**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held October 28, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

John F. Coleman, Jr., Vice Chairman

Ralph V. Yanora

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| Pennsylvania Public Utility Commission,Bureau of Investigation and Enforcement  v.Clearview Electric, Inc. d/b/a Clearview Energy  |  | C-2020-3020127 |

**Opinion and Order**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement or Settlement Agreement) filed on May 13, 2021, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Clearview Electric, Inc. d/b/a Clearview Energy (Clearview or Company). Both I&E and Clearview filed Statements in Support of the Settlement (Statement in Support). For the reasons set forth herein, we approve the Settlement as filed.

**History of the Proceeding**

 This matter concerns an incident in June 2017 involving an elderly person from Wiconisco Township, Dauphin County, PA who reported to the Pennsylvania State Police that his wallet was stolen from his home during a door-to-door marketing presentation conducted by two sales agents representing Clearview. Further study of this incident led to a Formal Complaint (Complaint) by I&E which alleged additional problems with Clearview’s marketing efforts including inadequate background checks, marketing efforts without appropriate notifications, switching customers without their permission, and charging customers a higher rate than Clearview had advertised. Settlement at 3-7.

 By letter dated March 14, 2018, I&E notified Clearview that it had initiated an informal investigation of Clearview. I&E served Clearview with three sets of data requests on March 14, 2018, May 8, 2018, and June 17, 2019. Clearview responded to I&E’s three sets of data requests. I&E filed the Complaint with the Commission on June 1, 2020. On June 23, 2020, Clearview filed an Answer. Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. Settlement at 1. As previously indicated, the Parties filed the instant Settlement on May 13, 2021.

**Background**

 On June 19, 2017, PennLive.com reported in an online article[[1]](#footnote-1) about the alleged wallet theft incident in Wiconisco Township, PA that involved two sales agents representing Clearview. Upon noticing the article, the Commission’s Office of Competitive Market Oversight (OCMO) contacted Clearview for information regarding the incident. Clearview did not self-report the incident but cooperated with OCMO by providing information in response to OCMO’s inquiries. Settlement at 3-4.

 The two sales agents were employed by a third-party vendor used by Clearview to market the Company’s electric generation supply services. In response to the incident, Clearview removed the two agents from its marketing campaign. Settlement at 4.

OCMO consulted with the Commission’s Bureau of Consumer Services (BCS) regarding Clearview’s in-person marketing. BCS advised that Clearview had not notified BCS of its intention to conduct door-to-door sales on the date of the incident (June 15, 2017) or any other date in June 2017. When OCMO raised the issue pertaining to a lack of door-to-door sales and marketing notifications from Clearview to BCS, Clearview committed to providing such notifications in the future. OCMO referred the matter to I&E. Settlement at 4.

 In addition to information provided by OCMO, I&E reviewed consumer complaints that were received by Clearview and disclosed to I&E in quarterly reports submitted pursuant to Paragraph 42(b) of a prior settlement agreement between Clearview and I&E that had been entered into on April 21, 2017 (Prior Agreement). The Prior Agreement resolved an enforcement proceeding initiated by I&E related to allegations that Clearview billed customers a rate that exceeded the rate set forth in the Company’s disclosure statements.[[2]](#footnote-2) Settlement at 4-5.

On the basis of the new allegations, I&E found that numerous consumer complaints had been made about customers having been enrolled to receive electric generation service supplied by Clearview without customers’ authorization of the switch to Clearview. Additionally, some consumer complaints alleged that Clearview billed a rate higher than the price advertised on [www.chooseenergy.com](http://www.chooseenergy.com), which is a website that certain customers used to enroll with Clearview. Settlement at 5.

By letter dated March 14, 2018, I&E notified Clearview that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa. C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s Regulations, 52 Pa. Code § 3.113. Settlement at 5.

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 I&E’s Complaint. In the Complaint, I&E made several requests for relief, including that: (1) the Commission impose a civil penalty in the amount of Two Hundred and Eight Thousand Dollars ($208,000) upon Clearview; (2) Clearview provide refunds to customers who were overbilled and/or switched to Clearview without consent; (3) Clearview reimburse customers who were charged a cancellation fee from a prior supplier as a result of the Company’s unauthorized switch; and (4) Clearview revise the Company’s policies and implement changes to its practices to address the aforementioned deficiencies. Settlement at 7.

