**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

|  |  |
| --- | --- |
|  | Public Meeting held February 24, 2022 |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  John F. Coleman, Jr., Vice Chairman  Ralph V. Yanora |  |
| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement | M-2021-3022658 |
| v. |  |
| Discount Power, Inc. |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Approval of Settlement (Settlement), filed on August 27, 2021, by the Commission’s Bureau of Investigation and Enforcement (I&E) and Discount Power, Inc. (Discount or DPI or Company), with respect to an informal investigation conducted by I&E. By Order entered October 28, 2021, relative to the above-captioned proceeding (*October 2021 Order*), we provided interested parties with the opportunity to file comments on the Settlement. Also, before the Commission for consideration and disposition are: (1) the Comments of PPL Electric Utilities Corporation (PPL), filed on December 8, 2021 (PPL’s Comments); (2) the Comments of Michael Zimmerman (Mr. Zimmerman), filed on December 9, 2021 (Mr. Zimmerman’s Comments); (3) Discount’s Motion to Strike PPL’s Comments, filed on December 20, 2021 (Discount’s Motion to Strike PPL’s Comments); and (4) Discount’s Motion to Strike Mr. Zimmerman’s Comments, filed on December 21, 2021 (Discount’s Motion to Strike Mr. Zimmerman’s Comments). On January 10, 2022, PPL filed an Answer to Discount’s Motion to Strike PPL’s Comments (PPL’s Answer).

Both I&E and Discount filed a Statement in Support of the Settlement (Statement in Support). Further, both I&E and Discount submit that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations— statement of policy* (Policy Statement). *See* Settlement at ¶¶ 12, 46, *infra*.

For the reasons set forth herein, we shall: (1) deny Discount’s Motions to Strike the Comments of both PPL and Mr. Zimmerman; (2) allow the Comments of both PPL and Mr. Zimmerman for consideration; and (3) approve the proposed Settlement, consistent with this Opinion and Order.

**History of the Proceeding**

This matter concerns allegations regarding Discount, a jurisdictional electric generation supplier (EGS).[[1]](#footnote-1) The allegations against Discount, from 2019 through May 2021, are as follows: (1) misleading and deceptive telemarketing; (2) billing of incorrect rates; (3) failure to issue renewal letters; (4) unauthorized enrollments; and (5) a lack of record keeping. Settlement at ¶¶ 7, 11. I&E and Discount 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 ¶ 12.

By letter dated January 28, 2021, I&E sent a data request to Discount (*January 2021 Letter*), notifying Discount that, based on information referred to I&E by the Office of Competitive Market Oversight (OCMO), I&E had instituted an informal investigation of Discount and a response to I&E’s set of twenty-eight (28) data requests was required by March 1, 2021. On March 1, 2021, Discount provided a timely response to I&E’s data requests. On April 20, 2021, I&E requested a response to a second set of data requests. On May 18, 2021, Discount provided a timely response to I&E’s second set of data requests. Settlement at ¶¶ 24-26.

As previously noted, on August 27, 2021, I&E and Discount filed the instant Settlement. Also, as noted earlier, the Parties to the Settlement in this instance have each filed a Statement in Support. *See* Appendix A and B to Settlement, which are Statements of Support filed by I&E and Discount, respectively.

In the Commission’s *October 2021 Order*, we directed that notice of the Order and the proposed Settlement be published in the *Pennsylvania Bulletin*, to provide an opportunity for interested parties to file comments with the Commission regarding the proposed Settlement within twenty-five (25) days after the date of publication.

On November 13, 2021, the *October 2021 Order*, along with the Settlement and Statements in Support, were published in the *Pennsylvania Bulletin*, 51 *Pa.B.* 7151 (November 13, 2021). In accordance with the *October 2021 Order*, comments on the proposed Joint Settlement were due on or before December 8, 2021.

As previously noted, comments in response to the *October 2021 Order* were filed by PPL and Mr. Zimmerman, on December 8, 2021 and December 9, 2021, respectively.[[2]](#footnote-2) Also, as noted earlier, on December 20, 2021 and December 21, 2021, Discount filed Motions to Strike the Comments of PPL and Mr. Zimmerman, respectively.[[3]](#footnote-3) PPL filed its Answer to Discount’s Motion to Strike PPL’s Comments on January 10, 2022.

**Background**

The basis for the instant Settlement resulted from I&E’s investigation, which included: (1) a review of a referral memo completed by OCMO; (2) informal customer complaints; and (3) Discount’s responses to I&E’s data requests. Settlement at ¶ 27.

On October 29, 2020, OCMO sent a referral memo to I&E alleging that, on August 24, 2020, the Director of OCMO had personally received a telemarketing call with a caller ID showing York, Pennsylvania.[[4]](#footnote-4) Specifically, the referral stated that the Director received an automated/robocall advertising a refund on his electric bill and, upon pressing one, an agent who came on the call identified himself by name but did not identify who he was calling on behalf of until several minutes into the call. The agent, who eventually said that he represented Discount, stated that: (1) he could provide a better, fixed rate for 24 months; (2) the Director would receive a $50 reward card every month; (3) the supplier would be “chosen by PPL;” and (4) “nothing will be changing” on the electric bill. Settlement at ¶¶ 15-18, 28. Further, the Director stated that he was advised that he would receive a newer, lower rate of 8.29 cents. Settlement at ¶¶ 19, 28. Moreover, the Director noted that upon being guided through the verification process, he was successfully enrolled with Discount; however, in contrast to the information provided by the agent, the verifier stated that enrollment was for a fixed 3‑month plan at a rate of 8.29 cents. Settlement at ¶¶ 20, 28. Furthermore, the verifier stated that a $4.95 monthly fee would be incurred even though the agent did not disclose such a fee during the call. Settlement at ¶¶ 21, 28. Finally, the Director noted that, on or about September 8, 2020, his account was switched to Discount, and he received a welcome letter and disclosure statement from Discount, dated August 26, 2020. Settlement at ¶ 22.

