

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

M-2022-2633098

v.

National Gas & Electric, LLC

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement Agreement or Joint Petition), filed on August 29, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and National Gas & Electric, LLC (NG&E or the Company) (collectively the Parties), with respect to an informal investigation conducted by I&E. The Joint Petition contains terms and conditions representing a comprehensive settlement, along with Statements in Support of the

Settlement Agreement (Statements in Support), regarding an Informal Investigation that I&E conducted. Both Parties submit that the proposed Settlement Agreement is in the public interest and is consistent with our 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). Settlement Agreement at ¶ 41. Before issuing a final decision on the merits of the proposed Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we shall publish the Settlement in the *Pennsylvania Bulletin* and provide an opportunity for interested parties to file comments regarding the proposed Settlement.<sup>1</sup>

### **I. History of the Proceeding**

This matter concerns an informal investigation initiated by I&E based on a referral from the Commission’s Office of Competitive Market Oversight (OCMO) regarding six informal complaints made by NG&E’s customers. OCMO alleged that the complaints reflected the possibility that customers were being charged more than the rate they contracted for with NG&E or that they were being enrolled without proper authorization.

To ensure that customers were being properly enrolled and that the Company was abiding by Commission Regulations and relevant statutes, I&E initiated an informal investigation requesting, *inter alia*, that NG&E provide copies of all third-party verifications (TPV) recorded by the Company and/or its agent(s) within the six-month time period from April 2019 to October 2019. Through its informal investigation, I&E concluded that sufficient data had been gathered to substantiate alleged violations of the Commission’s Regulations in connection with the TPVs recorded by NG&E and/or its agents. Namely, I&E alleged that NG&E and/or its agents: (1) engaged in slamming by

---

<sup>1</sup> As discussed, *infra*, due to the nature of the alleged violations in this matter, it is appropriate to publish the Settlement in the *Pennsylvania Bulletin*.

failing to obtain direct oral confirmation or written authorization from certain customers to change their electric generation supplier (EGS), which resulted in physically switching the EGS of those accounts without the proper authorization of the customers or without proper verification in violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171-179, and 111.12(d)(1) (multiple counts); (2) engaged in fraudulent, deceptive, or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers in violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts); (3) entered into sales agreements or changed the commodity providers for a consumer that was not personally accepted by the electric distribution company (EDC) Customer of Record in violation of 52 Pa. Code § 57.175 (two counts); and (4) failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process in violation of 52 Pa. Code § 111.7(b)(2) (five counts). I&E noted that while the source of the above violations appeared to have been the result of actions by NG&E's third-party vendor, Commission precedent holds the licensed entity responsible for the actions of its employees, agents, vendors, or contractors. *See* 52 Pa. Code § 54.43(f). I&E Statement in Support at 2-3.

The Parties entered into negotiations and agreed to resolve these matters in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. Settlement Agreement at 3. The Parties filed the instant Settlement Agreement on August 29, 2022.

## **II. Background**

### **A. Informal Complaints and I&E Informal Investigation**

As noted above, the basis for the instant Settlement resulted from six informal complaints made by NG&E's customers, which OCMO referred to I&E for an

informal investigation. OCMO stated that the complaints reflected the possibility that NG&E's customers were being charged more than the rate they contracted for or that they were enrolled without proper authorization. In addition, OCMO reported to I&E that the Commission's Bureau of Consumer Services (BCS) was in possession of similar informal complaints, which were filed against NG&E, that were awaiting response from the Company. Settlement Agreement at ¶¶ 14-16.

As a result, I&E opened an informal investigation and issued Data Requests to NG&E regarding the informal complaints.<sup>2</sup> In response to I&E's Data Requests – Sets I and II, NG&E reported that it received approximately fifty-one (51) informal complaints between 2017 and 2019. The Company represented that it received forty-two of these complaints from BCS and that the remaining nine complaints came directly from its customers. The Company continued that of these fifty-one (51) total informal complaints, sixteen related to billing complaints about incorrect rates, nine alleged high bills, six related to customers not receiving notifications for changes to their rate and/or bill, and twenty of the complaints related to enrollment disputes. The Company admitted to overbilling fifteen (15) customers and invalidly enrolling one customer, but asserted that such customers had been refunded. As to the remaining thirty-five (35) complaints, NG&E alleged that they were unfounded but that the Company issued courtesy refunds to those customers who submitted complaints. Settlement Agreement at ¶¶ 17-20.

To ensure that NG&E's customers were being properly enrolled and that the Company was abiding by Commission Regulations and relevant statutes, I&E requested, by way of I&E Data Requests – Set III, that NG&E provide copies of all the TPVs recorded by the Company and/or its agent(s) within the six-month time period from April 2019 to October 29, 2019. In response, NG&E provided I&E with approximately 907 recordings of TPVs completed from May 5, 2019 to September 16, 2019. NG&E

---

<sup>2</sup> The exact commencement date of I&E's informal investigation is not specified in the Settlement Agreement.

reported that the TPVs were conducted by TPV.com, the company NG&E contracted for TPV services. Settlement Agreement at ¶¶ 21-22.

## **B. Alleged Violations**

Based on its informal investigation, I&E concluded that NG&E and/or its third-party vendor, TPV.com, engaged in six unauthorized customer enrollments, four instances of fraudulent, deceptive, or otherwise unlawful marketing and sales practices, two instances of an unauthorized person acting on behalf of a customer, and five instances where the verification process was not separated from the transaction process.<sup>3</sup> Settlement Agreement at ¶¶ 23-26.

