

COMMONWEALTH OF PENNSYLVANIA



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January 5, 2022

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

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Certificate of Service

\*321809

## CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5<sup>th</sup> day of January 2022.

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Dated: January 5, 2022  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. BACKGROUND AND INTRODUCTION

On July 9, 2021, the Commission’s Bureau of Investigation and Enforcement (I&E) and Green Mountain Energy Company (Green Mountain or Company) (collectively, the Parties) filed a proposed Joint Petition for Approval of Settlement (Settlement) with respect to an informal investigation conducted by I&E. On November 18, 2021, the Pennsylvania Public Utility Commission (Commission) issued a Tentative Order to provide an opportunity for interested parties to file comments regarding the proposed Settlement. Pursuant to the Tentative Order, interested parties had twenty-five (25) days to submit comments after the Tentative Order was posted in the Pennsylvania Bulletin. The Tentative Order was published in the Pennsylvania Bulletin on December 11, 2021.

The Tentative Order outlines the conduct of Green Mountain that led to the investigation. Specifically, the Commission’s Bureau of Consumer Services (BCS) received twenty-two (22) informal complaints from residential customers between June 1, 2018 and September 30, 2020 alleging that their electricity accounts had been switched to receive the Company’s electric generation supply without authorization. Tentative Order at 3-4. BCS referred the matter to I&E for investigation. Id. at 4. During its investigation, I&E found significantly more unauthorized enrollments than that which resulted in complaints to BCS; specifically, they found 156 unauthorized enrollments: 141 were the direct result of what are described as enrollment processing errors, which occurred when Green Mountain agents selected the incorrect customer account from the ECL or where the agent failed to advise the customer that he or she was switching suppliers until after the enrollment was signed; ten (10) involved sales agent misrepresentation; and five (5) consisted of straightforward unauthorized switching. Tentative Order at 4; Settlement at 5.

The proposed Settlement requires of Green Mountain the following:

- Pay at civil penalty amount of \$156,000. Settlement ¶ 29(A).
- Provide to each of the 156 customers a refund for the entire electric generation supply portion on the customer's bill for the first two (2) billing periods that the customers were switched to Green Mountain. Settlement ¶ 29(B).
- Refund any cancellation fee or early termination fee imposed by other Electric Generation Suppliers (EGS) and incurred by any of the aforementioned customers as a result of the unauthorized switch to Green Mountain, provided that the customer supplies documentation of incurring the fee. Settlement ¶ 29(C).
- Provide I&E with monthly reports for a period of one (1) year detailing complaints from Pennsylvania consumers that were received by the Company from BCS, the Pennsylvania Attorney General's Office, the Better Business Bureau and/or complaints directed to the Company related to allegations of unauthorized switching that originated from in-person marketing locations. Settlement ¶ 29(D).
- Retain customer signatures placed on enrollment tablets used at in-person marketing locations for a period of one (1) year and provide such records to BCS and I&E upon request. Settlement ¶ 29(E).

As explained in more detail in these comments, the OCA is concerned about the abuses outlined here concerning the use of Commission-sanctioned Eligible Customer Lists (ECL) and requests that the Commission clarify certain aspects of the refund process agreed to in the Settlement. The OCA provides the following comments:

## II. COMMENTS

The OCA appreciates the opportunity to submit comments on behalf of Pennsylvania consumers<sup>1</sup> on this proposed Settlement. The OCA is concerned about the seriousness of the allegations against Green Mountain given the number of customers involved as well as the practices alleged concerning Green Mountain's handling of the ECL and sensitive customer data.<sup>2</sup> Based the information disclosed in the Tentative Order, it appears that Green Mountain had insufficient protections in place to ensure that its agents were not misusing customer information disclosed in the ECL to facilitate unauthorized enrollments. While many of these unauthorized enrollments were characterized as "processing errors", the fact remains that agents of Green Mountain either intentionally or negligently abused customer information to facilitate a transfer of customers from either default service or another EGS to Green Mountain. The practices outlined in the Tentative Order are troubling and the OCA supports the imposition of sanctions to remedy these abuses and deter future conduct.

The OCA offers the following comments for the Commission's consideration in determining whether to accept the proposed Settlement. As an initial matter, the OCA submits that its comments are based on the limited information that has been made available in the Tentative Order and therefore it cannot comment on the full scope of the issues that were investigated. As such, the OCA takes no position on the reasonableness of the civil penalty or

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<sup>1</sup> Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Commission.

