

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

Public Meeting held June 15, 2023

Commissioners Present:

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

M-2023-3020643

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

Great American Power, LLC

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement), filed on January 13, 2023, by the Commission's Bureau of Investigation and Enforcement (I&E) and Great American Power, LLC (GAP or the Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E concerning possible violations of the Public Utility Code (Code) and specific consumer protection regulations. By Order entered March 2, 2023, relative to the above-captioned

proceeding (*March 2023 Order*), we provided interested parties with the opportunity to file comments on the Settlement. Also, before the Commission for consideration and disposition are the Comments of the Office of Consumer Advocate (OCA), filed on April 12, 2023, in response to the *March 2023 Order*. Both I&E and GAP filed a Statement in Support of the Settlement (Statement in Support). Further, both Parties submit that the proposed Settlement 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* (Policy Statement). See Settlement at ¶ 47, *infra*.

For the reasons set forth herein, we shall deny the proposed Settlement, consistent with this Opinion and Order.

## I. History of the Proceeding

This matter concerns allegations regarding GAP, a jurisdictional electric generation supplier (EGS).<sup>1</sup> The allegations against GAP are as follows: (1) misleading and deceptive sales tactics; (2) unauthorized customer enrollments, known as slamming; and (3) billing violations. Settlement at ¶ 12. I&E and GAP entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. Settlement at ¶ 13.

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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 of Pennsylvania: (1) PECO Energy Company (PECO); (2) Duquesne Light Company (Duquesne); (3) Metropolitan Edison Company (Met-Ed); (4) Pennsylvania Electric Company (Penelec); (5) Pennsylvania Power Company (Penn Power); (6) Allegheny Power (West Penn); (7) PPL Electric Utilities Corporation (PPL); and (8) UGI Utilities, Inc. (UGI). The Parties note that, 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.

By letter dated January 28, 2021, I&E sent a data request to GAP (*January 2021 Letter*), notifying GAP that, based on information referred to I&E by the Office of Competitive Market Oversight (OCMO), I&E had instituted an informal investigation of GAP and a response to I&E's set of twenty-eight (28) data requests was required by March 1, 2021. On March 1, 2021, GAP provided a timely response to I&E's data requests. On April 26, 2021, GAP provided a timely supplemental response to I&E's data requests.<sup>2</sup> On May 5, 2021, I&E requested a response to a second set of nine (9) data requests no later than May 26, 2021. On May 26, 2021, GAP provided a timely response to I&E's second set of data requests. On September 13, 2022, I&E requested a response to a third set of five (5) data requests. On October 12, 2022, GAP provided a timely response to I&E's third set of data requests.<sup>3</sup> Settlement at ¶¶ 17-25.

As previously noted, on January 13, 2023, I&E and GAP filed the instant Settlement. Also, as noted earlier, the Parties to the Settlement in this instance have each filed a Statement in Support. *See* Appendix B and C to Settlement, which are Statements of Support filed by I&E and GAP, respectively.<sup>4</sup>

As noted, by the *March 2023 Order*, we directed that notice of the Order and the proposed Settlement be published in the *Pennsylvania Bulletin*, to provide an opportunity for interested parties to file comments with the Commission regarding the proposed Settlement within twenty-five days after the date of publication.

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<sup>2</sup> On February 25, 2021, I&E held a conference call with counsel for GAP to discuss GAP's responses to I&E's data requests. GAP advised that it needed additional time to respond to some of I&E's data requests due to power outages and storms where GAP's employees responsible for searching for the information were located. Accordingly, GAP was granted an extension to April 26, 2021. Settlement at ¶ 18.

<sup>3</sup> On or about September 16, 2022, I&E agreed to counsel for GAP's request for additional time to respond to I&E's third set of data requests, resulting in a due date of October 12, 2022. Settlement at ¶ 24.

<sup>4</sup> We note that the Settlement also includes supplemental Proposed Ordering Paragraphs. *See*, Appendix A to Settlement.

On March 18, 2023, the *March 2023 Order*, along with the Settlement and Statements in Support, were published in the *Pennsylvania Bulletin*, 53 Pa. B. 1629 (March 18, 2023). In accordance with the *March 2023 Order*, comments on the proposed Joint Settlement were due on or before April 12, 2023 (*i.e.*, twenty-five days after the *March 2023 Order* was published). On April 12, 2023, the OCA filed Comments in response to the *March 2023 Order*. Replies to the Comments have not been filed.