If this matter had been litigated, I&E was prepared to allege in a Formal Complaint that NG&E violated certain provisions of our Regulations and the Pennsylvania Public Utility Code (Code). Specifically, I&E would have asserted that NG&E violated our Regulations at 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171-179, and 111.12(d)(1) in that the Company and/or its agents failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification. Second, I&E would have contended that NG&E violated Sections 54.43(f), 54.122(3), and 111.12(d)(1) of our Regulations in that the Company and/or its agents engaged in fraudulent, deceptive, or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers. Third, I&E would have asserted that NG&E violated Section 57.175 of our Regulations in that the Company and/or its agents entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC customer of record. Finally, I&E would have averred that NG&E violated Section 111.7(b)(2) of our Regulations in that the Company and/or

---

<sup>3</sup> These alleged violations occurred from September 13, 2019 through September 16, 2019. Settlement Agreement at ¶ 23, n.2.

its agents failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process. Settlement Agreement at ¶ 27.

On the other hand, if this matter had been litigated, NG&E was prepared to represent that, other than as set forth in Paragraph 20 of the Settlement Agreement, wherein it alleged that thirty-five of the complaints were unfounded, it did not dispute I&E's allegations and fully acknowledged the seriousness of the allegations as well as the need to prevent their occurrence or reoccurrence. Settlement Agreement at ¶ 31.

As a result of negotiations, the Parties entered into the proposed Settlement Agreement, which is attached to this Opinion and Order, to resolve their differences. The Parties assert that the proposed Settlement Agreement is in the public interest and should, therefore, be approved by the Commission. Settlement Agreement at ¶ 13. I&E submits that NG&E fully cooperated with its investigation by fully complying with I&E's requests for information and documentation and by timely providing I&E with records, correspondences, and other documents, as requested. *Id.* at ¶ 29.

### **III. Terms of the Settlement<sup>4</sup>**

The Parties state that the purpose of the Settlement is to terminate I&E's informal investigation and settle this matter completely without litigation. Both Parties jointly acknowledge that approval of the Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201. Moreover, the Parties agree that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, travel

---

<sup>4</sup> Pages 8 through 16 of the Settlement Agreement set forth the full Settlement Terms and Conditions.

for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Settlement Agreement at ¶¶ 30, 35.

The essential terms of the Joint Settlement are set forth in Paragraph No. 32 of the Joint Petition, which is recited in full, below, as it appears in the Joint Petition:

32. I&E and NG&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:
  - A. NG&E will pay a civil penalty in the amount of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00), broken down as follows:
    - i. A civil penalty of One Thousand Dollars (\$1,000) for each of the six (6) unauthorized customer enrollments, totaling Six Thousand Dollars (\$6,000);
    - ii. A civil penalty of One Thousand Dollars (\$1,000) for each of the four (4) instances of deceptive marketing and sales practices, totaling Four Thousand Dollars (\$4,000);
    - iii. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the two (2) instances of an unauthorized person acting on behalf of a customer, totaling One Thousand Five Hundred Dollars (\$1,500); and
    - iv. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the five (5) instances where the verification process was not separated from the transaction process, totaling Three

Thousand Seven Hundred and Fifty Dollars (\$3,750).

Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to NG&E) within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement.

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) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

- B. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process. The pertinent portions of NG&E's modified procedures are briefly described as follows:
  - i. NG&E will provide I&E staff with a monthly report of the number of customer complaints received by the Company directly from customers in Pennsylvania related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agent. The report will categorize the complaints by type of allegation



(*i.e.*, unauthorized enrollment, deceptive marketing/sales, charged incorrect rate, *etc.*) and the form of marketing utilized by the Company (*i.e.*, door-to-door, telemarketing, mailing, other). The report will be provided to I&E staff by the 15th of each month containing the customer complaint data from the previous month. This requirement will remain in effect for one (1) year after the entry of a Commission final order in this matter and may be extended at the discretion of I&E staff.

- ii. For each customer identified in I&E's informal investigation that was invalidly enrolled with NG&E, the Company will provide a refund equal to that customer's first two (2) months of EGS charges pursuant to 52 Pa. Code § 57.177(b). NG&E will issue the customer refunds within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NG&E will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.
- iii. NG&E will provide training to all marketing and sales persons on conducting a no-pressure sales call and enforcing the concept that a customer is not required to choose a supplier or switch suppliers.
- iv. NG&E shall add the following questions to all TPVs, whether via live agent or an interactive voice response system:

1. Do you understand that NG&E is not your electric utility?
  2. Do you understand that you are not required to switch to NG&E in order to continue receiving electric service?
  3. Does your name appear on the electric bill?
- v. NG&E and its agents will commit to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. If the consumer answers that his/her name does not appear on the electric bill, NG&E and its agents shall first request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, NG&E and its agents shall then request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account. If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.
- vi. NG&E and its agents shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the presence of the NG&E sales representative. The NG&E in-person sales representative shall leave the premises during the TPV in

accordance with the Commission's regulations.

- vii. NG&E and its agents shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.
- viii. As part of the quality assurance process, NG&E and its agents shall be instructed to reject an enrollment, even if it had cleared TPV, if the customer sounded uncertain, confused, or suspicious in any way.

Settlement Agreement at ¶ 32.

The Parties state that the Joint Petition represents the Settlement Agreement in its entirety. In consideration of NG&E's agreement to pay a civil penalty and its compliance with the non-monetary terms of the Settlement Agreement, I&E agrees that its informal investigation relating to NG&E's conduct will be terminated and marked closed upon approval by the Commission of the Settlement Agreement, without modification, and receipt of the civil penalty. Settlement Agreement at ¶¶ 33, 36.

The proposed Settlement Agreement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission rejects the proposed Settlement Agreement, or makes any change or modification thereto, either Party may elect to withdraw from the Settlement Agreement. Moreover, the Settlement Agreement represents a compromise of positions and does not constitute a finding of culpability or an admission concerning the alleged violations of the Code and the Commission's Regulations. Finally, the Parties present the Settlement Agreement without prejudice to any position that I&E or NG&E may advance in the future on the

merits of the issues in any future proceeding, except to the extent necessary to effectuate the terms and conditions of the Settlement Agreement. Settlement Agreement at ¶¶ 37-41.

