



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

August 27, 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.  
Discount Power, Inc.  
Docket No. M-2021-3022658  
**Joint Petition for Approval of Settlement**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") and Discount Power, Inc.'s ("Discount Power" or "DPI") **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](mailto:karost@pa.gov)

KLR/ac  
Enclosures

cc: Per Certificate of Service  
Daniel Mumford, Office of Competitive Market Oversight (*via email - [dmumford@pa.gov](mailto:dmumford@pa.gov)*)  
Michael L. Swindler, Deputy Chief Prosecutor (*via email - [mwindler@pa.gov](mailto:mwindler@pa.gov)*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2021-3022658
	:	
Discount Power, Inc.	:	

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**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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**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 Discount Power, Inc. (“Discount Power,” “DPI,” 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 Discount Power (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 Discount Power

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 Discount Power, Inc., with a business address of 6 Armstrong Road, Shelton, CT 06484.

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. Discount Power is a jurisdictional electric generation supplier (“EGS”)<sup>1</sup> licensed by the Commission at Docket No. A-2012-2328004 to operate in the Pennsylvania electric distribution company (“EDC”) service territory of PECO Energy Company, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and PPL Electric Utilities Corporation.

8. Discount Power, 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. Discount Power, 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).

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

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<sup>1</sup> “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.

11. This matter involves allegations related to misleading and deceptive telemarketing, billing incorrect rates, failure to issue renewal letters, the enrollment of individuals without the authorization or capacity to authorize an enrollment, and lack of record keeping by Discount Power from 2019 to May 2021.

12. As a result of successful negotiations between I&E and Discount Power, 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 October 29, 2020, Daniel Mumford, Director of the Office of Competitive Market Oversight ("OCMO"), submitted a memo to I&E outlining his concerns with DPI's telemarketing practices. Specifically, Mr. Mumford personally received a telemarketing call on August 24, 2020 and described the corresponding phone conversation in detail.

16. On August 24, 2020, Mr. Mumford received a phone call with a caller ID showing York, PA and which started as an automated/robocall advertising a refund on his electric bill.

17. Mr. Mumford noted that after pressing “one,” an agent came on the call and immediately requested that Mr. Mumford retrieve his PPL electric bill. While the agent did identify himself by name, the agent failed to disclose who he was calling on behalf of.

18. The agent stated that he could provide a better rate fixed for 24 months, that Mr. Mumford would be receiving a reward card of \$50.00 every month, that the supplier would be “chosen by PPL,” and that “nothing will be changing” on the electric bill.

19. Mr. Mumford was advised that he would be receiving a “new, lower” rate of 8.29 cents. Several minutes into this conversation, the agent finally stated that he was representing Discount Power.

20. Mr. Mumford was then coached through the verification process and successfully enrolled with Discount Power. However, the verifier stated that Mr. Mumford was enrolling in a fixed 3-month plan at a rate of 8.29 cents, contrasting the information provided by the agent.

21. Additionally, the verifier stated that a \$4.95 monthly fee would be incurred, which the agent did not disclose to Mr. Mumford during the sales call.

22. Mr. Mumford’s account was switched to Discount Power on or about September 8, 2020 and he received a welcome letter and disclosure statement from Discount Power dated August 26, 2020.

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

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

25. On March 1, 2021, Discount Power provided its response to I&E Data Requests-Set I.

26. On April 20, 2021, I&E submitted a second set of data requests (“I&E Data Requests-Set II”), to which Discount Power timely provided its response on May 18, 2021.

