



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

January 13, 2023

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.
Great American Power, LLC
Docket No. M-2023-3020643

Joint Petition for Approval of Settlement and Statements in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement and Statements in Support** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L. Rost'.

Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/jfm
Enclosure

cc: Per Certificate of Service

Daniel Mumford, Office of Competitive Market Oversight (dmumford@pa.gov)

Michael L. Swindler, Deputy Chief Prosecutor (mwindler@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
v.	:	Docket No. M-2023-3020643
	:	
Great American Power, LLC	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Great American Power, LLC (“GAP” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based upon information provided by the Commission’s Office of Competitive Market Oversight (“OCMO”) regarding misleading and deceptive telemarketing calls.

As part of this Settlement Agreement, I&E and Great American Power, LLC (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement Agreement, without modification. Proposed Ordering Paragraphs are attached hereto as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and GAP 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, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA 17120, and GAP, with headquarters at 2633 McKinney Avenue, Suite 130, Dallas, Texas 75204.

2. The Pennsylvania Public Utility 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 ("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 I&E to initiate proceedings that are prosecutorial in nature).

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, regulation, or order 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

and orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. GAP is a jurisdictional electric generation supplier ("EGS")¹ licensed by the Commission at Docket No. A-2010-2205475 to operate in the Pennsylvania electric distribution company ("EDC") service territories of Allegheny Power ("West Penn Power Company"), Duquesne Light Company ("Duquesne Light"), Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company ("PECO"), PPL Electric Utilities, Inc. ("PPL"), and UGI Utilities, Inc.²

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

9. GAP, as a 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 Public Utility Code, 66 Pa.C.S. § 501(c).

10. Section 111.3 of the Commission's regulations, 52 Pa. Code § 111.3, provides that an EGS is responsible for fraudulent, deceptive, or other unlawful marketing acts performed by its agent.

¹ "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.

² While authorized to operate in all the service territories listed, GAP is currently not operating in the service territories of West Penn Power, Pennsylvania Power Company, and UGI Utilities, Inc.

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

12. This matter involves allegations related to deceptive and misleading sales tactics, enrolling customers without authorization (i.e., slamming), and alleged violations related to billing.

13. As a result of successful negotiations between I&E and GAP, the Parties have reached an agreement on an appropriate outcome as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. 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. STIPULATED FACTS

14. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 102, 501.

15. "It is the policy of the Commission to encourage settlements." 52 Pa. Code § 5.231(a).

16. On or about July 2, 2020, Daniel Mumford, Director of OCMO, submitted a memo to I&E outlining his concerns with GAP's telemarketing practices. Specifically, Mr. Mumford personally received a telemarketing phone call from a GAP representative on May 19, 2020 and described the corresponding phone conversation in detail.

17. Based upon the information provided by Mr. Mumford, by letter dated January 28, 2021, I&E issued a Data Request Letter (“I&E Data Requests-Set I”) informing GAP of the scope of its investigation and requesting a response to I&E’s twenty-eight (28) data requests. GAP’s responses were due on March 1, 2021.

18. On February 25, 2021, I&E held a conference call with counsel for GAP to discuss GAP’s responses. GAP advised I&E that it can provide responses for the time-frame of July 2020 to present, but needed additional time to provide responses for July 2019 through July 2020. GAP agreed to initially provide the responses for July 2019 through July 2020 on April 12, 2021, but was granted an extension to April 26, 2021, in light of the power outages and storms in Texas where some of the employees responsible for searching for the information were located.

19. On March 1, 2021, GAP provided its response to the I&E Data Requests-Set I.

20. On April 26, 2021, GAP provided its supplemental responses to I&E Data Requests-Set I.

21. On May 5, 2021, I&E issued a second Data Request Letter (“I&E Data Requests-Set II”) requesting a response to nine (9) data requests. GAP’s response was due on May 26, 2021.

22. On May 26, 2021, GAP timely provided its responses to I&E Data Requests-Set II.

23. On September 13, 2022, issued a third Data Request Letter (“I&E Data Requests-Set III”) requesting a response to five (5) data requests.

24. On or about September 16, 2022, counsel for GAP requested an extension to respond to I&E Data Requests-Set III. I&E agreed to an extension, resulting in a new due date of October 12, 2022.

25. On October 12, 2022, GAP timely provided its responses to I&E Data Requests-Set III.

A. Misleading and Deceptive Telemarketing to Mr. Mumford

26. Mr. Mumford's memo detailing the telemarketing call received on May 19, 2020, raised serious allegations of agent misidentification and misrepresentation, violations related to the "Do Not Call" list, and other telemarketing/code of conduct violations.

27. On May 19, 2020, Mr. Mumford received a telemarketing call with a caller ID showing Chambersburg, PA and which started as an automated/robocall advising Mr. Mumford that he "qualified" for a discount on his electric service and a \$50 "reward."

28. Mr. Mumford stated that after pressing "one," a representative came on the call and immediately requested that Mr. Mumford retrieve his PPL electric bill and provide his address and account number. The representative did not identify himself by name, disclose who he was calling on behalf of, nor state the nature of his business/the call. The representative merely informed Mr. Mumford that he was ensuring that the benefits were going to the right person.