## II. Background

The basis for the instant Settlement resulted from I&E's investigation, which included: (1) a review of a referral memo completed by OCMO; (2) several informal customer complaints; and (3) GAP's responses to I&E's data requests.

On or about July 2, 2020, OCMO sent a referral memo to I&E alleging that, on May 19, 2020, the Director of OCMO (the Director) had personally received a telemarketing call with a caller identification (caller ID) of Chambersburg, Pennsylvania. Specifically, the referral stated that the Director received an automated/robocall advertising a qualifying electric service discount and a fifty-dollar (\$50) reward. Settlement at ¶¶ 16, 26-27. The Director stated that upon pressing one on the telephone dial keys, a representative came on the call but, did not initially identify who he was calling on behalf of, promptly requested that the Director retrieve his PPL electric bill and provide his address and account number. Settlement at ¶ 28. The Director noted that the representative, who did not state his name or the nature of the call, advised that he was "ensuring that the benefits were going to the right person." Settlement at ¶ 28. The Director further noted that the representative incorrectly stated the Director's current electric rate was 12.9 cents and he could provide "a better green rate fixed for 24 months of 8.59 cents." Settlement at ¶ 29. The representative, who eventually stated that he was representing GAP, informed the Director that "he would receive everything in writing

and that he could reject or accept within 3 days and could cancel at any time.” Settlement at ¶¶ 30-31.

The Director noted that he was coached to say yes through the verification process and was told to not ask any questions. The Director stated that after being placed on a brief hold, the verifier answered the call and promptly requested the Director’s date of birth. The verifier provided a four-digit code and repeated the information about the 8.59 cents rate plus \$50 reward. The Director noted that, upon being provided with “a phone number to cancel and verification code,” the phone call ended. Settlement at ¶ 32. Finally, the Director noted that, on or about May 29, 2020, he was successfully enrolled with GAP, his account was switched to GAP, and, subsequently, he received a welcome letter and disclosure statement from GAP. Settlement at ¶ 33.

In addition to the allegations contained in the OCMO referral memo, I&E identified informal complaints from the Commission’s Bureau of Consumer Services (BCS) which raised concerns of unauthorized enrollment and billing errors. Settlement at ¶ 34. Each customer complaint from BCS, as summarized in the Settlement, is reprinted verbatim below:

- a) Customer A<sup>5</sup>
  - 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 [(TPV)] recording raised concerns of customer’s competency/ability to authorize enrollment.

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<sup>5</sup> The Parties have agreed to not include the name of the customer(s) or other identifiable information for confidential purposes.

- 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.
- 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.

Settlement at ¶ 35.

I&E also identified several documents from GAP which raised concerns of unauthorized enrollment, misrepresentation, and failure to cancel an account upon request. Settlement at ¶ 36. Each customer complaint provided by GAP, as summarized in the Settlement, is reprinted verbatim below:

- f) Complaint 2<sup>6</sup>
  - 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)
- g) Complaint 3
  - i) Customer alleged that he was [enrolled] 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)

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<sup>6</sup> Please note that the [documentation provided by GAP related to customer] 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.

- 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 [the customer] 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 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 of 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,<sup>7</sup> 153 alleged at least one violation of the [Code] and/or Commission [R]egulations 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;

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<sup>7</sup> The Parties note that one of the customer care call complaints involved a Maryland customer and was not included in the final calculations.

- 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;
- 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 the 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.

Settlement at ¶ 36. Additionally, I&E identified thirty-five (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 monthly. *Id.*

