**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held May 20, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

|  |  |  |
| --- | --- | --- |
| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement  v.  Eligo Energy PA, LLC |  | M-2020-3019204 |

**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 October 29, 2020, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Eligo Energy PA, LLC (Eligo or Company) (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 13. We will issue the Settlement for comment.

**History of the Proceeding**

This matter concerns alleged misleading and deceptive marketing materials, which included references or quotes allegedly from the Commission that may have violated the Public Utility Code (Code) and the Commission’s Regulations. These marketing materials were issued by Eligo from approximately January 2019 through March 2020. Settlement at 1, 4.

As a result of customer complaints, the Commission’s Bureau of Consumer Services (BCS) initiated a referral to I&E regarding Eligo’s alleged misleading and deceptive marketing materials. I&E determined that these allegations warranted a further investigation to examine whether the actions of Eligo violated Commission Regulations. Settlement at 1.

I&E instituted an informal investigation of Eligo 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 October 29, 2020.

**Background**

On or about March 10, 2020, BCS initiated a referral to I&E regarding Eligo’s alleged misleading and deceptive marketing materials. Specifically, BCS requested that I&E investigate Eligo’s marketing materials which included references or quotes allegedly from the Commission that may have violated the Code and the Commission’s Regulations. Settlement at 5.

By letter dated March 13, 2020, I&E notified Eligo of the scope of its informal investigation and requested responses to I&E’s Data Request – Set I. Eligo requested two extensions of the due date for responses to the data request due to issues caused by the COVID-19 pandemic. I&E granted the extension requests and instructed Eligo to provide responses as they became available. Eligo provided responses on May 8, 2020 and May 15, 2020. Settlement at 5-6.

On July 17, 2020, the Parties held a conference call to discuss I&E’s informal investigation. On July 29, 2020, Eligo provided a supplemental response to I&E Data Request – Set I, No. 4. Settlement at 6.

Under Section 111.8(d) of the Commission’s Regulations, a public utility shall not use the name of a governmental agency in a way that suggests a relationship that does not exist. 52 Pa. Code § 111.8(d). Additionally, pursuant to Sections 54.122(3), 111.12(d)(1), and 111.12(d)(2), an electric generation supplier may not engage in misleading or deceptive conduct or representations. 52 Pa. Code § 54.122(3) (“An electric distribution company or electric generation supplier may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth); 52 Pa. Code § 111.12(d)(1) (“May not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order”); and 52 Pa. Code § 111.12(d)(2) (“May not make false or misleading representations including misrepresenting rates or savings offered by the supplier”). Settlement at 7.

I&E found that Eligo sent three types of marketing materials that may have contained misleading information. In response to the mailers, one thousand one hundred and ninety-three (1,193) customers enrolled with Eligo. Settlement at 7-9.

The alleged misleading marketing materials are categorized as follows:

| Marketing Material | Mailer Description | Approximate Number Issued |
| --- | --- | --- |
| Exhibit 1 – Use of the Commission’s Name | In response to the Data Request – Set I, Eligo provided eleven (11) mailers that contained the phrase “Pennsylvania Public Utility Commission Notice”, or “Important PUC Notice” printed in bold letters. Specifically, “Pennsylvania Public Utility Commission Notice” was printed in bold on the front of the mailer about the customer address. | 302,189 |
| Exhibit 2 – Use of Allegedly Misleading or Deceptive Phrases | In response to Data Request – Set I, Eligo provided twenty-two (22) mailers that contained the phrase “Final Electric Notice: Attn Recipient: Request for Immediate Action.” Specifically, the phrase was in bold on the front of the mailer right above the customer address. | 867,499 |
| Exhibit 3 – Use of Allegedly Misleading or Deceptive Phrases | In response to Data Request – Set I, Eligo provided thirty-four (34) mailers that contained the phrase “Rate Change Notice” in bolded red letters right below the customer address. | 1,200,000 |

Settlement at 7-9.

I&E determined that the Company became aware of the allegedly deceptive mailers prior to I&E’s informal investigation and immediately implemented a formal review process applicable to mailers. This formal review process, among other things, now prevents any marketing material from being sent for printing unless approved by Eligo’s legal department. Settlement at 10.

The proposed Settlement, which is attached to this Opinion and Order, has been filed by the Parties to resolve I&E’s allegations that Eligo issued misleading and deceptive mailers between approximately January 2019 and March 2020. The Parties urge the Commission to approve the Settlement as being in the public interest. Settlement at 14.

**Terms of the Settlement**

Pursuant to the proposed Settlement, Eligo will pay a civil penalty of $188,125.00. The penalty includes:

* + - 1. A civil penalty of $1,000.00 for each of the 11 mailers with the phrases “Pennsylvania Public Utility Commission Notice” or “Important PUC Notice,” totaling $11,000.00.
      2. A civil penalty of $500.00 for each of the 22 mailers with the phrase “Final Electric Notice: Attn Recipient: Request for Immediate Action,” totaling $11,000.00.
      3. A civil penalty of $500.00 for each of the 34 mailers with the phrase “Rate Change Notice,” totaling

$17, 000.00.

* + - 1. A civil penalty of $125.00 for each of the 1,193 customer enrollments, totaling $149,125.00.

Settlement at 12.

The civil penalty shall not be tax deductible or passed through as an additional charge to Eligo’s customers in Pennsylvania. *Id.*

In response, I&E agrees to forgo the institution of any formal complaint against Eligo with respect to allegations of violations of the Code and the Commission’s Regulations related to misleading and deceptive mailers issued between approximately January 2019 and March 2020. Settlement at 14.

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 12-13.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, 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).

**Conclusion**

Before issuing a decision on the merits of the proposed Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we are providing an opportunity for interested parties to file comments regarding the proposed Settlement; **THEREFORE,**

**IT IS ORDERED:**

1. That this Opinion and Order, together with the attached Settlement Agreement and Statements in Support, shall be issued for comments by any interested party.

2. That a copy of this Opinion and Order, together with the attached Settlement Agreement and the Statements in Support thereof, shall be served on the Office of Consumer Advocate and the Office of Small Business Advocate.

3. That within twenty (20) days from the date of entry of this Opinion and Order, interested parties may file comments concerning the proposed Settlement Agreement.  Comments to the proposed Settlement Agreement shall be filed through efiling. Please know that at this time ALL parties wanting to file with the Commission and participate in proceedings before the Commission, must open an efiling account free of charge through our website and accept eservice.  This is in accordance with the Commission’s Emergency Order at Docket No. M-2020-3019262.  An efiling account may be opened at our website, <https://www.puc.pa.gov/efiling/default.aspx>.

4. That, subsequent to the Commission’s review of any comments filed in this proceeding, an Opinion and Order will be issued.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 20, 2021

ORDER ENTERED: May 20, 2021

**ATTACHMENT**



