

COMMONWEALTH OF PENNSYLVANIA



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April 12, 2023

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, Inc.  
Docket No. M-2023-3020643

Dear Secretary Chiavetta:

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

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Certificate of Service

\*344326

CERTIFICATE OF SERVICE

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

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

Dated this 12<sup>th</sup> day of April 2023.

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Dated: April 12, 2023  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

On March 2, 2023, the Pennsylvania Public Utility Commission (Commission) issued its Opinion and Order (Order) regarding the proposed Joint Petition for Approval of Settlement, filed on January 13, 2023, by the Commission's Bureau of Investigation and Enforcement (I&E) and Great American Power, LLC (GAP or Company) (collectively the Parties). The Settlement proposes to resolve an informal investigation conducted by I&E concerning possible violations of the Public Utility Code, Commission regulations, and consumer protection regulations. Before issuing a final decision on the Settlement, the Commission requested that interested parties file Comments regarding the Settlement. The Order was published in the *Pennsylvania Bulletin* on March 18, 2023. Comments were to be filed within twenty-five (25) days of publication in the *Pennsylvania Bulletin*.

The Settlement involves a proposed resolution of allegations against electric generation supplier (EGS), GAP. The allegations against GAP include: (1) misleading and deceptive sales tactics, including spoofing the electric distribution company's phone number; (2) unauthorized customer enrollments, or slamming; and (3) Commission billing regulation violations. Order at 2. The basis of I&E's investigation was a referral from the Office of Competitive Market Oversight (OCMO) and informal customer complaints received from the Bureau of Consumer Services (BCS). One of the referrals generated from a telemarketing call received by the Director of OCMO that alleged seven potential violations of the Commission's regulations. Order at Attach, Joint Petition for Settlement ¶¶ 26-33. I&E also received informal complaints from BCS that included switching without customer consent; competency to authorize enrollment; and billing and code errors. Order at Attach., Joint Petition for Settlement ¶¶ 34-35. I&E identified an additional 153 customer complaints from GAP's responses to discovery which raised concerns about a violation



of at least one Commission regulation. In its Statement in Support, I&E identified that there a total of 167 customers were affected, including the Director of OCMO, 5 BCS complaints, and 161 customer complaints.<sup>1</sup> Settlement, App. B at 10. The internal customer complaints included serious allegations of slamming, enrollment under false pretenses, enrollment of someone without mental capacity to consent, other misrepresentations or promises that were false, spoofing a phone number, pretending to be the EDC, consumer harassment, as well as violations of the Do Not Call list. Order at Attach., Joint Petition for Settlement ¶¶ 36 (generally), 36(n)(i).

The OCA appreciates the opportunity to provide Comments on the Settlement. The OCA does not agree based on the facts publicly presented that the Settlement sufficiently addresses the allegations presented and asserts that the civil penalty is likely not sufficient to deter the conduct identified.

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<sup>11</sup> The distinction that the Joint Petition appears to make is that 153 included at least one violation of the Commission's regulations and there were 161 customer complaints.

## II. COMMENTS

### A. Introduction

The basis for the informal I&E investigation underlying the Settlement were allegations from the Director of OCMO, the BCS complaints, and complaints identified through GAP's customer care center. Joint Petition for Settlement ¶¶ 26-36. The Settlement identified a list of potential alleged violations of fourteen different Commission regulations including 52 Pa. Code Sections 54.10, 54.42(a)(9), 54.43(g), 54.111.7, 54.111.8, 54.111.8(b), 54.111.8(f), 54.110, 54.111, 54.111.10(a)-(b), 54.112, 54.111.12(d), 54.122(3). Joint Petition for Settlement ¶ 37. The Joint Petition for Settlement also presents potential violations of the Unfair Trade Practices Act and the Telemarketer Registration Act. Settlement at ¶ 42(b)