If this matter had been fully litigated, I&E was prepared to present evidence and legal arguments to demonstrate that GAP and/or its agents committed the following alleged violations: (1) the following conduct of the GAP representative directed to the Director constitutes a violation of 52 Pa. Code §§ 54.43(g), 54.122(3), 111.8(b), 111.8(f), 111.10(a) and (b), and 111.12(d): (a) calling an individual on the Do Not Call list; (b) spoofing a Chambersburg, Pennsylvania telephone number;<sup>8</sup> (c) advising the recipient, via an automated recording, that he/she is qualified for a discount on their electric bill and a \$50 reward; (d) upon first contact, not stating who they were working on the behalf of, or that they were working for the local EDC; (e) not advising the Director that he is not required to choose a supplier and/or switch to GAP (*i.e.*, upon first contact, failed to state the nature of the phone call); (f) agent misrepresentation that the Director's current rate was 12.9 cents; and (g) agent misrepresentation that the Director will be receiving everything in writing and can accept or reject the terms within three days; (2) the customer complaints received by BCS alleged violations of 52 Pa. Code §§ 54.10, 54.42(a)(9), 111.7, 111.11, and 111.12; and (3) the customer complaints provided by GAP alleged violations of 52 Pa. Code §§ 54.43(g), 54.122(3), 111.7, 111.8, 111.10, and 111.12. Settlement at ¶ 37.

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<sup>8</sup> Spoofing refers to the practice of using the phone number of another company or business on the caller ID.

If this matter had been fully litigated, GAP intended to “vigorously” defend each claim. Settlement at ¶ 38.

### **III. Terms of the Settlement**

The Parties state that the purpose of the Settlement is to terminate I&E’s informal investigation and settle this matter completely without litigation. Further, the Parties note that they recognize that this is a disputed matter and, given the inherent unpredictability of the outcome of a contested proceeding, resolving the disputed issues through settlement and avoiding the additional time and expense of litigation and possible appeals can be beneficial. Moreover, the Parties acknowledge that approval of this Settlement is in the public interest and consistent with the Commission’s Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission Regulations, pursuant to 52 Pa. Code § 69.1201. Settlement at ¶¶ 39, 47-48.

The terms of the Settlement are reprinted verbatim below:

40. GAP shall pay a cumulative civil penalty of Ninety-Two Thousand Five Hundred Dollars (\$92,500.00).<sup>9</sup> The cumulative civil penalty is calculated as follows:
  - a) A \$500.00 civil penalty for each of the seven (7) alleged violations found during the telemarketing call made to [the Director], resulting in a total civil penalty amount of \$3,500.00.

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<sup>9</sup> [GAP] 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 after 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.

- 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) [GAP] shall cease and desist from advising customers that an [EDC's] rate fluctuates or is a variable rate.
  - b) [GAP] shall comply with all Pennsylvania laws, including the [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 [R]egulations, Orders, and policies.
  - c) [GAP] 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) [GAP] will continue to refrain from telemarketing through third-party vendors for a period of one (1) year after the effective date of the [S]ettlement.
- e) [GAP] agrees to provide notice to [BCS] and [I&E] at least thirty (30) days prior to resuming telemarketing after the 1-year moratorium.
- f) [GAP] agrees to provide to [I&E], 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 [Code] the Commission's [R]egulations, 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 all customer[s] will be enrolling with GAP after completion of the [TPV], 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) [GAP] 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.

*See*, Settlement at ¶¶ 40-42.

The Parties jointly request that the Commission issue an Order approving the Settlement without modification but note that if the terms of the Settlement are “substantively” modified by the Commission, the Parties agree that any party may withdraw from the Settlement. Settlement at ¶¶ 45-46. The Parties indicate that the consequence of any Party withdrawing from the Settlement is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated by the Parties, and all obligations of the Parties to each other will cease. Further, if a Party withdraws from the Settlement, the Parties jointly agree that nothing in the Settlement shall be construed as an admission against, or as prejudice to, any position which any Party might adopt during subsequent litigation of this case. Settlement at ¶ 46.

The Parties state that approval of the Settlement avoids the time and expense of litigation in this matter, which likely would include: (1) preparation for and attendance at hearings; and (2) preparation and filing of briefs, reply briefs, exceptions, and reply exceptions. Settlement at ¶ 48. Further, the Parties state that adopting the Settlement “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.” Settlement at ¶ 49.

The Parties acknowledge that the Settlement represents a complete settlement of I&E’s investigation of GAP’s alleged violations related to telemarketing and billing for the period January 28, 2020 through January 28, 2021. Settlement at ¶ 50. Moreover, the Parties jointly acknowledge that the Settlement is presented without prejudice to: (1) any position that may have been advanced by either Party; and (2) the position that any Party may advance on the merits of issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of the instant Settlement. Settlement at ¶ 51.

#### **IV. Discussion**

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

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos.