29. The representative advised Mr. Mumford that his current electric rate was 12.9 cents (which was incorrect) and that he could provide a better green rate fixed for 24 months of 8.59 cents.

30. Several minutes into this conversation, the representative finally stated that he was representing Great American Power, LLC.

31. Mr. Mumford was then informed that he would receive everything in writing and that he could reject or accept within 3 days and could cancel at any time.

32. Mr. Mumford was then coached through the verification process (told to say yes to everything and not ask any questions) and was placed on a brief hold. The verifier answered the “call” and immediately asked for his birthdate. The verifier then provided a 4-digit code and repeated the information about the 8.59 cents rate and \$50 reward. After providing Mr. Mumford with a phone number to cancel and verification code, the call ended.

33. Mr. Mumford was successfully enrolled with GAP and his account was switched to GAP on or about May 29, 2020. Mr. Mumford subsequently received a welcome letter and disclosure statement from GAP.

B. Bureau of Consumer Services Complaints

34. In addition to the complaint made by Mr. Mumford, I&E received customer complaints from the Commission’s Bureau of Consumer Services (“BCS”) alleging unauthorized enrollment and billing errors.

35. The complaints are as follows:
- a) Customer A³
 - i) Customer was switched to GAP without consent. Customer is 90 years old and son has power of attorney over her affairs, thus customer did not have authority/ability to authorize enrollment.
 - ii) Third-party verification recording raised concerns of customer's competency/ability to authorize enrollment.
 - b) Customer B- Billing Error
 - i) GAP's investigation revealed that the customer's rate change was not applied appropriately, and a refund was provided to the customer for the difference.
 - c) Customer C- Billing Error
 - i) Customer was provided a refund for the difference between the rate charged and the rate she should have been charged.
 - d) Customer D- Billing Error
 - i) Customer contacted GAP and requested to cancel her account. GAP did not enter the correct code to cancel the account and the account continued to flow with GAP. GAP provided a re-rate to the customer and retrained the customer care agent.

³ The Parties have agreed to not include the name of the customer(s) or other identifiable information for confidential purposes.

e) Customer E- Billing Error

- i) Customer requested cancellation prior to enrollment being effective.

GAP did not cancel enrollment and cancellation was delayed. GAP provided a refund to the customer.

C. Misleading and Deceptive Telemarketing Conduct

36. I&E reviewed voluminous documentation from GAP related to customer complaints. Through its review, I&E identified allegations of unauthorized enrollment, misrepresentation, and failure to cancel an account upon request.

f) Complaint 2⁴

- i) Customer alleged that he was advised that he would have to sign and

return the contract to enroll with GAP, which he never received nor signed and returned. Customer also stated that he called GAP within

36 hours of the initial call to confirm that he did not want to enroll with GAP. Customer was ultimately enrolled with GAP.

- ii) GAP contends that the customer's wife completed the TPV, which

the customer denies, stating that it was not his spouse on the recording. GAP provided a refund.

- iii) Total alleged violations: 2 (unauthorized enrollment and failure to cancel upon request)

⁴ Please note that the complaints are not listed/labeled in numerical order on purpose. The complaints are identified as provided by GAP through its responses to I&E's Data Requests.

g) Complaint 3

- i) Customer alleged that he was enrollment with GAP without his consent.
- ii) GAP provided a copy of the TPV, asserting that it was the customer's girlfriend who completed the enrollment. The customer challenged the recording, noting various inconsistencies with the recording and that the girlfriend did not have the authority to complete the enrollment. GAP provided a re-rate for the time of enrollment.
- iii) Total alleged violations: 1 (unauthorized enrollment)

h) Complaint 6

- i) Customer received a phone call from a GAP representative stating that he would not be enrolled with GAP until he received a document with the contract terms from GAP and agreed to sign such document. He was assured by the representative that nothing was finalized until the document was received and signed. Customer was also advised that he could cancel at any time without penalty. Customer ultimately received an enrollment letter.
- ii) GAP informed customer that he completed the TPV on the phone and that the completion of the TPV confirmed his enrollment with GAP. The customer's account was canceled and the agent was re-trained. GAP noted that the agent misunderstood the purpose of the

welcome letter and confused the Pennsylvania requirements with Maryland requirements.

iii) Total alleged violations: 2 (misrepresentation of enrollment process and unauthorized enrollment)

i) Complaint 9

i) Customer alleged that the GAP representative provided false information on the rate calculation/PECO's rate and enrolled with GAP based upon this incorrect rate information. Customer also alleged being advised that she will receive a refund of \$120.00 since she was being charged a commercial rate rather than a residential rate, but she never received a refund.

ii) GAP provided customer with information on its role as a supplier and canceled the account. GAP re-trained the agent.

iii) Total alleged violations: 3 (misrepresentation of rate(s), misrepresentation of refund/rebate, and unauthorized enrollment)

j) Complaint 10

i) Customer alleged various violations related to a June 8, 2020, telemarketing call with a GAP representative. Specifically, the customer alleged that he was advised that his EDC had overcharged him, that he was entitled to a \$50.00 per month refund/rebate for the next 3 months due to the overcharge, that the new monthly customer charge would be \$8.09 instead of the current rate of \$10.62, and that

the new lower rate would remain for 24 months. The customer also noted that the GAP representative was very hard to understand and spoke rapidly. After completing what appeared to be a TPV, the customer immediately informed the agent that he wanted to cancel the enrollment and requested an email confirmation of the cancellation. The customer contacted GAP multiple times following the call to ensure that his account was canceled as requested, but did not receive the confirmation. He also received another similar call a few days later, to which he promptly said he was not interested and hung up.

