



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 24, 2021

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.
Greenlight Energy Inc.
Docket No. M-2021-3023026
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") and Greenlight Energy Inc.'s ("Greenlight") **Joint Petition for Approval of Settlement** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L Rost'.

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/ac
Enclosures

cc: Per Certificate of Service
Daniel Mumford, Office of Competitive Market Oversight (*via email - dmumford@pa.gov*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2021-3023026
	:	
Greenlight Energy Inc.	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the regulations at 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Greenlight Energy Inc. (“Greenlight” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement,” “Settlement Agreement,” or “Petition”) to resolve all issues related to an Informal Investigation initiated by I&E. I&E’s Informal Investigation was initiated based upon information provided by the Office of Competitive Market Oversight (“OCMO”) relating to deceptive and misleading telemarketing.

As part of this Settlement Agreement, I&E and Greenlight (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Statements in Support of the Settlement expressing the individual views of I&E and Greenlight are

attached hereto as Appendix A and Appendix B, respectively, and are incorporated herein.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA, 17120, and Greenlight Energy Inc., with a business address of 310 New York Avenue, Huntington, NY 11743.

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 ("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 prosecutorial in nature to I&E).

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

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

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code, the Commission’s regulations and orders. Section 3301 of the Code 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. Greenlight is a jurisdictional electric generation supplier (“EGS”)¹ licensed by the Commission at Docket No. A-2015-2501712 to operate in the Pennsylvania electric distribution company (“EDC”) service territory of PECO Energy Company. By Docket No. A-2018-3000353, Greenlight expanded its operations to include the territories of Citizens Electric of Lewisburg, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Pike County Light and Power Company, PPL Electric Utilities Corporation, UGI Utilities Inc., Wellsboro Electric Company, and West Penn Power Company.

8. Greenlight, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility 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. Greenlight, as a 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).

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.

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

11. This matter involves allegations related to misleading and deceptive telemarketing and unauthorized enrollments completed by third-party vendors acting on Greenlight's behalf in 2020.

12. As a result of successful negotiations between I&E and Greenlight, 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 Section 69.1201. The Parties agree to the settlement terms set forth herein and urge the Commission to approve the Settlement as submitted as being in the public interest.

II. STIPULATED FACTS

13. The Commission has jurisdiction over the subject matter of and the Parties to this proceeding. 66 Pa.C.S. §§ 102, 501.

14. "It is the policy of the Commission to encourage settlements." 52 Pa. Code § 5.231(a).

15. On or about November 25, 2020, Daniel Mumford, Director of the Office of Competitive Market Oversight ("OCMO"), submitted a memo to I&E outlining his concerns with Greenlight's telemarketing practices. Specifically, Mr. Mumford

personally received telemarketing calls on October 30, 2020 and November 6, 2020 and described the corresponding phone conversations in detail.

16. In reference to the October 30, 2020 call, Mr. Mumford received an automated/robocall recording stating that he was entitled to a “refund” due to a “mistake” on his electric bill, and to press “one.” The agent who conducted the call after pressing “one” did not identify who he was calling on behalf of, the agent stated that Mr. Mumford would be receiving a 40% cheaper electric rate compared to his previous 15 cent rate which was a mistake, and the agent stated that Mr. Mumford was currently being billed at the business rate and that the agent would fix this mistake. Mr. Mumford was then coached through the verification process and successfully enrolled with Greenlight.

17. In reference to the November 6, 2020 call, Mr. Mumford again received an automated/robocall recording concerning “the recent rate reduction notice [he] received.” The agent who answered after pressing “one” did not identify who he was working for and promised a 30% discount, dropping Mr. Mumford’s rate from 40 cents to 9 cents, stating that “nothing will change, just getting a discount.” The agent explained that Mr. Mumford would be receiving paperwork in the mail to review, and if he was happy with the paperwork, to sign and return to PPL or to throw it away if not happy with the terms. The agent described the name of the program as Greenlight Energy and abruptly ended the call after realizing that Mr. Mumford had already signed up with Greenlight.

18. Mr. Mumford’s telephone number is on the Do Not Call list.

19. By letter dated January 28, 2021, I&E issued a Data Request Letter (“I&E Data Requests-Set I”) informing Greenlight of the scope of its investigation and

requesting a response to I&E's twenty-five (25) data requests. Greenlight's responses were due on March 1, 2021.