On June 23, 2020, Clearview, through counsel, filed an Answer and New Matter to the Complaint. In its Answer, Clearview generally denied the factual averments alleged in I&E’s Complaint. However, Clearview admitted that, without the knowledge of management, its sales team, which has been completely replaced since then, had temporarily ceased the practice of notifying BCS and the local electric distribution companies (EDCs) of Clearview’s door-to-door marketing practices. Clearview also admitted to switching ten (10) customers to receive its electric generation supply without the customers’ consent and had inadvertently failed to correct a price posted on the chooseenergy.com website, which resulted in one hundred thirty-seven (137) Pennsylvania customers being billed at a rate greater than the rate that was advertised. Clearview noted that the disclosure statements sent to these customers contained prices that matched the prices that were billed. Settlement at 7-8.

On July 13, 2020, I&E filed its Reply to Clearview’s New Matter specifically denying the viability of Clearview’s assertions in its New Matter as defenses in this proceeding. The Parties then engaged in a series of settlement discussions which culminated in the instant Settlement Agreement. Settlement at 8.

 If this matter had been fully litigated, I&E would have alleged that:

1. Clearview, through the action of its agent or agents, engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing Clearview’s electric generation supplier services in that on June 15, 2017, a prospective customer’s wallet containing cash was taken by an agent or agents conducting door-to-door sales on behalf of Clearview. If proven, I&E alleges that such conduct violates 52 Pa. Code § 54.43(f) (related to standards of conduct and disclosure for licensees) and 52 Pa. Code § 111.9(b) (related to door-to-door sales). (1 count).
2. Clearview impermissibly allowed the two agents implicated in the wallet theft incident to conduct door-to-door sales and marketing activities on June 15, 2017, in that Clearview did not first obtain and review their criminal history records from the Pennsylvania State Police. If proven, I&E alleges that such conduct violates 52 Pa. Code § 111.4(b) (related to agent qualifications and standards; criminal background investigations). (2 counts).
3. Clearview violated the Commission’s Regulations pertaining to marketing and sales practices for the retail residential energy market in that on each and every day of June 2017, except for June 25, 2017, Clearview conducted door-to-door sales and marketing activities without first notifying BCS no later than the morning of the day that the activity began. If proven, I&E alleges that such conduct violates 52 Pa. Code § 111.14(a) (related to notification regarding marketing or sales activity). (29 counts).
4. Clearview violated the Commission’s Regulations pertaining to marketing and sales practices for the retail residential energy market in that on each and every day of June 2017, expect for June 25, 2017, Clearview conducted door-to-door sales and marketing activities without first notifying the local distribution company with general, nonproprietary information about the activities no later than the morning of the date that the sales and marketing activities began. If proven, I&E alleges that such conduct violates 52 Pa. Code § 111.14(b) (related to notification regarding marketing or sales activity). (29 counts).
5. During the third and fourth calendar year quarters of 2017, Clearview switched ten (10) customers to receive electric generation service supplied by Clearview without the customers’ authorization in that the customers did not consent to being switched. If proven, I&E alleges that such conduct violates 52 Pa. Code § 54.42(a)(9) (permitting a civil penalty to be imposed upon a supplier who transfers a customer without the customer’s consent); 52 Pa. Code §§ 57.171-177 (related to the standards for changing a customer’s electricity generation supplier); and 52 Pa. Code § 111.7 (related to customer authorization to transfer account; transaction; verification; documentation). (10 counts).
6. Clearview violated the Commission’s Regulations pertaining to electricity generation customer choice information in that Clearview marketed a certain fixed rate for its electric generation service in the Duquesne Light and PECO service territories on chooseenergy.com and then billed customers a rate greater than the rate that was advertised on chooseenergy.com at the time of the customers’ enrollments. If proven, I&E alleges that such conduct violates 52 Pa. Code § 54.4(a) (requiring that EGS prices billed reflect the marketed prices). I&E’s proposed civil penalty for this violation is $137,000. (137 counts).