ii) GAP canceled the account and provided a full refund for the charges the customer incurred while services were flowing. GAP re-trained the agent.

iii) Total alleged violations: 5 (misrepresentation of EDC overcharge, misrepresentation of rebate/refund, misrepresentation of monthly customer charge, inability to understand agent, and failure to cancel upon request)

k) Complaint 11

i) Customer alleged that the GAP representative misrepresented himself as PECO and coached her through the verification process. The customer also alleged that the agent provided a false/incorrect

phone number which was not operational. She called GAP to cancel and request a credit on her account.

ii) GAP canceled the customer account and issued a refund for the difference in rate for the time service flowed. GAP re-trained the agent.

iii) Total alleged violations: 4 (misrepresented as the EDC, failure to identify as GAP upon initial contact, coached through verification process, and provided false call-back information)

l) Complaint 12

i) Customer described a telemarketing call where the GAP representative stated that he was a PECO employee and immediately requested the customer's account information. The customer did not want to switch to GAP and did not complete the verification process.

ii) The customer did not complete the TPV, so GAP did not submit an enrollment. GAP explained that an enrollment is only valid if a TPV is completed, so the account was not switched. GAP's investigation revealed that the name submitted by the agent did not match the customer's name. The team was terminated.

iii) Total alleged violations: 2 (misrepresentation as the EDC and failure to identify as GAP upon initial contact)

m) Complaint 16

i) Customer alleged a phone call from a GAP representative, noting

that the representative stated she was not switching suppliers and that there was no contract. Customer received a contract in the mail.

ii) GAP canceled the account and advised the agent to be more careful with word choice.

iii) Total alleged violations: 3 (suggesting that a customer must switch, misrepresentation on the enrollment process, and unauthorized enrollment)

n) Complaints 21-177 (recorded customer care calls)

i) Of the 156 recorded complaints received by GAP's customer care call center,⁵ 153 alleged at least one violation of the Public Utility Code and/or Commission regulations while a majority alleged more than one (1) violation. The alleged violations found included but are not limited to:

- 1) Slamming;
- 2) Enrollment of customer under false pretenses;
- 3) Enrollment of customers with dementia, Alzheimer's, or an active Power of Attorney;
- 4) Misrepresentation of the customer's current rate;
- 5) Misrepresentation of savings;
- 6) Misrepresentation of the rewards program;
- 7) Misrepresentation or failure to explain 50-cent daily charge;
- 8) Misrepresentation of customer's ability to choose an EGS;

⁵ The Parties note that one of the customer care call complaints involved a Maryland customer and was not included in the final calculations.

- 9) Misrepresentation of the status of other EGS companies, i.e., stating that company no longer was in business, that company was taken over by GAP, that contract with current supplier ended/was ending, etc.;
- 10) Misrepresentation of the enrollment process, i.e., advising potential customer that enrollment would not be confirmed until written materials were sent and signed by potential customer;
- 11) Promised gift card or check, monetary amount ranging from \$50 to \$200;
- 12) Promised rebate or refund after informing potential customer that he/she was overcharged by prior supplier and/or EDC;
- 13) Providing incorrect information regarding billing, i.e., telling customer that distribution charge will disappear if customer switched or that all rates would be combined into GAP's offered rate;
- 14) Agent stating that he/she was acting on the behalf of or working for local EDC;
- 15) Agent stating that he/she was acting on behalf of or working for other EGS company;
- 16) Spoofing of EDC's phone number; and
- 17) Harassment of potential customers by initiating/completing voluminous phone calls.

ii) In addition to the alleged violations found with the telemarketing calls, I&E identified 35 calls with GAP's customer care call center where the customer care representative explained or advised the customer that the EDC's rate fluctuates or is a variable rate which changes every month.

III. ALLEGED VIOLATIONS

37. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that GAP committed the following violations:

- a) In reference to the telemarketing directed to Mr. Mumford, the following conduct of the GAP representative constitutes a violation of 52 Pa. Code § 54.43(g); 52 Pa. Code § 54.122(3); 52 Pa. Code § 111.8(b); 52 Pa. Code § 111.8(f); 52 Pa. Code § 111.10(a) and (b); and 52 Pa. Code § 111.12(d):
- i) Calling an individual on the “Do Not Call” list;
 - ii) Spoofing a Chambersburg, PA telephone number;
 - iii) Automated recording advising the recipient that he/she qualified for a discount on their electric bill and a \$50 reward;
 - iv) Live agent not identifying who he/she was working on the behalf of upon first contact and not stating that he/she was not working for the local EDC upon first contact;
 - v) Live agent not advising Mr. Mumford that he is not required to choose a supplier and/or switch to GAP (failed to state nature of business/phone call upon first contact);
 - vi) Agent misrepresentation that Mr. Mumford’s current rate was 12.9 cents; and
 - vii) Agent misrepresentation that Mr. Mumford will be receiving everything in writing and can reject or accept the terms within 3 days.

b) The customer complaints received by BCS alleged violations of 52 Pa. Code § 54.10, 54 Pa. Code § 54.42(a)(9), 52 Pa. Code § 111.7, 52 Pa. Code § 111.11, and 52 Pa. Code § 111.12.

c) The customer complaints provided by GAP alleged violations of 52 Pa. Code § 54.43(g), 52 Pa. Code § 54.122(3), 52 Pa. Code § 111.7, 52 Pa. Code § 111.8, 52 Pa. Code § 111.10, and 52 Pa. Code § 111.12.