20. On February 26, 2021, Greenlight provided its responses to I&E Data Requests-Set I.

21. On March 26, 2021, I&E submitted a second set of data requests ("I&E Data Requests-Set II").

22. Greenlight timely provided its responses to I&E Data Requests-Set II on April 21, 2021 and April 22, 2021.

23. The results of I&E's Informal Investigation, which included review of Mr. Mumford's referral memo, customer complaints received by the Commission's Bureau of Consumer Services, and Greenlight's responses to I&E Data Request-Set I and Set II, form the basis for the instant Settlement Agreement.

A. Telemarketing to Mr. Mumford

24. The telemarketing calls received by Mr. Mumford on October 30, 2020 and November 6, 2020 contained the following alleged conduct:

- a) Calling an individual on the Do Not Call List (twice);
- b) Automated recording advising the recipient of a "refund" due to a "mistake" on the electric bill;
- c) Live agent not identifying himself/herself upon first contact (twice);
- d) Agent misrepresentation that Mr. Mumford would be receiving a 40% discount compared to previous bills;

- e) Agent misrepresentation that Mr. Mumford was currently paying 15 cents per kWh;
- f) Agent misrepresentation that Mr. Mumford was previously being billed at a business rate;
- g) Agent telling Mr. Mumford that he would be receiving a new supplier instead of giving Mr. Mumford the choice;
- h) Agent coaching Mr. Mumford through the verification process;
- i) Automated recording concerning a “recent rate reduction;”
- j) Agent misrepresentation of 30% discount;
- k) Agent misrepresentation that Mr. Mumford was currently paying 40 cents per kWh;
- l) Agent misrepresentation that “nothing will change, just getting a discount;” and
- m) Agent misrepresentation on the process after receiving the enrollment paperwork.

25. Pursuant to 52 Pa. Code § 111.3, Greenlight is responsible and liable for the conduct performed by its agent(s).

B. Unauthorized Enrollments

26. In addition to the allegations in Mr. Mumford’s referral memo, I&E identified five (5) informal complaints which either alleged an enrollment without authorization/capacity or disputed an enrollment. These five informal complaints

occurred between August 2020 and November 2020, noting that the complaint occurring in August 2020 concerned an enrollment through Facebook.

27. Customer 1² disputed their enrollment with Greenlight, noting that the phone number provided in the verification process was invalid. Greenlight responded to the complaint by canceling the account and issuing a refund.

28. Customer 2 disputed their enrollment with Greenlight. Greenlight responded that Customer 2's electric account was enrolled with Greenlight due to a mix-up with the account number and issued a refund.

29. Customer 3 disputed the enrollment of an elderly mother. Greenlight responded that it was not aware of the power of attorney ("POA") and canceled the enrollment.

30. Customer 4 disputed the enrollment of an elderly father. Greenlight responded that it canceled the account as requested.

31. Customer 5 (a male) disputed his enrollment with Greenlight. Greenlight responded by informing Customer 5 of the mistaken enrollment and circumstances and credited the customer's account. I&E notes that the individual who completed the third-party verification ("TPV") in this case was a female who did not share the same last name as the customer.

32. The complaints are allegations of unauthorized enrollment in violation of 54 Pa. Code § 54.42(a)(9) and 52 Pa. Code § 111.7.

² To protect the identity and confidential nature of the complainants, I&E and Greenlight have agreed to remove any identifying information from the allegations.

C. Greenlight's Response to the Alleged Conduct

33. Greenlight made the business decision to cease outbound telemarketing and the use of third-party vendors.

34. Greenlight did not conduct any telemarketing between February 2018 and September 2020. It resumed telemarketing using third party vendors for a short time in October 2020, and then ceased all third-party telemarketing effective December 16, 2020 and has not resumed.

35. Currently, Greenlight's only outbound marketing is limited to renewal and retention of existing customers which is completed by in-house agents.

36. Greenlight prohibits the use of and has never utilized robocalls. Once made aware of Mr. Mumford's telemarketing experience, Greenlight immediately terminated the third-party vendor who completed the phone calls.

III. ALLEGED VIOLATIONS

37. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Greenlight committed the following violations related to Mr. Mumford's referral memo:

- a) The alleged actions of Greenlight and/or its agents resulted in deceptive and misleading conduct in violation of state or federal law, including calling customers on the do not call list. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 54.43(g), 52 Pa. Code § 111.10(a) and (b), and 52 Pa. Code § 111.12(d) (multiple counts).