27. 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 Discount Power’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**

28. The telemarketing call received by Mr. Mumford on August 24, 2020 contained the following alleged conduct:

- a) Calling an individual on the Do Not Call List;
- b) Spoofing a York, PA telephone number;
- c) Automated recording advising the recipient of a “refund” on the electric bill;

- d) Live agent not identifying who he was working on the behalf of upon first contact or stating that he was not working for the local EDC;
- e) Agent misrepresentation that Mr. Mumford would be provided a better rate for 24-months when the verification stated that the agreement was for 3-months;
- f) Agent misrepresentation that Mr. Mumford that the supplier was “chosen by PPL;”
- g) Agent misrepresentation that “nothing will change;”
- h) Agent misrepresentation that Mr. Mumford will be receiving a newer, lower rate of 8.29 cents;
- i) Agent misrepresentation by failing to advise Mr. Mumford of the \$4.95 monthly fee; and
- j) Agent coaching Mr. Mumford through the verification process.

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

**B. Customer Complaints**

30. In addition to the allegations in Mr. Mumford’s referral memo, I&E identified other complaints which raised serious concerns of telemarketing misrepresentation, billing incorrect rates, failure to issue renewal letters, and the enrollment of individuals without the authorization or capacity to enroll. Specifically,



I&E found violations related to the following customer complaints:

- a) Five (5) incidents<sup>2</sup> where DPI requested a refund for the customer after an allegation of misrepresentation;
- b) Two (2) incidents where customers alleged misrepresentation but DPI offered refund for the “inconvenience;”
- c) Two (2) incidents where DPI requested a refund after an allegation of misrepresentation and noted possible tampering with the recording(s);
- d) Two (2) incidents where an agent was suspended and retrained after complaints of misrepresentation;
- e) Two (2) incidents where misrepresentation and deceptive enrollment resulted in the termination of an agent.
- f) Two (2) incidents where DPI improperly enrolled a customer as a “winback;”
- g) One (1) incident where DPI improperly enrolled a customer as a “winback” but only offered to provide a refund if the customer stayed with DPI;
- h) One (1) incident of enrolling a customer with dementia in a nursing home;

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<sup>2</sup> To protect the identity and confidential nature of the complainants, I&E and Discount Power have agreed to remove any identifying information from the allegations.

- i) One (1) incident of enrolling a customer with dementia who did not have legal ability to enter into a contract;
- j) One (1) incident of enrolling an elderly customer who did not have authorization to enroll;
- k) One (1) incident of enrolling a customer who was unable to authorize enrollment due to mental capacity, i.e., mental disability/mentally challenged;
- l) Two (2) incidents of enrolling a customer with incorrect information/possible slamming allegation;
- m) One (1) incident of failure to cancel/drop account upon request;
- n) Two (2) incidents of failure to provide renewal letters to customers;
- o) Two (2) incidents where DPI provided and/or enrolled customers with incorrect rates;
- p) Eight (8) incidents related to high variable rates and/or renewal rate where DPI offered and/or provided refund; and
- q) Two (2) incidents of failure to bill correct rate;

31. The complaints raise serious violations of 52 Pa. Code § 54.7(a), 52 Pa. Code § 54.10, 52 Pa. Code § 54.122(3), and 52 Pa. Code § 111.12(d).

### **C. Record Keeping Violations**

32. Pursuant to Section 111.13(b), a supplier shall implement an internal process for customer inquires, disputes, and complaints. 52 Pa. Code § 111.13(b).

33. Specifically, the process “shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint.” 52 Pa. Code § 111.13(b).

34. Furthermore, “[a] supplier shall retain the record for a time period equivalent to six billing cycles . . . .” 52 Pa. Code § 111.13(b).

35. Discount Power advised I&R early in its investigation that it started taking notes and tracking customer complaints sometime after 2019.

36. In reviewing the responses provided by Discount Power, I&E’s ability to investigate and analyze the responses was hindered by Discount Power’s poor internal recording keeping.

37. Specifically, Discount Power was unable to provide subsequent communications between the customer and DPI, was unable to provide a resolution to the inquiry or complaint, and, in most cases, simply stated that adding the customer to DPI’s “Do Not Call” list was the “resolution” of the complaint.

38. I&E identified fifty-nine (59) customer complaints which had no notes and/or resolution related to the complaint, three (3) of which occurred in the prior six (6) billing cycles and which Discount Power was required to retain.

