



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 9, 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.
Green Mountain Energy Company
Docket No. M-2021-3009235
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced informal investigation proceeding as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B - the Bureau of Investigation and Enforcement’s Statement in Support; and (2) Appendix C - the Statement in Support of Green Mountain Energy Company.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

SMW/jfm
Enclosure

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
E. Festus Odubo, Deputy Director - Technical, OSA (*via email only – Word Version*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email only*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3009235
	:	
Green Mountain Energy Company,	:	
Respondent	:	

**JOINT PETITION FOR
APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Green Mountain Energy Company (“Green Mountain” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based on information provided by the Commission’s Bureau of Consumer Services (“BCS”), which received informal complaints from residential consumers alleging that Green Mountain enrolled their electricity accounts to receive the Company’s electric generation supply without their consent or knowledge.

As part of this Settlement Agreement, I&E and Green Mountain (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and Green Mountain are attached hereto as Appendix B and Appendix C, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120, and Green Mountain with a principal place of business at 3711 Market Street, Suite 1000, Philadelphia, PA 19104.

2. The Pennsylvania Public Utility 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 prosecutory in nature to I&E).

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

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, 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 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. Green Mountain is a licensed electric generation supplier (“EGS”) as defined by 66 Pa.C.S. § 2803. On or about June 10, 2011, at Docket No. A-2011-2229050, the Company was granted Commission approval to begin to offer, render, furnish or supply electricity or electric generation supplier services to large commercial, industrial and governmental customers in all electric distribution company (“EDC”) service territories within the Commonwealth of Pennsylvania. On February 16, 2012, Green Mountain’s license was amended to enable Green Mountain to begin to offer, render, furnish or supply electric generation supplier services as a supplier to residential and small commercial (25 kilowatt and under) customers in all EDC service territories throughout the Commonwealth of Pennsylvania.

8. Green Mountain, as a licensed provider of electric generation supply service, is subject to the power and authority of the Commission pursuant to Sections 501 and 2809 of the Code, 66 Pa.C.S. §§ 501, 2809.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and actions of Green Mountain in its capacity as an EGS serving customers in Pennsylvania.

10. This matter involves the unauthorized enrollments of residential accounts by agents of Green Mountain to receive electric generation supplied by the Company.

11. A review of the resulting informal consumer complaints to BCS led to an informal investigation initiated by I&E prosecutory staff based on information referred to I&E by BCS.

12. BCS received allegations from numerous residential consumers alleging that their electricity accounts had been switched to receive electric generation supply provided by Green Mountain without the customers’ authorizations. The unauthorized switching allegations stemmed from Green Mountain’s marketing activities at in-person locations, including retail and

event sites, where Green Mountain agents were utilizing eligible customer lists (“ECL”)¹ to obtain the information of prospective customers.

13. As a result of negotiations between I&E and Green Mountain, the Parties have reached an agreement on an appropriate outcome to the investigation as encouraged by the Commission’s policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized parties executing this Settlement Agreement 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. BACKGROUND

14. Between June 1, 2018 and September 30, 2020, BCS received several informal complaints submitted by residential customers alleging that their electricity accounts had been switched to receive electric generation service supplied by Green Mountain without their authorization.

15. Approximately twenty-two (22) informal complaints submitted to BCS during this timeframe alleged that the customer was enrolled with Green Mountain without the customer’s consent and, in response, Green Mountain acknowledged that the switch was unauthorized, occurred at an in-person location and used information obtained from the ECL.

16. BCS became concerned that Green Mountain agents were improperly using the ECL at in-person locations to switch customers to Green Mountain without the customers’ consent.

17. Based on the seriousness of the allegations set forth in the informal complaints, BCS referred the matter to I&E.

18. By letter dated January 8, 2021, I&E notified Green Mountain that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Code,

¹ ECLs include customer information that is made available to EGSs by EDCs.

66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113. I&E advised Green Mountain that its investigation would focus on the Company’s marketing, sales and enrollment practices as an EGS in Pennsylvania, which were brought to I&E’s attention as a result of the aforementioned informal complaints.

19. I&E served Green Mountain with two (2) sets of data requests on January 8, 2021 and April 2, 2021, respectively.

20. After receiving an extension of time to respond, Green Mountain timely responded to I&E’s Data Requests – Set I on February 26, 2021 and provided supplemental responses on March 4, 2021. Green Mountain timely responded to I&E’s Data Requests – Set II on April 13, 2021.

21. The results of I&E’s investigation, which included a review of the Company’s responses to I&E’s data requests, formed the basis for the instant Settlement Agreement.