In addition to the allegations contained in the OCMO referral memo, I&E identified several informal complaints which raised concerns of telemarketing misrepresentation, billing of incorrect rates, failure to issue renewal letters, and the enrollment of individuals without authorization or the capacity to enroll. Each customer complaint, as summarized in the Settlement, is reprinted verbatim below:

1. Five (5) incidents[[5]](#footnote-5) where DPI requested a refund for the customer after an allegation of misrepresentation;
2. Two (2) incidents where customers alleged misrepresentation but DPI offered refund for the “inconvenience;”
3. Two (2) incidents where DPI requested a refund after an allegation of misrepresentation and noted possible tampering with the recording(s);
4. Two (2) incidents where an agent was suspended and retrained after complaints of misrepresentation;
5. Two (2) incidents where misrepresentation and deceptive enrollment resulted in the termination of an agent;
6. Two (2) incidents where DPI improperly enrolled a customer as a “winback;”
7. 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;
8. One (1) incident of enrolling a customer with dementia in a nursing home;
9. One (1) incident of enrolling a customer with dementia who did not have legal ability to enter into a contract;
10. One (1) incident of enrolling an elderly customer who did not have authorization to enroll;
11. One (1) incident of enrolling a customer who was unable to authorize enrollment due to mental capacity, i.e., mental disability/mentally challenged;
12. Two (2) incidents of enrolling a customer with incorrect information/possible slamming allegation;
13. One (1) incident of failure to cancel/drop account upon request;
14. Two (2) incidents of failure to provide renewal letters to customers;
15. Two (2) incidents where DPI provided and/or enrolled customers with incorrect rates;
16. Eight (8) incidents related to high variable rates and/or renewal rate where DPI offered and/or provided refund; and
17. Two (2) incidents of failure to bill correct rate.

Settlement at ¶ 30.

In response to the alleged conduct, Discount acknowledged that there were at least seven (7) individuals who filed complaints after receiving a telemarketing call despite being on the Do Not Call registry. Settlement at ¶ 39. Discount also stated that it started tracking and taking notes on customer complaints “sometime after 2019.” Settlement at ¶ 35.

I&E’s ability to investigate and analyze Discount’s responses was “hindered by Discount Power’s poor internal record keeping.” Settlement at ¶ 36. Specifically, I&E detailed that Discount was unable to provide its subsequent communications with the customer and was unable to provide a resolution to the complaint or inquiry beyond adding the customer to Discount’s Do Not Call list. Settlement at ¶ 37. I&E identified fifty-three (53) customer complaints which did not include notes or a resolution to the complaint, noting that three (3) of those complaints occurred in the prior six (6) billing cycles and which Discount was required to retain. Settlement ¶ at 38.

If this matter had been fully litigated, I&E was prepared to present evidence and legal arguments to demonstrate that Discount and/or its agents committed the following alleged violations: (1) Discount and/or its agents conducted deceptive and misleading actions, including calling customers on the Do Not Call list, an alleged violation of 52 Pa. Code §§ 54.43(g), 111.10(a) and (b), and 111.12(d) (multiple counts); (2) Discount and/or its agents conducted deceptive or false representations, including rates and savings, an alleged violation of 52 Pa. Code §§ 54.122(3) and 111.12(d) (multiple counts); (3) an agent for Discount failed to identify himself/herself upon first contact and state that he/she does not work for and is independent of the local EDC, an alleged violation of 52 Pa. Code §§ 111.8(b) and 111.10(a) and (b) (multiple counts); (4) an agent for Discount suggested that a customer is required to choose an EGS, an alleged violation of 52 Pa. Code §§ 111.8(f) and 111.10(a) and (b) (multiple counts); (5) Discount and/or its agents’ actions resulted in the unauthorized enrollment of customers (through improper “winback” enrollment, enrolling a customer with incorrect information, or enrollment of a customer who does not possess the ability to authorize or verify an enrollment), an alleged violation of 52 Pa. Code §§ 54.42(a)(9) and 111.7 (multiple counts); (6) Discount and/or its agents’ failure to issue renewal letters at the end of the contract term, an alleged violation of 52 Pa. Code §§ 54.10, 111.7, 111.10, 111.11, and 111.12 (multiple counts); (7) Discount and/or its agents’ actions resulted in customers being billed incorrect rates, an alleged violation of 52 Pa. Code §§ 54.10 and 111.12 (multiple counts); and (8) Discount and/or its agents’ actions resulted in poor record keeping, which impeded I&E’s ability to investigate this matter, an alleged violation of 52 Pa. Code § 111.13 (multiple counts). Settlement at ¶ 42.

If this matter had been fully litigated, Discount intended to deny each of the alleged violations of the Code, the Commission’s Regulations and Orders, as well as to raise defenses to each allegation and defend against the same at hearing. Settlement at ¶ 43.

**Terms of the Settlement**

The Parties state that the purpose of the Settlement is to terminate I&E’s informal investigation and settle this matter completely without litigation. The Parties further note that they recognize that this is a disputed matter and that resolving the disputed issues can be beneficial, given the inherent unpredictability of the outcome of a contested proceeding. Moreover, the Parties acknowledge that approval of this Settlement is in the public interest and is consistent with the Commission’s Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission Regulations, pursuant to 52 Pa. Code § 69.1201. Settlement at ¶¶ 44, 53-54.

The conditions of the Settlement are reprinted verbatim below:

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

1. A civil penalty of $500.00 for each of the ten (10) violations related to the August 24, 2020 telemarketing call received by [the Director of OCMO], totaling $5,000.00.
2. 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.
3. A civil penalty of $750.00 for violations related to calling seven (7) individuals on the “Do Not Call” list, totaling $5,250.00.
4. 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:

1. 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.
2. 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.
3. 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.