Settlement at 8-10.

Had this matter been fully litigated, Clearview would have alleged as follows:

* 1. Clearview did not self-report the allegations regarding the theft of a wallet because it was not aware of the alleged incident until it was contacted by the Commission’s OCMO.
	2. Clearview’s reliance upon third-party marketing companies to complete criminal background investigations of its agents complies with the Commission’s regulations since the check includes a search of various criminal databases covering all 50 states. Further, no allegations have been raised that if Pennsylvania State Police records had been examined, Clearview would have concluded that the agents mentioned in the Complaint should not be utilized for door-to-door sales and marketing activities.
	3. Clearview’s sales team in June 2017 had temporarily ceased, without the knowledge of Clearview’s management, to provide notifications of engaging in door-to-door sales and marketing activities to the Commission’s BCS and to EDCs.
	4. Clearview acknowledged that on one occasion, it failed to timely correct a price posted on Choose Energy’s website, which resulted in one hundred thirty-seven Pennsylvania customers being billed at a rate greater than the rate that was advertised on chooseenergy.com. Clearview would have further alleged that it presented these 137 customers with disclosure statements that contained the price that customers were billed. In addition, Clearview would have shown that it when it became aware of the error, it proactively and fully refunded the amounts paid by the customers to reflect the price advertised by Choose Energy.
	5. The Commission does not have the statutory authority to direct Clearview to issue refunds. *See Blue Pilot Energy, LLC v. Pa. PUC*,241 A.3d 1254 (2020), 2020 Pa. Commw. LEXIS 720.

Settlement at 10-11.

**Terms of the Settlement Agreement**

Pursuant to the proposed Settlement, Clearview will pay a civil penalty and fulfill the following obligations:

a. Clearview will pay a total civil penalty in the amount of Fifty-Nine Thousand Seven Hundred Fifty Dollars ($59,750), pursuant to 66 Pa.C.S. § 3301. The civil penalty represents the following: (1) $1,000 to resolve the alleged violation of 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.9(b); (2) $2,000 to resolve the two (2) alleged violations of 52 Pa. Code § 111.4(b); (3) $10,875 to resolve the twenty-nine (29) alleged violations of 52 Pa. Code § 111.14(a); (4) $10,875 to resolve the twenty-nine (29) alleged violations of 52 Pa. Code § 111.14(b); (5) $10,000 to resolve the ten (10) alleged violations of 52 Pa. Code § 54.42(a)(9), 52 Pa. Code §§ 57.171-177 and 52 Pa. Code § 111.7; and (6) $25,000 to resolve the one hundred and thirty-seven (137) alleged violations of 52 Pa. Code § 54.4(a). 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. Clearview has provided to each of the customers, who had one or more of the ten (10) accounts switched to Clearview’s electric generation supply service without authorization, a refund for the entire electric generation supply portion on the customer’s bill for the first two (2) billing periods that the customer was switched to Clearview, pursuant to 52 Pa. Code § 57.177(b). Clearview has provided evidence to I&E demonstrating the issuance of these refunds.

c. Clearview agrees to refund cancellation fees or early termination fees imposed by other electric generation suppliers (“EGS”) and incurred by the customers who were switched to Clearview without authorization, pursuant to 52 Pa. Code § 57.177(c), upon request and the presentation of documentation by the customers. During the pendency of this proceeding and for a period of 180 days following approval of this Settlement Agreement, Clearview will provide evidence to I&E demonstrating the issuance of these refunds.

d. Clearview has provided refunds to each of the customer accounts in the Duquesne Light Company and PECO Energy Company service territories for overcharges incurred between October 2017 and February 2018, consisting of the cumulative difference between the amount each customer was billed and the amount each customer was entitled to receive pursuant to the advertised rate on chooseenergy.com. Clearview has provided evidence to I&E demonstrating the issuance of these refunds.

e. Clearview has revised its policies and practices to ensure: (1) that customers are billed the rate for which they enrolled, (2) that the Company obtains and reviews criminal background checks of prospective sales agents from the Pennsylvania State Police, and (3) that the Company notifies the Commission’s Bureau of Consumer Services and local electric distribution companies of door-to-door sales and marketing activities no later than the morning of the day that such activities occur. Clearview has provided the revised policies and practices to I&E.