22. I&E found that between June 1, 2018 and September 30, 2020, Green Mountain or agents acting on behalf of Green Mountain² enrolled 156 residential customers to receive electric generation supply provided by the Company without the customers’ authorization, with such enrollments originating from Green Mountain’s in-person marketing locations.

23. Green Mountain placed each of the alleged 156 unauthorized enrollments into three different categories: (1) enrollment processing errors, which total 141; (2) instances of sales agent misrepresentation, which total 10; and (3) straightforward unauthorized enrollments, which total 5.

24. The bulk of the unauthorized enrollments pertain to enrollment processing errors, which occurred when Green Mountain agents inadvertently selected the incorrect customer

² A supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent. *See* 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.3.

account from the ECL or where the agent failed to advise the customer that he or she was switching suppliers until after the enrollment was signed.

25. I&E's investigation further determined that the Company undertook a number of corrective measures designed to prevent similar occurrences in the future. Most notably, Green Mountain eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. The ECL tool now utilizes advanced identification scanning technology to authenticate customer identities, thereby reducing the potential for ECL mismatches. Additionally, to prevent exploitation of the ECL, Green Mountain tightened its disciplinary policy for ECL misuse, which may result in the loss of ECL privileges and potential removal from working on behalf of Green Mountain.

III. ALLEGED VIOLATION

26. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Green Mountain committed the following violation:

- Green Mountain agents transferred the electric generation supplier to Green Mountain on at least one hundred fifty-six (156) residential accounts between June 1, 2018 and September 30, 2020 without the authorization of the customers.

If proven, I&E alleges that such conduct would have violated 52 Pa. Code §§ 54.42(a)(9), and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-180 (multiple counts).

- I&E would have argued that the Commission has a zero-tolerance policy regarding the unauthorized switching of customer accounts.

- I&E would have sought a civil penalty of \$1,000 per violation for each of the one hundred fifty-six (156) accounts that were switched without the authorization of the customers, and \$1,000 per day for each and every day that a customer received electric generation supplied by Green Mountain without the customer's consent. *See* 66 Pa.C.S. § 3301(a)-(b).

27. Had this matter been litigated, Green Mountain would have raised defenses to these allegations and defended against the same at hearing, presenting evidence and making legal arguments as follows:

- Because 141, or over 90%, of the alleged unauthorized switches involved ECL processing errors, the imposition of \$1,000 per violation is not warranted.
- An unauthorized switch is a single violation, not an ongoing violation that warrants a \$1,000 per day civil penalty for each and every day that a customer received electric generation supplied by Green Mountain, and to the extent the Commission views it as such, no penalties should be assessed after two billing periods. *See* 52 Pa. Code § 57.177 (b) (customer should have reasonably known of a change within that time period).
- The 10 instances involving customers' allegations about the agents' representations are not credible given the process that Green Mountain follows to complete an enrollment.
- A lower civil penalty per violation should be imposed due to: (a) the actions that Green Mountain has taken to avoid a recurrence; (b) the small percentage of Green Mountain's total customer base that is the subject of this investigation; (c) Green Mountain's history of compliance with the

Commission's regulations, as well as its cooperation with I&E's investigation; and (d) the programs that Green Mountain has in place, and continuously improves, to train sales agents, monitor agent performance, enforce agent compliance with requirements, complete enrollment verifications, and conduct quality assurance activities.

- Notwithstanding the provision in the regulations at 52 Pa. Code § 57.177(b) regarding refunds, the Commission does not have statutory authority to direct Green Mountain to issue refunds. *See Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (2020), 2020 Pa. Commw. LEXIS 720. At most, refunds should be limited to the customers who disputed the switch within the first two billing periods.

IV. SETTLEMENT TERMS

28. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. I&E and Green Mountain desire to: (i) terminate I&E's informal investigation; and (ii) settle this matter completely without litigation. Although Green Mountain may dispute or disagree with the allegations described above, it fully acknowledges the seriousness of the allegations and recognizes the need to prevent similar allegations from reoccurring. Moreover, the Parties recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues prior to the initiation of any formal enforcement proceeding. The terms and conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

29. I&E and Green Mountain, intending to be legally bound and for consideration given, desire to fully and finally conclude this matter and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

