customer enrollments as a result of the postcards 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 it provides for a number of relevant remedial measures as well as a civil

penalty and contribution to PPL's hardship fund. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, I&E and NG&E have agreed to the following:

A. NG&E will pay a civil penalty in the amount of One Hundred and Twenty Thousand Dollars (\$120,000.00). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. 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) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. In addition to the civil penalty above, NG&E will contribute the amount of Thirty Thousand Dollars (\$30,000.00) into PPL's hardship fund. Said contribution shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. NG&E shall file a verification with the Commission showing its compliance with this settlement term within sixty (60) days of the date of entry of the Final Order in this proceeding.

C. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future distribution of marketing materials that disclose confidential customer information, misrepresent savings, and provide inaccurate and untimely

information about rates being offered. The pertinent portions of NG&E's modified procedures are briefly described as follows:

- i. NG&E shall continue its quality and control measures that require NG&E to review and authorize a proof of all marketing materials that are to be printed by a third-party vendor before the mailing occurs;
- ii. NG&E shall be required to mail out any time-sensitive marketing materials at least two (2) months before an EDC's price to compare change goes into effect to ensure that prospective customers receive information that is accurate and timely;
- iii. For the next three (3) years, NG&E will provide any future mailing material intended for Pennsylvania customers to I&E for review at least fifteen (15) days prior to printing;
- iv. NG&E will continue to utilize tracking methods to determine how many customers enrolled in response to each unique mailer, so the scope and impact of any future problems can be quickly identified; and
- v. NG&E's customer service and sales scripts related to the utility price to compare shall continue to specifically state the end date of the current utility price to compare.

In consideration of NG&E's payment of a monetary civil penalty and contribution to PPL's hardship fund and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees that its informal investigation relating to NG&E'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 without modification and receipt of the civil penalty and the verification acknowledging that payment has been made to PPL's hardship fund.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NG&E at the Commission with respect to the allegations which were 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 (10) 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 civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E was advised by NG&E that the printing of the confidential information on the postcards was due to a technical, mail merge error on the part of the vendor that NG&E used for printing and mailing services. NG&E further advised that the postcards accurately represented the savings compared to the quoted PPL price to compare from June-November 2017, but mis-stated savings with NG&E compared to the new PPL price to compare effective December 1, 2017, and that the postcards contained outdated information about PPL's price to compare because the delivery schedule for the

postcards was inadvertently delayed by the same vendor. According to the Company, the delay is what caused prospective customers to receive the postcards after PPL's December 1, 2017 rate decrease.

While the violations are characteristic of an administrative or technical error, I&E submits that the violations concerning customer information to be a serious concern. Similarly, I&E submits that the violations involving the misrepresentation of savings with NG&E and inaccurate and untimely information about PPL's rates are of a serious nature. Consequently, the serious nature of the conduct at issue was considered in arriving at the penalty amount in the Settlement Agreement.

The second factor considers whether the resulting consequences of NG&E'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. As a result of the postcards, seventy (70) customers enrolled with NG&E. NG&E alleges that forty (40) customers enrolled prior to December 1, 2017 and received 25% savings for at least some period, five (5) customers enrolled between December 1 and December 4, 2017 and received 17% savings, thirteen (13) customers enrolled between December 5 and December 20, 2017 and received 17% savings, and twelve (12) customers enrolled in January 2018 and received 17% savings.

Additionally, the postcards resulted in the disclosure of customer information. PPL reported that the last four (4) digits of a PPL account number will not provide access

or allow anyone to gain access to confidential customer information. However, I&E takes very seriously the disclosure of customer information, whether it be inadvertent or not, and submits that reference of the customer's name and partial account number on the 90,634 postcards was considered when calculating the penalty payment.

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 NG&E's alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties. However, I&E submits that the unintentional nature of the conduct in question is a valid mitigating factor in this case.

The fourth factor to be considered is whether NG&E has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In response to these technical errors, NG&E instructed its agents to point out to customers the date range on the postcard, June-November 2017, and to inform customers of PPL's new December 2017 default rate of 7.463 cents and the accurate percentage of savings to NG&E's lowest offer, which became 17% savings instead of the 25% savings based upon the quoted June-November 2017 PPL default rate.

Additionally, a comprehensive list of the remedial actions that NG&E has agreed to undertake is outlined in the Settlement Agreement at Paragraph 34(C). Each of these remedial actions and commitments address the conduct at issue and are designed to enhance consumer protection and NG&E's marketing materials and prevent similar conduct from occurring again.

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 determined that approximately 2,500 prospective customers may have received the postcard in question after PPL's December 1, 2017 rate decrease. Approximately seventy (70) customers enrolled with NG&E through the receipt of the marketing material.

The sixth factor to be considered relates to the compliance history of NG&E. 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.* To date, I&E is not aware of any formal complaint being filed against NG&E regarding this matter. Additionally, I&E is not aware of any other enforcement action brought against NG&E relating to the disclosure of confidential customer information or marketing materials that misrepresent savings or provide inaccurate or untimely information about rates being offered.