<sup>2</sup> Starting in 2010, the Commission began a project to resolve issues in the competitive retail energy markets in the Commonwealth related to the information released to competitive service providers. Over the course of four years, the Commission proposed policy statements, accepted comments, and ultimately provided uniform standards for what customer information was released, as well as how customers could participate in the lists. This culminated in the Commission issuing an order outlining the appropriate use of customer information by EGSSs and the handling of customer lists that were required to be made available by electric distribution companies (EDCs). *See Interim Guidelines For Eligible Customer Lists Final Order on Reconsideration*, at Docket No. M-2010-2183412 (Nov. 15, 2011) and *Interim Guidelines for Eligible Customer Lists*, Docket No. M-2010-2183412 (Order entered October 23, 2014).

many of the corrective provisions included in the proposed Settlement. However, the OCA believes that Commission should clarify the Settlement terms dealing with customer refunds.

A. Customer Refunds (Settlement ¶ 29(b)).

Under the terms of the proposed Settlement, Green Mountain has agreed to refund the 156 affected customers the entire electric generation supply portion of the customer's bill for the first two (2) billing periods that customers were switched without their consent to Green Mountain, "pursuant to 52 Pa. Code § 57.177(b)." Settlement ¶ 29(B). Additionally, Green Mountain would be required to file a verification with the Commission acknowledging that all refund payments have been disbursed. Id.

It is unclear from the terms of the settlement, however, whether the reference to § 57.177(b) was meant to encompass the provisions contained there that obligate Green Mountain to issue refunds only in the event that the customer paid for the months that they were switched without their consent. While the OCA appreciates the effort of the Parties to partially refund customers unfairly charged excess amounts for being switched without their authorization, the OCA submits that the Commission should require Green Mountain to facilitate refunds for the electric generation supply portion for the first two (2) months for *all* customers affected by Green Mountain's unauthorized switching regardless of whether the customer paid those two (2) months of service. There are a myriad number of reasons that a customer may not have paid those months, including the very real possibility that their commodity costs were excessive during the unauthorized months.

Additionally, the Settlement lacks detail about the specifics of these refunds such as whether they will be applied to customer accounts with their EDC or whether they will be paid to customers via check. The Settlement also does not indicate whether Green Mountain has a complete list of the 156 customers' contact information or the exact manner in which they intend

to compensate the affected customers. For instance, are the affected customers still receiving service from Green Mountain? If not, will a check be mailed to their last known address on file? What if the customer has moved and Green Mountain cannot contact the customer? As discovered by I&E's informal investigation, some of the unauthorized switches occurred as far back as 2018. Settlement ¶ 22. Given the likelihood that the customers harmed by the alleged unauthorized switches are no longer customers of Green Mountain, the OCA requests that the Commission provide further clarification as to what information must be included in the verification filed with the Commission to indicate Green Mountain's compliance with the refund provision. The OCA requests that the verification filed with the Commission in compliance with Settlement ¶ 29(B) be accompanied by an attachment providing the number of customers contacted in reference to the refund, the total refunded amounts to each customer, and the number of checks sent to customers that were not cashed, if any. With these additional details, the Commission can ensure that the affected customers are properly receiving the refunds.

B. Eligible Customer List.

The OCA would also like to express its concern about Green Mountain's misuse of the ECL. The ECL was intended to be a tool for suppliers to enroll customers with ease and to avoid accidental switches if the customer signing up does not have their account number in their possession. Unfortunately, it appears that this same tool intended to facilitate energy shopping is also the reason for customers unknowingly having their accounts switched. Thus, the OCA remains concerned with the need to protect customer personal information on the ECL to prevent further unauthorized switches in the energy marketplace.

While the OCA recognizes that Green Mountain eliminated the ability for sales agents to scroll through the ECL to locate a certain customer and enhanced its disciplinary policy for ECL misuse, the OCA is concerned that the number of mismatches that I&E's investigation discovered

may point to a more widespread issue among all suppliers and their agents. As stated above, 141 of the 156 unauthorized switches allegedly made by Green Mountain’s agents are claimed to be result of enrollment errors. Settlement ¶ 25. Further, Green Mountain is an NRG Energy Inc. company<sup>3</sup> and recently, another NRG Energy Inc. supplier, NRG Home, also entered into a Settlement with I&E over allegations stemming from the misuse of the ECL.<sup>4</sup> Given the apparent rise of allegations of ECL misuse, the OCA submits that it may well be time for the Commission to reexamine use of the ECL by suppliers to ensure that proper safeguards are in place to prevent misuse of customer data in the future.

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<sup>3</sup> See Settlement, Appendix B, p. 12, footnote 4.

<sup>4</sup> See also, Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business, Docket No. M-2020-3006647 (Order entered March 25, 2021) (Many of the 168 unauthorized switching allegations stemmed from NRG Home’s marketing activities at public retail locations where NRG Home agents were utilizing the ECL to obtain the information of prospective customers.)

### III. CONCLUSION

The Office of Consumer Advocate appreciates the opportunity to provide these Comments. The OCA respectfully requests that the Commission clarify the process for which Green Mountain is to issue refunds to the affected customers in this proceeding. The OCA also respectfully requests that the Commission take into consideration the ongoing abuses of the ECL similar to those that allegedly occurred in this proceeding.

Respectfully submitted,

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