Settlement at 12-15.

 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 Fifty-Nine Thousand Seven Hundred Fifty Dollars ($59,750), I&E shall be deemed to have released Clearview from all past claims that were made or could have been made for monetary and/or other relief based on the allegations set forth in I&E’s Complaint. Settlement at 15, ¶ 32. We note that the language in Paragraph 32 of the Settlement states, in part, “…I&E shall be deemed to have released Clearview from all past claims that were made or could have been made for monetary and/or other relief based on allegations set forth in I&E’s Complaint.” *Id.* This release pertains to those claims for violations and penalties which I&E retains the authority to bring and is not intended as a general release of liability.

 The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. Settlement at 16.

 Additionally, the Settlement is made without any admission by any Party as to any matter of fact or law and is without prejudice to any position advanced by a Party in this proceeding or that may be advanced by a Party in future litigation, except to the extent necessary to effectuate this Settlement. Settlementat 16-17. The Settlement does not preclude the Parties from taking other positions in any other proceeding. Settlement at 17.

**Discussion**

 Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

After a review of the terms of the Settlement, we find that the Settlement is in the public interest. The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or a statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement as filed.

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). In this case, I&E alleges that the conduct in this matter involves fraudulent, deceptive, or unlawful marketing acts committed by two Clearview sales agents, a failure to obtain criminal background histories from the appropriate governmental agency, *i.e.*, the Pennsylvania State Police, unauthorized switching, overbilling and a failure to notify BCS and the EDCs of the Company’s door-to-door marketing activities. I&E provides that while the alleged violations pertaining to a failure to notify the Commission’s BCS and the relevant EDCs of Clearview’s intention to perform door-to-door marketing activities may be characterized as administrative errors, the remainder of the alleged misconduct is of a serious nature. I&E submits that the seriousness of the alleged violations averred in I&E’s Complaint was considered in arriving at the civil penalty, refund provisions and other remedial relief set forth in the terms of the Settlement. I&E Statement in Support at 10-11. Clearview acknowledges that the alleged violations are of a serious nature. Clearview Statement in Support at 10-12. The allegations concern compliance with the Commission’s Regulations regarding Clearview’s role as an EGS. Clearview must provide accurate pricing and ensure that its policies and procedures comply with the applicable regulations. We conclude that the civil penalty should be evaluated with a consideration of the seriousness of the allegations set forth in the Complaint. We agree with I&E’s calculation and assessment of the civil penalty based on this factor.

The second factor considered is whether the resulting consequences of Clearview’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). In this case, there are no allegations that consequences of a serious natures are involved such as personal injury or property damage. I&E provides that the outcome of the alleged violations resulted or may have resulted in adverse financial consequences. For example, the customers who were switched to receive electric generation supplied by Clearview without consent could have been charged a more expensive rate than the local EDC’s price-to-compare (PTC) or the rate of another generation supplier. Between October 2017 and February 2018, Clearview billed 137 customers in the Duquesne Light and PECO service territories a rate of one to two cents per kilowatt hour (kWh) more than the advertised rate that led them to enroll with Clearview. Additionally, the fraudulent, deceptive, and unlawful marketing conduct of the two Clearview sales agents allegedly resulted in a wallet containing cash that was removed from a prospective customer’s residence. I&E avers that some customers experienced or may have experienced adverse financial consequences as a result of the actions of Clearview and such consequences should be deemed serious. I&E Statement in Support at 11. Clearview avers that the financial effects on consumers were minimal and quickly remedied by Clearview. Clearview Statement in Support at 12. We note that Clearview lessened the potential negative impact on its customers by making refunds to the affected customers as described *infra.* Therefore, this mitigating factor supports the negotiated civil penalty.

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 Clearview’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties. I&E Statement in Support at 12.