To resolve these serious allegations, the Settlement provides that GAP must cease telling customers that an EDC's rate fluctuates or is a variable rate. Settlement ¶ 3(A). The Settlement also provides that GAP must comply with the law, including the Public Utility Code, 66 Pa. C.S. Section 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 72 P.S. Section 201-1, *et seq.*, the Telemarketer Registration Act, 73 P.S. Section 2241, *et seq.*, and other applicable laws, Commission regulations, Orders and policies. Settlement ¶ 3(B). Under the Settlement, GAP must implement a new calling system that will not permit spoofing. Settlement ¶ 3(C). GAP will not use a third-party vendor for telemarketing for at least a year, with notice to BCS and I&E at least 30 days prior to resuming telemarketing. Settlement ¶ 3(D)-(E). GAP agrees that telemarketing calls will be ended as soon as someone states that they are not interested. Settlement ¶ 3(G). GAP will also improve training to require the following elements: (i) applicable requirements of the law regarding marketing and billing practices; (ii) to identify themselves and as a representative of GAP and provide the reasoning for the call or visit; (iii) on the different

charges on the electric bill and which charge relates to the generation of electricity; (iv) on enrollment process with an emphasis on explaining that all customers will be enrolling with GAP after completion of the (Third Party Voice) TPV recording; and (v) on exercising good judgment when speaking with and enrolling customers who voice a misunderstanding of the relationship between an EGS and an EDC, a misunderstanding or display of confusion related to shopping for an electric supplier, or who display signs of confusion related to the enrollment process. Settlement ¶ 3(F).

The Settlement also imposes a cumulative civil penalty of \$92,500 for allegations from the Director of OCMO, the BCS complaints, and complaints identified through GAP's customer care center. Settlement ¶ 2; Order at Attach, Joint Petition for Settlement ¶ 40. The Joint Petition for Settlement details that the cumulative civil penalty of \$92,500 was calculated as follows:

- a \$500 civil penalty for each of the seven violations during the call to the Director;
- a \$1000 penalty for the violations alleged in informal BCS Complaint A;
- a \$500 each penalty for informal BCS Complaints B-E, totaling \$3000 for B-E;
- a \$500 penalty for each of the 22 Commission regulation violations identified in GAP's internal Complaints numbered 2-16, or a total penalty of \$11,000 for Complaints 2-16; and
- a civil penalty amount of \$75,000 for the violations alleged in the 153 internal customer call complaints received by GAP.

*See* for further details, Order at Attach. Joint Petition for Settlement ¶ 40.

The OCA does not believe that the Settlement sufficiently addresses the serious alleged violations for the Commission's regulations. The civil penalties proposed also would not sufficiently deter the Company from future violations. Moreover, the Settlement does not appropriately consider the fact that GAP has previously been accused of committing similar violations of the Commission's regulations.

B. The Settlement Does not Address Many of the Allegations Presented by I&E's Informal Investigation.

The OCA submits that the overall Settlement does not address many of the allegations presented. The allegations presented were not mere mistakes or errors on the part of the EGS. In particular, slamming, spoofing, and lying about the EGS's identity are deliberate violations of the Commission's regulations and the law on the part of the third-party vendor. While the Company may have identified 153 informal complaints and five BCS complaints, those only represent the customers who complained to the Company or the Commission, and it is very unlikely that this represents the full universe of customers who may have been impacted by GAP's actions.

While the OCA understands the desire to amicably resolve cases, the Settlement here does not reflect the seriousness of the allegations, particularly as it concerns the allegations of slamming and spoofing. The Commission has been crystal clear on numerous occasions that it has a zero-tolerance policy against slamming. *See Pa P.U.C. et al. v. AP Gas & Electric*, Docket No. M-2013-2311811, 2013 Pa. PUC LEXIS 1169, \*20 (Oct. 17, 2013). In particular, the Commission has stated, "[t]he Commission does not trivialize allegations of unauthorized enrollment of customers, or "slamming, " and seeks to deter such conduct by instituting firm retaliatory measures for violations of the Commission's regulations with respect to enrollment of customers." *See, Pa P.U.C. v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order at 5 (Sept. 26, 2001). The facts of this case are egregious and more serious sanctions, including the potential revocation or suspension of GAP's license should be considered.

