

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

Public Meeting held January 12, 2023

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.

For the reasons set forth herein, we shall grant the Petition and, thereby, approve the proposed Settlement Agreement, consistent with this Opinion and Order.

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 (6) 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 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.

By Order entered October 27, 2022 (*October 2022 Order*), the Commission provided interested parties with the opportunity to file comments regarding the proposed Settlement Agreement. More specifically, the Commission directed that the *October 2022 Order*, which included the Settlement Agreement as an Attachment, be published in the *Pennsylvania Bulletin* to allow for the filing of comments. In order to be considered timely, comments were due within twenty-five days of the publication date of the *October 2022 Order* in the *Pennsylvania Bulletin*.

On November 12, 2022, the *October 2022 Order*, along with the Settlement and Statements in Support, were published in the *Pennsylvania Bulletin*, 52 Pa. B. 7071. In accordance with the *October 2022 Order*, comments on the proposed Joint Settlement were due on or before December 7, 2022 (*i.e.*, twenty-five days after the *October 2022 Order* was published). No comments were filed.

II. Background

A. Informal Complaints and I&E Informal Investigation

As noted above, the basis for the instant Settlement resulted from six (6) 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.¹ 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 (42) of these complaints from BCS and that the remaining nine (9) complaints came directly from its customers. The Company continued that of these 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

¹ The exact commencement date of I&E's informal investigation is not specified in the Settlement Agreement.

to their rate and/or bill, and twenty (20) 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 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 (6) unauthorized customer enrollments, four (4) instances of fraudulent, deceptive, or otherwise unlawful 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.² 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

² These alleged violations occurred from September 13, 2019 through September 16, 2019. Settlement Agreement at ¶ 23, n.2.

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 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 (35) 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 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 Settlement³

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 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)

³ Pages 8 through 16 of the Settlement Agreement set forth the full Settlement Terms and Conditions.

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

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

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. 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). After a review of the terms of the Settlement, we are of the opinion that it is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten (10) factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation or Statute is appropriate as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. 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.* In the instant case, we find that application of these guidelines supports approval of the Settlement.

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

This proceeding involves allegations of slamming and deceptive marketing and of sales practices. NG&E avers it accepts responsibility for the actions of its third-party vendor that prompted the instant investigation and findings of violations by I&E. NG&E Statement of Support at 3-4. 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. Although, these were the actions of NG&E’s third-party vendor, 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. PUC MXenergy Electric Inc.*, M-2012-2201861 (Order entered May 3, 2012); I&E Statement in Support at 10-11. Therefore, we find the conduct at issue to be of a serious nature such that this factor warrants a higher civil penalty.

The second factor we may consider is whether the resulting consequences of the conduct at issue were of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* I&E’s investigation indicated 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. NG&E also agrees that while no personal injury or property damage occurred as a result of the alleged violations, its

customers may have been charged a higher electricity rate than what may have been charged by a local distribution company or by a competing supplier. NG&E Statement in Support at 5. Accordingly, we find that some customers may have experienced financial consequences as a result of the actions of NG&E's agents and that 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. *See* I&E Statement in Support at 11; NG&E Statement in Support at 5.

The third factor we may consider is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “When conduct has been deemed intentional, the conduct may result in a higher penalty.” *Id.* The third factor pertains to litigated cases only. Because this proceeding was settled, this factor is not applicable to this Settlement and we need not consider it in assessing the appropriate civil penalty for NG&E.

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4).

I&E's investigation indicated that NG&E has established extensive practices and procedures 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 fifteenth 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 are designed to enhance consumer protection and NG&E's marketing and sales practices. Therefore, NG&E is taking appropriate action to address concerns and to decrease the likelihood of similar incidents in the future. *See* I&E Statement in Support at 12; NG&E Statement in Support at 5. Accordingly, we find that this factor warrants a lower civil penalty than the maximum allowed.

The fifth factor we may consider is 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 improper conduct. Specifically, six (6) customer accounts were switched to receive electric service provided by NG&E without proper authorization. I&E Statement in Support at 12; NG&E Statement in Support at 6. Given these considerations, we find the civil penalty stated below to be fair and reasonable.

The sixth factor we may consider is the compliance history of the regulated utility that committed the violation. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." *Id.*

In *Pa. PUC v. National Gas & Electric, LLC*, Docket No. M-2020-2637688 (Order entered August 5, 2021) (2021 Investigation), 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). 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. *See* I&E Statement in Support at 13.

