PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held April 15, 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.Vista Energy Marketing, L.P.  |  | M-2019-2633094 |

**Opinion and Order**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Settlement Agreement (Settlement) of the Bureau of Investigation and Enforcement and Vista Energy Marketing, L.P. (Vista or Company) [[1]](#footnote-2) filed on February 28, 2019, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Vista[[2]](#footnote-3) (collectively, the Parties), with respect to an Informal Investigation conducted by I&E regarding unauthorized switching, and solicitation by the Company’s marketers in a “No Solicitation” zone. Both Parties submitted Statements in Support of the Settlement. The Parties request that the Commission approve the proposed Settlement because it is in the public interest and consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Settlement at 13‑14. For the reasons set forth herein, we shall grant the Parties’ request and approve the proposed Settlement based on our finding that the Settlement is in the public interest.

**History of the Proceeding**

 During the period from August 2017 through October 2017, the Commission’s Bureau of Consumer Services (BCS) received six informal complaints against Vista – five of which were related to alleged slamming[[3]](#footnote-4) incidents by the Company’s agents and one of which was related to an alleged slamming incident in a “No Solicitation” zone. At that time, it was determined that once Vista became aware of the mistaken enrollments, it took immediate corrective action, including cancelling the Complainants’ enrollment with Vista, ensuring that no charges were assessed to Complainants, and punishing the agents accordingly. Nevertheless, in consideration of those informal complaints, BCS requested that I&E review the above allegations.

 I&E subsequently initiated an informal investigation into whether Vista violated Section 52 Pa. Code §§ 57.171-179 by enrolling customers in its electric generation service without proper authorization.

 On February 16, 2018, and April 18, 2018, I&E sent letters to Vista requesting that the Company provide responses to data requests related to the above-mentioned slamming allegations.

 Vista subsequently submitted responses to the data requests. In addition, as part of the investigation, the Parties engaged in negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231.

 As a result of those negotiations, the Parties filed the instant Settlement on February 28, 2019, for the Commission’s consideration.

 By Order entered April 11, 2019 (*April 2019 Order*), the Commission provided interested parties with the opportunity to file comments. To be considered timely, the Commission directed that comments be filed no later than twenty days from the date of entry of the *April 2019 Order*. No comments were filed.

**Background**

 This matter involves an informal investigation initiated by I&E, consistent with Sections 331(a) and 506 of the Public Utility Code (Code) and Section 3.113 of the Commission’s Regulations, 52 Pa. Code § 3.113, regarding Vista’s marketing practices as an EGS in Pennsylvania. As noted, the informal investigation focused on allegations of slamming raised in five Informal Complaints received by BCS and a sixth informal slamming complaint that also alleged that Vista’s agents engaged in door-to-door sales in a senior citizen community where signs were clearly posted stating “No Solicitation.”

 A summary of the complaints received by BCS as Informal Complaints is as follows:

1. On August 7, 2017, a Complainant filed a complaint at BCS No. 3551377. The Complainant alleged that one of Vista’s agents visited her on July 25, 2017, and despite claiming that she told the agent she was not interested in enrolling with Vista, her account was enrolled anyway. After it accepted the Complainant’s representation of the events, Vista cancelled her account on August 7, 2017, credited back all its charges to her and terminated the agent involved with this matter.
2. On August 14, 2017, a Complainant filed a complaint at BCS No. 3553113. The Complainant alleged that on July 25, 2017, a Vista agent, was conducting door-to-door sales in a senior citizen community with signs advising “No Solicitation.” Vista enrolled the Complainant’s mother at a rate higher than her current rate. Vista subsequently re-rated the account but verified that the Complainant’s mother participated in a third-party verification. At the time of I&E’s investigation, the agent was no longer active.
3. On September 18, 2017, a Complainant filed a complaint at BCS No. 3563403. The Complainant alleged that on September 9, 2017, her mother’s account was enrolled with Vista without receiving proper authorization. Due to a health condition, the Complainant’s mother was unable to speak and no one else was present to provide the authorization. A third-party verification was obtained from a person who claimed they were authorized to switch services on behalf of the Complainant’s mother. Vista accepted the Complainant’s claim and cancelled the account, did not assess any charges, and deactivated the agent.
4. On September 20, 2017, a Complainant filed a complaint at BCS No. 3563467. The Complainant alleged that on September 12, 2017, he was enrolled with Vista without his consent. Vista investigated the matter and concluded that the Complainant’s daughter had enrolled the account, but after discussing the matter with her father, they decided to cancel the account with Vista. Vista credited the Complainant for the charges that were on the account and cancelled the account.
5. On October 10, 2017, a Complainant filed a complaint at BCS No. 3569005. The Complainant alleged that her account was enrolled with Vista on September 15, 2017, even though she lives alone and was out-of-town on the day her account was enrolled. Vista accepted her claim and cancelled her account. Vista did not assess any charges and eventually terminated the agent.
6. On October 23, 2017, a Complainant filed a complaint at BCS No. 3572249. The Complainant alleged that her account was enrolled with Vista on October 13, 2107 without her consent. Vista accepted the Complainant’s claim and cancelled her account. Vista did not assess any charges and the agent was eventually terminated.

