**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held March 25, 2021

Commissioners Present:

 Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

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| 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 |  | M-2020-3006647 |

**Opinion and Order**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Settlement Agreement (Settlement Agreement or Settlement) filed on September 29, 2020, by the Commission’s 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 or Company)[[1]](#footnote-1) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. The Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Settlement at 12-13. For the reasons set forth herein, we shall approve the proposed Settlement, consistent with this Opinion and Order.

**History of the Proceeding**

 This matter concerns alleged unauthorized changes to customers’ electric generation supply service. Between April and September 2018, the Commission’s Bureau of Consumer Services (BCS) received informal complaints from residential consumers alleging that NRG Home enrolled their electricity accounts to receive the Company’s electric generation supply without authorization. Settlement at 1-2, 4.

 I&E determined that these allegations warranted a further investigation to examine whether the actions of NRG Home violated Commission Regulations. Many of the unauthorized switching allegations stemmed from NRG Home’s marketing activities at public retail locations, such as big box stores, where NRG Home agents were utilizing the eligible customer list (ECL) to obtain the information of prospective customers. Settlement at 4.

 I&E instituted an informal investigation of NRG Home based on the information referred to I&E by BCS. Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. Settlement at 4. The Parties filed the instant Settlement on September 29, 2020.

**Background**

 BCS received approximately 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. A review by BCS of the informal complaints determined that the alleged unauthorized enrollments were set up by agents who used the ECL at public retail locations, such as big box stores. BCS became concerned that NRG Home agents were improperly using the ECL, which contains customer information, to switch customers to NRG Home without the customers’ consent. Therefore, BCS referred the matter to I&E. Settlement at 4, 5.

 On August 14, 2018, NRG Home met with the Commission’s Office of Competitive Market Oversight (OCMO) and self-reported that in some situations NRG Home agents improperly used the ECL to enroll customers with NRG Home’s electric generation supply service without authorization. NRG Home explained that it contracted with 5 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. NRG Home indicated that it had 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. Settlement at 5, n. 2.

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. Settlement at 5.

I&E served NRG Home with 2 sets of data requests on September 26, 2019 and May 6, 2020, respectively. NRG Home provided timely responses to the data requests. Settlement at 6.

I&E found that between January 1, 2018 and December 31, 2018, NRG Home, or its 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. I&E determined that there were an additional 28 accounts that were in the process of being switched, but NRG Home terminated the switch before the accounts actually received service from NRG Home. Settlement at 6-7.

I&E provided that as a supplier, NRG Home is responsible for fraudulent, deceptive, or other unlawful marketing acts performed by its agents. Settlement at 6, n. 3 (citing 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.3).

The alleged unauthorized enrollments are categorized as follows:

| Enrollment Type | Description | Number |
| --- | --- | --- |
| Disputed Enrollments | 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. | 71 |
| Unauthorized Enrollments | Enrollments 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, when they in fact lacked such authorization. | 14 |
| Enrollment Processing Errors | NRG Home agents inadvertently selected the incorrect customer account or where the agent failed to advise the customer that he or she was switching suppliers until after the enrollment was signed. | 83 |
| Total Accounts Identified by NRG Home |  | 168 |
| Additional Accounts Identified by I&E in Process to be Switched |  | 28 |
| Total Accounts Switched or in Process to be Switched |  | 196 |

Settlement at 6-7.

 I&E determined that the Company instituted several corrective measures designed to prevent similar occurrences in the future. NRG Home eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. Agents can now only search for a specific name and the information populates only if a match is located. NRG Home also has 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. Settlement at 7.

 The proposed Settlement was filed by the Parties to resolve I&E’s allegations that NRG Home or its agents made unauthorized electric generation supplier changes to customers’ accounts. The Parties urge the Commission to approve the Settlement as being in the public interest. Settlement at 13.

 By Order entered January 14, 2021, (*January 2021 Order*), the Commission provided interested parties with the opportunity to file comments. In order to be considered timely, comments were due within twenty days of the date of entry of the January *2021 Order*. No comments were filed.