R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to the Commission's Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Based on our review of the Settlement terms and conditions, we find that the Settlement is not in the public interest.

Furthermore, consistent with the Commission's policy to promote settlements, we have promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest. 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 Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In applying the relevant factors in this case, we find that the Settlement should be rejected.

## A. Comments Filed in Response to the *March 2023 Order* and Disposition

As previously noted, the Commission received comments from the OCA in response to our *March 2023 Order* issuing the proposed Settlement for comment. The OCA's Comments and our Disposition to the OCA's Comments are summarized below.

### 1. The OCA's Comments

In its Comments, the OCA recommends that the Commission reject the Settlement. The OCA raises four basic concerns about the Settlement. Specifically, the OCA submits that the Settlement fails to: (1) address the seriousness of the alleged conduct; (2) provide adequate remedies for all impacted customers; (3) provide sufficient corrective actions for the Company, such as training and third-party vendor monitoring; and (4) impose sufficient penalties to deter future violations. Comments at 5, 9-10. 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>10</sup> the OCA argues that a license suspension should be considered in this matter. *Id.* at 10-11. Accordingly, the OCA submits that the Settlement does not address the serious nature of the alleged conduct and should be rejected. *Id.* at 18.

First, the OCA submits that the Settlement fails to address the seriousness of the allegations arguing that slamming, spoofing, and lying about the EGS's identity reflect intentional violations of the Commission's Regulations and the law by the third-party vendor. Moreover, the OCA notes that the Commission has a zero-tolerance policy against slamming. Comments at 5 (citing *Pa. PUC, Bureau of Investigation and*

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

*Enforcement v. AP Gas & Electric (PA), LLC, d/b/a APG&E*, Docket No. M-2013-2311811 (Order entered October 17, 2013) (*APG&E*); *Pa. PUC, Bureau of Investigation and Enforcement v. Total Gas & Electric Inc.*, Docket No. M-00011529 (Order entered September 26, 2001) (*Total Gas & Electric*). Accordingly, the OCA argues that “more sanctions, including the potential revocation or suspension of GAP’s license,” should be considered. *Id.*

Next, the OCA notes that the informal complaints identified by GAP and BCS, which represent customers who complained to the Company and the Commission, do not represent “the full universe of customers” who may have been impacted by the Company’s actions. Comments at 5.

The OCA also notes that the Settlement fails to: (1) identify the responsible vendor; (2) prohibit GAP from using the same vendor again; or (3) address what types of vendor monitoring may be implemented in the future. Further, the OCA notes that beyond refunding customers and retraining, there is no indication that GAP took any steps to change its systemic and repeated pattern of behavior. Moreover, the OCA disagrees with GAP “essentially plac[ing] blame for the actions on the third-party vendor,” arguing that ultimately, the supplier is responsible for monitoring the vendor’s actions. As such, the OCA submits that GAP failed to monitor the actions of its vendor. Comments at 5-6.

The OCA also notes that the instant Settlement does not identify the effectiveness nor the status of several quality control measures that were implemented in accordance with *Pa. PUC, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2016-2536806 (Order entered April 20, 2017) (*2017 GAP*

*Order*).<sup>11</sup> Comments at 6-7 (citing *2017 GAP Order* at 5). Further, the OCA notes that the Settlement does not contain: (1) call monitoring requirements; (2) review of the training materials or scripts by I&E; and (3) information regarding what call monitoring will be used after the one-year moratorium has expired. Moreover, the OCA argues that because the actions alleged in the *2017 GAP Order* are still occurring, GAP's call center monitoring measures have either lapsed or need to be more extensive. Accordingly, the OCA submits that without effective call monitoring, GAP's internal handling of calls will not prevent similar issues when GAP resumes telemarketing and, therefore, the Settlement should include "more extensive call monitoring measures." *Id.* at 7.