**D. “Do Not Call” List Violations**

39. In its responses, Discount Power acknowledged that there were at least seven (7) individuals who filed complaints after receiving a telemarketing call in light of being on the “Do Not Call” list.

40. Sections 111.10(a) and 111.12(d)(1) require suppliers to comply with regulations that govern consumer protection and telemarketing and prohibit the solicitation of individuals who are on the “Do Not Call” list. 52 Pa. Code § 111.10(a); 52 Pa. Code § 111.12(d)(1).

41. Accordingly, the telemarketing calls made to those seven (7) individuals on the “Do Not Call” list are a violation of 52 Pa. Code § 54.43(g), 52 Pa. Code § 111.10(a), and 52 Pa. Code § 111.12(d)(1).

### **III. ALLEGED VIOLATIONS**

42. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Discount Power committed the following violations:

- a) The alleged actions of Discount Power 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 Discount Power 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 Discount Power 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 Discount Power 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 Discount Power and/or its agents resulted in the unauthorized enrollment of customers, either through the improper enrollment as a “winback,” enrolling a customer with incorrect information, or enrollment of a customer who does not possess the capacity or authorization to verify an enrollment. 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).
- f) The alleged actions of Discount Power and/or its agents resulted in the failure to cancel customer account(s) upon request and the failure to issue renewal letters at the end of the contract term. If proven, I&E alleges that such conduct would have violated 52 Pa. Code §

54.10, 52 Pa. Code § 111.7, 52 Pa. Code § 111.10, 52 Pa. Code § 111.11, and 52 Pa. Code § 111.12 (multiple counts).

- g) The alleged actions of Discount Power and/or its agents resulted in customers being billed incorrect rates. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 54.10 and 52 Pa. Code § 111.12 (multiple counts).
- h) The alleged actions of Discount Power resulted in poor record keeping which hindered I&E's ability to investigate this matter. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.13 (multiple counts).

43. Had this matter been fully litigated, Discount Power 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**

44. 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 Discount Power 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.

45. Discount Power shall pay a total civil penalty of \$42,250.00, broken down as follows:

- a) A civil penalty of \$500.00 for each of the ten (10) identified violations related to the August 24, 2020 telemarketing call received by Daniel Mumford, totaling \$5,000.00.
- b) A civil penalty of \$750.00 for the thirty-seven (37) violations relating to misrepresentation, incorrect rates, failure to drop the account upon request, failure to issue renewal letters, and unauthorized enrollments, totaling \$27,750.00.
- c) A civil penalty of \$750.00 for violations related to calling seven (7) individuals on the “Do Not Call” list, totaling \$5,250.00.
- d) A civil penalty of \$1,000.00 for Discount Power’s lack of recording keeping (1 count) and nonexistent record keeping prior to 2019 (1 count), and a \$750.00 civil penalty for the three (3) identified complaints within the last six billing cycles which contain no records of communications or a resolution of the complaint(s), totaling \$4,250.00.

46. The civil penalty shall not be tax deductible or passed through as an additional charge to Discount Power’s customers in Pennsylvania.

47. In addition to the civil penalty described above, Discount Power will perform the following remedial measures:

- a) Discount Power will create and implement a robust customer complaint tracking system which will include the inquiry, dispute, or complaint, subsequent communications between Discount Power and the customer, and the resolution of the inquiry, dispute, or complaint. This system will be capable of retrieving records either by searching for the customer's name or account number, or by other key words for easy access and review.
- b) Discount Power will train its customer service agents on the new system and ensure that all information logged into the system is detailed, as specific as possible, accurate, and responsive to the inquiry, dispute, or complaint.
- c) Discount Power will process, investigate, and be responsive to a customer inquiry, dispute, or complaint within a 6-month period of time from the date the inquiry, dispute, or complaint is received.

48. Discount Power will file a letter with the Commission and I&E stating its compliance with the remedial measures described in Paragraph 47 within six (6) months of an Order approving this Settlement Agreement.