38. Had this matter been fully litigated, GAP would have defended each and every one of these claims vigorously.

IV. SETTLEMENT TERMS

39. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. I&E and GAP desire to (1) terminate I&E's informal investigation; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed matter. Given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms and conditions of the Settlement Agreement, for which the Parties seek Commission approval, are set forth below.

40. GAP shall pay a cumulative civil penalty of Ninety-Two Thousand Five Hundred Dollars (\$92,500.00).⁶ The cumulative civil penalty is calculated as follows:

⁶ Great American Power, LLC shall make such payment in two (2) installments, the first payment in the amount of Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00) to be paid within thirty (30) days an Order becomes final, and the second and final payment of Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00) to be paid ninety (90) days thereafter.

- a) A \$500.00 civil penalty for each of the seven (7) alleged violations found during the telemarketing call made to Mr. Mumford, resulting in a total civil penalty amount of \$3,500.00.
- b) A \$1,000.00 civil penalty for the violation(s) alleged in Complaint A and a \$500.00 civil penalty for Complaints B-E, resulting in a total civil penalty amount of \$3,000.00.
- c) A \$500.00 civil penalty for the twenty-two (22) violations alleged in Complaints 2-16, resulting in a total civil penalty amount of \$11,000.00.
- d) A cumulative civil penalty amount of \$75,000.00 for the violations alleged in the 153 customer care call complaints.

41. The civil penalty shall not be tax deductible or passed-through as an additional charge to GAP's customers in Pennsylvania.

42. In addition to the civil penalty, GAP agrees to complete the following remedial measures:

- a) Great American Power, LLC shall cease and desist from advising customers that an electric distribution company's rate fluctuates or is a variable rate.
- b) Great American Power, LLC shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa.C.S. § 101 et seq., the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq., the Telemarketer Registration Act, 73 P.S. § 2241, et seq., and other

applicable laws, as well as Commission regulations, Orders and policies.

- c) Great American Power, LLC shall implement an internal call system to ensure that all customer service calls, solicitations, and telemarketing are transmitted through a telephone number bearing GAP's name on the caller-ID. GAP will ensure that all business transactions and calls to potential or existing customers will be through its internal call system.
- d) Great American Power, LLC will continue to refrain from telemarketing through third-party vendors for a period of one (1) year after the effective date of the settlement.
- e) Great American Power, LLC agrees to provide notice to the Commission's Bureau of Consumer Services and the Bureau of Investigation and Enforcement at least thirty (30) days prior to resuming telemarketing after the 1-year moratorium.
- f) Great American Power, LLC agrees to provide to the Commission's Bureau of Investigation and Enforcement, at least five (5) days prior to resuming telemarketing, a signed certification attesting that all agents, whether internal or through a third-party vendor, have successfully completed any and all training related to telemarketing rules and regulations. The training shall include, but is not limited to:

- i) The applicable requirements of the Public Utility Code, the Commission's regulations, Orders, and policies regarding marketing and billing practices for EGSs;
- ii) Training to all marketing persons to identify themselves, identify his/her representation of GAP, and provide the reasoning for the phone call or in-person meeting upon first contact;
- iii) Training to all marketing persons on the different charges on the electric bill and which charge relates to the generation of electricity;
- iv) Training to all marketing persons on GAP's enrollment process with an emphasis on explaining that the customer will be enrolling with GAP after completion of the third-party verification, i.e., that the enrollment can be made telephonically and not through the signature of a physical contract; and
- v) Training to all marketing persons on exercising good judgment when speaking with and enrolling potential customers who voice a misunderstanding of the relationship between an EGS and EDC, a misunderstanding or display of confusion related to shopping for an electric supplier, or who display signs of confusion related to the telephonic enrollment process.
- g) Great American Power, LLC agrees to immediately end the phone call and stop calling the potential customer as soon as the potential customer indicates that he/she is not interested, does not want to switch, or

specifically requests that the telemarketing agent quit calling him/her. If the potential customer specifically requests that the telemarketing agent quit calling him/her, GAP agrees to immediately place the customer's telephone number on its internal do not call list.

V. CONDITIONS OF SETTLEMENT

43. The benefits and obligations of this Joint Petition for Approval of Settlement shall be binding upon the successors and assigns of the Parties to this Settlement Agreement.

44. This Settlement Agreement may be signed in counterparts and all signatures attached hereto will be considered as originals.