- b) The alleged actions of Greenlight and/or its agents resulted in the false or deceptive and misleading representations, including rates and savings. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 54.122(3) and 52 Pa. Code § 111.12(d) (multiple counts).
- c) The alleged actions of Greenlight and/or its agents resulted in the failure of the agent to identify himself/herself upon first contact and state that he/she is not working for and is independent of the local EDC. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.8(b) and 52 Pa. Code § 111.10(a) and (b) (multiple counts).
- d) The alleged actions of Greenlight and/or its agents resulted in the agent suggesting that a customer is required to choose an EGS. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.8(f) and 52 Pa. Code § 111.10(a) and (b) (multiple counts).
- e) The alleged actions of Greenlight and/or its agents resulted in the authorized enrollment of five (5) customers. If proven, I&E alleges that such conduct would have violated 54 Pa. Code § 54.42(a)(9) and 52 Pa. Code § 111.7 (multiple counts).

38. Had this matter been fully litigated, Greenlight would have denied each of the alleged violations of the Commission's Regulations, the Code, or Commission's

Orders, raised defenses to each of these allegations, and defended against the same at hearing.

IV. SETTLEMENT TERMS

39. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a settlement discussion that culminated in this Settlement. I&E and Greenlight desire to (1) terminate I&E's Informal Investigation; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed matter, and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

40. Greenlight shall pay a total civil penalty of \$8,250.00, broken down as follows:

- a) A civil penalty of \$300.00 for each of the fifteen (15) identified violations related to the October 30, 2020 and November 6, 2020 telemarketing calls received by Daniel Mumford, totaling \$4,500.00.
- b) A civil penalty of \$750.00 for each of the five (5) complaints related to unauthorized enrollment, totaling \$3,750.00.

41. The civil penalty shall not be tax deductible or passed through as an additional charge to Greenlight's customers in Pennsylvania.

V. CONDITIONS OF SETTLEMENT

42. The benefits and obligations of this Settlement Agreement shall be binding upon the successors and assigns of the Parties to this Agreement.

43. This Agreement may be signed in counterparts and all signatures attached hereto will be considered as originals.

44. In order to effectuate the Parties' Settlement Agreement, the undersigned Parties request that the Commission issue an Order approving the Petition without modification.

45. The Parties agree that any party may petition the Commission for reconsideration or take other recourse allowed under the Commission's rules if the Commission Order substantively modifies the terms of this Petition. However, if the Commission takes any action in a Tentative or other Order substantively modifying the terms of this Settlement, any party may give notice to the other party that it is withdrawing from this Petition. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter that adopts this Petition with substantive modifications of its terms. The consequence of any party withdrawing from this Petition as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the Parties and all obligations of the Parties to each other are terminated and of no force and effect. In the event that a Party withdraws from this Petition as set forth in this Paragraph, I&E and Greenlight jointly agree that nothing in this Agreement shall be construed as an

admission against or as prejudice to any position either Party might adopt during subsequent litigation of this case.

46. I&E and Greenlight jointly acknowledge that approval of this Agreement is in the public interest and is fully 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 Commission will serve the public interest by adopting this Joint Petition for Approval of Settlement.

47. This Petition avoids the time and expense of litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of briefs, reply briefs, exceptions, and reply exceptions. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the disputed issues through settlement. Attached as Appendices A and B are Statements in Support submitted by I&E and Greenlight, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

48. Adopting this Agreement will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

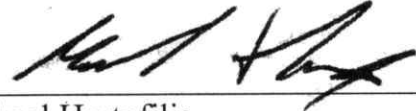
49. This Settlement consists of the entire agreement between I&E and Greenlight regarding the matters addressed herein. Moreover, this Settlement represents a complete settlement of I&E's Informal Investigation of Greenlight's alleged violations

of the Code and the Commission's regulations related to the misleading and deceptive telemarketing calls made to Mr. Mumford and unauthorized enrollments made from August 2020 to December 2020 and fully satisfies I&E's Informal Investigation of the matters discussed herein. The Parties expressly acknowledge that this Agreement represents a compromise of positions and does not in any way constitute a finding or an admission concerning the alleged violations of the Code and the Commission's regulations.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Greenlight Energy Inc. respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest and granting such other relief not inconsistent with the Settlement as may be just and reasonable under the circumstances.

IN WITNESS WHEREOF, I&E and Greenlight by their authorized representatives
have hereunto set our hands and seals on this 24th day of June 2021.

Date: June 24, 2021



Michael Hartofilis
Vice President
Greenlight Energy Inc.