- A. Green Mountain will pay a civil penalty in the amount of One Hundred Fifty-Six Thousand Dollars (\$156,000), pursuant to 66 Pa.C.S. § 3301, to resolve all allegations of unauthorized switching, and to fully and finally settle all possible liability and claims of alleged violations of the Commission’s regulations and Orders arising from, or related to, the conduct investigated herein. Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. Green Mountain will provide to each of the one hundred fifty-six (156) customers a refund for the entire electric generation supply portion on the customer’s bill for the first two (2) billing periods that the customers were switched to Green Mountain, pursuant to 52 Pa. Code § 57.177(b). Green Mountain will issue the customer refunds within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, Green Mountain will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.
- C. Green Mountain shall refund any cancellation fee or early termination fee imposed by other EGSs and incurred by any of the aforementioned customers as a result of the unauthorized switch to Green Mountain, pursuant to 52 Pa. Code § 57.177(c), provided that the customer supplies documentation of incurring the fee.
- D. After the entry of a Final Commission Order in this matter, Green Mountain will provide I&E with a monthly report by the 30th of each month, for a period of one (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 marketing locations. The monthly report to I&E shall include customer complaint data from the previous month.

- E. Green Mountain agrees to retain customer signatures placed on enrollment tablets used at in-person marketing locations for a period of one (1) year starting after the entry of a Final Commission Order in this matter, and will provide such records to BCS and I&E upon request.

30. Upon Commission approval of the Settlement in its entirety without modification and in consideration of the Company's payment of the total civil penalty in the amount of One Hundred Fifty-Six Thousand Dollars (\$156,000), disbursement of customer refunds and compliance with the other terms of this Settlement, as specified herein, I&E agrees that its informal investigation relating to Green Mountain's conduct as described in this Settlement Agreement shall be terminated and marked closed.

31. Upon Commission approval of the Settlement in its entirety without modification, I&E agrees to forgo the institution of any formal complaint against the Company at the Commission with respect to allegations of unauthorized enrollments committed by Green Mountain agents at in-person marketing locations during the time period in question.

32. I&E and Green Mountain jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations, and avoids the time and expense of litigation, which entails hearings, travel for the Company's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals.

33. Attached as Appendices B and C are Statements in Support submitted by I&E and Green Mountain, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

34. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

35. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) days after entry of an Order modifying the Settlement.

36. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this informal investigation proceeding. It is further understood that, by entering into this Settlement Agreement, Green Mountain has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in the Settlement.

37. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this matter.

38. If either party should file any pleading, including comments, in response to a tentative or final order of the Commission, the other party shall have the right to file a reply.

39. This Settlement Agreement is being presented only in the context of this informal investigation in an effort to resolve the matter in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding.

40. The Parties arrived at the Settlement after conducting informal discovery and engaging in discussions over several months. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Green Mountain Energy Company respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

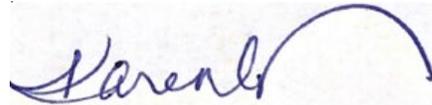
Green Mountain Energy Company

By:

By:



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Date: July 9, 2021

Date: July 9, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3009235
	:	
Green Mountain Energy Company,	:	
Respondent	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on July 9, 2021 between the Commission’s Bureau of Investigation and Enforcement and Green Mountain Energy Company 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, Green Mountain Energy Company shall pay a civil penalty of One Hundred Fifty-Six Thousand Dollars (\$156,000). 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. Within thirty (30) days of the date this Order becomes final, Green Mountain Energy Company shall provide to each of the customers who had one or more of the 156 accounts 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, Green Mountain Energy Company shall file with the Commission a verification acknowledging that all refund payments have been disbursed.

4. Green Mountain Energy Company 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 informal investigation proceeding, pursuant to 52 Pa. Code 57.177(c), provided that the customer supplies documentation of incurring the fee.

5. Upon entry of this Order, Green Mountain Energy Company 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 Bureau of Consumer Services, the Pennsylvania Attorney General's Office, the Better Business Bureau and/or complaints directed to Green Mountain Energy Company related to allegations of unauthorized switching that originated from in-person marketing locations.

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

7. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and verification indicating that all customer refunds have been disbursed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. : Docket No. M-2021-3009235
Green Mountain Energy Company, :
Respondent :

**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 Green Mountain Energy Company (“Green Mountain,” “Respondent” 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 Green Mountain are collectively referred to herein as the “Parties.”

I. BACKGROUND

By letter dated January 8, 2021, I&E notified Green Mountain 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. I&E advised Green Mountain that its investigation would focus on the Company’s marketing, sales and enrollment practices as an electric generation supplier (“EGS”) in Pennsylvania, which were brought to I&E’s attention as a result of approximately twenty-two (22) informal complaints submitted to the Commission’s Bureau of Consumer Services (“BCS”) between June 1, 2018 and September 30, 2020, which alleged that the customers’ electricity accounts had been switched to receive electric generation service supplied by Green Mountain without their authorization. In response to each of the informal complaints, Green Mountain acknowledged that the switch was unauthorized, occurred at an in-person location and used information obtained from the eligible customer list (“ECL”). BCS became concerned that Green Mountain agents were improperly using the ECL at in-person locations to switch customers to Green Mountain without the customers’ consent.