Similarly, the OCA also refers to *Pa. PUC, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2018-2617335 (Order entered July 11, 2019) (*2019 GAP Order*) to argue that, based on the Company's actions in the instant proceeding, GAP has not followed-through on the training commitments in the *2019 GAP Order*.<sup>12</sup> Comments at 7-8 (citing *2019 GAP Order* at 6). Further, the OCA notes that the Settlement does not reflect the seriousness of the third-party vendor's actions or that the Commission has identified concerns regarding the Company's marketing practices three times in the last ten years. *Id.* at 8 (citing *2019 GAP Order*;

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<sup>11</sup> Specifically, the OCA referenced the following quality control measures: (1) requiring that outbound sales calls be monitored; (2) conducting live monitoring of outbound sales calls for ten to twenty hours per month; (3) a TPV company validates outbound sales call enrollments; (4) providing federal and state do not call lists to the Company's vendor and requiring the vendor to scrub do not call numbers from GAP's sales lead lists; (5) maintaining an internal do not call list generated from contacts made directly to GAP and requiring GAP's vendor to scrub these numbers from the sales lead list twice per week; and (6) sending a welcome package to every enrolling customer. Comments at 7 (citing *2017 GAP Order* at 5).

<sup>12</sup> Specifically, the OCA referenced the following commitments: (1) initial training of GAP's internal marketing and sales representatives and third-party agents; (2) revisions to GAP's Code of Conduct for Agents, Quality Assurance Program, and any and all training materials to require subsequent Quarterly training on Commission Regulations, statute, policies, and Orders. Comments at 8 (citing *2019 GAP Order* at 6).

*2017 GAP Order; William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Order entered October 18, 2013) (*Towne*). Accordingly, the OCA submits that given the facts of the instant case and previous civil penalties have been ineffective in changing the Company's conduct, serious sanctions, including the possible suspension or revocation of GAP's license, should be considered. *Id.* at 5, 8.

Next, the OCA submits that the Settlement is insufficient to deter the Company from similar actions in the future. Comments at 8-9. Specifically, the OCA argues that, regarding the internal complaints with at least one violation of the Code and Commission Regulations, the Settlement: (1) does not sufficiently address remedies provided to customers; (2) does not indicate how these complaints were resolved; (3) could have merited a customer "re-rate or refund;" and (4) is unclear whether all internal customer complaints have been identified and rectified. *Id.* at 9-10 (citing Settlement at ¶¶ 35-36). Further, the OCA avers that if there were violations of the Code and the Commission's Regulations in acquiring the customers, then, in accordance with 52 Pa. Code § 57.177(b), the Settlement should ensure that the refunds were provided to the impacted customers. Moreover, the OCA argues that the Settlement only identifies customers that were reported by GAP as the subject of informal internal complaints and does not represent all of the potential customers that were potentially impacted. Accordingly, the OCA submits that the Commission require that: (1) the Settlement identify the remedies provided to each of the customers included in Complaints 21-177; and (2) GAP investigate whether other customers may have been impacted by the actions of its third-party vendor. *Id.* at 10.

Finally, the OCA questions the sufficiency of the \$500 fine for each of the 153 violations in the informal complaints, arguing that given the Company's repeat conduct, the seriousness of the allegations, and the number of customers identified, license suspension should be considered. The OCA refers to the Commission's Policy

Statement at 52 Pa. Code § 69.1201 to submit that the proposed Settlement is not in the public interest and, therefore, should be rejected.<sup>13</sup> Comments at 10-11.

The OCA argues that the proposed \$92,500 civil penalty is insufficient and not in the public interest, given: (1) the number of complaints identified; (2) the amount, type, and scope of the intentional conduct alleged; (3) the seriousness of the allegations against GAP; and (4) other supplier complaint matters in Pennsylvania with similar allegations. Comments at 11-13 (citing 52 Pa. Code § 69.1201(c)(1)-(2); *Total Gas & Electric* at 5; *Pa. PUC, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015); *Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, Through The Bureau of Consumer Protection and Tanya J. McCloskey, Acting Consumer Advocate, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered July 11, 2019)). Further, the OCA argues that the terms of the Settlement are: (1) insufficient to address the harms presented by GAP's actions; (2) incomplete in addressing the practices that should be changed by GAP; and (3) does not address what happens after GAP resumes telemarketing with a third-party vendor. Moreover, the OCA repeats its claim that the full scope of customers impacted by the Company's practice of deceptive and intentional conduct is likely not represented by the number of customers that reported issues. *Id.* at 14 (citing 52 Pa. Code § 69.1201(c)(4)-(5)).