#### IV. Discussion

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. However, the Commission must 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).

In reviewing settlements that resolve informal investigations, the Commission will provide other potentially affected parties with the opportunity to file comments regarding a proposed settlement prior to issuing a decision. The Commission's Regulations at 52 Pa. Code § 3.113(b) provide as follows:

##### **§ 3.113. Resolution of informal investigations.**

\* \* \*

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

\* \* \*

(3) When the utility, or other person subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except

for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. **Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.**

52 Pa. Code § 3.113(b) (emphasis added). *See also Pa. PUC, Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Order entered September 13, 2012); *Pa. PUC, Bureau of Investigation and Enforcement v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered August 8, 2019).

## V. Conclusion

Before issuing a decision on the merits of the proposed Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), and for the reason(s) stated above, we believe it is appropriate to publish the Settlement in the *Pennsylvania Bulletin*. Therefore, we will: (1) publish this Opinion and Order and a copy of the proposed Settlement and Statements in Support, attached hereto, in the *Pennsylvania Bulletin*; and (2) provide an opportunity for interested parties to file comments regarding the proposed Settlement within twenty-five days after the date of publication in the *Pennsylvania Bulletin*; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Secretary's Bureau shall duly certify this Opinion and Order along with the attached Joint Petition for Approval of Settlement and the

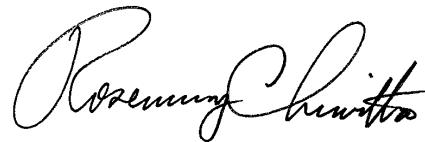
Statements in Support thereof, at Docket No. M-2022-2633098, and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. That within twenty-five (25) days after the date that this Opinion and Order and the attached Joint Petition for Approval of Settlement and the Statements in Support thereof are published in the *Pennsylvania Bulletin*, interested parties may file comments concerning the proposed Settlement.

3. That a copy of this Opinion and Order, together with the attached Joint Petition for Approval of Settlement and the Statements in Support thereof, at Docket No. M-2022-2633098, shall be served on the Office of Consumer Advocate and the Office of Small Business Advocate.

4. That, subsequent to the Commission's review of any comments filed in this proceeding, at Docket No. M-2022-2633098, a final Opinion and Order will be issued by the Commission.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

# **Attachment**



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

August 29, 2022

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
National Gas & Electric, LLC  
Docket No. M-2022-2633098  
**Joint Petition for Approval of Settlement**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B – the Bureau of Investigation and Enforcement’s Statement in Support; and (3) Appendix C – the Statement in Support of National Gas & Electric, LLC.

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

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

Sincerely,

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494  
(717) 705-4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

KLM/jfm  
Enclosure

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)  
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)  
As per Certificate of Service



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2022-2633098
	:	
National Gas & Electric, LLC	:	

---

**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

---

**TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and National Gas & Electric, LLC (“NG&E” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed informal investigation.

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

## I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, with offices at 400 North Street, Harrisburg, PA 17120 and National Gas & Electric, LLC, with its principal place of business at 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

2. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (the "Code"), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

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

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations, or

both. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s). 66 Pa.C.S. § 3301.

7. NG&E is a jurisdictional electric generation supplier ("EGS")<sup>1</sup> licensed by the Commission at Docket No. A-2015-2517744 to operate in all of the electric distribution company ("EDC") service territories throughout the Commonwealth of Pennsylvania.

8. NG&E, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Code, 66 Pa.C.S. § 102, for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.

9. NG&E, as a licensed provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey, and comply with the Commission's regulations and orders pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c).

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

11. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

12. I&E instituted an informal investigation of NG&E based on information

---

<sup>1</sup> "Electric generation supplier" is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 ("Competition Act"). *See also*, 52 Pa. Code § 57.171.

referred to I&E by the Commission's Office of Competitive Market Oversight ("OCMO"). The Director of OCMO notified I&E of six (6) informal complaints made by NG&E's customers regarding possible overcharges or unauthorized enrollments. I&E determined that these complaints warranted further investigation to examine whether the actions of NG&E violated Commission regulations and orders.

13. As a result of successful negotiations between I&E and NG&E, the Parties have reached an agreement on an appropriate outcome to the informal investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

## **II. BACKGROUND**

14. OCMO referred six (6) informal complaints made by NG&E's customers to I&E for an informal investigation.

15. According to OCMO, the complaints reflected the possibility that customers were being charged more than the rate they contracted for with NG&E or enrolled without proper authorization.

16. OCMO also reported to I&E that the Commission's Bureau of Consumer Services ("BCS") was in possession of similar informal complaints, which were filed against NG&E, that were awaiting response from the Company.

17. Through NG&E's responses to I&E's Data Requests – Sets I and II, NG&E reported that it received approximately fifty-one (51) informal complaints from 2017-2019. The Company reported that it received forty-two (42) of these complaints from BCS and that the remaining nine (9) complaints came directly from its customers.

18. Of the fifty-one (51) total informal complaints, sixteen (16) related to billing complaints about incorrect rates, nine (9) alleged high bills, six (6) related to customers not receiving notifications for changes to their rate and/or bill, and twenty (20) of the complaints related to enrollment disputes.

19. In its responses to I&E's Data Requests, the Company admitted to overbilling fifteen (15) customers and invalidly enrolling one (1) customer but reported that such customers had been refunded.

20. NG&E alleged that the remaining thirty-five (35) complaints were unfounded, but that the Company issued courtesy refunds to those customers who submitted complaints.