No formal complaint has been filed against NG&E regarding the 2021 Investigation. I&E Statement in Support at 13; NG&E Statement in Support at 6. Additionally, upon review of our records regarding complaints against, and investigations of, NG&E, we find that aside from the 2021 Investigation and this current proceeding, there have been no proceedings in which the Commission has made findings of violations against NG&E. As such, the Company's compliance history poses no barrier to approval of the Settlement between the Parties. For these reasons, we conclude that the agreed-upon civil penalty is warranted.

The seventh factor we may consider is whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty. 52 Pa. Code § 69.1201(c)(7). Both I&E and the Company noted that NG&E fully cooperated in both informal discovery and in settlement discussions regarding this matter. I&E Statement in Support at 14; NG&E Statement in Support at 6. Thus, we conclude that this factor warrants the imposition of a lower penalty.

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.* Here,

NG&E has agreed to pay a civil penalty of \$15,250.00, which is not tax deductible. Both I&E and NG&E submit that this civil penalty amount is substantial and sufficient to deter NG&E from committing future violations. I&E Statement in Support at 14; NG&E Statement in Support at 6-7. We concur with the Parties that this agreed-upon amount is sufficient to deter 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. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013), *Pa. PUC 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. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014), and *Pa. PUC v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered April 15, 2021). I&E Statement in Support at 14-15.

Additionally, we note that NG&E has undertaken additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future. I&E Statement in Support at 15; NG&E Statement in Support at 7. We find that this lends further support that the agreed-upon civil penalty is appropriate.

The tenth factor that the Commission may consider is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). In this proceeding, an additional relevant factor is that the Parties have agreed to the proposed Settlement Agreement in lieu of litigation. A settlement avoids the necessity for the governmental agency to prove elements of each

allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed-upon remedial actions. I&E Statement in Support at 15. In its Statement in Support, NG&E submits that approval of the Settlement Agreement is warranted because the mitigating factors noted, *supra*, demonstrate that the Company has extensive practices and procedures in place to prevent the type of impermissible sales and marketing conduct by its third-party vendor. In addition, NG&E notes that it 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. NG&E Statement in Support at 7.

We agree that it is in the public interest to settle this matter so as to avoid the time and expense of litigation. In our view, other relevant factors weigh in favor of approval of the agreed-upon civil penalty, as well as the other settlement terms, established in the Settlement Agreement.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our *Policy Statement* and our past decisions. When considering the appropriateness of a financial penalty, we are cognizant of the fact that the primary purpose of a penalty is to influence future behavior and to ensure that similar events are avoided in the future. Given the serious nature of the allegations in this case, as well as consideration of all of the above factors taken collectively, we are of the opinion that a civil penalty of \$15,250 is appropriate. In our view, this amount will be sufficient to deter future violations and is consistent with our prior decisions in other proceedings as

well as the Code. Additionally, the non-financial terms of the proposed Settlement appropriately ensure that NG&E's procedures are revised in order to safeguard against future incidents of slamming.

V. Conclusion

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, the Commission's Regulations and policy statements, as well as the forgoing discussion, we find that the proposed Settlement Agreement between I&E and NG&E is in the public interest and merits approval. We will therefore approve the Settlement Agreement consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed on August 29, 2022, between the 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 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date of entry of this Opinion and Order, National Gas & Electric, LLC shall pay a civil penalty of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250). 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). Immediately following payment of the civil penalty by wire transfer, National Gas & Electric, LLC shall file with the Commission a verification acknowledging that wire transfer payment

of the civil penalty has been completed. Notice of the filed verification shall also be electronically served upon:

Pennsylvania Public Utility Commission
Kourtney L. Myers, Prosecutor
Bureau of Investigation and Enforcement
komyers@pa.gov

and

Pennsylvania Public Utility Commission
Financial and Assessment Chief
Bureau of Administration
pucassessments@pa.gov

3. That the civil penalty shall not be tax deductible or passed through as an additional charge to National Gas & Electric, LLC's customers in Pennsylvania.

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

5. That the above-captioned matter shall be marked closed upon receipt of the civil penalty of \$15,250.

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: January 12, 2023

ORDER ENTERED: January 12, 2023