## **V. CONDITIONS OF SETTLEMENT**

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



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

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

52. 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 Discount Power 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.

53. I&E and Discount Power 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.

54. 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 Discount Power, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

55. 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.

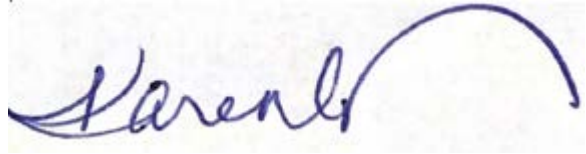
56. This Settlement consists of the entire agreement between I&E and Discount Power regarding the matters addressed herein. Moreover, this Settlement represents a complete settlement of I&E's Informal Investigation of Discount Power's alleged violations of the Code and the Commission's regulations related to (1) the misleading and deceptive telemarketing call made to Mr. Mumford; (2) violations relating to

misrepresentation, incorrect rates, failure to drop an account upon request, failure to issue renewal letters, and unauthorized enrollments from 2019 to May 2021; (3) calling individuals on the “Do Not Call” list from 2019 to May 2021; and (4) Discount Power’s record keeping prior to the initiation of the Informal Investigation. This Settlement 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 Discount Power, 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 Discount Power by their authorized representatives have hereunto set our hands and seals on this 27th day of August 2021.

Date: 8/27/2021

A handwritten signature in blue ink that reads "Karen O. Moury". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Karen O. Moury, Esq.  
Sarah C. Stoner, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
*Counsel for Discount Power, Inc.*

Date: August 27, 2021

A handwritten signature in blue ink that reads "Kayla L. Rost". The signature is cursive and written in a clear, legible hand.

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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-2021-3022658
	:	
Discount Power, Inc.	:	

**PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Petition for Approval of Settlement filed on August 27, 2021 between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Discount Power, Inc. (“Discount Power”) 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, Discount Power shall pay Forty-Two Thousand Two Hundred Fifty Dollars (\$42,250.00), 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 Discount Power’s customers in Pennsylvania.

4. In addition to the civil penalty, Discount Power will perform the following remedial measures:

- a) Discount Power will create and implement a robust customer complaint tracking system which will include the inquiry, dispute, or complaint, subsequent communications between Discount Power and the customer, and the resolution of the inquiry, dispute, or complaint. This system will be capable of retrieving records either by searching for the customer's name or account number, or by other key words for easy access and review.
- b) Discount Power will train its customer service agents on the new system and ensure that all information logged into the system is detailed, as specific as possible, accurate, and responsive to the inquiry, dispute, or complaint.
- c) Discount Power will process, investigate, and be responsive to a customer inquiry, dispute, or complaint within a 6-month period of time from the date the inquiry, dispute, or complaint is received.

5. That, within six (6) months of the date this Order becomes final, Discount Power shall file a letter with the Commission and I&E stating its compliance with the remedial measures described in Paragraph 4.

6. The above-captioned matter shall be marked closed upon receipt of the civil penalty and performance of the remedial measures.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2021-3022658
	:	
Discount Power Inc.	:	

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

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**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 Discount Power Inc. (“Discount Power,” “DPI,” or “Company”).<sup>1</sup> 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.

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<sup>1</sup> I&E and Discount Power are collectively referred to herein as the “Parties.”

## **I. Background**

On October 29, 2020, Daniel Mumford, Director of the Office of Competitive Market Oversight (“OCMO”), submitted a memo to I&E outlining his concerns with DPI’s telemarketing practices. Specifically, Mr. Mumford personally received a telemarketing phone call on August 24, 2020 with a caller ID showing York, PA and which started as an automated/robocall advertising a refund on his electric bill. Mr. Mumford described the corresponding phone conversation in detail, noting that after pressing “one,” an agent came on the call and immediately requested that Mr. Mumford retrieve his PPL electric bill. While the agent did identify himself by name, the agent failed to disclose who he was calling on behalf of.