*See* Settlement at ¶¶ 45-48.

The Parties request that the Commission issue an Order approving the Settlement without modification but note that if the terms of the Settlement are “substantively” modified by a Commission Order, the Parties agree that any party may withdraw from the Settlement. Settlement at ¶¶ 51-52. The Parties indicate that the consequence of any Party withdrawing from the Settlement is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated by the Parties, and all obligations of the Parties to each other will cease. Further, if a Party withdraws from the Settlement, the Parties jointly agree that nothing in the Settlement shall be construed as an admission against, or as prejudice to, any position which any Party might adopt during subsequent litigation of this case. Settlement at ¶ 52.

The Parties acknowledge that the Settlement represents a complete settlement of I&E’s investigation of Discount’s alleged violations related to: (1) the misleading and deceptive telemarketing calls made to the Director; (2) violations relating to misrepresentation, incorrect rates, failure to remove an account upon request, failure to issue renewal letters, and unauthorized enrollments made from 2019 to May 2021; (3) calling individuals on the Do Not Call list from 2019 to May 2021; and (4) Discount’s record keeping prior to the initiation of the informal investigation. The Settlement represents a compromise of positions and does not constitute a finding or an admission concerning the alleged violations of the Code and the Commission’s Regulations. Settlement at ¶ 56.

**Discussion**

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

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. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to the Commission’s 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). Based on our review of the Settlement terms and conditions, we find that the Settlement is in the public interest.

Consistent with the Commission’s policy to promote settlements, we have promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest. 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 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.

1. **Comments Filed** **in Response to the *October 2021 Order***

As previously noted, the Commission received comments from two parties, PPL and Mr. Zimmerman, in response to our *October 2021 Order* issuing the proposed Settlement for comment. Their comments are summarized below.

1. **PPL’s Comments**

In its Comments, PPL references its recent experience involving EGS practices that impacted PPL’s customers to note that deceptive and unlawful marketing and sales practices used by an EGS will have a large impact on customers.[[6]](#footnote-6) PPL further notes that the *Verde Energy* investigation included: (1) allegations of unauthorized enrollment (or slamming); (2) improper release of customer information; and (3) unauthorized customer account access. To that end, PPL submits that, although the terms of the proposed Settlement are appropriate, additional requirements are necessary to strengthen oversight of Discount’s marketing activities and make future allegations easier to investigate. PPL Comments at 4-5.

PPL first recommends that, to better address the “significant issues identified in the investigation,” training on Pennsylvania’s retail competition rules and regulations, including proper customer communication and representation, be required for all Discount agents annually, regardless of whether the agents are employed by the Company or a third-party vendor. PPL Comments at 6. PPL notes that individual agents should complete this training prior to any customer contact and communication. Further, PPL notes that Discount should be required to certify, in writing, that all of its agents (in-house and third-party) have met the necessary training requirements, adding that the written certification should be submitted to the Commission and retained by the Company for future reference. *Id.* at 6.

PPL also asserts that strong record keeping is essential to investigations that include alleged improprieties. Accordingly, PPL recommends that, for a minimum of four years, Discount be required to retain records pertaining to: (1) customer inquiries; (2) customer disputes or complaints; (3) customer communications; (4) customer resolutions; and (5) recorded telemarketing calls. PPL also recommends that, to address the limited record retention requirements in the Settlement and increase the likelihood that customer concerns are quickly addressed, Discount be required to respond to customer inquiries within forty-eight (48) hours. PPL Comments at 7-8.

Finally, PPL recommends that, to determine compliance with the Commission’s Regulations at 52 Pa. Code § 111 (Section 111) requirements, Discount be required to audit the sales activities of its vendors and maintain records of vendor audits for a minimum of four years. Further, PPL notes that, if a vendor is found to be in violation of Section 111, the Company should be required to take remedial measures with the vendor and report the incident(s) to the Commission. Moreover, PPL states that suppliers who fail to sufficiently audit their vendors or fail to take timely action upon discovering a violation should be assessed increased penalties. PPL Comments at 8.

1. **Mr. Zimmerman’ Comments**

In his Comments, Mr. Zimmerman requests that the Commission hold the Settlement in abeyance pending further investigation of the Company. Zimmerman Comments at 2, 4. Mr. Zimmerman provides that, on December 6, 2021, he “apparently” received a telemarketing call from Discount that was similar to the telemarketing calls described in the Settlement.[[7]](#footnote-7) *Id.* at 2 (citing Settlement at ¶¶ 16-20). Mr. Zimmerman asserts that the call represents that Discount “may be continuing to engage in the same types of deceptive and misleading conduct that precipitated I&E’s investigation.” *Id.*at 2. Mr. Zimmerman also avers that, because the call is suggestive of a large telemarketing campaign, further investigation is warranted. *Id.* at 3.

Mr. Zimmerman notes that the telemarketing call was from a “spoofed” number, meaning the caller ID was manipulated to appear as though the call originated from Western Pennsylvania. Zimmerman Comments at 2. Mr. Zimmerman elaborates that, upon the conclusion of the telemarketing call, he dialed the spoofed number back and the call was answered by “a Western Pennsylvania resident” who is not affiliated with Discount and had not provided Discount with permission to use their personal telephone number.[[8]](#footnote-8) *Id.*