I&E’s investigation primarily consisted of service and review of two (2) sets of data requests to Green Mountain. The results of I&E’s investigation determined that between June 1, 2018 and September 30, 2020, Green Mountain or agents acting on behalf of Green Mountain² enrolled 156 residential customers to receive electric

² A supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent. *See* 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.3.

generation supply provided by the Company without the customers' authorization, with such enrollments originating from Green Mountain's in-person marketing locations. Of the 156 unauthorized enrollments, 141 were the direct result of enrollment processing errors, which occurred when Green Mountain agents inadvertently selected the incorrect customer account from the ECL or where the agent failed to advise the customer that he or she was switching suppliers until after the enrollment was signed. The remaining fifteen unauthorized enrollments involved either sales agent misrepresentation (ten instances) or consisted of straightforward unauthorized switching (five instances).

Had this matter been litigated, I&E was prepared to allege that agents acting on behalf of Green Mountain transferred the electric generation supplier to Green Mountain on at least one hundred fifty-six (156) residential accounts between June 1, 2018 and September 30, 2020 without the authorization of the customers. I&E was prepared to allege that such conduct would have violated 52 Pa. Code §§ 54.42(a)(9), and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-180 (multiple counts).

I&E's investigation further found that the Company undertook a number of proactive, corrective measures designed to prevent similar occurrences in the future. Most notably, Green Mountain eliminated the ability for sales agents to scroll through the ECL to locate a certain customer. The ECL tool now utilizes advanced identification scanning technology to authenticate customer identities, thereby reducing the potential for ECL mismatches. Additionally, to prevent exploitation of the ECL, Green Mountain tightened its disciplinary policy for ECL misuse, which may result in the loss of ECL

privileges and potential removal from working on behalf of Green Mountain.

On July 9, 2021, the Parties filed a Joint Settlement Petition resolving all issues between I&E and Green Mountain in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation involving allegations that Green Mountain, through its agents, switched customers to receive electric generation service without their authorization. Notably, prior to the initiation of I&E's investigation, Green Mountain took proactive measures targeting ECL misuse in an effort to prevent unauthorized switching at in-person locations.

I&E intended to prove the factual allegations set forth in its investigation at hearing, to which the Company would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and Green Mountain may disagree with respect to I&E's factual allegations, Green Mountain recognizes the seriousness of the allegations and commits to fully complying with the Commission's regulations in the future.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the

Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and Green Mountain have agreed as follows:

- A. Green Mountain will pay a civil penalty in the amount of One Hundred Fifty-Six Thousand Dollars (\$156,000), pursuant to 66 Pa.C.S. § 3301, to resolve all allegations of unauthorized switching, and to fully and finally settle all possible liability and claims of alleged violations of the Commission’s regulations and Orders arising from, or related to, the conduct investigated herein. Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. Green Mountain will provide to each of the one hundred fifty-six (156) customers a refund for the entire electric generation supply portion on the customer’s bill for the first two (2) billing periods that the customers were switched to Green Mountain, pursuant to 52 Pa. Code § 57.177(b). Green Mountain will issue the customer refunds within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, Green Mountain will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.

- C. Green Mountain shall refund any cancellation fee or early termination fee imposed by other EGSs and incurred by any of the aforementioned customers as a result of the unauthorized switch to Green Mountain, pursuant to 52 Pa. Code § 57.177(c), provided that the customer supplies documentation of incurring the fee.
- D. After the entry of a Final Commission Order in this matter, Green Mountain will provide I&E with a monthly report by the 30th of each month, for a period of one (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 marketing locations. The monthly report to I&E shall include customer complaint data from the previous month.
- E. Green Mountain agrees to retain customer signatures placed on enrollment tablets used at in-person marketing locations for a period of one (1) year starting after the entry of a Final Commission Order in this matter, and will provide such records to BCS and I&E upon request.

In consideration of Green Mountain's payment of a monetary civil penalty and performance of the above-described terms, I&E agrees that its informal investigation relating to Green Mountain'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 in its entirety.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against Green Mountain at the Commission with respect to the unauthorized switching allegations that are the subject of the instant I&E 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 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 penalty. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the conduct in this matter involves unauthorized switching performed by Green Mountain sales agents at in-person marketing locations, including retail stores and events, where the ECL was readily available to and used by the agents during the enrollment process. Some instances of the unauthorized switching may have been inadvertent, such as mistakenly selecting the incorrect customer from the ECL. Nevertheless, the alleged violations are of a serious nature in that they involve changing a customer’s electric generation supplier without consent. Consequently, the seriousness of these violations is reflected in the agreed-upon civil penalty set forth in the Settlement.

