

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Public Utility Commission,  
Bureau of Investigation & Enforcement**

**Public Meeting June 15, 2023  
3020643-OSA  
Docket No. M-2023-3020643**

v.

**Great American Power, LLC**

**JOINT MOTION OF VICE CHAIRMAN STEPHEN M. DEFRANK AND  
COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement) filed by the Commission's Bureau of Investigation and Enforcement (BI&E) and Great American Power, LLC (GAP or the Company). GAP is a jurisdictional electric generation supplier (EGS).<sup>1</sup> The Settlement arose out of an informal investigation by BI&E into possible violations of the Public Utility Code (Code) and specific consumer protection regulations. The general allegations against GAP are as follows: (1) misleading and deceptive sales tactics; (2) unauthorized customer enrollments known as slamming; and (3) billing violations.

BI&E and GAP agreed to settle the matter in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. Under the Settlement, GAP agrees to pay a cumulative civil penalty of \$92,500. GAP also agrees to deploy certain remedial measures, including voluntarily ending all telemarketing, as of May 6, 2021, and agreeing to a one-year moratorium against all telemarketing by third-party vendors following Commission approval of the Settlement.

In accordance with our Opinion and Order entered on March 2, 2023, at the above-captioned docket, the Settlement was published in the *Pennsylvania Bulletin* to provide interested parties with an opportunity to comment on the Settlement. Comments were filed by the Office of Consumer Advocate (OCA).

In its Comments, the OCA recommends that the Commission reject the Settlement. The OCA raises four basic concerns about the Settlement: (1) it fails to address the seriousness of the alleged conduct; (2) it fails provide adequate remedies for all impacted customers; (3) it fails to impose sufficient corrective actions for the Company, such as training and third-party vendor monitoring; and (4) it fails to impose a civil penalty sufficient to deter future violations.

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<sup>1</sup> GAP is licensed by the Commission, at Docket No. A-2010-2205475, to operate in the following electric distribution company (EDC) service territories in Pennsylvania: (1) PECO Energy Company; (2) Duquesne Light Company; (3) Metropolitan Edison Company; (4) Pennsylvania Electric Company; (5) Pennsylvania Power Company (Penn Power); (6) Allegheny Power (West Penn Power Company or West Penn); (7) PPL Electric Utilities Corporation; and (8) UGI Utilities, Inc. (UGI). Although GAP is authorized to operate in all of the service territories listed, GAP is currently not operating in the service territories of Penn Power, West Penn, and UGI. Settlement at ¶ 7.

The OCA in its Comments also notes that the Settlement does not provide for any suspension of GAP's EGS license. Given the alleged repeated conduct of GAP, the seriousness of the allegations in this case, and the number of customers identified as affected by the alleged conduct,<sup>2</sup> the OCA argues that a license suspension should be considered here. OCA Comments at 10-11.

The Commission has a Policy Statement that sets forth the factors it may consider in evaluating whether a settlement is reasonable and in the public interest.<sup>3</sup> In applying the relevant factors here, we propose to reject the Settlement.

The first factor to be considered in evaluating a settlement is whether the conduct at issue is of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty. 52 Pa. Code § 69.1201(c)(1).

In this matter, the allegations are extensive and include: (1) slamming; (2) customer enrollment under false pretenses; (3) failure to identify; (4) misrepresentation as an EDC or another EGS; (5) providing false information regarding the status of other EGSs, such as suggesting that the EGS was going out of business; (6) providing incorrect or false information regarding the rate, distribution charge, or customer charge; (7) spoofing the phone number of another company or business on the caller ID; (8) suggesting or stating that the customer must switch suppliers; (9) misrepresentation of the enrollment process; (10) making false monetary promises, such as offering a gift card or a rebate/refund; and (11) harassing potential customers with voluminous phone calls, even after potential customers requested no further calls. All parties, including GAP, agree the allegations are serious, and BI&E characterizes the conduct here as egregious. I&E Statement in Support at 9.