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 NG&E fully cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil

penalty amount of \$120,000.00³ plus a contribution of \$30,000.00 to PPL's hardship fund is substantial and sufficient to deter NG&E 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). I&E submits that the instant Settlement Agreement should be viewed on its merits as there are no past Commission decisions that are directly responsive to this matter.

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

³ It is important to note, however, that the civil penalty amount reached in this amicable settlement is not based on a precise calculation consisting of a dollar amount multiplied by a number representing the violations. Rather, the penalty settlement amount was reached by using a "black box" methodology.

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,

A handwritten signature in black ink, appearing to read 'K. Myers', written in a cursive style.

Kourtney L. Myers
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 316494

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Dated: November 19, 2020

APPENDIX C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau :
of Investigation and Enforcement, :
Complainant :
v. : Docket No. M-2020-2637688
National Gas & Electric, LLC :
Respondent :

**STATEMENT IN SUPPORT OF SETTLEMENT OF
NATIONAL GAS & ELECTRIC, LLC**

Pursuant to 52 Pa. Code §§ 5.231, 5.232, and 69.1201, Respondent, National Gas & Electric, LLC (“NG&E” or the “Company”), by its undersigned attorneys, submits this statement in support of the Joint Petition for Approval of Settlement, which is being filed in the above-captioned matter (“Settlement” or “Settlement Agreement”). For the reasons set forth below, the Settlement is reasonable and in the public interest, and, as such, should be approved by the Pennsylvania Public Utility Commission (“Commission”).

I. INTRODUCTION AND BACKGROUND

1. This Settlement provides for an expeditious resolution of a contested matter. The Settlement stems from the Bureau of Investigation & Enforcement (I&E)’s concerns regarding a promotional postcard that NG&E mailed to prospective customers in November 2017. The postcard in question was promoting NG&E’s fixed price electricity supply offer at a rate of \$.0637/kWh. The postcard accurately noted that the offered rate provided a 25% savings to the

the June 1- November 30, 2017 Price to Compare of PPL Electric Utilities, Inc. (“PPL”). However, due to unforeseen delays by NG&E’s printing and mail fulfillment vendor and through no fault of NG&E’s, a small percentage of the postcards were not issued until the week preceding the PPL Price to Compare change on December 1, 2017. The PPL Price to Compare decreased slightly on December 1, 2017, such that NG&E’s fixed price offer was only 17% lower than the Price to Compare, instead of 25% lower. Even though the NG&E’s delivery vendor has admitted that its error was the sole cause for the delay, NG&E is willing to accept responsibility for that delay. The vendor has also admitted liability for an erroneous mail merge issue that resulted in a potential customer name appearing on the postcards along four digits from the customer’s utility account number. NG&E had nothing to do with that error, but again is willing to accept responsibility for it.

2. In total, 70 (seventy) customers enrolled with NG&E based on the postcard that contained the PPL June 1-December 1, 2017 Price to Compare. Because the postcard contained a dedicated telephone number that customers used to enroll in the offer, NG&E was able to determine exactly how many customers completed an enrollment for the \$.0637/kWh fixed rate offer based on receiving the postcard. NG&E estimated that at most approximately 2,500 of the 155,252 postcards may have been received after December 1, 2017 (approximately 1.6%). All of the customers who enrolled did so after speaking to a customer service representative, which gave them the opportunity to ask questions about the offer before agreeing to enroll. All of the customers received disclosure statements and contract summary forms following their enrollment, both of which explained the right to rescind their enrollment in accordance with the applicable regulations.

3. Approximately 30 (thirty) customers who enrolled in the fixed price offer after December 1, 2017 did not realize 25% savings compared to the PPL Price to Compare in effect after December 1, 2017, but those 30 they did realize savings of approximately 17% versus the PPL Price to Compare.¹ The 40 customers that enrolled prior to the change in the Price to Compare did realize the full 25% savings for some period of time.

4. NG&E received no complaints or disputes from any of the enrolled customers related to the savings percentage advertised in the postcard.

5. NG&E understands the nature of the allegations that I&E would have asserted in a formal complaint regarding the mailing in question, and recognizes the importance of providing accurate and timely information to customers about its service offerings and of preventing any release of even partial customer data. Therefore, as outlined in the Settlement Petition, NG&E is committing to additional quality assurance measures for future promotional mailings in Pennsylvania in addition to the civil penalty and hardship fund components of the Settlement.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED BY THE COMMISSION

6. It is the Commission's policy to encourage settlements. *See* 52 Pa. Code § 5.231. Settlements decrease the time and expense the parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. "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

¹ PPL's Price to Compare for the period December 1, 2017 to May 31, 2018 was \$.07463, and the NG&E offer on the postcard was \$.0637.

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. *See Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation*, M-2009-2058182 (Order entered November 23, 2009); *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004); 52 Pa. Code § 69.1201; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

7. NG&E submits that approval of the Settlement in this matter is consistent with the Commission’s Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations (“Policy Statement”). 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., 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 an alleged violation is reasonable and in the public interest. 52 Pa. Code § 69.1201(a).