The second factor considered is whether the resulting consequences of Green Mountain’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. However, the

consequences of the alleged violations may have resulted in customers, who received electric generation supplied by Green Mountain, being charged a more expensive rate than what they had been charged by the local electric distribution company's default service price or the rate of another EGS. Accordingly, I&E avers that some customers may have experienced financial consequences as a result of the actions of Green Mountain 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 Green Mountain's alleged conduct was intentional or negligent does not apply since 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). Green Mountain has extensive practices and procedures in place to vet potential new vendors, train agents, conduct quality assurance and ensure the proper enrollment of customers. In August 2019, Green Mountain modified the ECL search tool to eliminate the ability of third-party sales agents from scrolling through the list to locate a customer. This limitation was expanded in August 2020 to include all Green Mountain sales agents, both third-party and in-house. The tool now only permits searching for a specific name and populates information if a match is located. Moreover, Green Mountain maintains a stringent ECL misuse policy that enables Green

Mountain to suspend a sales agent or entire sales team from using the ECL for one week, thirty days or indefinitely, depending on the severity of the offense.

Green Mountain has also agreed to provide I&E 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 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 locations. Green Mountain further agreed to retain customer signatures obtained on enrollment tablets at in-person locations during the enrollment process for a period of one year. Thus, heightened scrutiny will continue to be placed on Green Mountains sales activities at in-person locations.

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 156 customer accounts were switched to receive electric generation service provided by Green Mountain without the customers' authorizations. Green Mountain solicited residential customers, however, if a residential customer was also a small business owner, residential products could also have been marketed. The incidents of unauthorized enrollments originated from Green Mountain's sales activities at in-person locations that took place between June 1, 2018 and September 30, 2020. In-person retail settings included box stores, farmers markets and festivals. Some customers detected the unauthorized enrollment, promptly contacted Green Mountain to complain and were served by Green Mountain for less than a billing cycle.

Other customers received electric generation supply provided by Green Mountain for upwards of a year prior to being switched back to default service or another EGS.

The sixth factor to be considered relates to the compliance history of Green Mountain. 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.* Since receiving its EGS license, a total of nine formal complaints were filed by consumers against Green Mountain, all of which resulted in the filing of Certificates of Satisfaction pursuant to 52 Pa. Code § 5.24.³ Accordingly, no formal complaints have been sustained against the Company. The instant matter is the first case involving an I&E enforcement action brought against Green Mountain and is the first instance in which Green Mountain would pay a civil penalty imposed by the Commission.

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 Green Mountain 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 \$156,000, which is not tax deductible, in combination with the issuance of customer refunds is substantial and sufficient to deter Green Mountain from committing future violations.

³ See Docket Nos. C-2014-2419106, F-2015-2472063, F-2017-2635714, C-2017-2639266, C-2018-3000504, C-2018-3004734, C-2019-3007060, C-2020-3015594, and C-2020-3020255.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). A recent Commission decision, *Pa. Pub. Util. Comm'n, 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*, Docket No. M-2020-3006647 (Order entered March 25, 2021) (hereinafter referred to as “*NRG Home Order*”), approved a settlement between I&E and an EGS involving substantially similar facts.⁴ Specifically, the *NRG Home Order* approved a civil penalty of \$1,000 for each customer account that was switched without authority, with the unauthorized enrollments originating from marketing activities that took place at retail and event locations where the ECL was used to obtain customer information. The *NRG Home Order* also approved settlement terms pertaining to the issuance of customer refunds for the first two billing periods in which customers were switched, reimbursement of any cancellation or early termination fees incurred by customers from another EGS as a result of the unauthorized switch, the provision of monthly reports for a period of one year detailing complaints from Pennsylvania consumers reported to BCS and other agencies related to allegations of unauthorized switching, and the retention of customer signatures on enrollment tablets used at retail and event locations for one year. The above-referenced settlement terms are identical to the agreed-upon terms set forth in the instant matter.

Likewise, Commission precedent in other decisions supports the imposition of a \$1,000 civil penalty for each account that was switched and received electric generation

⁴ Green Mountain is an NRG Energy, Inc. company.

supply service from an EGS without customer consent. *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*).

In summary, 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 – most notably, a civil penalty, customer refunds and a reporting requirement - this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome that is in the public interest.