Settlement at 6.

 As noted, BCS subsequently requested that I&E review the matter. I&E responded by initiating an informal investigation into whether Vista enrolled customers in their electric generation service without proper authorization contrary to Commission Regulations pertaining to “Standards for Changing a Customer’s Electricity Generation Supplier” at 52 Pa. Code §§ 57.171-179. Settlement at 6-7.

 The Parties note in the Settlement that Vista timely complied with I&E’s data requests. Settlement at 7. Vista also had internal controls in place and required all vendors and agents to abide by them as well. *Id.* Those controls included: monitoring agents for compliance, daily review of all third-party verifications[[4]](#footnote-5) (TPV), and regular audits of enrollments. *Id.*  Vista also utilizes internal quality assurance (QA) agents whose responsibility was to review one hundred percent of the TPVs. *Id.* As part of the quality assurance process, agents were instructed to reject an enrollment even if it had cleared TPV if the customer sounded uncertain, confused, or suspicious in any way. *Id.* If the quality assurance agent deemed that the TPV was questionable, the agent would follow-up by contacting the customer to verify his/her intent to enroll with Vista. *Id*. However, Vista acknowledged that due to increased sales volume, its quality assurance resources were challenged by the volume. *Id*. Consequently, the Company developed what it believed to be a more risk-oriented approach to quality assurance by utilizing algorithms that were designed to identify higher risk sales. *Id.* at 7-8. The algorithm approach was used in limited circumstances when higher sales volume prevented one hundred percent quality assurance review of TPVs. *Id*. Vista subsequently resumed its previous practice of having one hundred percent of TPVs reviewed by a quality assurance agent on January 25, 2018. *Id.* at 8.

 Through its investigation and data requests, I&E concluded that four of the Complainants who filed the BCS informal complaints (*i.e.*, BCS Nos. 3551377, 3563403, 3569005, and 3572249) had their electric generation supplier switched to Vista without their authorization. *Id* at 8. I&E found that the switching likely occurred when Vista incorporated its risk-oriented approach to quality assurance. *Id*.

 At the end of its investigation, I&E was prepared to allege in a formal complaint that Vista violated the Electric Generation Customer Choice and Competition Act at 52 Pa. Code §§ 54.42(a)(9) and 54.43(f) and the Standards for Changing a Customer’s electricity Generation Supplier at 52 Pa. Code §§ 57.171-179 (multiple counts) by the action of Vista or its agents initiating the process of switching the electric generation supplier on four accounts without the customer’s authorization. *Id.* at 8-9.

 According to the Settlement, Vista understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges its error in switching to a risk-oriented QA approach that likely resulted in residential accounts being enrolled to receive electric generation supply service from Vista without proper authorization, and has put into effect appropriate measures that have been approved by I&E to ensure that such oversight is not likely to reoccur. *Id.* at 9.

 I&E acknowledges that Vista fully cooperated with I&E’s investigation and complied with I&E’s requests for information and documentation and provided I&E with records, correspondences and other documents as requested by I&E. *Id.* Moreover, throughout the entire investigatory process, I&E and Vista remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation. *Id.*

 Additionally, per the Settlement, Vista: (1) does not dispute the allegations; (2) fully acknowledges the Commission’s long-standing “zero-tolerance” policy concerning slamming; (3) acknowledges that the Commission has penalized companies that have slammed or are alleged to have slammed customers; and (4) that the Commission has made it clear that such acts will not be tolerated. Vista also has implemented its own extensive internal policies to prevent slamming and has its own internal “zero-tolerance” policy against slamming. *Id.* at 10.

 Accordingly, the proposed Settlement has been filed by the Parties for purposes of terminating I&E’s informal investigation and to resolve this matter completely and without litigation. The Parties urge the Commission to approve the Settlement, described in detail below, as being in the public interest.

# **Terms of the Settlement**

 Pursuant to the proposed Settlement, Vista agrees to pay a civil penalty of $4,000 within thirty days after the Commission has entered a final order approving the Settlement to resolve all allegations of slamming and to settle all possible liability and claims of alleged violations of the Code and Commission Regulations addressed in the informal investigation.[[5]](#footnote-6) Settlement at 10.