Mr. Zimmerman details that the telemarketing call began with a prerecorded message from an unidentified caller stating that, if one was pressed, he would be eligible to receive a $50 gift card. Mr. Zimmerman states that upon pressing one, he was transferred to a live agent who indicated that the call was being recorded but did not identify who he was calling on behalf of until several minutes into the call. Zimmerman Comments at 2-3. Mr. Zimmerman posits that during the call, his electric rates and the product offered by the agent were “materially misrepresented” by the agent. *Id.* at 2. Specifically, Mr. Zimmerman explains that, the agent stated that he would provide a 12-month rate of 14.99 cents per kWh, which the agent stated would represent a 30% discount to Mr. Zimmerman’s electric bill. Further, Mr. Zimmerman notes that, although his effective electric supply rate is “between 7 and 8 cents per kWh,” the agent stated that Mr. Zimmerman was paying “almost 17.99 cents per kWh.” *Id.* at 2-3. Moreover, Mr. Zimmerman provides that he was coached to answer “yes” on all questions from the third-party verifier; however, Mr. Zimmerman notes that prior to completing the third-party verification process, the phone call was dropped. *Id.* at 3. Furthermore, Mr. Zimmerman notes that, it does not appear that he was enrolled with Discount as a result of the call. Finally, Mr. Zimmerman offers that upon request, he can provide a recording of the call to Commission investigators. *Id.*

Additionally, Mr. Zimmerman refers to the Policy Statement at 52 Pa. Code § 69.1201, to assert that the ongoing deceptive telemarketing by Discount, if substantiated, would bear on several of the factors by which the Commission evaluates settlements, including, *inter alia*: (1) the seriousness of Discount’s conduct (52 Pa. Code § 69.1201(c)(1)); (2) Discount’s efforts to prevent similar misconduct (52 Pa. Code § 69.1201(c)(4)); (3) Discount’s compliance history (52 Pa. Code § 69.1201(c)(6)); (4) Discount’s cooperation with the Commission’s investigation (52 Pa. Code § 69.1201(c)(7)); and (5) the amount civil penalty or fine necessary to deter future violations (52 Pa. Code § 69.1201(c)(8)). Zimmerman Comments at 3. Thus, Mr. Zimmerman concludes that, pending further investigation, re-examination of the proposed civil penalty or additional enforcement action by the Commission may be appropriate. *Id.*

1. **Discount’s Motions to Strike filed Comments and Analysis**

As previously noted, Discount filed Motions to Strike the Comments of PPL and Mr. Zimmerman. Discount’s Motions to Strike the filed Comments and our analysis are summarized below.

1. **Discount’s Motion to Strike PPL’s Comments and PPL’s Answer**

In its Motion to Strike PPL’s Comments, Discount asserts that, if the Settlement is approved without modification, PPL will not be impacted. Discount argues that PPL lacks standing to participate in this proceeding because PPL: (1) raises issues that are irrelevant to whether the terms of the Settlement are reasonable and in the public interest; and (2) will not be aggrieved by a Commission order or other action. DPI Motion to Strike PPL Comments at 3, 6. The Company contends that a person or entity has standing to participate in a proceeding before the Commission only upon the showing of a direct, immediate, and substantial interest in the subject matter of a proceeding and to assert a theoretical interest of all citizens in having others comply with the law is insufficient. *Id.* at 4 (citing *Man O’ War Racing Association, Inc. v. State Horse Racing Commission*, 433 Pa. 432, 441, 250 A.2d 172 (1969) (*MOWRA*); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 191-192, 346 A.2d 269 (1975) (*William Penn*). Accordingly, Discount requests that the Commission strike PPL’s Comments. *Id.* at 3.

Discount offers that PPL does not identify any direct, substantial, or immediate interest that PPL has in the outcome of the instant proceeding. Discount refers to *Mid-Atlantic Power Supply Association v. Pa. PUC*, 746 A.2d 1196 (*MAPSA*) to contend that PPL may not represent the interests of its distribution customers. Discount elaborates that, in *MAPSA*, the Commonwealth Court of Pennsylvania (Commonwealth Court) reviewed a Commission order which established electric choice policies regarding the sharing of customer information by PECO with electric suppliers and, in addressing PECO’s claim that the Commission’s order did not adequately protect its customers’ privacy rights, the Court held that PECO does not represent the interests of its customers and, therefore, does not have standing. DPI Motion to Strike PPL Comments at 5-6 (citing *MAPSA* at 1200). Discount further notes that, in *MAPSA*, the Commonwealth Court cited *Pennsylvania Dental Association v. Commonwealth of Pennsylvania, Department of Health*, 75 Pa. Commw. 7, 461 A.2d 329, which emphasized that a party may not claim standing to absolve the rights of a third-party who has an opportunity to be heard. Here, Discount continues, upon the publication of the Settlement in the *Pennsylvania Bulletin*, no consumer or consumer representative proposed that the Commission should impose additional requirements on the Company. Moreover, Discount claims that PPL’s Comments are “in the nature of proposals that a regulator, attorney general or other enforcement agency might make and seek, at most, to assert a common abstract interest of all citizens, which does not afford a person or entity standing.” *Id.* at 6.

Discount also states that PPL does not characterize its proposed modifications to the Settlement as being necessary to satisfy the standard of whether the terms of the Settlement are in the public interest. Discount argues that, to determine that imposing additional requirements on an entity would strengthen the Settlement terms is beyond the Commission’s review of whether the terms of the Settlement are reasonable and in the public interest and, therefore, would be inconsistent. Further, Discount contends that any settlement could be strengthened by additional conditions and modifying settlements to add or enhance certain regulatory obligations is not conducive to the Commission’s settlement process. Moreover, Discount argues that the pertinent standard is whether the Settlement provisions, when viewed together and given the factors outlined in the Policy Statement, adequately address the allegations investigated by I&E. DPI Motion to Strike PPL Comments at 6-7.

Additionally, Discount argues that PPL makes its proposals without having any information regarding the Company’s current practices with regard to: (1) training; (2) records retention; (3) response times; and (4) vendor audits. Furthermore, Discount notes that, when compared to Section 111, the requirements that PPL proposes be imposed on Discount through the Settlement are “more burdensome.” DPI Motion to Strike PPL Comments at 7 (citing PPL Comments at 6-8; 52 Pa. Code §§ 111.5, 111.13(b)).