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 informal investigation 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,



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Dated: July 9, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3009235
	:	
Green Mountain Energy Company,	:	
Respondent	:	

**STATEMENT OF GREEN MOUNTAIN ENERGY COMPANY
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF SETTLEMENT**

Pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code §§ 5.231, 5.232 and 69.1201, Green Mountain Energy Company (“GME”) files this Statement in Support of the Joint Petition for Approval of Settlement (“Settlement”) filed by GME and the Commission’s Bureau of Investigation and Enforcement (“I&E”). In support of the Settlement, GME offers the following information for the Commission’s consideration.

I. INTRODUCTION

The Settlement fully resolves issues related to alleged unauthorized switches stemming from GME’s in-person marketing activities at retail establishments and public events. GME acknowledges that some switches were unauthorized due to agent misuse of the eligible customer list (“ECL”). However, other instances of unauthorized switching that I&E examined during the investigation were the result of inadvertent ECL processing errors. GME believes that an in-depth

review of each account that is the subject of this Settlement would reveal that far fewer violations of the Commission's regulations occurred than alleged by I&E. Rather than expending significant resources developing this defense and engaging the Commission in a possibly lengthy process to adjudicate the propriety of many individual enrollments, GME made the practical business decision to enter into the Settlement. By entering into the Settlement, GME also avoids the uncertainty of litigation.

Through this Settlement, GME has agreed to pay a civil penalty of \$1,000 for each switch that I&E has alleged was not authorized, which is the maximum amount that the Commission may impose for a violation of the Public Utility Code or Commission regulations. 66 Pa. C.S. § 3301. Additionally, prior to initiation of the investigation by I&E, GME proactively took measures to avoid agent misuse of the ECL, and as part of the Settlement, further agreed to a number of conditions. The conditions include refunds to customers, monthly reporting to I&E, and retention of customer signatures on enrollment tablets.

GME believes that the terms and conditions of the Settlement provide for a fair and reasonable resolution of the issues. As such, GME submits that the Settlement is in the public interest and respectfully requests that it be approved without modification.

II. DISCUSSION

A. Summary of Issues

Approximately 22 consumers filed informal complaints with the Commission's Bureau of Consumer Services between June 1, 2018 and September 30, 2020 alleging that their electricity accounts had been switched to receive electric generation service from GME without their authorization. The disputed enrollments occurred at retail establishments and public events using

information obtained from the ECL. These informal complaints generated the initiation of the informal investigation that resulted in this Settlement.

Through the informal investigation, GME provided information to I&E regarding 156 alleged unauthorized enrollments during the period in question. The vast majority (over 90 percent) of these allegations resulted from enrollment processing errors where GME agents inadvertently selected the incorrect customer account from the ECL. Due to these errors, GME 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. In addition, the ECL tool utilizes advanced identification scanning technology to authenticate customer identities, thereby reducing the potential for ECL mismatches. Further, to prevent ECL misuse, GME tightened its disciplinary policy, which may result in the loss of an agent's ECL privileges and potential removal from working on behalf of GME.

The primary issue that would have been litigated is an appropriate civil penalty for instances in which an unauthorized switch was proven. GME would have contended that when an unauthorized switch occurred due to an ECL processing error, no civil penalty or a minimal civil penalty is warranted. If an electric generation supplier ("EGS") could enroll customers with information in their wallets, instead of utility account numbers that are not readily available to customers especially when they are not at home, the ECL would not even be necessary. While the ECL allows for the possibility of human errors, the enrollment process would be greatly enhanced if consumers did not need to memorize their lengthy account numbers in order to choose an EGS. Easing the enrollment process for consumers would also support the General Assembly's policy determination in support of electric choice. 66 Pa. C.S. §§ 2801 *et seq.*

B. Key Provisions of Settlement

1. Civil Penalty

Under the Settlement, GME agrees to pay a civil penalty of \$1,000 for each of the 156 instances in which I&E alleged that the switch was unauthorized, for a total of \$156,000.

2. Refunds

With respect to refunds, the Settlement obligates GME to refund two months' of supply charges to the 156 customers whose accounts were switched to GME allegedly without authorization. In addition, GME commits under the Settlement to refund a cancellation or termination fee incurred by any of these 156 customers as a result of being switched to GME, provided that the customer supplies documentation of incurring the fee.

3. Reporting

The Settlement also obligates GME to provide I&E with a monthly report for a period of one year. This report will include details of complaints from Pennsylvania consumers that were received directly by GME and referred to GME by the Commission's Bureau of Consumer Services ("BCS"), the Attorney General's Office and the Better Business Bureau related to allegations of unauthorized switching that originated from in-person retail and event solicitations.