The agent stated that he could provide a better rate fixed for 24 months, that Mr. Mumford would be receiving a reward card of \$50.00 every month, that the supplier would be “chosen by PPL,” and that “nothing will be changing” on the electric bill. Mr. Mumford was advised that he would be receiving a “new, lower” rate of 8.29 cents. Several minutes into this conversation, the agent finally stated that he was representing Discount Power.

Mr. Mumford was then coached through the verification process and successfully enrolled with DPI. However, the verifier stated that Mr. Mumford was enrolling in a fixed 3-month plan at a rate of 8.29 cents, contrasting the information provided by the agent. Additionally, the verifier stated that a \$4.95 monthly fee would be incurred, which the agent did not disclose to Mr. Mumford during the sales call. Mr. Mumford’s account



was switched to DPI on or about September 8, 2020 and he received a welcome letter and disclosure statement from DPI dated August 26, 2020.

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

On March 1, 2021, DPI provided its response to the I&E Data Requests-Set I.

On April 20, 2021, I&E submitted a second set of data requests, to which DPI timely provided its response on May 18, 2021.

On August 27, 2021, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Discount Power 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 relating to misleading and deceptive telemarketing, billing incorrect rates, failure to issue renewal letters, the enrollment of individuals without the authorization or capacity to authorize an enrollment, and lack of record keeping by Discount Power.

I&E intended to prove the factual allegations set forth in its investigation at hearing to which Discount Power 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 Discount Power have agreed that Discount Power shall pay a total civil penalty of \$42,250.00, broken down as follows:

- a) A civil penalty of \$500.00 for each of the ten (10) identified violations related to the August 24, 2020 telemarketing call received by Daniel Mumford, totaling \$5,000.00.
- b) A civil penalty of \$750.00 for the thirty-seven (37) violations relating to misrepresentation, incorrect rates, failure to drop the account upon request, failure to issue renewal letters, and unauthorized enrollments, totaling \$27,750.00.
- c) A civil penalty of \$750.00 for violations related to calling seven (7) individuals on the “Do Not Call” list, totaling \$5,250.00.
- d) A civil penalty of \$1,000.00 for Discount Power’s lack of recording keeping (1 count) and nonexistent record keeping prior to 2019 (1 count), and a \$750.00 civil penalty for the three (3) identified complaints within the

last six billing cycles which contain no records of communications or a resolution of the complaint(s), totaling \$4,250.00.

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 Discount Power's customers in Pennsylvania.

In addition to the civil penalty described above, Discount Power will perform the following remedial measures:

- a) Discount Power will create and implement a robust customer complaint tracking system which will include the inquiry, dispute, or complaint, subsequent communications between Discount Power and the customer, and the resolution of the inquiry, dispute, or complaint. This system will be capable of retrieving records either by searching for the customer's name or account number, or by other key words for easy access and review.
- b) Discount Power will train its customer service agents on the new system and ensure that all information logged into the system is detailed, as specific as possible, accurate, and responsive to the inquiry, dispute, or complaint.
- c) Discount Power will process, investigate, and be responsive to a customer inquiry, dispute, or complaint within a 6-month period of time from the date the inquiry, dispute, or complaint is received.

Discount Power will file a letter with the Commission and I&E stating its compliance with the remedial measures described above within six (6) months of an Order approving the Settlement Agreement.

In consideration of Discount Power's payment of a monetary civil penalty and agreement to perform remedial measures, I&E agrees that its informal investigation relating to Discount Power'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, payment of the civil penalty, and notice of Discount Power's compliance with the remedial measures.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against Discount Power at the Commission with respect to the alleged conduct described in detail in the Settlement Agreement which was 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 call made to Mr. Mumford and multiple calls made to other customers are a clear example of misrepresentation while the unauthorized enrollments appear to either be the result of a mistake, an account/information mix-up, or related to Discount Power's lack of knowledge as to the customer's capacity/authorization status. Consequently, the 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 Discount Power'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 Discount Power'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 Discount Power 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, Discount Power agrees to make robust changes to its customer service system to not only create a better system to track and identify issues or a common theme with the complaints, but to also provide an