45. In order to effectuate the Parties' Joint Petition for Approval of Settlement, the undersigned parties request that the Commission issue a Secretarial Letter or Order approving the Settlement Agreement without modification.

46. The Parties agree that any party may petition the Commission for rehearing or take other recourse allowed under the Commission's rules if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition for Approval of Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Approval of Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Approval of Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for Approval of

Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties to each other are terminated and of no force and effect. In the event that a Party withdraws from this Joint Petition for Approval of Settlement as set forth in this paragraph, I&E and GAP jointly agree that nothing in this Settlement Agreement shall be construed as an admission against or as prejudice to any position which any party might adopt during litigation of this case.

47. I&E and GAP jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully 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 Commission will serve the public interest by adopting this Joint Petition for Approval of Settlement.

48. The Joint Petition for Approval of Settlement avoids the time and expense of litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of briefs, reply briefs, exceptions, reply exceptions. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the disputed issues through settlement. Attached as Appendices B and C are Statements in Support submitted by I&E and GAP, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

49. Since the Parties agree to the terms of the Joint Petition for Approval of Settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

50. This Settlement Agreement consists of the entire agreement between I&E and GAP regarding the matters addressed herein. Moreover, this Settlement Agreement represents a complete settlement of I&E's investigation of GAP's alleged violations related to telemarketing and billing for the time period of January 28, 2020 through January 28, 2021, and fully satisfies I&E's investigation of the matters discussed herein.

51. The Settlement Agreement contains a summary of alleged violations of the Public Utility Code and the Commission's regulations. *See* Section III, Alleged Violations. In addition, the Settlement Agreement contains Proposed Settlement Terms. *See* Section IV, Settlement Terms. This Settlement Agreement is presented without prejudice to any position that either Party may have advanced, and without prejudice to the position any party 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.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Great American Power, LLC respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

[SIGNATURE PAGE TO FOLLOW]

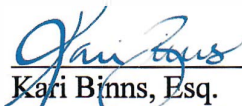
IN WITNESS WHEREOF, we have unto set our hands and seals on this 13th day
of January 2023.

Date: 1/13/2023



Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP

Date: 1/13/2023



Kari Binns, Esq.
*General Counsel and Secretary for
Great American Power, LLC*

Date: 1/13/2023



Kayla L. Rost
*Prosecutor for the Commission's
Bureau of Investigation and Enforcement*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
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v. : Docket No. M-2023-3020643
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Great American Power, LLC :

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on January 13, 2023, between the Commission’s Bureau of Investigation and Enforcement and Great American Power, LLC (“GAP”) is approved in its entirety without modifications.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, Great American Power, LLC shall pay Ninety-Two Thousand Five Hundred Dollars (\$92,500.00), which consists of the entirety of the civil penalty amount. Great American Power, LLC shall make such payment in two (2) installments, the first payment in the amount of Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00) to be paid within thirty (30) days of the date this Order becomes final, and the second and final payment of Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00) to be paid ninety (90) days thereafter. Said payments shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

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

3. In addition to the civil penalty, Great American Power, LLC shall complete the following remedial measures:

- A. Great American Power, LLC shall cease and desist from advising customers that an electric distribution company's rate fluctuates or is a variable rate.
- B. Great American Power, LLC shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa.C.S. § 101 et seq., the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq., the Telemarketer Registration Act, 73 P.S. § 2241, et seq., and other applicable laws, as well as Commission regulations, Orders and policies.
- C. Great American Power, LLC shall implement an internal call system to ensure that all customer service calls, solicitations, and telemarketing are transmitted through a telephone number bearing GAP's name on the caller-ID. GAP will ensure that all business transactions and calls to potential or existing customers will be through its internal call system.
- D. Great American Power, LLC will continue to refrain from telemarketing through third-party vendors for a period of one (1) year from the date this Order becomes final.
- E. Great American Power, LLC agrees to provide notice to the Commission's Bureau of Consumer Services and the Bureau of

Investigation and Enforcement at least thirty (30) days prior to resuming telemarketing after the 1-year moratorium.

- F. Great American Power, LLC agrees to provide to the Commission's Bureau of Investigation and Enforcement, at least five (5) days prior to resuming telemarketing, a signed certification attesting that all agents, whether internal or through a third-party vendor, have successfully completed any and all training related to telemarketing rules and regulations. The training shall include, but is not limited to:
- i. The applicable requirements of the Public Utility Code, the Commission's regulations, Orders, and policies regarding marketing and billing practices for EGSs;
 - ii. Training to all marketing persons to identify themselves, identify his/her representation of GAP, and provide the reasoning for the phone call or in-person meeting upon first contact;
 - iii. Training to all marketing persons on the different charges on the electric bill and which charge relates to the generation of electricity;
 - iv. Training to all marketing persons on GAP's enrollment process with an emphasis on explaining that the customer will be enrolling with GAP after completion of the third-party

verification, i.e., that the enrollment can be made telephonically and not through the signature of a physical contract; and

- v. Training to all marketing persons on exercising good judgment when speaking with and enrolling potential customers who voice a misunderstanding of the relationship between an EGS and EDC, a misunderstanding or display of confusion related to shopping for an electric supplier, or who display signs of confusion related to the telephonic enrollment process.