Although the Settlement provides that GAP will not use a third-party vendor for a year, there is no identification by the Settlement of the vendor who took these actions. There is also no provision that the Company will not use the same vendor in the future. Moreover, there appears to be no indication that other than refunding individual accounts and "retraining" that the Company

really took any steps to change the behavior while it was on-going. There appears to be systemic and repeated patterns of the same conduct. It appears from the Settlement that GAP essentially placed blame for the actions of the third-party vendor because the only remedy is to stop using the third-party vendor. The supplier is responsible for the conduct of its vendor and is responsible for monitoring the actions of its vendor. GAP failed to appropriately monitor the actions of its vendor, and the Settlement does not address what monitoring protocols will be put in place in the future when or if GAP resumes using a third-party vendor.

Critically, it is also important to contextualize that this is not I&E's first complaint against GAP for deceptive marketing practices. Since 2017, I&E has entered into two other Settlement agreements for alleged violations of the Commission's regulations. *See Pa. PUC, BI&E v. GAP*, Docket No. M-2016-2536806), Order (April 20, 2017) (*2017 Settlement Order*); *Pa. PUC, BI&E v. GAP*, Docket No. M-2018-2617335, Order (July 11, 2019) (*2019 Settlement Order*). *2017 Settlement Order* at 4. The 2017 case was generated from an October 29, 2013 investigation letter issued as a result of the *William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991, Order (Oct. 18, 2013)(*Towne*). In the *Towne* case, the Commission identified a concern that customers, like Mr. Towne, may have been subjected to aggressive marketing tactics that would "be potentially detrimental to the ongoing enhancements and the ultimate success of Pennsylvania's retail market." *Towne* at 22. I&E in the *2017 Settlement Order* proceeding began an investigation of the Company's marketing practices. *2017 Settlement Order* at 3.

The Commission's *2017 Settlement Order* provided an explanation of practices implemented by GAP in response to the complaints about deceptive marketing. The quality control measures that the Company was to implement for its third-party representatives as a result of the *2017 Settlement Order* included:

- requiring outbound sales calls to be monitored;
- conducting live monitoring of outbound sales calls for a total of ten to twenty hours per month;
- validating outbound sales call enrollments by a third-party verification company;
- providing federal and state Do-Not-Call (DNC) lists to its vendor and requiring the vendor to scrub DNC list numbers from its sales lead lists;
- maintaining an internal DNC list generated from contacts made directly to Great American and requiring its vendor to scrub these numbers from the sales lead list twice per week; and
- sending a welcome package to every enrolling customer.

*2017 Settlement Order at 5.*

The Settlement in this case does not identify whether the Company still had these practices in place, or whether the practices were not effective. The Settlement contains no call monitoring requirements or review of the training materials or scripts by I&E, and in particular, no information about what call monitoring will be used after the one-year period has expired. Moreover, the Settlement provides that the Company representatives will exercise “good judgment.” The previous allegations indicate that the Company’s call center representatives have not exercised “good judgment.” The fact that the same actions are still occurring demonstrates that the Company has either lapsed in its call monitoring practices or needs to implement more extensive call monitoring measures. Just because the Company will be internally handling calls does not mean that the same issues cannot arise without effective call monitoring. At a minimum, the Settlement should include the provisions in place for when the Company resumes telemarketing.

In the second proceeding, I&E investigated complaints that involved door-to-door marketing permitting violations and failure to identify sales activities to the EDCs. *2019 Settlement Order at 5.* Although the *2019 Settlement Order* involved different issues than the instant case, the Company’s actions here seem to indicate that it did not follow through with its commitments as to the most recent Settlement. The *2019 Settlement Order* provided, in part:

The Settlement acknowledges that the Company has since taken corrective action and revised its marketing practices and implemented revisions to its operating procedures which will act as safeguards against future unauthorized EGS marketing and sales practices by its employees, agents and the Company's third-party vendors. The settlement recites the Company's modified procedures as follows:

- ii. In addition to Great American's initial training of its internal marketing and sales representatives and third-party marketing and sales agents, the Company shall revise its Code of Conduct for Agents, Quality Assurance Program, and any and all training materials to require subsequent refresher training on current Commission regulations, statutes, policies, and orders on at least a quarterly basis...

*2019 Settlement Order* at 6.