21. To ensure that customers were being properly enrolled and that the Company was abiding by Commission regulations and relevant statutes, I&E requested, by way of I&E Data Requests – Set III, that NG&E provide copies of all the third-party verifications ("TPV") recorded by the Company and/or its agent(s) within the six (6) month time period from April 2019 to October 29, 2019.

22. In response, NG&E provided I&E with approximately 907 recordings of TPVs completed from May 5, 2019 to September 16, 2019. NG&E reported that the TPVs were conducted by TPV.com, the company NG&E contracted for TPV services.

23. Through these recordings, I&E asserted that NG&E and/or its third-party

vendor, TPV.com, engaged in six (6) unauthorized customer enrollments, four (4) instances of deceptive marketing and sales practices, two (2) instances of an unauthorized person acting on behalf of a customer, and five (5) instances where the verification process was not separated from the transaction process.<sup>2</sup>

### **III. ALLEGED VIOLATIONS**

24. I&E concluded from its investigation that NG&E<sup>3</sup> violated provisions of Chapter 54 of the Pennsylvania Code concerning Electricity Generation Customer Choice, 52 Pa. Code §§ 54.1, *et seq.*, with regard to the six (6) instances of switching the EGS of an account without the proper authorization of the consumer or without proper verification and the four (4) instances of fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services.

25. I&E determined from its investigation that NG&E<sup>4</sup> violated provisions of Chapter 57 of the Pennsylvania Code concerning the Standards for Changing a Customer's Electricity Generation Supplier, 52 Pa. Code §§ 57.171-180, regarding the six (6) instances of switching the EGS of an account without the proper authorization of the consumer or without proper verification and the two (2) instances of entering into a sales agreement or changing the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record.

26. I&E also concluded that NG&E<sup>5</sup> violated provisions of Chapter 111 of the Pennsylvania Code concerning the Marketing and Sales Practices for the Retail Residential

---

<sup>2</sup> These alleged violations occurred from September 13, 2019 through September 16, 2019.

<sup>3</sup> NG&E is responsible for the actions of its agents pursuant to the Commission's regulations. *See* 52 Pa. Code §§ 54.43(f) and 111.3(b).

<sup>4</sup> *See supra* note 3.

<sup>5</sup> *See supra* note 3.

Energy Market, 52 Pa. Code §§ 111.1-14, with regard to the six (6) instances of switching the EGS of an account without the proper authorization of the consumer or without proper verification, the four (4) instances of fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services, and the five (5) instances of initiating the verification process before finalizing transaction process.

27. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations and relevant statutes, I&E was prepared to contend by the filing of a formal complaint that NG&E committed the following violations:

A. NG&E failed to comply with the Commission's regulations at 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171-179, and 111.12(d)(1) in that the Company and/or its agents failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification.

If proven, this would be a violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171-179, and 111.12(d)(1) (multiple counts).

B. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § §§ 54.43(f), 54.122(3), and 111.12(d)(1) in that the Company and/or its agents engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers.

If proven, this would be a violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts).

C. NG&E failed to comply with the Commission's regulations at 52 Pa.

Code § 57.175 in that the Company and/or its agents entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record.

If proven, this would be a violation of 52 Pa. Code § 57.175 (two counts).

D. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 111.7(b)(2) in that the Company and/or its agents failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process.

If proven, this would be a violation of 52 Pa. Code § 111.7(b)(2) (five counts).

28. NG&E understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges the errors of its agents, for whom NG&E is legally responsible, and has put into effect appropriate measures that have been approved by I&E to ensure that such issues would not be likely to reoccur.

29. As a mitigating factor to the above allegations, I&E acknowledges that NG&E fully cooperated with I&E's investigation. During the investigatory process, NG&E fully complied with I&E's requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E.

#### **IV. SETTLEMENT TERMS**

30. Pursuant to the Commission's policy of encouraging settlements that are



reasonable and in the public interest,<sup>6</sup> I&E and NG&E held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E's informal investigation and to settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident.

31. Other than as set forth in Paragraph 20 above, NG&E does not dispute I&E's allegations above and fully acknowledges the seriousness of those allegations as well as the need to prevent the occurrence or reoccurrence of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process.

32. I&E and NG&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. NG&E will pay a civil penalty in the amount of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00), broken down as follows:

- i. A civil penalty of One Thousand Dollars (\$1,000) for each of the six (6) unauthorized customer enrollments, totaling Six Thousand Dollars (\$6,000);

---

<sup>6</sup> See 52 Pa. Code § 5.231(a).

- ii. A civil penalty of One Thousand Dollars (\$1,000) for each of the four (4) instances of deceptive marketing and sales practices, totaling Four Thousand Dollars (\$4,000);
- iii. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the two (2) instances of an unauthorized person acting on behalf of a customer, totaling One Thousand Five Hundred Dollars (\$1,500); and
- iv. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the five (5) instances where the verification process was not separated from the transaction process, totaling Three Thousand Seven Hundred and Fifty Dollars (\$3,750).

Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to NG&E) within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement.

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) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process. The pertinent portions

of NG&E's modified procedures are briefly described as follows:

- i. NG&E will provide I&E staff with a monthly report of the number of customer complaints received by the Company directly from customers in Pennsylvania related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agent. The report will categorize the complaints by type of allegation (*i.e.*, unauthorized enrollment, deceptive marketing/sales, charged incorrect rate, *etc.*) and the form of marketing utilized by the Company (*i.e.*, door-to-door, telemarketing, mailing, other). The report will be provided to I&E staff by the 15th of each month containing the customer complaint data from the previous month. This requirement will remain in effect for one (1) year after the entry of a Commission final order in this matter and may be extended at the discretion of I&E staff.
- ii. For each customer identified in I&E's informal investigation that was invalidly enrolled with NG&E, the Company will provide a refund equal to that customer's first two (2) months of EGS charges pursuant to 52 Pa. Code § 57.177(b). NG&E will issue the customer refunds within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NG&E will file with the Commission a verification acknowledging

that all refund payments have been disbursed, satisfying this settlement provision.