 The Settlement acknowledges that the Company has since taken corrective action and is committed to diligently applying its policies which will act as safeguards against the unauthorized switch of customer accounts initiated by a third-party vendor. *Id.* at 11. Specifically, Vista has terminated its relationship with the agents whose actions are the cause of this matter and has instructed its third-party vendors not to assign the agents to any Vista accounts or contracts. *Id.* Additionally, after becoming aware of the unauthorized enrollments for its EGS service, Vista took immediate corrective action by cancelling the Complainants’ enrollment with Vista and ensuring that no charges were assessed to the Complainants upon becoming aware of the mistaken enrollments. *Id.* at 11. The Parties also do not believe that there are any other potentially affected parties who should directly receive notice of this Settlement. *Id.* at 10.

 In addition, according to the Settlement, Vista has implemented the following quality control measures, with I&E’s approval, to address this issue in the future:

i. For each third-party vendor with whom Vista seeks to engage in business, Vista will affirmatively inquire about whether the agents, whose actions are the cause of this present matter, is employed by or associated with the company.

ii. Vista shall continue to ensure that its agents are reminded of the Commission’s regulations regarding consumer protection, with an emphasis on those prohibiting slamming.

iii. Vista shall provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS.

iv. Vista will continue to respond to all consumer inquiries and complaints relating to fraudulent, deceptive, or otherwise unlawful acts in the process of marketing supplier products and/or services in accordance with BCS requirements, including providing to BCS staff a copy of the customer contract and any audio recordings of the verification call, when such recordings are available to Vista.

v. For a term of twelve (12) months starting after the date of entry of the Commission’s order approving settlement in this matter, Vista shall provide to BCS staff, in the first week of each calendar quarter, a report for the prior quarter that captures the following data concerning customer complaints filed directly with Vista: (1) the number of complaints by category, i.e. slamming, do-not-call list violations, incorrect charges, etc.; and (2) any process improvements, organizational changes, etc. that were implemented to reduce or eliminate similar complaints going forward.

Settlement at 11-12.

 The Settlement provides that I&E will agree to forbear from initiating a formal complaint relative to the allegations that are the subject of the proposed Settlement. The Settlement will not, however, affect the Commission’s authority to receive and resolve any formal or informal complaints filed by any affected party regarding the subject of the allegations of I&E’s informal investigation. Settlement at 12. In addition, 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. Settlement at 14, 16.

**Discussion**

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

 Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). In this regard, the Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b). Based on our review of the Settlement, we find, as discussed in more detail below, that the application of these factors supports approval of the Settlement.

 The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.* Based on our review of the alleged violations and in consideration of our “zero tolerance” policy regarding slamming violations, we are of the opinion that the violations in this matter are of a serious nature which warrants in favor of a higher civil penalty.

 The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). *Id.* According to the Settlement, I&E’s investigation determined that four residential customers had their electric generation service physically switched to Vista without proper authorization. Settlement ¶ 19 at 8. However, once Vista became aware of the situation, Vista promptly rectified the situation by cancelling the Complainants’ enrollment with Vista, ensuring that no charges were assessed to the Complainants, and punishing the responsible agents accordingly. Settlement ¶ 28.b. at 11. Nevertheless, the enrollment was unauthorized and the actions of Vista or its agents in enrolling customers to receive electric generation service without proper customer authorization is a serious consequence and warrants a penalty.[[6]](#footnote-7)

 The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). This factor is only to be considered when evaluating litigated cases. *Id.* This factor does not apply to the present case because this proceeding is a settled matter that did not involve formal litigation.

 The fourth factor to be considered is whether Vista made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). I&E explained in the Settlement that when the issue of the unauthorized enrollment was brought to Vista’s attention, Vista promptly rescinded the enrollments and took action to ensure that no charges were assessed to Complainants. Settlement ¶ 14 at 6. In addition, as described in Paragraph 28.b. of the Settlement Agreement, Vista has taken corrective action and implemented revisions to its operating procedures, which will act as a safeguard to prevent this type of error from recurring in the future. As such, we believe that this factor supports a lower penalty because Vista has taken prompt and appropriate action to address the concerns and decrease the likelihood of similar incidents in the future.