Finally, Discount contends that, although PPL characterizes its suggested modifications as necessary based on the Company’s actions, I&E’s allegations were not proven and the Settlement “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 [R]egulations.” DPI Motion to Strike PPL Comments at 8 (citing Settlement at ¶ 56). Discount adds that, given that I&E negotiated a balanced set of provisions in reaching the Settlement with the Company, PPL’s policy-changing suggestions should be considered in the context of a rulemaking. *Id.* at 8.

In its Answer to Discount’s Motion to Strike, PPL references two cases to counter that in Commission proceedings, interested parties do not need to have legal standing to file comments.[[9]](#footnote-9) PPL argues that, when the Commission issues a tentative decision and solicits comments from interested parties, comments are permitted without commenters interfering or being designated as a party. PPL Answer at 3-4 (citing *Morris-Rospond* at 48-49; *Bell Atlantic and GTE* at 4-5). Further, PPL notes that in this proceeding, PPL did not file a petition to intervene, nor did PPL request to be granted intervenor or party status. Moreover, PPL contends that, because Discount is licensed to operate in PPL’s service territory and the underlying claims in this case involve a PPL customer, the alleged misrepresentations of I&E’s Complaint had a direct, immediate, and substantial effect on PPL and, therefore, PPL has standing to participate in this matter. *Id.* at 4. Accordingly, PPL asserts that the Commission should deny Discount’s “unsupported attempt to apply legal standing to comments filed in a Commission proceeding.” *Id.* at 4.

1. **Discount’s Motion to Strike Mr. Zimmerman’s Comments**

In its Motion to Strike Mr. Zimmerman’s Comments, Discount asserts that Mr. Zimmerman seeks to introduce allegations that are new and unsubstantiated, as they are beyond the timeframe of I&E’s investigation and are irrelevant to whether the terms of Settlement are in the public interest. DPI Motion to Strike Zimmerman Comments at 2. Discount contends that, if Mr. Zimmerman’s Comments are relied upon by the Commission in ruling on the Settlement, then the Company will be deprived of its right to due process, which is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Id.* at 4-5 (citing *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing *Fuscaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978) (*Fuscaro*)). Further, the Company argues that an individual consumer may not represent the interests of other customers and Mr. Zimmerman’s Comments disregard the fact that the Settlement is based on unproven allegations. Moreover, Discount claims that the Commission may not grant Mr. Zimmerman’s request for relief. *Id.* at 2-3.

Discount challenges the relevance of Mr. Zimmerman’s allegation that he received a telemarketing call from the Company, explaining that I&E’s informal investigation examined Discount’s sales and marketing practices from 2019 through May 2021 and, because Mr. Zimmerman allegedly received the telemarketing call from the Company on December 6, 2021 (or outside of I&E’s investigation timeframe), the call is beyond the scope of this proceeding and is, therefore, irrelevant to whether the Settlement is in the public interest or is in accordance with the Policy Statement at 52 Pa. Code § 69.1201. Further, Discount cites *Verde Energy* to argue that it would be improper for the Commission to rely on additional averments in determining whether the terms of a settlement are reasonable and in the public interest. DPI Motion to Strike Zimmerman Comments at 5-6 (citing *Verde Energy* at 17-19).

Discount references *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Clearview Electric, Inc. d/b/a Clearview Energy*, Docket No. C‑2020-3020127 (Order entered October 28, 2021) (*Clearview*) to argue that, in evaluating a settlement, the Commission reviews the allegations investigated by I&E and considers whether the civil penalty and other provisions of the settlement satisfactorily address those allegations. DPI Motion to Strike Zimmerman Comments at 5 (citing *Clearview* at 11-21). Discount also refers to *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*,Docket No. M‑2020-3011455 (Order entered August 5, 2021; Tentative Order entered April 16, 2020) (*PPL 2020*) tonote that it is customary for settlements related to enforcement actions to cover a specific period of time and the Company is unaware of any precedent where the Commission has considered allegations of events that occurred *after* the timeframe of I&E’s investigation. *Id.* at 5-6 (citing *PPL 2020* at 2).

Discount also argues that Mr. Zimmerman’s contention disregards the Commission’s reliance on the Policy Statement for examining the specific allegations of I&E’s investigation and determining whether the Settlement terms appropriately resolve those allegations. DPI Motion to Strike Zimmerman Comments at 6 (citing Zimmerman Comments at 4). Further, Discount contends that an event that allegedly occurred outside of the timeframe of the investigation has no bearing on the factors indicated by the Policy Statement and, if subsequent events were considered, Mr. Zimmerman’s alleged receipt of a telemarketing call from the Company after the timeframe of the investigation would not impact the seriousness of the alleged violations, nor would it alter the Company’s prior compliance history or the fact that Discount cooperated with I&E’s investigation. *Id.*

Discount also asserts that, if the Commission were to delay its review and disposition of the Settlement based on an allegation of one telemarketing call received from an unspecified source after the time period investigated by I&E, then the Company’s fundamental rights of due process would be violated. Discount adds that the Company, as a licensed EGS, entered into the Settlement with I&E based on a business decision to focus on its operations and resolve I&E’s investigation. DPI Motion to Strike Zimmerman Comments at 7.

Additionally, Discount argues that, Mr. Zimmerman’s reliance on an alleged telemarketing call from an unspecified source to conclude that several customers will fall victim to a larger telemarketing campaign is improper. DPI Motion to Strike Zimmerman Comments at 7 (citing Zimmerman Comments at 4). Discount references two prior Commission cases to argue that Mr. Zimmerman, as an individual consumer, may not assert complaints on behalf of other customers.[[10]](#footnote-10) Discount adds that, to the extent that Mr. Zimmerman desires to follow-up on the alleged telemarketing call, such a follow-up should occur through a separate proceeding. *Id.* at 7-8.