- iii. NG&E will provide training to all marketing and sales persons on conducting a no-pressure sales call and enforcing the concept that a customer is not required to choose a supplier or switch suppliers.
- iv. NG&E shall add the following questions to all TPVs, whether via live agent or an interactive voice response system:
  - 1. Do you understand that NG&E is not your electric utility?
  - 2. Do you understand that you are not required to switch to NG&E in order to continue receiving electric service?
  - 3. Does your name appear on the electric bill?
- v. NG&E and its agents will commit to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. If the consumer answers that his/her name does not appear on the electric bill, NG&E and its agents shall first request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, NG&E and its agents shall then request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account.

If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.

- vi. NG&E and its agents shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the presence of the NG&E sales representative. The NG&E in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.
- vii. NG&E and its agents shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.
- viii. As part of the quality assurance process, NG&E and its agents shall be instructed to reject an enrollment, even if it had cleared TPV, if the customer sounded uncertain, confused, or suspicious in any way.

33. In consideration of NG&E's payment of a monetary civil penalty and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees that its informal investigation relating to NG&E's conduct as described in the Settlement Agreement shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification and receipt of the civil penalty.

34. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NG&E at the

Commission with respect to the allegations which were the subject of I&E's instant investigation.

35. I&E and NG&E jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and NG&E, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

**V. CONDITIONS OF SETTLEMENT**

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

37. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw

must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

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

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

40. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

41. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed


herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.


**WHEREFORE**, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and National Gas & Electric, LLC respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

National Gas & Electric, LLC

By:   
\_\_\_\_\_  
Kourtney L. Myers, Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
Harrisburg, PA 17120  
717.705.4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

By:   
\_\_\_\_\_  
Gary Lancaster, General Counsel  
National Gas & Electric, LLC  
12140 Wickchester Lane  
Suite 100  
Houston, TX 77079  
[glancaster@ngande.com](mailto:glancaster@ngande.com)

Date: August 29, 2022

Date: August 29, 2022



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement :  
 :  
v. : Docket No. M-2022-2633098  
 :  
National Gas & Electric, LLC :

**PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Petition for Approval of Settlement filed on August 29, 2022 between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and National Gas & Electric, LLC is approved in its entirety without modification.

2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, National Gas & Electric, LLC shall pay a civil penalty of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00). Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to National Gas & Electric, LLC).

3. That the civil penalty shall not be tax deductible nor passed through as an additional charge to National Gas and Electric, LLC’s customers in Pennsylvania.

4. Within thirty (30) days of the date this Order becomes final, National Gas & Electric, LLC shall provide to each of the customers, who were invalidly enrolled with National Gas & Electric, LLC, a refund equal to that customer’s first two (2) months of

electric generation supply charges pursuant to 52 Pa. Code § 57.177(b). Following payment of the refunds, National Gas & Electric, LLC shall file with the Commission a verification acknowledging that all refund payments have been disbursed.

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

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement :  
 :  
v. : Docket No. M-2022-2633098  
 :  
National Gas & Electric, LLC :

---

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

---

**TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and National Gas & Electric, LLC (“NG&E” or “Company”).<sup>1</sup> I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

---

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

## 1. Background

The Commission's Office of Competitive Market Oversight ("OCMO") initiated a referral to I&E regarding six (6) informal complaints made by NG&E's customers. According to OCMO, the complaints reflected the possibility that customers were being charged more than the rate they contracted for with NG&E or enrolled without proper authorization.

To ensure that customers were being properly enrolled and that the Company was abiding by Commission regulations and relevant statutes, I&E initiated an informal investigation requesting, *inter alia*, that NG&E provide copies of all third-party verifications ("TPV") recorded by the Company and/or its agent(s) within the six (6) month time period from April 2019 to October 29, 2019. In response, NG&E provided I&E with approximately 907 recordings of TPVs completed from May 5, 2019 to September 16, 2019.

I&E's informal investigation concluded that sufficient data had been gathered to substantiate alleged violations<sup>2</sup> of the Commission's regulations in connection with the TPVs recorded by NG&E and/or its agents. Specifically, I&E alleged that NG&E and/or its agents failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification (hereinafter referred to as "slamming") in violation of 52 Pa. Code §§ 54.42(a)(9),

---

<sup>2</sup> These alleged violations occurred from September 13, 2019 through September 16, 2019.

54.43(f), 54.122(3), 57.171-179, and 111.12(d)(1) (multiple counts), engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers in violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts), entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record in violation of 52 Pa. Code § 57.175 (two counts), and failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process in violation of 52 Pa. Code § 111.7(b)(2) (five counts).

While the source of the issue appears to have been the actions of NG&E's third-party vendor, Commission precedent holds the licensed entity responsible for the actions of its employees, agents, vendors, or contractors. *See* 52 Pa. Code § 54.43(f). In making a determination that the instant Settlement was appropriate, I&E weighed the Commission's clear "zero tolerance" policy regarding slamming against various mitigating circumstances that are present here.

Importantly, NG&E has been cooperative with I&E by identifying policies and procedures that can be further improved to assist NG&E in enhancing consumer protection and its marketing and sales practices and to satisfy the commitments that I&E has required in the settlement process. I&E also acknowledges that NG&E fully cooperated with I&E's investigation. NG&E responded to I&E's requests for information regarding the alleged violations and provided I&E with records,

correspondence, and other documents associated with such allegations. Moreover, I&E and NG&E actively explored the possibility of resolving this investigation.

On August 29, 2022, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and NG&E in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

**2. The Public Interest**

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation.