The Settlement should more closely adhere to the allegations presented in the investigation. The Settlement does not reflect the seriousness of the deliberate actions of the third-party vendor or the fact that in the last decade, the Commission has three times identified concerns about GAP's marketing practices. *See Towne, supra; 2017 Settlement Order, supra; 2019 Settlement Order, supra.* The facts of this case are egregious and more serious sanctions, including the potential revocation or suspension of GAP's license should be considered, particularly because previous civil penalties have not been effective in changing GAP's conduct.

C. The Settlement does not provide for adequate remedies and penalties.

1. Overview of civil penalties included in the Settlement.

The OCA is concerned that the proposed Settlement does not sufficiently deter GAP from future similar actions. The Settlement also imposes a cumulative civil penalty of \$92,500 for allegations from the Director of OCMO, the BCS complaints, and complaints identified through GAP's customer care center. Settlement ¶ 2; Order at Attach, Joint Petition for Settlement ¶ 40. The Joint Petition for Settlement details that the cumulative civil penalty of \$92,500 was calculated as follows:

- a \$500 civil penalty for each of the seven violations during the call to the Director;
- a \$1000 penalty for the violations alleged in informal BCS Complaint A;
- a \$500 each penalty for informal BCS Complaints B-E, totaling \$3000 for B-E;
- a \$500 penalty for each of the 22 Commission regulation violations identified in GAP's internal Complaints numbered 2-16, or a total penalty of \$11,000 for Complaints 2-16; and
- a civil penalty amount of \$75,000 for the violations alleged in the 153 internal customer call complaints received by GAP.

See for further details, Order at Attach. Joint Petition for Settlement ¶ 40.

2. The Settlement provides for insufficient remedies for impacted customers.

The Joint Petition for Settlement is incomplete in its discussion of the remedies provided to customers. The Joint Petition for Settlement identifies the resolutions of the BCS complaints and *some* of the internal informal customer care complaints identified through I&E's discovery of GAP's internal business records. Joint Petition for Settlement ¶¶ 35-36. The Joint Petition for Settlement, however, identifies a list of GAP's internal complaints as "Complaints 21-177" with at least one violation of the Public Utility Code and/or Commission regulations. No resolution for these GAP internal complaints is provided. The allegations involved in the complaints include slamming, enrollment under false pretenses, enrollment of customer with dementia, misrepresentation of the customer's current rate, misrepresentation of savings, misrepresentation of rewards, misrepresentation of 50-cent daily charge, misrepresentation of customer's ability to choose an EGS, misrepresentation as another EGS or EDC, misrepresentation of enrollment process, promised gift card or check, promised rebate or refund, incorrect billing information, spoofing an EDC phone number, and harassment. ¶ 35(n). Settlement ¶ 35(n). Each of these violations of the Commission's regulations could have merited a customer re-rate or refund. The Joint Petition for Settlement does not indicate how these GAP internal consumer complaints were



resolved, or if they were resolved at all. No further remedies are provided for these customers in the Settlement.

The OCA also respectfully submits that the Settlement fails to identify and redress the full scale of harm that may have resulted to Pennsylvania consumers. There are some indications in the descriptions of refunds provided, but it is not clear whether all internal customer complaints have been rectified. If there were violations of the Public Utility Code and the Commission's regulations in acquiring the customers, the customers should be refunded, and the Settlement should ensure that the refunds were provided at a minimum at the standard set forth in the Commission's regulations. 52 Pa. Code § 57.177(b).

The OCA notes that the Settlement also only addresses those customers that complained to the Company or that contacted the Public Utility Commission. The Settlement does not represent the full universe of potential customers that were potentially impacted, and based upon the information presented in the Settlement, it appears that the only customers identified were those reported by the Company as the subject of informal internal complaints.

The OCA submits that the Commission should require the Settlement to include and identify that remedies have been provided to each of the customers included in Complaints 21-177. The Commission should also require a further investigation by GAP to determine whether other customers may have been impacted by the actions of its third-party vendor.

3. The civil penalties assessed are insufficient to deter future conduct.

The Settlement includes allegations of the most significant violations of the Commission's regulations: slamming; deceptive and coercive conduct, including lying to customers about the EGS's identity; and spoofing a customer phone number. Yet, the Settlement only provides for a \$500 fine for each of the 153 violations in the informal complaints. The Settlement does not

provide for any license suspension, and given the repeat conduct of GAP, seriousness of the allegations, and number of customers identified, license suspension should be considered.