Discount also challenges that Mr. Zimmerman’s allegation against the Company of continuing misconduct which necessitates further investigation is inconsistent with the provisions of the Settlement which, *inter alia*, recognize that Discount admitted no wrongdoing. DPI Motion to Strike Zimmerman Comments at 8 (citing Zimmerman Comments at 4; Settlement at ¶¶ 43-44, 56). Further, Discount notes that, by issuing the *October 2021 Order*,the Commission did not invite interested parties to request relief by holding the Settlement in abeyance and directing additional investigation of the Company. *Id.* at 9 (citing *October 2021 Order* at 10). Moreover, Discount contends that, although the Commission may refer matters to I&E for action that is appropriate in the I&E’s discretion, the Commission may not direct I&E to conduct a further investigation of the Company. Discount explains that, in compliance with *Lyness v. Commonwealth of Pennsylvania*, 529 Pa. 535, 605 A.2d 1204 (1992) (*Lyness*), the Commission adopted a policy which eliminated the potential for Commission-level involvement in the initiation of prosecutions and investigations, adding that Section 308.2(b) of the Code provides that Commission employees may not mix such functions. *Id.* at 9-10 (citing *Lyness; LP Water & Sewer Company v. Pa. PUC*, 722 A.2d 733, 736 (1998); *Implementation of Act 129 of 2008*; *Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 3-5; 66 Pa.C.S. § 308.2(b)).

1. **Disposition of Discount’s Motions to Strike Filed Comments**

Upon review, we will deny Discount’s Motions to Strike PPL’s Comments and Mr. Zimmerman’s Comments. In its Answer to Discount’s Motion to Strike PPL’s Comments, PPL argues that, for the purpose of filing comments in Commission proceedings, interested parties do not need to have legal standing. PPL asserts that its Comments on the proposed Settlement are permitted because the *October 2021 Order* solicited comments from interested parties and, given that the underlying claims in this case involve a PPL customer and Discount is licensed to operate in PPL’s service territory, PPL is an interested party and, therefore, its Comments are permitted. PPL Answer at 3-4. We agree with PPL’s reasoning. Where the Commission invites the opportunity for interested parties to file comments regarding a proposed settlement, the Commission is free to consider such comments and the legal standard for “standing” to participate in a proceeding is not applicable. Therefore, the Commission is free to consider the filed Comments regarding the proposed Settlement, as provided with the *October 2021 Order*. Furthermore, given that Discount is licensed by the Commission to operate in PPL’s service territory and the potential exists for PPL’s customers to be impacted by the deceptive practices being addressed in this proceeding, PPL’s perspective is informative to the Commission. Therefore, we shall deny Discount’s Motion to Strike PPL’s Comments and, accordingly, we will review and consider the Comments filed by PPL.

Regarding Discount’s Motion to Strike Mr. Zimmerman’s Comments, although we note that Discount raises valid arguments, those arguments pertain to the weight we should afford those Comments rather than persuading us to strike Mr. Zimmerman’s Comments. Therefore, to ensure that important questions raised by Discount’s conduct are fully considered, we will review and consider the Comments filed by Mr. Zimmerman. Accordingly, we shall deny Discount’s Motion to Strike Mr. Zimmerman’s Comments.

**C. Disposition of Comments Filed in Response to the *October 2021 Order***

Upon review of the Comments filed in response to the *October 2021 Order*, we are unpersuaded to modify the proposed Settlement. PPL recommends that the Company be required to: (1) certify that all of its agents have been trained on the rules and regulations of retail competition; (2) retain records of customer inquiries, complaints, communications, and resolutions for a minimum of four years; (3) respond to customer inquiries within forty-eight hours; and (4) regularly conduct audits of its vendors to determine compliance with Section 111. PPL Comments at 6-8. We decline to modify the Settlement to require such measures. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Here, I&E asserts that the concerns raised by Discount’s conduct are adequately addressed by the Company’s agreement to: (1) improve Discount’s system of tracking and identifying of customer service issues or complaints with a common theme; and (2) provide an efficient and more direct response to a customer’s complaint. Moreover, I&E is satisfied that the remedial measures in the Settlement: (1) will allow Discount to better identify and address telemarketing and/or billing issues; and (2) will provide I&E with more information to successfully complete a future investigation, if necessary. I&E Statement in Support at 8-9. We agree. Therefore, under the circumstances in this case, we are not inclined to disturb the proposed Settlement based on PPL’s proposed requirements.

Regarding Mr. Zimmerman’s Comments, we agree with the Company that, to the extent that Mr. Zimmerman asserts conduct by Discount outside of the scope of this proceeding (i.e., after the time period that was the focus of I&E’s investigation), Mr. Zimmerman’s Comments do not assert a basis to deny the Settlement. Further, we note that the personal experience of customers, as expressed in filed comments, is helpful towards informing our review of the matters under consideration in a proposed settlement. However, in the instant case, while the Comments filed by Mr. Zimmerman are helpful, they do not persuade us that any modification to the proposed Settlement is necessary under the circumstances. Moreover, Mr. Zimmerman’s Comments do not persuade us that the proposed Settlement is unreasonable or should be denied.

**D. Analysis of Policy Statement Factors**

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id*.

The alleged violations against Discount relate to: (1) a telemarketing call received by the Director of OCMO; (2) several informal complaints regarding unauthorized enrollments; (3) insufficient record keeping; and (4) solicitation of individuals who are on the Do Not Call list. Settlement at ¶¶ 28, 30, 36-41. I&E asserted that the conduct considered in determining the civil penalty amount involved misrepresentation and administrative or technical errors. I&E elaborated that the telemarketing calls are an example of misrepresentation and the unauthorized enrollments are the result of a mistake, an “account/information mix-up”, or Discount’s lack of knowledge regarding the customer’s capacity or authorization status. I&E Statement in Support at 7-8. Discount noted the importance of ensuring that Pennsylvania consumers trust the electric choice program and are protected as program participants. DPI Statement in Support at 4-5. We find that the conduct involved – the telemarketing call, unauthorized enrollments, insufficient record keeping and unsolicited calls to individuals on the Do Not Call list – were the result of less egregious conduct and, accordingly, we find the proposed penalty to be fair and reasonable given the circumstances.