4. Signatures

Under the Settlement, GME further agrees to retain customer signatures placed on enrollment tablets used at retail and event locations for a period of one year. GME also commits to providing such records to BCS and I&E upon request.

C. Settlement is in the Public Interest

1. Applicable Legal Standards

It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231(a). Settlements conserve valuable resources of the Commission and the parties. Importantly, the focus of inquiry for determining whether a proposed settlement should be approved is not a "burden of proof" standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011). Rather, the Commission reviews settlements to determine whether the terms are in the public interest. *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

The Commission's Policy Statement at 52 Pa. Code § 69.1201, which sets forth various factors and standards that are used in evaluating settled cases, is a codification of the Commission's decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000). These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest. 52 Pa. Code § 69.1201(a). Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict a fashion to settled cases, and the parties in settled cases are afforded flexibility in reaching amicable resolutions as long as the settlement is in the public interest. 52 Pa. Code § 69.1201(b).

2. GME's Position

Had this matter been litigated, GME would have presented evidence to show that in the vast majority of instances that are the subject of this Settlement, the alleged unauthorized switches

occurred as a result of inadvertent ECL processing errors. As such, any civil penalty for proven unauthorized switches should be far lower than that sought by I&E due to a number of factors. These factors include: (i) GME's modifications to its internal practices to prevent any recurrence of this practice; (ii) the extremely small percentage of GME's customer base in Pennsylvania that is the subject of this Settlement; (iii) the unintentional nature of over 90% of the switches that were not authorized by the customer; (iv) GME's history of compliance with the Commission's regulations; (v) GME's cooperation with I&E during the investigation; and (vi) the robust programs that GME has in place, and continuously improves, to train sales agents, monitor agent performance, enforce agent compliance with requirements, complete enrollment verifications, and conduct quality assurance activities. By agreeing to pay a civil penalty of \$156,000, in lieu of advancing these arguments, GME avoided the uncertainty of litigation.

3. Application of Policy Statement

a. Seriousness of Allegations

The first factor that is considered under the Policy Statement is whether the allegations were of a serious nature, such as willful fraud or misrepresentation, as opposed to administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). GME acknowledges that allegations of switching customers without authorization are of a serious nature, and that the Commission has established a zero tolerance policy for switching customers without their consent. *See PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013, at 3, 9) (Commission had previously rejected a settlement that called for a civil penalty of \$500 per unauthorized switch; in approving a settlement providing for a civil penalty of \$1,000 per unauthorized switch, Commission noted its long standing zero tolerance policy for such conduct).

GME has likewise implemented a zero tolerance policy and agrees that switching customers without their consent is a serious violation of the Commission's regulations and GME's policies. Nonetheless, GME notes that the vast majority of the allegations that are the subject of the Settlement were not of an intentional nature. Indeed, over 90 percent of the accounts that were switched, allegedly without consent, occurred as a result of enrollment processing errors where GME agents inadvertently selected the incorrect customer account. The negotiated civil penalty of \$1,000 per alleged unauthorized switch appropriately reflects the seriousness of I&E's allegations. *See MXenergy* at 9.

b. Seriousness of Consequences

The second factor that is evaluated under the Policy Statement is whether the resulting consequences of the alleged actions were of a serious nature, such as whether personal injury or property damage was involved. 52 Pa. Code § 69.1201(c)(2). No allegations have been raised about personal injury or damage. Therefore, the consequences were not serious and this mitigating factor supports the negotiated civil penalty. *See MXenergy* at 10.

c. Intentional vs. Negligent

The third factor identified by the Policy Statement is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). Since this factor is only considered in evaluating litigated cases, it is not relevant in reviewing the Settlement.

d. Modifications to Practices and Procedures

The fourth factor that is considered under the Policy Statement is whether the regulated entity has made efforts to modify its internal practices and procedures to address the allegations at issue and prevent similar conduct in the future. These modifications may include improving company techniques. 52 Pa. Code § 69.1201(c) (4).

GME 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. GME has also since deployed a technology solution to authenticate customers' identities, thereby narrowing the ECL search results. Additionally, GME has tightened its discipline policy for agents found to have committed ECL errors.

Further, GME has agreed to issue refunds of two months' of supply charges to all 156 customers whose accounts are alleged by I&E to have been switched without authorization. GME has further agreed to refund any early termination or cancellation fees that those customers incurred as a result of the switch, provided that the customer furnishes documentation.