The OCA also repeats its argument that, given that the actions alleged in the *2017 GAP Order* are still occurring, GAP's call center monitoring measures have either lapsed or need to be more extensive. The OCA adds that, to ensure that violations are not

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<sup>13</sup> As discussed, *infra*, consistent with the Commission's policy to promote settlements, the Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest.



repeated, effective call monitoring is essential. Further, the OCA repeats its argument that the Settlement does not indicate the effectiveness and status of the training requirements set forth in the *2019 GAP Order*. The OCA adds that, given that training on the same issues identified in the *2019 GAP Order* have been identified in the instant case, the proposed civil penalty does not reflect that GAP's previous training efforts did not result in compliance. Comments at 15-16 (citing 52 Pa. Code § 69.1201(c)(6)). Moreover, the OCA contends that, when the number of customers involved in the *2017 GAP Order* is compared to the nature of the actions in the instant case, the penalty amount of \$500 per violation seems disproportionate. As such, the OCA recommends that, in order to send a "strong signal" to GAP, a license suspension and a higher civil penalty are necessary. Comments at 16-17 (citing 52 Pa. Code § 69.1201(c)(8)).

The OCA also refers to *Pa. PUC, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.*, Docket No. M-2013-2325122 (Order entered October 2, 2014) (*Energy Services*) to note that: (1) more than 300 customer accounts involved slamming complaints; (2) the Commission fined the supplier \$150,200; and (3) only one agent and an accomplice were responsible for slamming and attempted slamming. The OCA continues that, in the instant case, there is no information indicating that only one agent was involved. Furthermore, the OCA maintains that the allegations against the Company are serious, the number of accounts identified is significant, and the allegations of slamming and deceptive marketing activity are concerning. Accordingly, the OCA submits that the Settlement does not fully address the serious nature of GAP's alleged conduct. Comments at 17-18 (citing 52 Pa. Code § 69.1201(c)(9)-(10)).

## **2. Disposition of the OCA's Comments**

Upon review of the OCA's Comments filed in response to the *March 2023 Order*, we agree with the OCA that the Settlement fails to: (1) sufficiently address the

seriousness of the alleged conduct; (2) provide adequate remedies for all impacted customers; (3) impose sufficient corrective actions for the Company; and (4) impose a civil penalty sufficient to deter future violations. I&E and GAP note that the alleged conduct in this matter was of a serious nature, with I&E asserting that the deceptive and egregious nature of such conduct creates public distrust and self-loathing towards the EGS shopping process and, accordingly, warrants a higher civil penalty. I&E Statement in Support at 9-10; GAP Statement in Support at 1. We agree. However, we also find that the egregious nature of such conduct does not reconcile with the proposed remedies for the impacted customers or the proposed remedial actions for the Company. Moreover, we agree with the OCA that the \$92,500 civil penalty is insufficient given the number of complaints identified and the seriousness of the allegations. We will address these deficiencies in further detail in our analysis of the Policy Statement factors below and in applying the relevant factors here, we propose to reject the Settlement.

## **B. Analysis of Policy Statement Factors**

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

The alleged violations against GAP are in connection with a telemarketing call received by the Director of OCMO and several informal complaints regarding unauthorized enrollments, billing errors, misrepresentation, and failure to cancel an account upon request. Settlement at ¶¶ 16, 26-33, 36. Here, we note that 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. I&E Statement in Support at 9. I&E and GAP agree that the allegations are serious, and I&E characterized 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 in this matter. Upon review, the allegations are extensive and involve deceptive and misleading conduct. Moreover, the allegations regarding 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 GAP 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 implemented in the future when, or if, GAP resumes using a third-party vendor. OCA Comments at 5-6. Accordingly, we find that this factor warrants a higher penalty.

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Here, both I&E and GAP submitted that no personal injury or property damage resulted from the alleged violations. I&E Statement in Support at 10; GAP Statement in Support at 2. However, I&E asserted 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. We agree with I&E. Accordingly, we find that this factor supports a higher penalty.

The third factor is “[w]hether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(3). The third factor pertains to litigated cases only. *Id.* Because this proceeding was settled prior to the filing of a complaint by I&E, this factor is not applicable to this Settlement.