 The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). As previously stated, I&E’s investigation determined that four residential customer accounts were physically switched to receive electric generation from Vista without authorization. Settlement ¶ 21.a. at 8. According to I&E, the customers received EGS services from Vista for approximately ten, eleven, fourteen, and twenty-seven days. Appendix B (I&E Statement in Support of Settlement) at 13. Also, as noted, Vista promptly rectified the situation by cancelling the Complainants’ enrollment with Vista so that no charges resulting from the slamming were ever assessed to the Complainants. Thus, this factor leans towards a lower penalty in consideration that only four residential customers were affected, and Vista promptly switched those Complainants back to their proper provider in time before any of Vista’s charges could show up on their bills.

 The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant company may result in a lower penalty.” *Id.* Based on our review of Vista’s compliance history, there has been one other proceeding initiated against Vista regarding its criminal background investigation practices for its agents that culminated in I&E and Vista agreeing to the terms of a settlement agreement at Docket No. M-2018-2624484. In addition, we note that, to date, only five formal complaints had ever been filed against Vista, and in each of those cases, the Company filed Certificates of Satisfaction, thus avoiding any extensive formal litigation in those cases. Therefore, this factor merits a lower penalty.

 The seventh factor to be considered is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). According to the Settlement, throughout this investigation, the Parties have remained active in communications and informal discovery. Settlement ¶ 24 at 9. Vista fully cooperated in the process, maintained ongoing communication, and responded to I&E’s requests for information and documentation. Settlement ¶23 at 9. Therefore, we find that Vista’s cooperation with I&E throughout all phases of this investigation and settlement process warrants in favor of a lower penalty.

 The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Both Parties agreed that a civil penalty in the amount of $4,000 is substantial and sufficient under the circumstances to deter Vista from committing future violations. Appendix B (I&E Statement in Support of Settlement) at 14; Appendix C (Vista Statement in Support of Settlement) at 2. Furthermore, Vista indicates that the $4,000 civil penalty “represents a reasonable redress of the present investigation while recognizing that Vista took corrective action even before the I&E began its investigation. *Id.* We agree with the Parties that the $4,000 penalty is sufficient to deter any future violations.

 The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Settlement provides a civil penalty of $1,000 for each account that was physically switched to Vista’s supply service without authorization, for a total civil penalty of $4,000. This amount is comparable to our decision in *Pa. PUC v. Energy Services, Providers, Inc. d/b/a Pa. Gas & Electric and US. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014) where we imposed a $1,000 civil penalty per account that was slammed. Further, as was the case in previous slamming matters, Vista has since undertaken additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future. Therefore, we find that this Settlement Agreement is consistent with our past actions and presents a fair and reasonable outcome.

 Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201(c)(10). We believe, consistent with the Commission’s policy that encourages settlements, it is in the public interest to settle this matter so as to avoid the expense of formal litigation.

**Conclusion**

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

 **IT IS ORDERED:**

 1. That the Joint Settlement Petition filed on February 28, 2019, between the Commission’s Bureau of Investigation and Enforcement and Vista Energy Marketing, L.P., hereby, is approved without modification, consistent with this Opinion and Order.

 2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date of entry of this Opinion and Order, Vista Energy Marketing, L.P. shall pay Four Thousand Dollars ($4,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

 Rosemary Chiavetta, Secretary

 Pennsylvania Public Utility Commission

 Commonwealth Keystone Building

 400 North Street

 Harrisburg, PA 17120

 3. That, after Vista Energy Marketing, L.P. remits the civil penalty as set forth in Ordering Paragraph No. 2, the Secretary’s Bureau shall mark this proceeding closed.

 4 That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services, the Office of Consumer Advocate, and the Office of Small Business Advocate.

 **BY THE COMMISSION,**



 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: April 15, 2021

ORDER ENTERED: April 15, 2021

1. Vista is an electric generation supplier (EGS) licensed by the Commission to operate in the service territories of the First Energy Pennsylvania Companies, Duquesne Light, PPL, and UGI Utilities. [↑](#footnote-ref-2)
2. Vista received its Pennsylvania EGS license on December 22, 2016, at Docket No. A-2016-2569804. [↑](#footnote-ref-3)
3. “Slamming” is an unauthorized change made to a customer’s supply service. *HIKO Energy LLC v Pa. Pub. Util. Comm’n*, 163 A.3d 1079, 1090 (Pa. Cmwlth. 2017). [↑](#footnote-ref-4)
4. Verification is the process used to confirm that the customer authorized the transfer of the account to the supplier. All TPVs performed over the telephone are recorded. Statement in Support at 7. [↑](#footnote-ref-5)
5. The civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f). Settlement at 11. [↑](#footnote-ref-6)
6. *See, Pa. PUC, Bureau of Investigation and Enforcement v. US. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013- 2325122 (Order entered October 2, 2014). [↑](#footnote-ref-7)