In I&E's Statement of Support, I&E correctly identifies the legal standard for Settlement Agreements. *See Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201 (Policy Statement); *see also Joseph A. Rosi v. Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00992409, Order (March 16, 2000) (*Rosi Factors*) The Commission's Policy Statement identifies ten factors that the Commission may consider when evaluating a civil penalty. Settlement, App. B at 8. As I&E's Statement in Support notes, if the Commission is to evaluate this Settlement under the *Rosi factors*, the Commission should apply the factors in a strict fashion as if it were otherwise litigated. 52 Pa. Code 69.1201(b). For the reasons set out below, an evaluation of the *Rosi* factors and standards will show the Joint Complainants' Settlement is not in the public interest and should be rejected.

The first factor under *Rosi* is an examination of the serious nature of the conduct alleged or involved in the complaint. 52 Pa. Code 69.1201(c)(1). Under this factor, "[w]hen conduct is of such a serious nature, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty." *Id.* As I&E's Statement in Support acknowledges, "conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount." Settlement, App. B at 9; 52 Pa. Code § 69.1201(c)(1). I&E also acknowledges that "the conduct in this matter was of a serious nature in the form of misrepresentation and deceptive conduct" that included slamming, enrollment of customer under false pretenses, failure to identify, misrepresentation as an EDC or EGS, providing false information to the customer about their status with another supplier, providing incorrect or false rate information, spoofing, suggesting or stating

that the customer must switch suppliers, misrepresentation of the enrollment process, false promises of a reward, gift card or check, and harassment of customers. *See* Settlement, App. B at 9.

The Commission has a “zero-tolerance” policy on “slamming”<sup>2</sup> and the Joint Petition’s Settlement does not give proper weight to the allegations. In discussing its “zero-tolerance” policy on “slamming,” the Commission has stated, “[t]he Commission does not trivialize allegations of unauthorized enrollment of customers, or “slamming,” and seeks to deter such conduct by instituting firm retaliatory measures for violations of the Commission’s regulations with respect to enrollment of customers.” *Pa P.U.C. v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order at 5 (Sept. 26, 2001). The amount and type of conduct presented is not sufficiently penalized by the \$92,500 civil penalty. Given the number of complaints identified and scope of the intentional and deceptive conduct alleged, the Settlement should have considered the appropriateness of a license suspension.

The second factor considers whether the consequences of GAP’s conduct were of a series nature, such as personal injury or property damage. 52 Pa. Code § 69.1201(c)(2). This factor under *Rosi* allows the Commission to consider the effects of the alleged conduct and its resulting consequences. 52 Pa. Code § 69.1201(c)(2). Although no personal injury or property damage is alleged, I&E’s Statement in Support states that the alleged conduct creates “public distrust and self-loathing towards the electric generation supplier shopping process.” Settlement, App. B at 10. The OCA agrees that the conduct creates a level of public distrust in electric generation supplier shopping, but the OCA does not agree that the Settlement sufficiently addresses the second factor.

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<sup>2</sup> *See Pa P.U.C. et al. v. AP Gas & Electric*, Docket No. M-2013-2311811, 2013 Pa. PUC LEXIS 1169 at \*20 (Oct. 17, 2013); *see also, Pa P.U.C. v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order at 5 (Sept. 26, 2001).

The civil penalty in the proposed settlement does not reflect the seriousness of the allegations against GAP and is not in the public interest when compared to other supplier complaint matters in Pennsylvania with similar allegations. These cases include *Hiko*, wherein the Commission approved both a \$1.8 million civil penalty in the I&E Formal Complaint and *Blue Pilot* where the Commission ordered a \$1.06 million civil penalty. See *Pa. P.U.C., Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410, Order (Dec. 3, 2015) (*Hiko*); see also, *Commonwealth of Pa., Attorney General Kathleen Kane and Acting Consumer Advocate Tanya McCloskey v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655, Order (July 11, 2019) (*Blue Pilot*). Although the Joint Petitioners reached the lower civil penalty because of negotiations and compromise, the civil penalty must be an appropriate amount given the seriousness of the allegations and the settled upon civil penalty of \$92,500 is far too low to be in the public interest in this case.