The fourth factor is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, I&E noted that on May 6, 2021, GAP voluntarily ceased all telemarketing. Further, I&E noted that GAP agreed to a one-year moratorium following the approval of the Settlement. Moreover, both of the Parties noted that GAP, in accordance with the Settlement, improved its internal practices and procedures to address the conduct at issue and prevent similar conduct from occurring in the future. I&E Statement in Support at 10; GAP Statement in Support at 2. Although we acknowledge GAP’s efforts, we find that GAP’s corrective measures were inadequate given the serious and egregious nature of the alleged conduct. For example, as discussed in more detail above, we do not believe the allegations regarding the use of a third-party telemarketing vendor were adequately addressed by the remedial measures in the Settlement. Therefore, this factor supports a higher civil penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In calculating the civil penalty, I&E noted that

it considered the 167 customers affected in this matter, including: (1) the Director; (2) five customer complaints provided by BCS; and (3) 161 customer complaints provided by GAP. I&E Statement in Support at 10. GAP noted that I&E alleged specific violations against fifteen (15) customers and “the remaining number reflect an unknown number of unsubstantiated allegations.” GAP Statement in Support at 2. GAP further noted that the number of impacted customers was limited because the Company voluntarily ceased telemarketing through vendors. *Id.* We find that the number of customers affected supports a higher penalty.

We may also consider the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* Here, I&E noted that to date, it is aware of two prior settlements between I&E and GAP based upon prior informal investigations related to marketing and sales practices. First, I&E noted the proceeding for the *2017 GAP Order*, which arose out of an informal investigation that was a follow-up to the Commission’s Order in *Towne*, an individual customer complaint case. Specifically, in the *2017 GAP Order* proceeding, the informal investigation addressed allegations that GAP engaged in improper telemarketing of EGS services. I&E Statement in Support at 11. I&E reached a settlement with GAP, which was approved by the Commission in April 2017. Under the terms of that 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. *2017 GAP Order* at 7-8.

I&E also noted the proceeding for the *2019 GAP Order*, which 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 BCS. I&E Statement in Support at 11. I&E reached a settlement with GAP, which was approved by the

Commission in July 2019. Under the terms of that settlement, GAP agreed to pay a civil penalty of \$13,500 and to implement certain remedial measures. *2019 GAP Order* at 6-7.

We also propose to reject the Settlement due to 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, which should not be tolerated. Accordingly, we find that this factor weighs in favor of a higher penalty.

Another factor we may consider is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, GAP fully cooperated during the investigation and settlement process, including cooperating during informal discovery and settlement discussions. I&E Statement in Support at 11. Therefore, we find this factor supports a lower penalty.

In addition, we may consider the amount of the civil penalty or fine necessary to deter future violations, as well as past Commission decisions in similar situations. 52 Pa. Code §§ 69.1201(c)(8) and (c)(9). I&E submitted that the civil penalty amount of \$92,500, which is not tax deductible, is substantial and sufficient to deter GAP from committing future violations. I&E Statement in Support at 11. Similarly, GAP noted that the civil penalty amount is sufficient to deter future violations, particularly given the financial strains imposed on the Company by current market conditions. GAP Statement in Support at 2.

Regarding past Commission decisions, I&E submitted that because there are no past Commission decisions that are identical to this matter, the instant Settlement should be viewed on its merits. However, I&E referenced several prior Commission

decisions which provide guidance on how the Commission has regarded prior settlement agreements with similar deceptive and misleading conduct. Specifically, I&E referenced the following: (1) *Pa. PUC, Bureau of Investigation and Enforcement v. Discount Power, Inc.*, Docket No. M-2021-3022658 (Order entered February 24, 2022), in which the Commission approved a settlement imposing a civil penalty of \$42,250 to resolve allegations of: (a) misleading and deceptive telemarketing; (b) billing of incorrect rates; (c) failure to issue renewal letters; (d) unauthorized enrollments; and (e) a lack of record keeping; (2) *Pa. PUC, Bureau of Investigation and Enforcement v. Greenlight Energy Inc.*, Docket No. M-2021-3023026 (Order entered February 24, 2022), in which the Commission approved a settlement imposing a civil penalty of \$8,250 to resolve allegations of: (a) misleading and deceptive telemarketing; and (b) unauthorized enrollments; (3) *Pa. PUC, Bureau of Investigation and Enforcement v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014), in which the Commission approved a settlement imposing a civil penalty of \$59,000 to resolve allegations of: (a) slamming; (b) unauthorized marketing practices; and (c) Do Not Call violations, which resulted from thirteen (13) complaints comprising forty-nine (49) potential violations and no practical means to accurately determine the amount of violations; (4) *APG&E*, in which the Commission approved a settlement imposing a civil penalty of \$43,200 to resolve allegations of: (a) slamming; (b) unauthorized marketing practices; and (c) Do Not Call violations, which resulted from thirty-seven (37) complaints comprising fifty-four (54) potential violations; and (5) *Pa. PUC, Bureau of Investigation and Enforcement v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013), in which the Commission approved a settlement imposing a civil penalty of \$39,000 to resolve allegations of: (a) slamming; (b) fraudulent, deceptive, or unlawful sales and marketing practices; and (c) Do Not Call violations, which resulted from twenty-one (21) complaints comprising thirty-nine (39) potential violations. Settlement at ¶¶ 12-13.