In addition, GME has robust programs in place, which it continuously improves, to train sale agents, monitor agent performance, enforce agent compliance with requirements, complete enrollment verifications, and conduct quality assurance activities. GME has also agreed to provide monthly reports to I&E for a period of one year. These reports will detail complaints that GME receives directly from consumers and complaints that are received from BCS, the Attorney General's Office and the Better Business Bureau relating to allegations of unauthorized switching that originated from in-person retail sales and event solicitations. GME's reports will include the following details: the complaint/incident date, customer sign-up date, utility account number, a synopsis of the complaint or incident, and the results of GME's investigation of the incident.

All of these measures demonstrate GME's commitment to addressing the allegations of unauthorized switching and to avoid similar incidents in the future. Therefore, this mitigating factor supports the negotiated civil penalty. *See MXenergy* at 10.

e. Number of Affected Customers

The fifth factor that is evaluated under the Policy Statement is the number of customers who were affected and the duration of the alleged violations. 52 Pa. Code § 69.1201(c) (5). Here, the 156 customer accounts that are the subject of the Settlement represent a very small fraction of GME's enrollments over the same period and an even more miniscule fraction of GME's total customer base. Looking at it from the standpoint of the number of residential customers who are receiving electricity from an EGS, the percent of affected customers is so negligible as to be *de minimus*.¹ While GME does not offer this statistic to minimize the experiences of individual consumers whose accounts were switched without consent, this perspective does demonstrate that the proportion of affected customers was not large. *MXenergy* at 11. It also supports GME's assertion that it takes compliance very seriously and has a robust sales performance program aimed at ensuring compliance and rooting out problems.

As to the duration of unauthorized switches, all affected and potentially affected customers are receiving refunds for the first two months' of supply charges, consistent with the Commission's regulations. 52 Pa. Code § 57.177(b). Since customers should have reasonably known of a change in EGS within the first two billing periods, they could have complained and been returned to their prior EGS or default service. Therefore, any duration of an unauthorized switch beyond two months is not relevant. This mitigating factor supports the negotiated civil penalty.

f. Compliance History

The sixth factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c) (6). Only 7 formal complaints have been filed against GME since it was licensed in 2011, with 4

¹ According to the May 2021 statistics, 1,382,936 residential customers are shopping for electricity. https://www.papowerswitch.com/media/xihp4rqk/paps_numbers053121.pdf

of them alleging unauthorized switches and none of them being sustained by the Commission.² As with disputes filed with GME or when informal complaints are filed with BCS, GME works with consumers who file formal complaints to reach amicable resolutions that result in the complaints being fully satisfied and withdrawn. GME's compliance record supports the negotiated civil penalty. *MXenergy* at 11.

g. Cooperation During Informal Investigation

The seventh factor that is considered under the Policy Statement is whether the regulated entity cooperated with the Commission's informal investigation. 52 Pa. Code § 69.1201(c) (7). GME cooperated during the investigation, timely responding to I&E's data requests. Settlement, ¶¶ 19, 20. This mitigating factor supports approval of the Settlement. *MXenergy* at 11.

h. Deterrent Nature of Civil Penalty and Consistency with Prior Decisions

The eighth and ninth factors that are evaluated under the Policy Statement are the amount of civil penalty that is necessary to deter future violations and past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c) (8) and (9). The civil penalty of \$1,000 per alleged unauthorized switch is the maximum amount that may be imposed by the Commission. 66 Pa. C.S. § 3301. Also, it is consistent with prior Commission decisions addressing investigations involving allegations of unauthorized switches. *See MXenergy* at 11-12.

i. Other Relevant Factors

The tenth item for consideration includes other "relevant factors." 52 Pa. Code § 69.1201(c) (10). It is in the public interest to approve the Settlement and avoid the expense and uncertainty of litigation. In addition, the Settlement provides for refunds to affected customers

² <https://www.puc.pa.gov/utility/1113241>

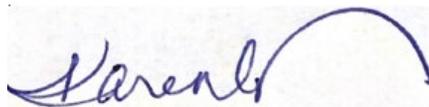
and reflects modifications to GME's business practices that will provide a public benefit to all prospective customers. *MXenergy* at 12.

j. Summary

An evaluation of the factors in the Policy Statement shows that the Settlement is in the public interest and should be approved without modification. Not only does the Settlement sufficiently address the issues raised in this proceeding, particularly where all affected customers have been fully reimbursed for two months of supply charges, it avoids the uncertainty and attendant costs of litigation and allows GME to focus on its EGS operations.

WHEREFORE, based upon the foregoing, Green Mountain Energy Company respectfully requests that the Commission approve the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



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Dated: July 9, 2021

Counsel for Green Mountain Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3009235
	:	
Green Mountain Energy Company,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail Only:

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Dated: July 9, 2021