I&E intended to prove the factual allegations set forth in its investigation at hearing. This Settlement Agreement results from the compromises of the Parties. NG&E recognizes the concerns related to the unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiation of the verification process before finalizing the transaction process. NG&E commits to fully complying with the Commission's regulations in the future.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it provides for a number of relevant remedial measures as well as a civil

penalty. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

**3. Terms of Settlement**

Under the terms of the Settlement Agreement, I&E and NG&E have agreed to the following:

A. NG&E will pay a civil penalty in the amount of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00), broken down as follows:

i. A civil penalty of One Thousand Dollars (\$1,000) for each of the six (6) unauthorized customer enrollments, totaling Six Thousand Dollars (\$6,000);

ii. A civil penalty of One Thousand Dollars (\$1,000) for each of the four (4) instances of deceptive marketing and sales practices, totaling Four Thousand Dollars (\$4,000);

iii. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the two (2) instances of an unauthorized person acting on behalf of a customer, totaling One Thousand Five Hundred Dollars (\$1,500); and

iv. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the five (5) instances where the verification process was not separated from the transaction process, totaling Three Thousand Seven Hundred and Fifty Dollars (\$3,750).

Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of

Investigation and Enforcement to NG&E) within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement.

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) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process. The pertinent portions of NG&E's modified procedures are briefly described as follows:

- i. NG&E will provide I&E staff with a monthly report of the number of customer complaints received by the Company directly from customers in Pennsylvania related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agent. The report will categorize the complaints by type of allegation (*i.e.*, unauthorized enrollment, deceptive marketing/sales, charged incorrect rate, *etc.*) and the form of marketing utilized by the Company (*i.e.*, door-to-door, telemarketing, mailing, other). The report will be provided to I&E staff by the 15th of each month containing the customer complaint data from the previous month. This requirement will remain in effect for one (1) year



after the entry of a Commission final order in this matter and may be extended at the discretion of I&E staff.

ii. For each customer identified in I&E's informal investigation that was invalidly enrolled with NG&E, the Company will provide a refund equal to that customer's first two (2) months of EGS charges pursuant to 52 Pa. Code § 57.177(b). NG&E will issue the customer refunds within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NG&E will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.

iii. NG&E will provide training to all marketing and sales persons on conducting a no-pressure sales call and enforcing the concept that a customer is not required to choose a supplier or switch suppliers.

iv. NG&E shall add the following questions to all TPVs, whether via live agent or an interactive voice response system:

1. Do you understand that NG&E is not your electric utility?
2. Do you understand that you are not required to switch to NG&E in order to continue receiving electric service?
3. Does your name appear on the electric bill?

v. NG&E and its agents will commit to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally

accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. If the consumer answers that his/her name does not appear on the electric bill, NG&E and its agents shall first request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, NG&E and its agents shall then request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account. If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.

vi. NG&E and its agents shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the presence of the NG&E sales representative. The NG&E in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

vii. NG&E and its agents shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.

viii. As part of the quality assurance process, NG&E and its agents shall be instructed to reject an enrollment, even if it had cleared TPV, if the customer sounded uncertain, confused, or suspicious in any way.

In consideration of NG&E's payment of a monetary civil penalty and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees that its informal investigation relating to NG&E's conduct as described in the Settlement Agreement referenced herein shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification and receipt of the civil penalty.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NG&E at the Commission with respect to the allegations which were the subject of I&E's instant investigation.

#### **4. Legal Standard for Settlement Agreements**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E submits that the violations at issue in this matter are of a serious nature in that they involve allegations of slamming and deceptive marketing and sales practices. The Commission has stated that it maintains a "zero tolerance" policy

regarding slamming and unlawful activity that threatens to harm consumers and the burgeoning retail electricity market in Pennsylvania. *See Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, M-2012-2201861 (Order entered May 3, 2012). Consequently, the seriousness of these violations is reflected in the agreed-upon civil penalty set forth in the Settlement.

The second factor considers whether the resulting consequences of NG&E's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations. However, the consequences of the alleged violations may have resulted in customers, who received electric generation supplied by NG&E, being charged a more expensive rate than what they had been charged by the local electric distribution company's default service price or the rate of another EGS. Accordingly, I&E avers that some customers may have experienced financial consequences as a result of the actions of NG&E's agents and such consequences should be deemed serious. Nevertheless, under the Settlement, NG&E will provide a full refund for the entire electric generation supply portion on these customers' bills for the first two (2) months of EGS charges which will serve to alleviate these consequences.

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 NG&E’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether NG&E has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). NG&E has extensive practices and procedures in place to train agents, conduct quality assurance, and ensure the proper enrollment of customers. NG&E has also agreed to provide I&E with a monthly report by the 15<sup>th</sup> of each month, for a period of one (1) year, detailing complaints from Pennsylvania consumers that were received by the Company related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agents. Each of these remedial actions and commitments address the conduct at issue and are designed to enhance consumer protection and NG&E’s marketing and sales practices and prevent similar conduct from occurring again.

The fifth factor to be considered relates to the number of customers affected by the Company’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E’s investigation revealed that ten (10) customers were affected by NG&E’s misconduct. Specifically, six (6) customer accounts were switched to receive electric generation service provided by NG&E without proper authorization.