Date: June 24, 2021



Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2021-3023026
	:	
Greenlight Energy Inc.	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on June 24, 2021 between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Greenlight Energy Inc. (“Greenlight”) 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 sixty (60) days of the date this Order becomes final, Greenlight shall pay Eight Thousand Two Hundred Fifty Dollars (\$8,250.00), which consists of the entirety of the civil penalty amount. 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 or passed through as an additional charge to Greenlight’s customers in Pennsylvania.

4. The above-captioned matter shall be marked closed upon receipt of the civil penalty.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2021-3023026
 :
Greenlight Energy Inc. :

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

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Bureau of Investigation and Enforcement ("I&E"), a signatory party to the Joint Petition for Approval of Settlement ("Settlement" or "Settlement Agreement") filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Greenlight Energy Inc. ("Greenlight" 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 Greenlight are collectively referred to herein as the "Parties."

I. Background

On November 25, 2020, Daniel Mumford, Director of the Office of Competitive Market Oversight (“OCMO”), submitted a memo to I&E outlining his concerns with Greenlight’s telemarketing practices. Specifically, Mr. Mumford personally received a telemarketing phone call on October 30, 2020 which started as an automated/robocall advertising a refund due to a mistake on his electric bill. Mr. Mumford described the corresponding phone conversation in detail, noting that the agent who later conducted the call did not identify who he was calling on behalf of, the agent stated that Mr. Mumford would be receiving a 40% cheaper electric rate compared to his previous 15 cent rate which was a mistake, and the agent stated that Mr. Mumford was currently being billed at the business rate and that the agent would fix this mistake. Mr. Mumford was then coached through the verification process and successfully enrolled with Greenlight.

Mr. Mumford also received a second robocall on November 6, 2020. This call promised a 30% discount, dropping Mr. Mumford’s rate from 40 cents to 9 cents and that “nothing will change, just getting a discount.” The agent described the name of the program as Greenlight Energy and abruptly ended the call after realizing that Mr. Mumford had already signed up with Greenlight.

By letter dated January 28, 2021, I&E issued a Data Request Letter (“I&E Data Requests-Set I”) informing Greenlight of the scope of its investigation and requesting a response to I&E’s twenty-five (25) data requests. Greenlight’s responses were due on March 1, 2021.

On February 26, 2021, Greenlight provided its response to I&E Data Requests-Set I.

On March 26, 2021, I&E submitted a second set of data requests (“I&E Data Requests-Set II”), to which Greenlight timely provided its response on April 21, 2021 and April 22, 2021.

On June 24, 2021, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Greenlight 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 settlement discussion. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E informal investigation involving allegations that Greenlight completed deceptive and misleading telemarketing and completed five (5) unauthorized enrollments from August 2020 through December 2020. Notably, prior to the initiation of I&E’s informal investigation, Greenlight made the business decision to cease outbound telemarketing and the use of third-party vendors. Greenlight stopped all telemarketing from February 2018 through September 2020, and ceased using third-party vendors effective December 16, 2020. This business decision will significantly reduce the potential of fraudulent or deceptive conduct being conducted on Greenlight’s behalf, and thus squarely addressing the allegations raised in the Joint Petition.

This business decision, in addition to the civil penalty discussed below, is in the public interest because it will protect the public from potential misleading and deceptive telemarketing calls and unauthorized enrollments in the future and will act as a deterrent for future misconduct.

I&E intended to prove the factual allegations set forth in its investigation at hearing to which Greenlight would have disputed. This Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, I&E and Greenlight have agreed that Greenlight will pay a civil penalty of \$8,250.00, broken down as follows:

- a) A civil penalty of \$300.00 for each of the fifteen (15) identified violations related to the October 30, 2020 and November 6, 2020 telemarketing calls received by Daniel Mumford, totaling \$4,500.00.
- b) A civil penalty of \$750.00 each of the five (5) complaints related to unauthorized enrollment, totaling \$3,750.00.

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). Furthermore, the civil penalty shall not be passed through as an additional charge to Greenlight's customers in Pennsylvania.

In consideration of Greenlight's payment of a monetary civil penalty, I&E agrees that its informal investigation relating to Greenlight'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 payment of the civil penalty.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against Greenlight at the Commission with respect to the deceptive and misleading telemarketing calls made to Mr. Daniel Mumford and the five (5) unauthorized enrollments 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 alleges that the conduct in this matter involved misrepresentation and administrative/technical errors. The telemarketing calls made to Mr. Mumford are a clear example of misrepresentation while the unauthorized enrollments appear to either be the result of a mistake, an account mix-up, or related to Greenlight's lack of knowledge as to the customer's capacity/authorization status. Consequently, the less egregious nature of the conduct was considered in arriving at the civil penalty amount in the Settlement Agreement.