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). Prior to the filing of the instant Settlement agreement, Clearview fully refunded customers who were overbilled the difference between the rate that was advertised on choosenergy.com and the billed rate. Clearview also refunded the ten customer accounts that were switched without authorization the entire electric generation supply portion on the customers’ bills for the first two (2) billing periods that the customers were switched to Clearview, pursuant to 52 Pa. Code § 57.177(b). Proof of the issuance of the above-described refunds has been provided to I&E. I&E Statement in Support at 12. Clearview also 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. Clearview Statement in Support at 13.

I&E provides that Clearview’s agreement to issue refunds as part of the settlement process represents a significant public benefit that might not otherwise be realized. Had this matter been fully litigated, the Commission’s ability to order Clearview to issue refunds to customers who were switched without consent or overbilled is questionable. *See Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (Pa. Cmwlth. 2020) (holding, *inter alia*, that the Commission lacks the requisite express authority or necessary implied authority to order an EGS to issue refunds to its customers). According to I&E, Clearview’s provision of refunds to customers weighs heavily in favor of approving the Settlement Agreement as being in the public interest. I&E Statement in Support at 12.

I&E notes that Clearview entered into a comprehensive agreement with a third party in 2019 to manage its billing system and perform billing related functions. Clearview is paying a substantial cost to receive these services, which should aid in preventing future billing errors that are technical in nature. I&E Statement in Support at 13.

Additionally, Clearview has revised its policies and procedures to ensure that criminal background checks include a review of the Pennsylvania State Police database. Clearview also emphasized to its sales team the requirement to notify BCS and the local distribution companies about its door-to-door sales and marketing activities no later than the morning of the date that such activities are anticipated to begin, pursuant to 52 Pa. Code § 111.14. Clearview’s revised policies, procedures, and internal communications to its sales teams have been provided to I&E. I&E Statement in Support at 13.

Finally, Clearview promptly addressed the wallet theft incident by permanently removing the two sales agents who were involved from Clearview’s marketing campaign. Clearview also cooperated with Pennsylvania State Police and OCMO concerning the incident. I&E Statement in Support at 13.

Each of these modifications to Clearview’s internal policies and procedures, as well as post incident remedial actions taken by Clearview addressing the alleged conduct at issue, are designed to prevent similar incidents from occurring again and demonstrate a commitment to comply with the Commission’s Regulations. I&E Statement in Support at 13. We find that Clearview’s actions indicate compliance and support the negotiated penalty.

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 Complaint alleges that ten customer accounts were switched to receive electric generation service provided by Clearview without the customers’ authorization. Clearview received customer complaints asserting the unauthorized switching of these accounts in the third and fourth quarters of 2017, with such unauthorized enrollments taking place in 2017. Between October 2017 and February 2018, Clearview billed 137 customers at a rate greater than the rate that Clearview advertised on chooseenergy.com at the time of the customers’ enrollments. For the majority of the month of June 2017, Clearview failed to notify BCS and the local EDCs in advance of its intention to conduct door-to-door sales and marketing activities. On June 15, 2017, the fraudulent, deceptive, and/or unlawful action of two Clearview agents resulted in the theft of a prospective customer’s wallet during a door-to-door sales campaign. I&E avers that approximately 148 customers were adversely impacted by Clearview’s misconduct over the course of several months in 2017. I&E Statement in Support at 13-14. The number of affected customers is 148 and the alleged violations occurred during June 2017 and the third and fourth quarters of 2017. Clearview contends that the ten instances of alleged unauthorized enrollments is not a large number of affected customers, and given Clearview’s refunds of supply charges, the duration of the alleged violations was not lengthy. Clearview claims that it also quickly remedied the price difference for the 137 customer accounts that were affected by the billing error. Clearview Statement in Support at 14. Based on these considerations, we find that this factor supports the negotiated civil penalty.