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Here, I&E submitted that no personal injury or property damage resulted from the alleged violations. I&E Statement in Support at 8. Accordingly, this factor does not warrant a higher penalty.

The third factor is “[w]hether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(3). The third factor pertains to litigated cases only. *Id.* Because this proceeding was settled prior to the filing of a complaint by I&E, this factor is not applicable to this Settlement.

The fourth factor is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, I&E noted that Discount agreed to make changes to its customer service system, thereby providing the Company with an improved system for tracking and identifying issues or complaints with a common theme. Accordingly, I&E continued, Discount will be able to better identify and address telemarketing and/or billing issues and provide I&E with more information in the event of a future I&E investigation. I&E Statement in Support at 8-9. Discount added that, to improve the Company’s overall operations, Discount has agreed to: (1) train its customer service agents on the Company’s new complaint tracking system; and (2) promptly process and investigate customer inquiries, disputes, and complaints. DPI Statement in Support at 5. Therefore, we conclude that Discount’s corrective measures support a lower civil penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In calculating the civil penalty, I&E noted that it considered 37 substantiated customer complaints, between 2019 and May 2021, comprised of: (1) misrepresentation; (2) incorrect rates; (3) failure to cancel an account upon request; (4) failure to issue renewal letters; (5) unauthorized enrollments; and (6) seven complaints related to calling individuals on the Do Not Call list. Further, I&E noted that the Director of OCMO’s account was successfully enrolled with Discount. Moreover, I&E stated that, due to the Company’s lack of record keeping, I&E was unable to fully investigate all customer complaints provided by Discount and the Commission’s Bureau of Consumer Services. I&E Statement in Support at 9. Discount referenced the number of residential customers shopping for electricity to note that the number of affected customers is relatively small.[[11]](#footnote-11) DPI Statement in Support at 6. Given these considerations, we find the proposed penalty to be fair and reasonable.

We may also consider the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.*  Here, I&E asserted that, although it is not aware of any formal complaint being filed against Discount, between March 2016 and July 2020, approximately eight (8) customers have filed formal complaints with the Commission against Discount related to incorrect billing, unauthorized enrollment, and fraudulent or deceptive marketing.[[12]](#footnote-12) I&E Statement in Support at 9. Accordingly, we find that the penalty does not warrant further consideration regarding this factor.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, Discount fully cooperated during the investigation, including in the informal discovery process and the settlement process. I&E Statement in Support at 10. Therefore, we find this factor leans toward a lower penalty.

In addition, we may consider the amount of the civil penalty or fine necessary to deter future violations, as well as past Commission decisions in similar situations. 52 Pa. Code §§ 69.1201(c)(8) and (c)(9). I&E submitted that the civil penalty amount, which is not tax deductible, is substantial and sufficient to deter Discount from committing future violations. I&E Statement in Support at 10. Discount referend *Pa. PUC, Bureau of Investigation and Enforcement v. American Power & Gas of Pennsylvania, LLC*, Docket No. M-2017-2508002 (Order entered June 14, 2018) to submit that the civil penalty amount is consistent with fines previously approved by the Commission. DPI Statement in Support at 6-7. Regarding past Commission decisions, I&E submitted that there are no past Commission decisions that are identical to the instant matter. However, I&E referenced several prior Commission decisions which provide guidance on how the Commission has regarded prior settlement agreements with similar deceptive and misleading conduct.[[13]](#footnote-13) I&E Statement in Support at 10-11. Considering the terms of the Settlement, we agree and find that the proposed civil penalty will help deter future violations and presents a fair and reasonable outcome.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). Relevant to our consideration of the Settlement, we note that among other terms, the Parties have agreed to the following condition: that, within six (6) months of the date that this Opinion and Order becomes final, Discount shall file a letter with the Commission stating its compliance with the remedial measures described in Paragraph No. 47 of the Settlement between the Company and I&E. Settlement at ¶ 48. We weigh the Company’s voluntary compliance as a relevant factor in favor of our adoption of the Settlement. Our decision to adopt the proposed Settlement is made in view of the Company’s voluntary agreement to both rectify its conduct and report on its compliance with the terms of the Settlement within the time period proscribed. We note that if the Company fails to comply with the express terms of the Settlement, including the voluntary reporting of compliance, such failure will be viewed as egregious conduct warranting enforcement action.

Finally, as asserted by the Parties, we agree that it is in the public interest to settle this matter, so as to avoid the expense of litigation, and conserve administrative and judicial resources.

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

**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, the Commission’s Regulations and policy statements, as well as the foregoing discussion, we find that the proposed Settlement between the Commission’s Bureau of Investigation and Enforcement and Discount Power, Inc. is in the public interest and merits approval. Additionally, based on the foregoing discussion, we shall deny Discount Power, Inc.’s Motions to Strike the Comments of PPL Electric Utilities Corporation and the Comments of Michael Zimmerman. Accordingly, we will approve the Settlement, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion to Strike PPL’s Comments, filed by Discount Power, Inc. (hereinafter referred to as “Discount”) on December 20, 2021, is denied, consistent with this Opinion and Order.
2. That the Motion to Strike Michael Zimmerman’s Comments, filed by Discount on December 21, 2021, is denied, consistent with this Opinion and Order.
3. That the Joint Petition for Approval of Settlement between the Commission’s Bureau of Investigation and Enforcement (hereinafter referred to as I&E) and Discount, filed on August 27, 2021, at Docket No. M‑2020‑3022658, is approved in its entirety, without modification.
4. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the entry of this Opinion and Order, Discount shall remit a civil penalty of Forty-Two Thousand Two Hundred Fifty Dollars ($42,250). Said payment shall be made by certified check or money order and 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. That within six (6) months of the date that this Opinion and Order becomes final, Discount shall file a letter with the Commission stating its compliance with the remedial measures described in Paragraph No. 47 of the Joint Petition for Approval of Settlement between I&E and Discount.
2. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.
3. That, after Discount remits the civil penalty as set forth in Ordering Paragraph No. 4, above, or upon the receipt of the civil penalty and upon Discount’s compliance with Ordering Paragraph No. 5, above, the Secretary’s Bureau shall mark this proceeding closed.