efficient and more direct response to a customer's complaint. Accordingly, the remedial measures will allow Discount Power to better identify and address telemarketing and/or billing issues while providing I&E with more information to effectively complete an investigation, if one is initiated 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 2019 through May 2021, I&E was able to substantiate 37 customer complaints relating to misrepresentation, incorrect rates, failure to drop the account upon request, failure to issue renewal letters, and unauthorized enrollments, and 7 complaints related to calling individuals on the "Do Not Call" list. Additionally, Mr. Mumford's account was successfully enrolled with Discount Power. I&E was unable to fully investigate all customer complaints provided by BCS and Discount Power due to Discount Power's lack of records/record keeping issues. These facts were considered when calculating the civil penalty.

The sixth factor to be considered relates to the compliance history of Discount Power. 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.* While I&E is not aware of any formal complaint being filed against Discount Power by I&E, I&E does note that approximately eight (8) customers, during the time frame of March 2016 through July 2020, have filed formal complaints with the Commission against Discount Power related to incorrect billing, unauthorized enrollment, and fraudulent or deceptive marketing acts. One of the

formal complaints similarly alleged multiple misrepresentations during a telemarketing call.<sup>2</sup>

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 Discount Power 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 \$42,250.00, which is not tax deductible, is substantial and sufficient to deter Discount Power 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

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<sup>2</sup> *See Michael Zimmerman v. Discount Power, Inc.*, Docket No. C-2020-3021020, Complaint filed July 21, 2020, Certificate of Satisfaction filed February 5, 2021.



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,

A handwritten signature in blue ink that reads "Kayla L. Rost". The signature is written in a cursive style with a large initial 'K'.

Kayla L. Rost

Prosecutor

PA Attorney ID No. 322768

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
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Dated: August 27, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	: : : : : :	
v.	:	Docket No. M-2021-3022658
Discount Power, Inc.	: :	

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**STATEMENT OF DISCOUNT POWER, INC. IN SUPPORT OF  
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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

**I. DISCUSSION**

A. Summary of Issues

The Settlement fully resolves issues related to allegations of deceptive and misleading telemarketing raised during I&E’s informal investigation based on information provided by the Commission’s Office of Competitive Market Oversight (“OCMO”) and supplemented by DPI’s responses to I&E’s data requests served during the investigation. DPI acknowledges that an agent working on its behalf made a telemarketing call to the OCMO director on August 24, 2020 and that certain statements were made during that solicitation do not comply with the Commission’s

sales and marketing regulations. DPI further recognizes that I&E identified several other instances through its review of data request responses during the informal investigation that raised concerns about DPI's compliance with applicable regulatory requirements. In addition, DPI is aware of the shortcomings of its past recordkeeping practices. Although DPI further realizes that its agents telephoned some consumers who are on "Do Not Call" lists, DPI would have argued that Commission lacks statutory authority to determine violations of the Telemarketing Registration Act. 73 P.S. §§ 2241 *et seq.*; *See Cmwlth. of PA, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered December 11, 2014) at 16-18 ("*BPE Interlocutory Order*"); *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (Corrected Final Rulemaking Order entered October 24, 2012). Nonetheless, DPI understands the seriousness of the allegations raised by I&E and has made a business decision to enter into this Settlement to put these matters behind it so that it can focus on providing energy products to Pennsylvania consumers that they desire and find valuable. By entering into the Settlement, DPI also avoids the uncertainty of litigation.

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

## B. Key Provisions of Settlement

### 1. Civil Penalty

Under the Settlement, DPI is agreeing to pay a very substantial civil penalty in the amount of \$42,250.00. The breakdown of this amount is set forth in the Settlement. (Settlement Para. 45).