GAP noted that in similar situations, prior Commission decisions “support

the dollar amounts proposed for each enumerated allegation, as well as a lesser amount for unenumerated allegations.” GAP Statement in Support at 2.

However, we agree with the OCA that the proposed civil penalty is not sufficient to deter future violations. 52 Pa. Code § 69.1201(c)(8). As previously noted, the \$92,500 penalty amount includes a \$500 civil penalty for each of the seven alleged violations found during the telemarketing call made to the Director, and each of the violations alleged in the informal complaints filed with BCS and written documentation received from GAP. The penalty amount also includes \$75,000 in civil penalties for violations alleged in the 153 customer care call complaints received by the Company’s call center. Settlement at ¶ 40. Although the overall penalty amount is substantially higher than in the prior cases involving GAP, we find that when the serious nature of the allegations and the Company’s compliance history are considered, these per-violation penalty amounts are insufficient. Accordingly, we find that this factor weighs in favor of a higher penalty.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E noted that a factor of pivotal importance to the Settlement is whether the case was settled or litigated. I&E explained that a settlement avoids the necessity for the governmental agency to prove elements of each allegation and, in return, the opposing party in a settlement agrees to a lesser penalty or other remedial action. Further, I&E noted that both Parties negotiate from their initial litigation positions and the penalties and other remedial actions that result from a fully-litigated proceeding are difficult to predict and can differ from those that result from a settlement. Moreover, I&E noted that reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and focus on implementing the agreed-upon remedial actions. I&E Statement in Support at 13. GAP submitted that other relevant factors include, but are not limited to: (1) the Company’s current “financial strains;” (2) the Company has ceased all telemarketing and agreed to not



engage in third-party telemarketing for one year; (3) many customers benefit from being enrolled with GAP; and (4) the detrimental effect on customers if GAP were forced to exit the market. GAP Statement in Support at 2-3.

While it's the Commission's policy to promote settlements, 52 Pa. Code § 5.231, we find that, given the serious and egregious nature of the allegations, GAP's poor compliance history, and the insufficient amount of civil penalties for the violations alleged in the 153 customer call complaints received by the Company's call center, the proposed Settlement is not reasonable nor in the public interest. Indeed, after the proceedings for the *2017 GAP Order* and the *2019 GAP Order*, this is GAP's third appearance before the Commission in recent years, which appears to demonstrate a system of repeated patterns of behavior that, if not addressed, may threaten to undermine consumer faith in Pennsylvania's retail electric market. Accordingly, we deny the Settlement and refer this matter to I&E for such further proceedings as deemed necessary and appropriate.

## V. Conclusion

Upon review of the terms of the Settlement, the associated Statements in Support, and the Comments filed in response to the *March 2023 Order*, we deny the Settlement and refer this matter to the Commission's Bureau of Investigation and Enforcement for such further proceedings as deemed necessary and appropriate; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement between the Commission's Bureau of Investigation and Enforcement and Great American Power, LLC, at Docket No. M-2023-3020643, filed on January 13, 2023, is denied.

2. That this matter is referred to the Commission's Bureau of Investigation and Enforcement for such further proceedings, as deemed necessary and appropriate, consistent with this Opinion and Order.

3. That a copy of this Opinion and Order shall be served upon the Office of Consumer Advocate.

**BY THE COMMISSION,**

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

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: June 15, 2023

ORDER ENTERED: July 6, 2023