We propose to reject the Settlement first because of the serious/egregious nature of the allegations here. Upon review, the allegations are extensive and involve deceptive and misleading conduct, which warrants a higher penalty. Moreover, the allegations related to a third-party telemarketing vendor are not adequately addressed by the remedial measures in the Settlement. Although the Settlement provides that GAP will not use a third-party telemarketing vendor for a year, the third-party vendor responsible for the alleged violations was not identified, and the Settlement does not prohibit the Company from using the same vendor in the future. Moreover, it appears that 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. OCA Comments at 5-6.

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<sup>2</sup> In its Statement in Support, BI&E identified a total of 167 customers affected. Settlement, App. B at 10.

<sup>3</sup> *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201; see also *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000).

Another factor to be considered in evaluating a settlement is the compliance history of the regulated entity. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty. 52 Pa. Code § 69.1201(c)(6).

According to BI&E in its Statement in Support, it is aware of two prior settlements with GAP related to the Company's marketing and sales practices. The first settlement arose out of an informal investigation that was a follow-up to a Commission Order in an individual customer complaint case.<sup>4</sup> Specifically, the informal investigation addressed allegations that GAP engaged in improper telemarketing of EGS services. BI&E reached a settlement with GAP, which was approved by the Commission in April of 2017. Under the terms of the settlement, GAP agreed to pay a civil penalty of \$18,000 and to implement certain remedial measures, including terminating its relationship with the third-party marketer involved in the allegations.<sup>5</sup>

The second settlement arose out of an informal investigation into allegations that GAP engaged in door-to-door marketing without the proper solicitation permits and without notification to the Commission's Bureau of Consumer Services (BCS). BI&E reached a settlement with GAP, which was approved by the Commission in July of 2019. Under the terms of the settlement, GAP agreed to pay a civil penalty of \$13,500 and to implement certain remedial measures.<sup>6</sup>

Another reason we propose to reject the Settlement is GAP's poor compliance history. We are troubled that this is GAP's third appearance before the Commission in recent years as an alleged bad actor. With this history, GAP appears to be showing systemic and repeated patterns of behavior. In our view, the alleged behavior serves to undermine consumer faith in Pennsylvania's retail electric choice market, and it should not be tolerated.

We note that another Policy Statement factor to be considered in evaluating a settlement is whether the resulting consequences of the conduct at issue are of a serious nature. 52 Pa. Code § 69.1201(c)(2). We agree with BI&E that the alleged conduct in this matter "creates public distrust and self-loathing towards the [EGS] shopping process." I&E Statement in Support at 10. Accordingly, this factor supports a higher penalty.

We also agree with the OCA that the proposed civil penalty is not sufficient to deter future violations, which is another factor we use when evaluating settlements. 52 Pa. Code § 69.1201(c)(8). As previously noted, the Settlement provides for a civil penalty of \$92,500 to be paid by GAP. This penalty amount includes a \$500 civil penalty for each of the seven alleged violations found during the telemarketing call made to the Commission's Director of the Office of Competitive Market Oversight and each of the violations alleged in informal complaints filed

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<sup>4</sup> *William Towne v. Great American Power, LLC*, Docket No. C-20122307991 (Order entered October 18, 2013). The Commission sustained the complaint, and GAP was required to pay a \$10,000 civil penalty.

<sup>5</sup> *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).

<sup>6</sup> *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M2018-2617335 (Opinion and Order entered July 11, 2019).

with BCS and written documentation received from GAP. The penalty amount also includes \$75,000 in civil penalties for the violations alleged in the 153 customer care call complaints received by GAP's call center. Although the overall penalty amount is substantially higher than in the prior cases involving GAP, we do not believe these per-violation penalty amounts are sufficient when considering the serious nature of the allegations and the compliance history here.

For these reasons, we do not believe the Settlement is reasonable and in the public interest. **THEREFORE, WE MOVE THAT:**

1. The Joint Petition for Approval of Settlement filed on January 13, 2023, at the above-captioned docket by the Commission's Bureau of Investigation and Enforcement and Great American Power, LLC be rejected consistent with this Joint Motion.
2. This matter be returned to the Commission's Bureau of Investigation and Enforcement to take whatever further action may be warranted.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Joint Motion.



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STEPHEN M. DEFRANK  
VICE CHAIRMAN



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JOHN F. COLEMAN, JR.  
COMMISSIONER

Date: June 15, 2023