The sixth factor to be considered relates to the compliance history of Clearview. 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.* At least six customers have filed formal complaints against the Company alleging unauthorized switching, deceptive marketing, incorrect billing, and/or an increase in rates.[[3]](#footnote-3) These matters were resolved by the filing of Certificates of Satisfaction pursuant to 52 Pa. Code § 5.24. One formal complaint filed against Clearview by a customer was dismissed when Clearview’s Preliminary Objections were sustained.[[4]](#footnote-4) No formal complaints brought by customers have been sustained against the Company. I&E Statement in Support at 14. Clearview maintains that when formal complaints are filed, Clearview works with consumers to reach amicable resolutions that result in the complaints being fully satisfied and withdrawn. Clearview states that it takes a similar approach in handling informal complaints with BCS. Clearview Statement in Support at 15.

I&E provides that Clearview was also the subject of a former enforcement proceeding initiated by I&E wherein I&E alleged that Clearview issued 10,334 invoices in February, March, and April 2014, containing charges that exceeded the rate in which customers enrolled. *Pa. PUC, Bureau of Investigation and Enforcement v. Clearview Electric, Inc.*, Docket No. C-2016-2543592 (Final Order entered June 30, 2017, approving settlement agreement without modification) (*2017 Settlement*). According to I&E, the matter was amicably resolved by settlement of the parties and Clearview paid a civil penalty in the amount of $250,000, representing a “per violation” civil penalty of slightly more than $24. I&E Statement in Support at 15.

I&E acknowledges that the instant matter involves allegations pertaining to the same misconduct, *i.e.*, overbilling. The Settlement considers this fact as I&E demanded, and Clearview agreed to pay, a civil penalty of slightly more than $182 for each of the 137 overbilling violations. This amount is seven times greater than the “per violation” civil penalty that was received in the prior enforcement action. I&E Statement in Support at 10-15.

Clearview has agreed to pay a civil penalty of $59,750, of which $25,000 is to resolve the alleged 137 violations of 52 Pa. Code § 54.4(a). This is an increase from $24 to approximately $182 for each violation. We note that the number of customers affected in this proceeding is much lower than Clearview’s previous alleged overbilling resolved by the *2017 Settlement*. Clearview avers that this was an administrative error. Upon review of this information and considering this factor, we find that the compliance history of Clearview, while imperfect, is not so failing as to render the Settlement unreasonable.

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 Clearview cooperated in the investigation, Complaint proceeding, and settlement process in this matter and that such cooperation demonstrates a commitment consistent with compliance with the Commission’s Regulations. I&E Statement in Support at 15. Clearview avers that it cooperated during the informal investigation, which preceded the filing of the Complaint, by timely responding to I&E’s data requests. Clearview Statement in Support at 15. We note Clearview’s cooperation during the informal investigation and find that this mitigating factor supports the Settlement.

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 $59,750, which is not tax deductible, in combination with the issuance of customer refunds and the monetary cost of Clearview’s performance of the remedial measures, especially its comprehensive agreement with a third party to upgrade its billing system and manage billing related functions, is substantial and sufficient to deter Clearview from committing future violations. I&E Statement in Support at 15-16. Clearview contends that the civil penalty it agreed to pay in connection with the unauthorized enrollments, the alleged theft of a prospective customer’s wallet, and the allegation concerning the adequacy of Clearview’s criminal background checks is a sufficient deterrent. Clearview Statement in Support at 16. Based on the amount of the civil penalty and the additional measures Clearview has taken to comply with its background checks, notifications, and billing obligations, we conclude that the Settlement deters future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Settlement Agreement between I&E and Clearview provides a civil penalty of $1,000 for each of the 10 customer accounts that were physically switched to and received electric generation supply service from Clearview without the customers’ authorization. This per account civil penalty is identical to the $1,000 per account penalty imposed by the Commission in previous slamming matters where a customer’s account was switched and received electric generation supply service from a company without the customer’s authorization. *See Pa. PUC, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc.*, Docket No. M‑2012‑2201861 (Order entered August 29, 2013); s*ee also* *Pa. PUC, 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); and *See also* *Pa. PUC, 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). I&E Statement in Support at 16.