The sixth factor to be considered relates to the compliance history of NG&E. 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.*

In *Pa. Pub. Util. Comm'n v. National Gas & Electric, LLC*, Docket No. M-2020-2637688 (Order entered August 5, 2021), I&E initiated an investigation of NG&E regarding the Company's marketing material which improperly contained the confidential and personal information of a PPL Electric Utilities ("PPL") customer and was mailed to 90,634 prospective customers. The marketing material also contained information about PPL's default rate that was outdated by the time it reached 2,500 prospective customers. While the Company advised that such misconduct was due to the fault of its third-party vendor, I&E determined that NG&E failed to maintain the confidentiality of a consumer's personal information in violation of 52 Pa. Code § 54.43(d), misrepresented savings offered by NG&E in violation of 52 Pa. Code § 111.12(d)(2), provided inaccurate and untimely information about PPL's rates being offered in violation of 52 Pa. Code § 111.12(d)(4), and as a result of the marketing material that misrepresented savings with NG&E and provided inaccurate and untimely information about PPL's rates, customers were enrolled with NG&E in violation of 52 Pa. Code § 111.12(d)(1). *Id.* In this case, the Commission approved a settlement agreement ordering NG&E to pay a civil penalty of \$120,000 and a contribution into PPL's hardship fund in the amount of \$30,000. *Id.*

To date, I&E is not aware of any formal complaint being filed against NG&E regarding this matter. Other than the aforementioned matter involving NG&E, there have been no proceedings in which the Commission has made findings of violations against

NG&E. Therefore, I&E submits that the compliance history of the Company poses no barrier to approval of the Settlement between the Parties.

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 NG&E fully cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil penalty amount of \$15,250.00 is substantial and sufficient to deter NG&E from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Settlement Agreement between I&E and NG&E provides a civil penalty of \$1,000 for each instance of slamming and for each instance of deceptive marketing and sales practices. This \$1,000 per instance civil penalty is identical to the penalty imposed by the Commission in previous slamming cases and matters involving deceptive sales practices and misrepresentations committed by third-party agents. *See Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013), *Pa. Pub. Util. Comm'n 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), *Pa. Pub. Util. Comm'n v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered



November 13, 2014), and *Pa. Pub. Util. Comm'n v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered April 15, 2021).

Further, just as was the case in prior matters concerning slamming and deceptive sales practices, NG&E has since undertaken additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

**WHEREFORE**, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Myers', written in a cursive style.

Kourtney L. Myers  
Prosecutor  
Bureau of Investigation & Enforcement  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 705-4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: August 29, 2022

**APPENDIX C**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau	:	
of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. M-2022-2633098
v.	:	
	:	
National Gas & Electric, LLC	:	
Respondent	:	

---

**STATEMENT IN SUPPORT OF SETTLEMENT OF  
NATIONAL GAS & ELECTRIC, LLC**

---

Pursuant to 52 Pa. Code §§ 5.231, 5.232, and 69.1201, Respondent, National Gas & Electric, LLC (“NG&E” or the “Company”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and National Gas & Electric, LLC (“NG&E” or “Company”).<sup>1</sup> For the reasons set forth below, NG&E avers that the terms and conditions of the Settlement are just, reasonable, and in the public interest, and, therefore, should be approved by the Pennsylvania Public Utility Commission (“Commission”).

**I. BACKGROUND**

This Settlement provides for an expeditious resolution of a contested matter initiated by a referral from the Commission’s Office of Competitive Market Oversight (“OCMO”) to I&E regarding six (6) informal complaints made by NG&E. According to OCMO, the six complaints reflected the

---

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

possibility that NG&E's customers were charged more than the rate they contracted for with NG & E or were enrolled without proper authorization.

To ensure that customers were being properly enrolled by NG&E in accordance with pertinent Commission regulations and statutes, I&E initiated an informal investigation requesting, among other things, that NG&E provide copies of all third-party verifications ("TPV") recorded by the Company and/or its agent(s) within the six (6) month time period from April 2019 to October 29, 2019. In response, NG&E furnished I&E with approximately 907 recordings of TPVs that had completed from May 5, 2019 to September 16, 2019, and I&E determined that the six violations referenced herein occurred between September 13 – 16, 2019.

Specifically, I&E alleged that NG&E and/or its agents: (a) failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification (i.e., "slamming") in violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171-179, and 111.12(d)(1) (multiple counts); (b) engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers in violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts); (c) entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record in violation of 52 Pa. Code § 57.175 (two counts); and (d) failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process in violation of 52 Pa. Code § 111.7(b)(2) (five counts).

While the Commission recognizes that the actions that resulted in the violations detailed above were the actions of a third party vendor of NG&E, as the licensed entity privileged to engage in the retail energy business in the Commonwealth of Pennsylvania, NG&E acknowledges and accepts

responsibility for the actions of our employees, agents, contractors, and vendors *See* 52 Pa. Code § 54.43(f). In addition to acknowledging responsibility for the actions of its vendor, NG&E would also emphasize that, as further mitigating circumstances, NG&E provided I&E with records, correspondence, and other documentation responsive to I&E's requests; identified policies and procedures with respect to its marketing and sales practices in which NG&E could enhance consumer protection; and has otherwise fully cooperated with I&E throughout the investigation and settlement process.

Furthermore, NG&E would point that it has taken strong corrective action by implementing revisions to its training and operating procedures for not only its own employees, but by ensuring that the Company practices and procedures are adopted and uniformly observed by its contractors and third party vendors. NG&E and I&E both assert that this corrective action will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer and initiating the verification process before finalizing the transaction process.

## **II. THIS SETTLEMENT IS IN THE PUBLIC INTEREST**

The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard as would be utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R- 2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation*, M-2009- 2058182 (Order entered November 23, 2009); *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004); 52 Pa. Code §

69.1201; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

NG&E submits that approval of the Settlement in this matter is consistent with the Commission's Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"). 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission will not apply the standards as strictly in settled cases as in litigated cases. *Id.* at § 69.1201(b). In settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." *Id.* NG&E submits that the Settlement is in the public interest because it: (a) is a complete and final resolution of this proceeding; (b) effectively addresses the issues of concern to I&E; and (c) avoids the time and expense of litigation and possible appeals.