## 2. Other Conditions

Other conditions include the creation and implementation of a robust customer complaint tracking system, training of customer service agents on the new system, and the prompt processing and investigation of customer inquiries, disputes and complaints. The tracking system will ensure that DPI is documenting each inquiry, dispute or complaint, as well as subsequent communications with the customer and the resolution of the inquiry, dispute or complaint. In addition, the training of customer service agents on the new tracking system will ensure that all information logged into the system is detailed and responsive to the customers' concerns. Finally, the processing and investigation of complaints within a six month period will promote customer satisfaction. (Settlement, Para. 47).

### 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. DPI's Position

Had this matter been litigated, DPI would have presented evidence to show that in many instances that are the subject of this Settlement, DPI and its agents complied with provisions of the Commission's regulations contrary to the allegations raised by I&E. However, rather than expending significant resources to perform an in-depth review of each account on which I&E alleges violations occurred and then defend these allegations in litigation, DPI made a practical business decision to enter into the Settlement.

DPI would have also advocated for the imposition of a lower civil penalty, largely due to its excellent compliance history in Pennsylvania to date. In addition, DPI would have contended that the Commission lacks statutory authority to enforce and administer provisions of the TRA. *BPE Interlocutory Order* at 16-18.

## 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). DPI acknowledges that allegations of deceptive

and misleading practices are of a serious nature given the importance of ensuring that Pennsylvania consumers trust the electric choice program and that they are protected when they participate in it.

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.

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).

Through the Settlement, DPI has agreed to create and implement a robust customer complaint tracking system, train its customer service agents on the new system, and promptly process and investigate customer inquiries, disputes and complaints. All of these modifications address concerns raised by I&E during the informal investigation and will improve DPI's overall operations. In addition, consumers interacting with enrolling with DPI will experience greater satisfaction with the electric choice program.

## 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, a relatively small number of customers were affected. 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*.<sup>1</sup> While DPI does not offer this statistic to minimize the experiences of individual consumers, this perspective demonstrates that the proportion of affected customers was not large.

## f. Compliance History

The sixth factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). No formal complaints have been sustained against DPI since it was licensed in 2012. DPI's unblemished compliance record supports the negotiated civil penalty.

## 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). DPI cooperated during the informal investigation, timely responding to I&E's data requests. (Settlement, Paras. 24-26). This mitigating factor supports approval of the Settlement.

## 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)-(9). The civil penalty here is significant and represents

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<sup>1</sup> According to the July 2021 statistics, 1,356,861 residential customers are shopping for electricity. [https://www.papowerswitch.com/media/11cfejj/paps\\_numbers073121.pdf](https://www.papowerswitch.com/media/11cfejj/paps_numbers073121.pdf)



an effective deterrent for DPI going forward. DPI further submits that the negotiated civil penalty is similar to fines approved by the Commission in the past. *See, e.g., Pa. P.U.C., Bureau of Investigation and Enforcement v. American Power & Gas of Pennsylvania, LLC*, Docket No. M-2017-2508002 (Order entered June 14, 2018).

i. Other Relevant Factors

The tenth factor to consider is 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. The Settlement will allow both the Commission and DPI to conserve valuable resources. In addition, the Settlement reflects modifications to DPI’s business practices that will provide a public benefit to all prospective customers.

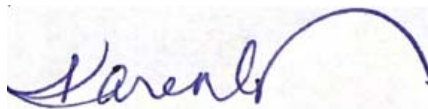
j. Summary

An evaluation of the factors in the Policy Statement shows that the Settlement is in the public interest and that it should be approved without modification. Not only does the Settlement sufficiently address the issues raised in this proceeding, it avoids the uncertainty and attendant costs of litigation and allows DPI to focus on its EGS operations.

**II. CONCLUSION**

WHEREFORE, based upon the foregoing, Discount Power, Inc. respectfully requests that the Commission approve the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



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Dated: August 27, 2021

Counsel for Discount Power, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2021-3022658
	:	
Discount Power, 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 August 27, 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**

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