The Settlement Agreement also provides for a civil penalty of $25,000 to resolve 137 alleged overbilling violations, which represents a “per violation” civil penalty of more than $182 per count. As noted herein, *supra.*, this civil penalty amount considers that the instant matter is Clearview’s second offense with respect to overbilling violations brought forth by I&E and it greatly exceeds the $24 “per violation” civil penalty that was imposed by the Commission in *Pa. PUC, Bureau of Investigation and Enforcement v. Clearview Electric, Inc.*, Docket No. C-2016-2543592. The $182 “per violation” civil penalty is also larger than the $125 “per violation” imposed by the Commission in *Pa. PUC, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015), which was a fully litigated matter involving allegations that company management deliberately overcharged customers to save the company from financial peril – facts which are not present in the instant matter. I&E Statement in Support at 16-17.

Regarding the allegations that Clearview failed to obtain criminal background histories from the Pennsylvania State Police of the two sales agents implicated in the June 2017 wallet theft incident, the Settlement provides for a $2,000 civil penalty. This civil penalty, which is the statutory maximum pursuant to 66 Pa. C.S. § 3301, is larger than the $425 “per violation” civil penalty imposed by the Commission in *Pa. PUC, Bureau of Investigation and Enforcement v. Vista Energy Marketing, L.P.*, Docket No. M-2018-2624484 (Order entered March 27, 2019) (related to an I&E investigation of an EGS finding that 124 sales agents were conditionally approved to conduct sales and marketing activities while the results of Pennsylvania State Police criminal background checks were pending). I&E Statement in Support at 17.

The Settlement Agreement also provides for a civil penalty of $1,000 to resolve the alleged violation of 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.9(b), which represent the maximum civil penalty authorized under 66 Pa. C.S. § 3301. Furthermore, regarding the allegations that Clearview failed to notify BCS and local EDCs of its door-to-door marketing activities, the Settlement provides for a “per violation” civil penalty of $375, which I&E asserts is reasonable and sufficient to address what can be fairly characterized as an administrative error. I&E Statement in Support at 17.

I&E submits that the instant Settlement Agreement should be viewed on its own merits as there are no past Commission decisions that are directly responsive to an identical situation. However, in looking at the relevant factors that are comparable to other matters involving allegations of unauthorized switching, fraudulent, deceptive or unlawful marketing acts, a failure to obtain criminal background histories from the appropriate governmental agency, overbilling and a failure to notify BCS and EDCs of the Company’s door-to-door marketing activities, and comparing the allegations to the relief provided in the Settlement - specifically, a civil penalty and customer refunds - this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome. I&E Statement in Support at 18.

The tenth factor we may consider is 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. I&E Statement in Support at 18. Clearview submits that the Settlement provides for refunds to affected customers and reflects modifications to Clearview’s business practices that will benefit future customers. Clearview Statement in Support at 16. We find that it is in the public interest to approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals and we note the refunds for the affected customers and the improvements to Clearview’s policies and procedures.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement Agreement and the Statements in Support thereof, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Joint Petition for Approval of Settlement filed on May 13, 2021, by the Commission’s Bureau of Investigation and Enforcement and Clearview Electric, Inc. d/b/a Clearview Energy is approved in its entirety without modification.

1. 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, Clearview Electric, Inc. d/b/a Clearview Energy shall pay a civil penalty of Fifty-Nine Thousand Seven Hundred Fifty Dollars ($59,750). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

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

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

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 28, 2021

ORDER ENTERED: October 28, 2021

1. <https://www.pennlive.com/news/2017/06/man_let_energy_company_reps_in.html> [↑](#footnote-ref-1)
2. *Pa. PUC, Bureau of Investigation and Enforcement v. Clearview Electric, Inc.*, Docket No. C-2016-2543592 (Final Order entered June 30, 2017, approving settlement agreement without modification). [↑](#footnote-ref-2)
3. The six formal complaints are docketed as follows: C-2017-2616037, F‑2016-2559912, F-2015-2478664, C-2014-2411137, C-2013-2381987, and C‑2012‑2335048. [↑](#footnote-ref-3)
4. *Fortunato Vangeli v. Clearview Electric, Inc.*, Docket No. F-2020-3021497 (Final Order entered December 15, 2020). [↑](#footnote-ref-4)