**A picture containing letter

Description automatically generatedBY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 24, 2022

ORDER ENTERED: February 24, 2022

1. Discount is licensed by the Commission, at Docket No. A-2012-2328004, to operate in the following electric distribution company (EDC) service territories of Pennsylvania: (1) PECO Energy Company (PECO); (2) Duquesne Light Company (Duquesne); (3) Metropolitan Edison Company (Met-Ed); (4) Pennsylvania Electric Company (Penelec); and (5) PPL. Settlement at ¶ 7. [↑](#footnote-ref-1)
2. Although Mr. Zimmerman’s Comments were filed on December 9, 2021, the *October 2021 Order* indicated that comments on the proposed Joint Settlement were due on or before December 8, 2021. Consequently, while we acknowledge that Mr. Zimmerman’s Comments were not timely filed, we will consider them in order to secure a just, speedy and inexpensive determination in this proceeding, particularly as Mr. Zimmerman is appearing *pro se* in this proceeding. 52 Pa. Code § 1.2(a),(d). [↑](#footnote-ref-2)
3. On December 23, 2021, I&E filed a letter advising the Parties and the Commission, *inter alia*, that I&E will not be submitting an answer or other response pleading with regard to Discount’s Motions to Strike. [↑](#footnote-ref-3)
4. The Director’s telephone number is on the Do Not Call registry. Settlement at ¶¶ 23, 28. [↑](#footnote-ref-4)
5. To protect the identity and confidential nature of the complainants, I&E and Discount have agreed to remove any identifying information from the allegations. Settlement at ¶ 30. [↑](#footnote-ref-5)
6. *Pa. PUC, Bureau of Investigation and Enforcement v. Verde Energy USA, Inc.*,Docket No.C-2020-3017229 (Order entered October 26, 2021) (*Verde Energy*); *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021* (P‑2016‑2526627); *Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period June 1, 2021 Through May 31, 2025* (P‑2020‑3019356). [↑](#footnote-ref-6)
7. Mr. Zimmerman notes that the call he received on December 6, 2021, was in addition to a telemarketing call he received from Discount that was the subject of a prior, separate formal complaint. Zimmerman Comments at 2 (citing *Michael Zimmerman v. Discount Power, Inc.*, Docket No. C-2020-3021020, Certificate of Satisfaction filed February 5, 2021) (*Zimmerman 2021*). [↑](#footnote-ref-7)
8. Mr. Zimmerman states that, although the owner of the spoofed number authorized the sharing of their name and contact information with Commission investigators, he is withholding the spoofed number to protect the owner’s privacy. Mr. Zimmerman adds that, on a confidential basis and upon request, he will provide the name and contact information of the owner of the spoofed number. Zimmerman Comments at 2. [↑](#footnote-ref-8)
9. *Petition of Morris-Rospond Associates for Declaratory Order*, 1986 Pa. PUC LEXIS 127 (Tentative Decision March 11, 1986) (*Morris-Rospond*); *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, 1999 Pa. PUC LEXIS 86 (Order entered November 4, 1999) (*Bell Atlantic and GTE*). [↑](#footnote-ref-9)
10. *C Leslie* *Pettko v. Pennsylvania American Water Company*, Docket No. C‑2011-2226096 (Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings, dated October 5, 2011) at 6; *Walter Painter and Donna Painter v. Aqua Pennsylvania, Inc.*, Docket No. C-2011-2239556 (Order entered May 22, 2014) at 2. [↑](#footnote-ref-10)
11. Specifically, Discount stated that, as of July 2021, 1,356,861 residential customers are shopping for electricity. DPI Statement in Support at 6 (citing https://www.papowerswitch.com/media/l1cftejy/paps\_numbers073121.pdf). [↑](#footnote-ref-11)
12. I&E noted that, in *Zimmerman 2021*, multiple misrepresentations during a telemarketing call were similarly alleged. I&E Statement in Support at 9-10. [↑](#footnote-ref-12)
13. *Pa. PUC v. ResCom Energy LLC*,Docket No.M-2013-2320112 (Order entered November 13, 2014), in which the Commission approved a settlement imposing a civil penalty of $59,000 to resolve allegations of: (1) slamming; (2) unauthorized marketing practices; and (3) Do Not Call violations, which resulted from 13 complaints comprising 49 potential violations and no practical means to accurately determine the amount of violations; *Pa. PUC v. AP Gas & Electric (PA), LLC, d/b/a APG&E*,Docket No. M-2013-2311811 (Order entered October 17, 2013), in which the Commission approved a settlement imposing a civil penalty of $43,200 to resolve allegations of: (1) slamming; (2) unauthorized marketing practices; and (3) Do Not Call violations, which resulted from 37 complaints comprising 54 potential violations; *Pa. PUC v. IDT Energy, Inc.*,Docket No. M-2013-2314312 (Order entered October 17, 2013), in which the Commission approved a settlement imposing a civil penalty of $39,000 to resolve allegations of: (1) slamming; (2) fraudulent, deceptive, or unlawful sales and marketing practices; and (3) Do Not Call violations which resulted from 21 complaints comprising 39 potential violations. I&E Statement in Support at 10-11. [↑](#footnote-ref-13)