The second factor considers whether the resulting consequences of Eligo'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.

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 Greenlight's alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Greenlight has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As explained in more detail above, Greenlight became aware of the deceptive and misleading actions of its third-party vendors prior to I&E's investigation. As a result, Greenlight made the business decision to cease the use of outbound calling

and third-party vendors. Greenlight solely utilizes outbound calling for renewal and retention of existing customers which is completed by in-house agents. Accordingly, Greenlight's business decision will prevent similar conduct from occurring in the future.

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). During the time frame of September 2020 through December 2020, Greenlight identified approximately 16 customer complaints. Of those 16 complaints, one (1) related to a payment arrangement request, one (1) requested a cancellation of service, three (3) didn't recall enrolling with Greenlight (Greenlight provided valid TPVs and I&E was unable to substantiate a violation), one (1) complained of high bills, two (2) requested that the telemarketing calls cease, two (2) related to a different EGS, one (1) related to a complaint of dimming lights (EDC issue), and five (5) are included in the Settlement Agreement. Additionally, Mr. Mumford's account was enrolled with Greenlight approximately four (4) days. Thus, the number of customers affected by Greenlight's conduct are six (6) (Mr. Mumford and the five (5) unauthorized enrollment complaints). These facts were considered when calculating the civil penalty.

The sixth factor to be considered relates to the compliance history of Greenlight. 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 Greenlight regarding this matter. Additionally, I&E is not aware of any other enforcement action brought against Greenlight relating to deceptive and misleading

telemarketing or unauthorized enrollments since the application for licensure was granted in early 2016.

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 Greenlight 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). I&E submits that a civil penalty amount of \$8,250.00, which is not tax deductible, is substantial and sufficient to deter Greenlight 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 identical to this matter. However, I&E notes that some prior Commission decisions do provide guidance on how the Commission viewed past settlement agreements proposing a civil penalty with similar deceptive and misleading conduct as alleged in the Joint Petition. *See generally Pa. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014) (Commission approval of settlement imposing a civil penalty of \$59,000 to resolve allegations of slamming, unauthorized marketing practices, and "Do Not Call" violations resulting from 13 customer complaints comprising of 49 potential violations and no practical means to accurately determine the number of Do Not Call violations); *Pa. PUC v. AP Gas & Electric (PA), LLC, d/b/a*

APG&E, Docket No. M-2013-2311811 (Order entered October 17, 2013) (Commission approval of settlement with a \$43,200 civil penalty to resolve allegations of slamming, unauthorized marketing practices, and “Do Not Call” violations resulting from 37 complaints comprising of 54 potential violations); and *Pa. PUC v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013) (Commission approval of settlement with a \$39,000 civil penalty to resolve allegations of slamming and fraudulent, deceptive or unlawful sales, and marketing practices and “Do Not Call” violations resulting from 21 complaints comprising of 39 potential violations).

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

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that

approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

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

Respectfully submitted,

Handwritten signature of Kayla L. Rost in blue ink.

Kayla L. Rost

Prosecutor

PA Attorney ID No. 322768

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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Dated: June 24, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and :
Enforcement :
v. : **Docket No. M-2021-3023026**
: :
Greenlight Energy, Inc. :
:

STATEMENT IN SUPPORT OF SETTLEMENT OF GREENLIGHT ENERGY, INC.

Greenlight Energy, Inc. (“Greenlight” or “Company”) hereby submits its Statement in Support of the Joint Petition for Settlement (“Settlement”) of the above-referenced informal investigation of the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”). Greenlight has fully cooperated with the investigation. Greenlight also conducted its own internal investigation of this matter, both before and after the opening of I&E’s investigation, and for the reasons set forth below, Greenlight believes that the Settlement is in the public interest and should be approved.

The I&E investigation underlying this settlement stems from the unauthorized actions of a telemarketing vendor that was conducting marketing on behalf of Greenlight for a very short time. Based on the complaint received, Greenlight determined that the vendor in question conducted marketing calls to customers that were not in any way consistent with Greenlight’s marketing policies or protocols, and the vendor was terminating after only nine (9) days of service. Greenlight absolutely does not permit or condone the use of “robocalls”. Unfortunately during that time frame the vendor did make

the calls that are referenced in paragraph 24 of the Settlement. The Company became aware of the incident on November 6, 2020 when it received an email from the customer. Upon learning of the marketer's practices, Greenlight immediately terminated the marketer, contacted every customer enrolled by the marketer, and cancelled their enrollment. Since then, Greenlight has not undertaken any telemarketing to new customers in Pennsylvania and has implemented new quality control procedures for its telemarketing vendors.