### **III. THIS SETTLEMENT AGREEMENT MEETS ALL LEGAL STANDARDS**

The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for an alleged violation is reasonable and in the public interest. 52 Pa. Code § 69.1201(a):

1. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Since the alleged violations pertained to slamming and other deceptive marketing and sales practices, NGE&E acknowledges that any such actions of NG&E's third party vendor would constitute serious violations as well as violation of Company practices and procedures. Accordingly, NG&E accepts responsibility for the actions of its vendors that prompted this investigation and

finding of six violations by I&E, and NG&E has taken affirmative action to ensure that these mistakes are not repeated.

2. The second factor considers whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code. § 69.1201(c)(2). Section 69.1201(c)(2) of the Commission's regulations state that "[w]hen consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* While no personal injury or property damage occurred as a result of the alleged violations, NG&E's electrical customers may have been charged a higher electricity rate than what they may have been charged by the local distribution company or by a competing supplier. To address this concern, NG&E has agreed to provide a full refund for the entire electric generation supply on the affected customers' bills for the first two (2) months of EGS charges under the terms of the Settlement.
3. 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). In this case the conduct was caused by the actions of the Company's third party vendor so the conduct of NG&E on this factor should not be applicable by virtue of the Settlement.
4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). NG&E already has extensive practices and procedures in place, but the Settlement outlines steps that the Company has agreed to undertake in regard to additional reporting and other remedial actions to address the conduct at issue in this investigation and to prevent the occurrence of similar conduct in the future.
5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code

§ 69.1201(c)(5). A total of ten (10) customers were affected by the improper conduct in this case and that six (6) accounts were switched to receive electric service without proper authorization.

6. The sixth factor to be considered under the Policy Statement is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant company may result in a lower penalty.” *Id.* In *Pa. Pub. Util. Comm’n v. National Gas & Electric, LLC*, Docket No. M-2020-2637688 (Order entered August 5, 2021), I&E initiated an investigation of NG&E regarding the Company’s marketing material which improperly contained the confidential and personal information of a PPL Electric Utilities (“PPL”) customer that was used in a postcard marketing campaign due to a mail merge error of its third party vendor which also failed to timely mail certain postcards, causing the rate savings to become outdated by the time it had received by about 2,500 prospective customers. In light of the civil penalties paid by NG& E and its contribution to the PPL hardship fund in this prior matter and the Company’s overall compliance history with the Public Utility Code and the Commission’s regulations should not pose any barrier to approval of the Settlement in this matter. NG&E would also point out that no formal complaint has been filed against NG&E in this matter.
7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). NG&E fully cooperated with I&E during the investigation of this matter as well as in the informal discovery conducted by I&E and in the settlement discussions leading up to the Settlement.
8. The eighth factor to be considered is whether the settlement amount is sufficient to deter future violations. 52 Pa. Code § 69.1201(c)(8). NG&E respectfully submits that the size of the



civil penalty agreed to is a significant deterrent to future violations and, therefore, constitutes a reasonable and appropriate amount to resolve this matter.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). ). The Settlement Agreement between I&E and NG&E provides a civil penalty of \$1,000 for each instance of slamming and for each instance of deceptive marketing and sales practices. This \$1,000 per instance civil penalty is identical to the penalty imposed by the Commission in previous slamming cases and matters involving deceptive sales practices and misrepresentations committed by third-party agents. *See Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013), *Pa. Pub. Util. Comm'n 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), *Pa. Pub. Util. Comm'n v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014), and *Pa. Pub. Util. Comm'n v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered April 15, 2021). NG&E would further point out that it has undertaken additional corrective actions of a non-monetary nature to ensure that similar misconduct does not occur in the future. Accordingly, the Company submits that approval of the Settlement Agreement is reasonable and appropriate as well as consistent with prior Commission decisions.
10. The tenth factor to consider is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). Settlements avoid the time, expense, and uncertainty of litigation and the Commission generally encourages settlements as being in the public interest for this reason. Approval of the Settlement of the present case is warranted because of the mitigating factors outlined above that demonstrate that NG&E already had extensive practices and procedures to prevent

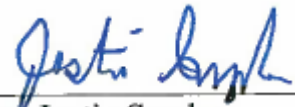
the type of impermissible sales and marketing conduct by its third party vendor and that NG&E has agreed to undertake additional training, reporting, and other remedial measures to prevent similar conduct in the future as well as to compensate the persons affected by the conduct in this matter. For these reasons and other reasons articulated in this Appendix C, NG&E respectfully submits that the Settlement meets the criteria for approval of settlements set forth in 52 Pa. Code § 69.1201.

In summary, NG&E respectfully submits that an evaluation of the Settlement Agreement under the factors and standards enunciated in the Commission's Policy Statement justifies expeditious approval of the Settlement without modification. The Settlement provides for a significant civil penalty and business modifications that are commensurate with the nature of the allegations and the number of customers affected, while avoiding the significant time, expense, and uncertainty of litigating the matter to conclusion.

WHEREFORE, NG&E respectfully submits that the above-captioned Settlement is in the public interest and should be approved and, therefore, requests that the Commission approve such Settlement without modification.

Respectfully Submitted,

National Gas & Electric, LLC

By:  \_\_\_\_\_

Name: Justin Snyder

Title: President

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	Docket No. M-2022-2633098
v.	:	
	:	
National Gas & Electric, LLC	:	

**CERTIFICATE OF SERVICE**

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

**Service by Electronic Mail:**

Gary Lancaster, Esquire  
General Counsel  
National Gas & Electric, LLC  
12140 Wickchester Lane, Suite 100  
Houston, TX 77079  
[glancaster@ngande.com](mailto:glancaster@ngande.com)  
[glancaster@texenergy.com](mailto:glancaster@texenergy.com)  
*Counsel for National Gas & Electric, LLC*



Kourthey L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
717.705.4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: August 29, 2022