The third factor is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). The factor may only be applied in evaluating litigated cases. *Id.* As I&E notes, the factor does not apply since the matter is resolved by Settlement. Settlement, App. B at 10. Should the Commission determine to reject the Settlement, the factor may be applicable. If fully litigated, conduct such as slamming and spoofing would be considered intentional, deceptive acts.

The fourth factor 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). Under this factor of the *Rosi* analysis, the Commission is to consider:

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. These modifications may include activities such as training and improving company techniques and supervision. 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 argues that GAP has voluntarily ceased telemarketing for one year and will “make great efforts to change its practices and procedures to prevent similar conduct from occurring in the future.” Settlement, App. B at 10.<sup>3</sup> As discussed above, the OCA submits that the proposed Settlement terms are insufficient to address the harms presented by the Company’s actions and do not fully address areas where the Company should change its practices. The Settlement also does not address what happens after the Company resumes telemarketing with a third-party vendor.

The fifth factor is the number of customers affected by GAP’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In its Statement in Support, I&E identifies the Director’s complaint, five BCS complaints, and 161 customer complaints provided by GAP, or a total of 167 customers. Settlement, App. B at 10. The OCA submits that I&E only states that this factor “was considered” as a part of the civil penalty calculation but does not indicate how the factor was considered. *Id.* The OCA submits that one hundred and fifty-three customers represent a pattern of intentional conduct by the Company. Moreover, the number of customers that reported issues likely does not represent the full universe of customers impacted by the apparent pattern and practice of deceptive conduct.

The sixth factor to be considered is the compliance history of GAP. 52 Pa. Code § 69.1201(c)(6). Under this factor, frequent, recurrent violations by a utility may result in a higher penalty. *Id.* I&E’s Statement in Support identified that they are aware of two prior I&E settlements with GAP based on informal investigations of marketing practices. *Settlement*, App. B at 11; *see*

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<sup>3</sup> The OCA notes that the Settlement only provides that GAP will cease using a third-party vendor for telemarketing for at least one year. The language of the Settlement does not state that GAP will not engage in any telemarketing activity for one year.

*2017 Settlement Order, supra; 2019 Settlement Order, supra.* I&E’s Statement in Support does not provide any analysis or information about how these two prior settlements impacted the amount of the civil penalty. I&E’s description also does not address the fact that the prior Settlement in 2017 had raised very similar concerns and issues that still exist nearly six years later.

As discussed above, in the *2017 Settlement Order*, I&E alleged that the third-party vendor used by GAP had engaged in deceptive telemarketing practices and “unacceptable” TPV practices. *2017 Settlement Order* at 4. The Commission’s Order provided an explanation of practices implemented by GAP in response to the complaints. The practices included:

- requiring outbound sales calls to be monitored;
- conducting live monitoring of outbound sales calls for a total of ten to twenty hours per month;
- validating outbound sales call enrollments by a third-party verification company;
- providing federal and state Do-Not-Call (DNC) lists to its vendor and requiring the vendor to scrub DNC list numbers from its sales lead lists;
- maintaining an internal DNC list generated from contacts made directly to Great American and requiring its vendor to scrub these numbers from the sales lead list twice per week; and
- sending a welcome package to every enrolling customer.

*2017 Settlement Order* at 5.

The Settlement in this case does not identify whether the Company had these practices still in place or whether the practices were not effective. The fact that the same actions are still occurring demonstrates that the Company has either lapsed in its call monitoring practices or needs to implement more extensive call monitoring measures. Moreover, if the practices were in place, the Company may have violated its prior Settlement agreement. Effective call monitoring is essential to ensuring that the violations are not repeated.

As discussed above, the *2019 Settlement Order* included provisions that required the Company to adhere to quarterly training about the Commission’s regulations, statutes, policies,

and orders on at least a quarterly basis. The *2019 Settlement Order* provided, in part, that the Company agreed to:

The Settlement acknowledges that the Company has since taken corrective action and revised its marketing practices and implemented revisions to its operating procedures which will act as safeguards against future unauthorized EGS marketing and sales practices by its employees, agents and the Company's third-party vendors. The settlement recites the Company's modified procedures as follows:

- ii. In addition to Great American's initial training of its internal marketing and sales representatives and third-party marketing and sales agents, the Company shall revise its Code of Conduct for Agents, Quality Assurance Program, and any and all training materials to require subsequent refresher training on current Commission regulations, statutes, policies, and orders on at least a quarterly basis...