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

Greenlight believes that the Settlement is in the public interest because it is a complete and final resolution of this matter, it effectively addresses the issues that were the subject of the investigation, and it avoids the time and expense of litigation and possible appeals. Greenlight also believes that this Settlement is consistent with the factors that the Commission uses to evaluate settlements and is consistent with prior settlements involving EGSs.

The actions alleged in this case are serious in nature, as they involved improper marketing by a marketing vendor. However, Greenlight believes that the consequences of the marketer's actions were contained based on the immediate follow-up actions taken by Greenlight to fire the vendor and cancel the limited number of customer enrollments submitted by the vendor.

The incident did not involve any negligent or intentional conduct by Greenlight, and it was solely the result of unauthorized actions by its now-fired telemarketing vendor. As a result of this incident, Greenlight has strengthened the vetting of its marketing vendors and its quality assurance protocols, and has ceased telemarketing except for contacts with existing customers

for retentions and renewals. Greenlight has implemented new measures to prevent any such improper practices from occurring in the future. Under Greenlight Energy's new policy, welcome calls are placed to every newly enrolled customer from Greenlight's quality assurance team. All new customers are asked to confirm their agreement to enroll and the understanding of Greenlight's service and offer. Any indication of misunderstanding or improper sale will result in cancellation of the enrollment and remedial action against the vendor in question.

Greenlight has a satisfactory compliance history with the Public Utility Code and the Commission's regulations and has never been found to be in violation of the Public Utility Code or the Commission's regulations. Greenlight fully cooperated with I&E throughout this matter, as reflected in the Settlement. Greenlight fully believes that the that the civil penalty amount in this case is proportionate to the nature of the incident and the number of customers affected and is sufficient to deter future violations. Greenlight submits that the civil penalty amount is consistent with other I&E investigations related to allegedly improper EGS sales activities by independent agents. The settlement avoids the time, expense, and uncertainty of litigation, which is why the Commission generally encourages settlements as being in the public interest. Greenlight sincerely regrets that an independent vendor engaged in improper activity while conducting sales on behalf of the Company. This action was undertaken without Greenlight's knowledge and clearly violated Greenlight's sales and marketing policies. Upon being notified of the actions of the vendor, Greenlight pro-actively took steps to investigate the incident, terminate the vendor, and cancel the enrollments of the few customers whose enrollments were submitted for processing by the vendor. Greenlight did not receive any other complaints or customer contacts regarding the improper marketer. The other complaints referenced in the Settlement involved completely different issues

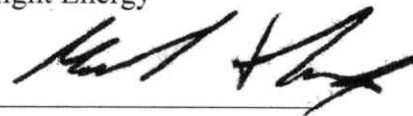
(i.e., an account number mistake, two complaints filed relatives of enrolled customers, and an issue with an online enrollment.)

In summary, Greenlight respectfully submits that an evaluation of the Settlement Agreement under the Commission's standards for reviewing settlement Policy Statement justifies approval of the Settlement without modification. While the action underlying this investigation was undertaken by a telemarketing vendor without Greenlight's knowledge and clearly violated Greenlight's sales and marketing policies, Greenlight recognizes that it can be found to be in violation of the Commission's regulations as a result of the activities of sales agents acting on its behalf. Accordingly, Greenlight is willing to accept the civil penalty as a result of the incident. The remedial measures taken by Greenlight and the resolution of I&E's investigation through the Settlement are in the public interest. The Settlement allows this investigation to be completed without the need for a formal proceeding and the associated time and cost of fully litigating this matter, while still providing consequences for the inappropriate actions of a sales agent operating on behalf of a licensed supplier. This is in the public interest because it will conserve both Greenlight's and Commission resources to focus attention on their responsibilities of assuring safe, adequate and reliable utility service to the citizens of the Commonwealth, and of ensuring that the Commission's electricity supplier sales and marketing regulations are adhered to. Greenlight therefore believes that the Joint Petition for Settlement is in the public interest and should be approved by the Commission.

Respectfully Submitted,

Greenlight Energy

By: _____



Date: June 24, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2021-3023026
	:	
Greenlight Energy Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement** dated June 24, 2021, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail Only

Michael Hartofilis
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