8. The Commission will not apply the standards as strictly in settled cases as in litigated cases. *Id.* at § 69.1201(b). In settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” *Id.* NG&E submits that the Settlement is in the public interest because it is a complete and final resolution of this proceeding, which effectively addresses the issues of concern to I&E, and avoids the time and expense of litigation and possible appeals. be unavailable in the near term

9. The ten factors of the Policy Statement, as applied to this Settlement are addressed below.

10. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). While any violation of Commission regulations are serious, the actions here did not involve willful fraud or misrepresentation, and instead were administrative and technical errors by NG&E's mail fulfillment vendor. Nonetheless, NG&E fully cooperated with I&E during its investigation of this issues and accepts responsibility for these errors.

11. The second factor considers whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code. § 69.1201(c)(2). Section 69.1201(c)(2) of the Commission's regulations state that "[w]hen consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* The consequences of the postcard mailings did not cause personal injury or property damage. A total of 70 customers enrolled with NG&E as a result of the postcard mailing, all realized sizable savings in comparison to the Price to Compare. Therefore, NG&E asserts that the resulting consequences are not of a serious nature. Regardless, NG&E takes the allegations seriously, and the Company has agreed to pay a significant civil penalty and make a sizable contribution to PPL's hardship fund to assist customers with the payment of their electricity bills. The Company has proposed and agreed to numerous modifications to its business practices. These measures are appropriately designed to respond to the allegations, and therefore are commensurate with the second standard for evaluation of the Settlement.

12. 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). In this case the conduct was clearly not intentional or negligent, as it was caused solely by the actions of the Company's mail fulfillment vendor.

13. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). The Settlement outlines steps that the Company has agreed to take to modify internal practices and procedures to prevent against similar issues with mailings recurring the future. NG&E is confident that these steps will prevent any similar issues from recurring in the future.

14. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). NG&E has confirmed that a total of 70 (seventy) customers enrolled in NG&E's fixed rate offer in response to the post card. Forty customers enrolled prior to December 1, 2017 and did receive 25% savings for at least some period. Five enrolled between December 1 and December 4, thirteen enrolled between December 5 and December 20, and twelve enrolled in January 2018. Notably, every customer who enrolled based on the postcard received at least 17% savings versus the utility price to compare, and the majority received 25% for some portion of their enrollment. NG&E received no complaints from customers regarding its postcard mailing.

15. The sixth factor to be considered under the Policy Statement is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an

otherwise compliant company may result in a lower penalty.” *Id.* NG&E has a satisfactory compliance history with the Public Utility Code and the Commission’s regulations.

16. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). NG&E fully cooperated with I&E during the investigation, including providing significant amounts of information and data both formally and informally during settlement discussions.

17. The eighth factor to be considered is the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8). With respect to this factor, NG&E respectfully submits that the size of the civil penalty agreed to is a significant deterrent to not just NG&E, but to other EGSs who conduct direct mail marketing in Pennsylvania as well. As such, NG&E submits that the total amount of civil penalty and hardship contributions to be made by the Company is clearly sufficient to deter future violations and, therefore, constitutes a reasonable and appropriate amount to resolve this matter.

18. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The civil penalty which NG&E has agreed to is consistent with civil penalties imposed previously by the Commission in connection with allegations of deceptive and misleading marketing practices and unauthorized release of customer information. Accordingly, the Company submits that approval of the Settlement Agreement is reasonable and appropriate and consistent with prior Commission decisions.

19. The tenth factor to consider is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). It goes without saying that all settlements avoid the time, expense, and

uncertainty of litigation, which is why the Commission generally encourages settlements as being in the public interest. Approval of the Settlement of the present case is especially beneficial to the public interest because of the amount of time that would be required to litigate the case to conclusion, the considerable uncertainty over the outcome, and the immediate Hardship Fund contributions that will result from the Settlement. The Settlement thus provides immediate, concrete benefits to the public that would otherwise be unavailable in the near term. As such, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission's regulations set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

20. In summary, NG&E respectfully submits that an evaluation of the Settlement Agreement under the factors and standards enunciated in the Commission's Policy Statement justifies expeditious approval of the Settlement without modification. The Settlement allows the potentially contested allegations of the Complaint to be resolved with no finding of wrongdoing or violation, but provides for a significant civil penalty and business modifications that are commensurate with the nature of the allegations and the number of customers affected, while avoiding the significant time, expense, and uncertainty of litigating the matter to conclusion. For these reasons, approval of the Settlement Agreement is reasonable and in the public interest.

NG&E respectfully submits that the above-captioned Settlement is in the public interest and should be approved and, therefore, requests that the Commission approve such Settlement without modification.

Respectfully Submitted,

STEVENS & LEE



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DATE: November 19, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	Docket No. M-2020-2637688
v.	:	
	:	
National Gas & Electric, LLC	:	

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:

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Dated: November 19, 2020