**Terms of the Settlement**

 Pursuant to the proposed Settlement, NRG Home will pay a civil penalty of One Hundred Seventy-Five Thousand Dollars ($175,000). The penalty includes: One Hundred Sixty-Eight Thousand Dollars ($168,000) or $1,000 for each of the 168 customer accounts that were switched to and received electric generation supply from NRG Home, and Seven Thousand Dollars ($7,000), or $250 for each of the 28 customer accounts where the process of switching had been initiated but not completed. 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). Settlement at 10-11.

 In addition, NRG Home will provide to each of the customers, who had one or more of the 168 accounts switched to NRG Home, a refund for the entire electric generation supply portion on the customer’s bill for the first 2 billing periods that the customers were switched to NRG Home, pursuant to 52 Pa. Code § 57.177(b). NRG Home will refund any cancellation fee or early termination fee incurred by any of the aforementioned customers from another electric generation supplier (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. Settlement at 11.

 NRG Home will continue its current level of quality assurance monitoring efforts for 1 year, which includes random in-person visits to retail and event sales locations by NRG Home employees. NRG Home will provide monthly reports to I&E for a period of 1 year detailing complaints from Pennsylvania consumers reported to BCS and other agencies related to allegations of unauthorized switching by NRG Home. Settlement at 12.

 NRG Home will retain customer signatures placed on enrollment tablets used at retail and event locations for 1 year and will provide such records to BCS and I&E upon request. NRG Home will retain any audio recordings of verifications taken at retail and event locations for 1 year if alternative forms of verification, *i.e.,* electronic customer signatures are not utilized. *Id.*

 In recognition of these remedies agreed to by NRG Home, I&E agrees to forgo the institution of any formal complaint against NRG Home 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. Settlement at 13.

 The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. *Id.* at 14.

**Discussion**

 Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). After a review of the terms of the Settlement, we find that it is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth 10 factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor 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). The alleged 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. The violations averred in this 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 proposed 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). There is no indication that 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, 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 because 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 1 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 1 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. Accordingly, we determine that the fourth factor has been satisfied through NRG Home’s actions in response to the complaints and as agreed in the Settlement.

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. I&E also determined that 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. This is a significant number of customers impacted in a single calendar year. We note that some customers detected the unauthorized enrollment, promptly contacted NRG Home to complain and were served by NRG Home for less than a billing cycle, but other customers received electric generation supply provided by NRG Home for several months prior to being switched back to default service or another EGS. We thus determine that this factor weighs in favor of a higher penalty.

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.[[2]](#footnote-2) 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. On balance, we consider NRG Home’s compliance history does not support a heavy penalty.

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. These factors weigh in favor of a reduced penalty amount.

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 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 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.

NRG noted that the civil penalties are consistent with prior Commission decisions and are appropriate. Settlement Appendix C, NRG Statement in Support at 12.

I&E submits that the instant Settlement 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 – we find that this Settlement is consistent with past Commission decisions 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. 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.

We determine that other relevant factors weigh in favor of approval of the Settlement here proposed.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case and the Commission’s Regulations and policy statements, we find that the proposed Settlement between I&E and NRG Home is in the public interest and merits approval. We will therefore approve the Settlement consistent with this Opinion and Order; **THEREFORE**,

 **IT IS ORDERED:**

1. That the Joint Settlement Petition filed on 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:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

1. Within thirty (30) days of the date this Opinion and 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.
2. 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.
3. Upon entry of this Opinion and 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 the Commission’s Bureau of Consumer Services, 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.
4. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.
5. That the above-captioned matter shall be marked closed upon NRG Home’s compliance with the directives in this Opinion and Order including the receipt of the civil penalty and verification indicating that all customer refunds have been disbursed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 25, 2021

ORDER ENTERED: March 25, 2021

1. The Commission granted NRG Home approval to operate as a licensed electric generation supplier on May 19, 2011 at Docket No. A-2010-2192350. Settlement at 3, para. 7. [↑](#footnote-ref-1)
2. One consumer complaint proceeding is pending before the Commission. *See Christina Knotts v. Reliant Energy Northeast LLC t/a NRG Residential Solutions*, Docket No. F-2020-3020303. [↑](#footnote-ref-2)