- G. Great American Power, LLC agrees to immediately end the phone call and stop calling the potential customer as soon as the potential customer indicates that he/she is not interested, does not want to switch, or specifically requests that the telemarketing agent quit calling him/her. If the potential customer specifically requests that the telemarketing agent quit calling him/her, GAP agrees to immediately place the customer's telephone number on its internal do not call list.

4. The above-captioned matter shall be marked closed upon receipt of the civil penalty and completion of the remedial measures outlined above.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2023-3020643
 :
Great American Power, 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” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Great American Power, LLC (“GAP” or “Company”).⁷ I&E avers that the terms and conditions of the Settlement Agreement are just and reasonable and in the public interest for the reasons set forth herein.

⁷ I&E and Great American Power, LLC are collectively referred to herein as the “Parties.”

I. Background

On July 2, 2020, Daniel Mumford, Director of the Office of Competitive Market Oversight (“OCMO”), submitted a memo to I&E outlining his concerns with GAP’s telemarketing practices. Specifically, Mr. Mumford, whose phone number is on the Do Not Call List, personally received a telemarketing phone call on May 19, 2020 from a GAP representative and kept detailed notes of the interaction.

By letter dated January 28, 2021, I&E issued a Data Request Letter (“I&E Data Requests-Set I”) informing GAP of the scope of its investigation and requesting a response to I&E’s twenty-eight (28) data requests. GAP’s responses were due on March 1, 2021.

On February 25, 2021, I&E held a conference call with counsel for GAP to discuss GAP’s responses and subsequently granted GAP an extension to provide its responses.

On March 1, 2021, GAP provided its response to the I&E Data Requests-Set I.

On April 26, 2021, GAP provided its supplemental responses to I&E Data Requests-Set I.

On May 5, 2021, I&E issued a second Data Request Letter (“I&E Data Requests-Set II”) requesting a response to nine (9) data requests. GAP’s response was due on May 26, 2021.

On May 26, 2021, GAP timely provided its responses to I&E Data Requests-Set II.

On September 13, 2022, issued a third Data Request Letter (“I&E Data Requests-Set III”) requesting a response to five (5) data requests.

On or about September 16, 2022, counsel for GAP requested an extension to respond to I&E Data Requests-Set III. I&E agreed to an extension, resulting in a new due date of October 12, 2022.

On October 12, 2022, GAP timely provided its responses to I&E Data Requests-Set

III.

Accordingly, I&E and GAP began discussing settlement to amicably resolve the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. 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 informal investigation involving allegations of billing errors and deceptive and misleading telemarketing by GAP and/or its representative(s).

I&E intended to prove the factual allegations set forth in its investigation at hearing to which GAP would have disputed. This Settlement Agreement results from the compromises of the Parties. 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 Agreement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement Agreement without modification.

III. Terms of Settlement

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

1. GAP shall pay a cumulative civil penalty of Ninety-Two Thousand Five Hundred Dollars (\$92,500.00).⁸ The cumulative civil penalty is calculated as follows:
 - a. A \$500.00 civil penalty for each of the seven (7) violations found during the telemarketing call made to Mr. Mumford, resulting in a total civil penalty amount of \$3,500.00.
 - b. A \$1,000.00 civil penalty for the violation(s) alleged in Complaint A and a \$500.00 civil penalty for Complaints B-E, resulting in a total civil penalty amount of \$3,000.00.
 - c. A \$500.00 civil penalty for the twenty-two (22) violations alleged in Complaints 2-16, resulting in a total civil penalty amount of \$11,000.00.
 - d. A cumulative civil penalty amount of \$75,000.00 for the violations alleged in the 153 customer care call complaints.
2. In addition to the civil penalty, GAP agrees to complete the following remedial measures:
 - a. Great American Power, LLC shall cease and desist from advising

⁸ Great American Power, LLC shall make such payment in two (2) installments, the first payment in the amount of Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00) to be paid within thirty (30) days an Order becomes final, and the second and final payment of Forty-Six Thousand Two Hundred Fifty Dollars (\$46,250.00) to be paid ninety (90) days thereafter.

customers that an electric distribution company's rate fluctuates or is a variable rate.

- b. Great American Power, LLC shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa.C.S. § 101 et seq., the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq., the Telemarketer Registration Act, 73 P.S. § 2241, et seq., and other applicable laws, as well as Commission regulations, Orders, and policies.
- c. Great American Power, LLC shall implement an internal call system to ensure that all customer service calls, solicitations, and telemarketing are transmitted through a telephone number bearing GAP's name on the caller-ID. GAP will ensure that all business transactions and calls to potential or existing customers will be through its internal call system.
- d. Great American Power, LLC will continue to refrain from telemarketing through third-party vendors for a period of one (1) year after the effective date of the settlement.
- e. Great American Power, LLC agrees to provide notice to the Commission's Bureau of Consumer Services and the Bureau of Investigation and Enforcement at least thirty (30) days prior to resuming telemarketing after the 1-year moratorium.
- f. Great American Power, LLC agrees to provide to the Commission's Bureau of Investigation and Enforcement, at least five (5) days prior to

resuming telemarketing, a signed certification attesting that all agents, whether internal or through a third-party vendor, have successfully completed any and all training related to telemarketing rules and regulations. The training shall include, but is not limited to:

- i. The applicable requirements of the Public Utility Code, the Commission's regulations, Orders, and policies regarding marketing and billing practices for EGSs;
- ii. Training to all marketing persons to identify themselves, identify his/her representation of GAP, and provide the reasoning for the phone call or in-person meeting upon first contact;
- iii. Training to all marketing persons on the different charges on the electric bill and which charge relates to the generation of electricity;
- iv. Training to all marketing persons on GAP's enrollment process with an emphasis on explaining that the customer will be enrolling with GAP after completion of the third-party verification, i.e., that the enrollment can be made telephonically and not through the signature of a physical contract; and
- v. Training to all marketing persons on exercising good judgment when speaking with and enrolling potential customers who voice a misunderstanding of the relationship between an EGS

and EDC, a misunderstanding or display of confusion related to shopping for an electric supplier, or who display signs of confusion related to the telephonic enrollment process.

- g. Great American Power, LLC agrees to immediately end the phone call and stop calling the potential customer as soon as the potential customer indicates that he/she is not interested, does not want to switch, or specifically requests that the telemarketing agent quit calling him/her. If the potential customer specifically requests that the telemarketing agent quit calling him/her, GAP agrees to immediately place the customer's telephone number on its internal do not call list.

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). Furthermore, the civil penalty shall not be passed through as an additional charge to GAP's customers in Pennsylvania.

In consideration of GAP's payment of a monetary civil penalty and the remedial measure outlined above, I&E agrees that its informal investigation relating to GAP'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, payment of the civil penalty, and completion of the remedial measures.

Upon Commission approval of the Settlement Agreement in its entirety without modification, I&E will not file any complaints or initiate other action against GAP at the Commission with respect to the violations that were the subject of I&E's instant investigation and described in more detail in the Joint Petition for Approval of Settlement.

IV. 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 alleges that the conduct in this matter was of a serious nature in the form of misrepresentation and deceptive conduct. The extent of the fraudulent and misrepresentation included, but was not limited to: slamming; enrollment of customer under false pretenses; failure to identify; misrepresenting as an EDC or another generation supplier; providing false information as to the customer’s current status with his/her supplier; providing false information as to the status of other generation suppliers, such as suggesting that the supplier was going out of business; providing false or incorrect rate information; providing incorrect information on the distribution charge or customer charge; spoofing, using other companys’ or businesses’ phone number on the caller ID to entice customers to answer the call; suggesting or explicitly stating that the customer must switch suppliers; misrepresentation of the enrollment process; making false monetary promises such as a gift card or refund/rebate check; and harassing potential customers with voluminous phone calls and refusing to stop calling the potential customers when asked. Accordingly, the egregious nature of the conduct warrants a higher civil penalty.

The second factor considers whether the resulting consequences of GAP'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. Nonetheless, the deceptive conduct alleged in Mr. Mumford's memo, the BCS complaints, and the customer care call center complaints creates public distrust and self-loathing towards the electric generation supplier shopping process.

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 GAP'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 GAP has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). GAP voluntarily ceased all telemarketing on May 6, 2021 and has agreed to a one (1) year moratorium following the approval of the Settlement Agreement. Additionally, in accordance with the settlement terms, GAP will make great efforts to change its practices and procedures to prevent similar conduct from occurring in the future.

The fifth factor to be considered relates to the number of customers affected by the GAP's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E identified Mr. Mumford, five (5) customer complaints provided by BCS, and one hundred sixty-one (161) customer complaints provided by GAP, resulting in a total of 167 customers affected. These facts were considered when calculating the civil penalty.

The sixth factor to be considered relates to the compliance history of GAP. 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.* To date, I&E is aware of two (2) settlements between I&E and GAP based upon prior informal investigations related to marketing practices. *See Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2016-2536806 (Opinion and Order entered April 20, 2017)(investigation based upon “aggressive marketing tactics” in follow-up to the Commission’s Order in *William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Order entered October 18, 2013)); *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2018-2617335 (Opinion and Order entered July 11, 2019)(investigation based upon door-to-door marketing without the proper solicitation permits and notification to BCS).

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 GAP fully cooperated in the investigation of 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). I&E submits that a civil penalty amount of \$92,500.00, which is not tax deductible, is substantial and sufficient to deter GAP 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). I&E submits that the instant Settlement Agreement should be viewed on its merits as there are no past Commission decisions that are identical to this matter. However, I&E notes that some prior Commission decisions do provide guidance on how the Commission viewed past settlement agreements proposing a civil penalty which involved deceptive and misleading conduct. *See generally Pa. PUC, Bureau of Investigation and Enforcement v. Discount Power, Inc.*, Docket No. M-2021-3022658 (Order entered February 24, 2022)(Commission approval of settlement imposing a civil penalty of \$42,250 to resolve allegations from 37 customer complaints related to misleading and deceptive telemarketing, billing of incorrect rates, failure to issue renewal letters, unauthorized enrollments, and a lack of record keeping.); *Pa. PUC, Bureau of Investigation and Enforcement v. Greenlight Energy Inc.*, Docket No. M-2021-3023026 (Order entered February 24, 2022)(Commission approval of settlement imposing a civil penalty of \$8,250 to resolve allegations of misleading and deceptive telemarketing practices and unauthorized enrollments.); *Pa. PUC v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014) (Commission approval of settlement imposing a civil penalty of \$59,000 to resolve allegations of slamming, unauthorized marketing practices, and “Do Not Call” violations resulting from 13 customer complaints comprising of 49 potential violations and no practical means to accurately determine the number of Do Not Call violations); *Pa. PUC v. AP Gas & Electric (PA), LLC, d/b/a APG&E*, Docket No. M-2013-2311811 (Order entered October 17, 2013) (Commission approval of settlement with a \$43,200 civil penalty to resolve allegations of slamming, unauthorized marketing practices, and “Do Not Call”