*2019 Settlement Order* at 6. The Settlement in this case does not reflect that the Company's training either was not effective or did not continue in the manner consistent with the requirements of the prior 2019 Settlement. Training on these same issues has been identified in this case, and the civil penalty does not reflect that the Company's previous training efforts did not result in compliance with the law.

The seventh factor is whether the Company cooperated with the Commission's investigation. 52 Pa. Code 69.1201(c)(7). I&E states that the Company cooperated with the investigation. Settlement, Attach. B at 11.

The eighth factor to be considered is the settlement amount appropriate to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E argues that the amount is substantial and sufficient to deter GAP from committing future violations. Settlement, Attach. B at 11. The OCA notes that the Settlement amount is an increase over the \$18,000 identified in the 2017 Settlement Order; however, the amount of \$500 per violation does not seem to be proportionate to the actions committed and the serious nature. Moreover, the *2017 Settlement Order* allegations involved a

significantly smaller number of customers. The fact that similar issues are recurring indicates that a strong signal needs to be sent to GAP in the form of something more involving a license suspension and a higher civil penalty to reflect the seriousness of the allegations and GAP's history of alleged violations of Commission regulations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code §69.1201(c)(9). In its Statement in Support, I&E identified five past settlements involving other EGSs that ranged in civil penalties from \$8,250 to \$59,000. Settlement, Attach. B at 12. The OCA notes that each of those settlements involved less than 40 customers. *Id.* I&E did not reference the Settlement involving *PaG&E* which involved slamming complaints of hundreds of customer accounts. In 2013, 108 accounts of customers were physically switched to receive EGS or NGS service from PaG&E without authorization and 211 customer accounts were in the process of being switched to PaG&E. *Pa. PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.*, Docket No. M-2013-2325122, Order (Oct. 2, 2014). The Commission noted that the allegations in the PaG&E case were the most egregious it had thus far seen and fined the supplier \$150,200 which, at the time, was the largest civil penalty imposed on a supplier for slamming. *Id.* An important distinction to make, however, between PaG&E and this matter, is that only one agent and an accomplice were responsible for "slammings" and attempted "slammings." *Id.* There is no information that this case only involved one agent.

The tenth factor is "other relevant factors." I&E states that an additional factor that should be considered is whether the case was settled or litigated. Settlement, App. B at 13. The settlement avoids the need for the uncertainty of litigation. While the OCA agrees that settlements can be an effective tool to resolve disputes, the allegations against GAP are extremely serious. The number of accounts identified is significant, and the allegations of conduct related to slamming and



deceptive marketing activity are extremely concerning. The Settlement simply does not fully address the serious nature of this alleged conduct.

D. Conclusion

For the reasons set forth above, the OCA respectfully submits that the Settlement should be rejected. The terms of the Settlement do not address the seriousness of the allegations. The Commission has previously stated that it has a zero-tolerance policy for slamming, and the Settlement does not reflect that zero-tolerance policy. The Settlement also does not effectively identify that all customers impacted were made whole by the Company. The Settlement is vague regarding the proposed training to be provided. There are no requirements for call monitoring. Moreover, there is no prohibition that after one year the Company cannot go back to using the exact same vendor. Moreover, the civil penalty is insufficient to address the seriousness of the allegations presented and the repeat violations of the Commission's regulations.

### III. CONCLUSION

The Office of Consumer Advocate appreciates the opportunity to provide Comments on the Settlement. For the reasons set forth above, the OCA submits that the Settlement does not sufficiently address the allegations presented. The Settlement does not adequately compensate customers who may have been harmed, does not include an appropriate civil penalty or license suspension, and fails to provide an appropriate framework to ensure the revisions of GAP's business practices to ensure compliance with Pennsylvania law and regulations. The OCA respectfully submits that the Settlement should be rejected.

Respectfully Submitted,

/s/ Christy M. Appleby

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