violations resulting from 37 complaints comprising of 54 potential violations); and *Pa. PUC v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013) (Commission approval of settlement with a \$39,000 civil penalty to resolve allegations of slamming and fraudulent, deceptive or unlawful sales, and marketing practices and “Do Not Call” violations resulting from 21 complaints comprising of 39 potential violations).

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 penalty or other remedial action. Both parties negotiate from their initial litigation positions. The 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 Agreement in its entirety without modification.

Respectfully submitted,



Kayla L. Rost
Prosecutor

PA Attorney ID No. 322768

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-1888
karost@pa.gov

Dated: January 13, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
 : Docket No. M-2023-3020643
v. :
 :
Great American Power, LLC :

**STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NOW COMES, Great American Power, LLC (“GAP”) and submits this statement in support of the Joint Petition for Approval of Settlement (“Settlement”) filed simultaneously herewith in the above-captioned informal investigation. GAP believes that the Settlement is a reasonable and fair resolution of the issues raised in the investigation and recognizes that the many of the concerns raised were not recent, which reflects what GAP hopes the Commission will recognize as its recent progress in providing service to its customers at the highest level of cooperation, compliance and accountability. While GAP denies that it has violated any applicable statute, Commission Regulation or order, it nonetheless recognizes that the conduct identified is serious and it has approached it as such.

GAP submits that the proposed Settlement, with a cumulative civil penalty of \$92,500.00, to be paid in two installments of \$46,250.00 each, one within 30 days of the date of a Commission Order approving the Settlement and one 90 days thereafter, coupled with the additional remedial

measures proposed, is in the public interest and is consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Of these factors, the following support a lower penalty:

Factor (2) the consequences of the conduct at issue do not include personal injury or property damage, and so do not warrant a higher penalty.

Factor (3) the conduct at issue being deemed negligent or intentional does not apply to settled cases;

Factor (4) GAP made significant efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future;

Factor (5) the number of customers effected by the conduct is limited. There were only 15 customers in which BIE alleges specific violations (4 of which involve billing errors not related to the marketing conduct at issue), while the remaining number reflect an unknown number of unsubstantiated allegations. Additionally, GAP voluntarily ceased telemarketing through vendors, further limiting the number of customers impacted;

Factor (6) while GAP has been a party to a prior settlement, Docket Number M-2016-2536806, GAP would also like to point out that the conduct at issue in the previous matter was from 2012-2014, and that there have been no other matters between now and then. Furthermore, the nature of the telemarketing at issue now was different than the telemarketing GAP was engaged in at the time of the last settlement. The new approaches and methods of reaching customers have raised new challenges GAP had not previously encountered. GAP has since supplemented its policies and procedures to account for these new challenges;

Factor (7) GAP cooperated fully with I&E's investigation;

Factor (8) the amount of the civil penalty is sufficient to deter future violations, particularly given the financial strains already imposed on GAP by current market conditions and the fact that GAP is a small EGS;

Factor (9) past decisions in similar situations support the dollar amounts proposed for each enumerated allegation, as well as a lesser amount for unenumerated allegations; and,

Factor (10) the other relevant factors including but not limited to the financial strains GAP is already suffering, the promise not to engage in any telemarketing with a third-party for at least another year, on top of the amount of time GAP has already ceased telemarketing,

and the fact that many customers are benefiting in a meaningful way from being enrolled with GAP and would necessarily be harmed if GAP was forced to exit the market.

GAP believes and therefore submits that the Settlement is in the public interest in that it will accomplish the Commission's goals of ensuring that service is provided in accordance with its regulations and standards while at the same time avoiding the cost, time and effort that litigation entails. The civil penalty amounts are in line with recent Commission settlements in matters with similar allegations. GAP has been investing substantial effort toward ensuring that its service is fully compliant so that it can continue to provide value to its customers. Accordingly, GAP respectfully requests that the Commission approve the settlement without modification.

Respectfully submitted,



Todd S. Stewart, Attorney ID No. 75556
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com

Counsel for Great American Power, LLC

DATED: January 13, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
v.	:	Docket No. M-2023-3020643
	:	
Great American Power, LLC	:	


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statements in Support** dated January 13, 2023, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served by Electronic Mail

Kari Binns, Esq.
General Counsel & Secretary
Great American Power, LLC
2633 McKinney Avenue
Suite 130, #517
Dallas, TX 75204
KBinns@GreatAmericanPower.com

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com



Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov