



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

June 5, 2024

***Via Electronic Filing***

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

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
Planet Energy (Pennsylvania) Corp.  
d/b/a RiteRate Energy d/b/a Value Plus Energy  
Docket No. C-2023-3041126  
**Joint Petition for Approval of Settlement and Statement in Support**

Dear Secretary Chiavetta:

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

Copies are being served on parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'mswindler'.

Michael L. Swindler  
Deputy Chief Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 43319  
(717) 783-6369  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

MLS/ac  
Enclosures

cc: Administrative Law Judge John M. Coogan (via e-mail – [jcoogan@pa.gov](mailto:jcoogan@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	Docket No. C-2023-3041126
	:	
Planet Energy (Pennsylvania) Corp. d/b/a	:	
RiteRate Energy d/b/a Value Plus Energy	:	

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**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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**TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to 52 Pa. Code §§ 5.41, and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Planet Energy (Pennsylvania) Corporation (“Planet Energy” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement”, “Settlement Agreement”) to resolve all issues related to or raised by I&E in its Formal Complaint in the above-captioned case.

As part of this Settlement Agreement, I&E and Planet Energy (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement Agreement, without modification. Proposed Ordering Paragraphs are attached hereto as Appendix A. A Joint Statement in Support of the Settlement expressing the views of I&E and Planet Energy is attached hereto as Appendix B.

## I. INTRODUCTION

1. The original parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, and Planet Energy, with a business address of 1691 Michigan Avenue, Suite 425, Miami Beach, Florida 33139.<sup>1</sup>

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11). *See also* Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to I&E to initiate proceedings that are prosecutorial in nature).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, regulation, or order that the Commission has jurisdiction to administer.

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<sup>1</sup> Planet Energy is no longer in operation; however, the mailing address is still applicable.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations and orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. Section 54.42 of the Commission's regulations, 52 Pa. Code §§54.42(a)(7)-(9), authorize the Commission to impose fines and/or suspend or revoke the license of an electric generation supplier ("EGS") for violation of applicable provisions of the Code, violation of Pennsylvania Consumer Protection Laws and/or the transfer of a customer to another energy supplier without that customer's consent.

8. Planet Energy is a jurisdictional EGS licensed by the Commission at Docket No. A-2011-2223534 and operated in the service territories of Duquesne Light Company ("Duquesne"), Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), PECO Energy Company ("PECO"), PPL Electric Utilities ("PPL"), and West Penn Power Company ("West Penn").

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

10. Planet Energy, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and is required to observe, obey, and comply with the Commission's regulations and orders pursuant to Section 501(c) of the

Public Utility Code, 66 Pa.C.S. § 501(c).<sup>2</sup>

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

12. This matter involves allegations related to Planet Energy's cancellation of customer fixed-rate contracts prior to their expiration without proper notification.

13. As a result of successful negotiations between I&E and Planet Energy, the Parties have reached an agreement on an appropriate outcome as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

## **II. STIPULATED FACTS**

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

15. On or about August 19, 2022, the Bureau of Consumer Services ("BCS") referred to I&E its finding that Planet Energy unilaterally canceled customer fixed-rate contracts without proper notification and failed to abide by the terms and conditions of the customers' fixed-rate contracts.

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<sup>2</sup> On May 25, 2023, Planet Energy (Pennsylvania) Corporation ("Planet Energy") filed an application to abandon its EGS license as a supplier in Pennsylvania. On June 1, 2023, I&E filed a formal complaint against Planet Energy at Docket No. C-2023-3041126, alleging that Planet Energy violated Pennsylvania law and Commission regulations. Given I&E's pending complaint, the Commission elected to refrain from cancelling or granting an abandonment of Planet Energy's EGS license until the Commission is assured that all of Planet Energy's obligations to Pennsylvania consumers and the Commonwealth have been properly met. Accordingly, the Commission suspended Planet Energy's license until final resolution of the pending formal complaint.

16. BCS stated that it received complaints from Planet Energy’s customers who reported entering into fixed-rate contracts with Planet Energy, but who were subsequently returned to default service prior to the expiration of those contracts without notice.

17. On or about October 6, 2022, following the referral by BCS, I&E initiated an investigation into Planet Energy's actions.

18. As part of the investigation, I&E served two sets of Data Requests to Planet Energy, on October 6, 2022, and on April 7, 2023.

19. Planet Energy timely responded to the Data Requests on October 25, 2022, and on April 11, 2023, respectively.

20. At the conclusion of its investigation, I&E filed a formal complaint against Planet Energy on or about June 1, 2023, at the above-referenced docket, seeking civil penalties and other remedies.

21. Planet Energy filed an Answer to the formal complaint on June 20, 2023, denying the allegations of the Complaint and raising several defenses based on the facts and circumstances of the case.

22. Despite the fact that I&E and Planet Energy are willing and able to vigorously prosecute or defend this matter, the Parties seek to uphold the Commission’s “policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a). To that end, the Parties stipulate to the facts as follows:

- a. Planet Energy is an electric generation supplier licensed by the Commission to operate in Pennsylvania.
- b. Planet Energy operated in the Commonwealth under the names, “Planet Energy,” “RiteRate Energy,” and “Value Plus Energy.”

- c. From January 1, 2022 to October 6, 2022, Planet Energy canceled approximately 5,690 fixed-rate contracts of customers in Pennsylvania.
- d. Planet Energy did not provide 90 days' prior written notice to the Commission, the EGS's customers, the affected distribution utilities, and the default service providers before ceasing service as an EGS.
- e. Planet Energy's rapid exit from the Pennsylvania energy market was a result of perceived economic conditions and financial distress of its parent entity in Canada.<sup>3</sup>
- f. Planet Energy (Ontario), on behalf of Planet Energy, entered into a Letter of Credit ("LOC") with the Bank of Nova Scotia ("BNS") with the Commission as Beneficiary. Planet Energy (Ontario) posted cash collateral with BNS as security for the LOC (the "BNS Cash Collateral"). The LOC stipulates that, "Proceeds of the [LOC] may not be used to pay penalties or fines."
- g. For the avoidance of doubt, nothing in this Settlement Agreement provides for or allows payment of any penalties or fines from the LOC.

### III. ALLEGED VIOLATIONS

23. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments that Planet Energy committed the following violations impacting all 5,690 of its customers in Pennsylvania:

- a. Planet Energy failed to comply with the terms of the disclosure statements and contract summaries that they provided to their customers. They failed to fulfill the duration (length) of contract that they promised in the disclosure and contract summary in violation of 52 Pa. Code § 54.10.

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<sup>3</sup> Specifically, Planet Energy (Ontario) Corp. ("Planet Energy (Ontario)"), the parent entity of Planet Energy (Pennsylvania), and its subsidiary, Planet Energy (B.C.) Corp. ("Planet Energy (BC)"), and with Planet Energy (Ontario), "Planet Energy (Canada)", filed for creditor protection under the provisions of the Canadian *Bankruptcy and Insolvency Act* (the "BIA"). KSV Restructuring Inc. ("KSV"), a licensed insolvency trustee operating was appointed the "Interim Receiver" of Planet Energy (Ontario) by the Ontario Superior Court of Justice (the "Ontario Court") overseeing those restructuring proceedings.

Both Planet Energy (Ontario) and Planet Energy (BC) were unable to restructure and became bankrupt. KSV was appointed the Licensed Insolvency Trustee of Planet Energy (Ontario)'s bankruptcy estate by the Ontario Court and the interim receivership proceedings on Planet Energy (Ontario) terminated at that time.

- b. Upon making this change in duration, Planet Energy failed to provide advance notice of this change per the terms of their disclosure and our regulations in violation of 52 Pa. Code §54.5.
- c. Planet Energy failed to provide notice to the Commission or the affected distribution utilities and default service providers 90 days prior to abandonment in violation of 52 Pa. Code § 54.41.
- d. Planet Energy failed to provide notification of change in conditions or service, intent to cease operations as an EGS, and an explanation of denial of service in violation of 52 Pa. Code § 54.43.

24. Planet Energy denies these claims. Had this matter been fully litigated, Planet Energy would have defended each and every one of these claims.

#### **IV. SETTLEMENT TERMS**

25. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement.

26. I&E and Planet Energy desire to (1) allow KSV to efficiently settle Planet Energy (Ontario)'s bankruptcy estate; and (2) settle this matter completely without further litigation.

27. The Parties recognize that this is a disputed matter. Given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms and conditions of the Settlement Agreement, for which the Parties seek Commission approval, are set forth below.

28. The Parties submit this Joint Petition for Approval of Settlement and respectfully request a Commission Order approving this Joint Petition for Approval of Settlement without modification.

29. The Parties acknowledge and agree that because of the bankruptcy described herein, as well as the language of the LOC prohibiting its use to satisfy penalties, no civil penalty judgment can be satisfied by the LOC.

30. Subject to the conditions of settlement outlined in Section V below, the Parties agree to the following terms for the sole purpose of resolving this complaint docket:

- a. The Parties agree to the entry of a civil penalty in order to amicably resolve this matter in the amount of One Million (\$1,000,000) Dollars solely against Planet Energy, which takes into account the nature and extent of the violations, the harm caused, the benefit gained, the history of compliance, and the deterrent effect.
- b. The Parties agree to the admission into the record of all pleadings and testimonies submitted to date for the purpose of creating a record from which the presiding officer and Commission can review and use to support the assessment of said civil penalty and ultimate overall approval of this Settlement Agreement.
- c. While I&E desires that this Commission enter an Order assessing a civil penalty in the amount of \$1,000,000 against Planet Energy, as a means to illustrate the Commission's fervent disapproval of Planet Energy's actions and to deter similar actions by other energy suppliers serving consumers in this Commonwealth, I&E accepts that recovery of any civil penalty imposed herein is unlikely due to the bankruptcy proceeding of Planet Energy's parent company in Canada impacting Planet Energy as described, *supra.*, and agrees not to pursue the collection thereof.
- d. Planet Energy does not admit and expressly denies any violation of law or other wrongdoing by itself, any affiliated entities, and all current or former officers, directors, employees, agents, attorneys, contractors, or other persons who ever acted on behalf of Planet Energy.
- e. Planet Energy agrees to surrender its license to operate as an EGS in the Commonwealth of Pennsylvania and to comply with all applicable rules and orders regarding the same.
- f. Planet Energy agrees to refrain from conducting business in the Commonwealth of Pennsylvania, as an EGS or otherwise, in perpetuity from the date of entry of the Commission's Final Order, unless otherwise authorized by the Commission.

- g. I&E agrees to withdraw its protests/comments filed in Docket Nos. A-2023-3040904 and M-2023-3037455.
- h. The Parties agree that this Settlement Agreement resolves all issues in this case, fulfills all factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations, and constitutes a full and final settlement of all claims and disputes among the Parties arising from or related to this case.
- i. The Parties agree that this Settlement Agreement eliminates all litigation between I&E and Planet Energy and I&E does not oppose actions taken by Planet Energy intended to gain immediate release/return of its Letter of Credit from the Commission.
- j. The Parties agree to cooperate in good faith and use their best efforts to execute the terms of this Settlement Agreement in a timely and effective manner subject to the conditions of this Settlement Agreement.

## **V. CONDITIONS OF SETTLEMENT**

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

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

33. In order to effectuate the Parties' Joint Petition for Approval of Settlement, the undersigned Parties request that the presiding administrative law judge issue a decision granting the Joint Petition for Approval of Settlement and recommending approval of the within Settlement Agreement in its entirety without modification and that the Commission enter an Order adopting the Recommended Decision and approving the Settlement Agreement without modification.

34. The Parties agree that any party may petition the Commission for rehearing or take other recourse allowed under the Commission's rules should the Commission's Final

Order substantively modify in any way the terms of this Joint Petition for Approval of Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Approval of Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Approval of Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for Approval of Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the Parties and all obligations of the Parties to each other are terminated and of no force and effect. In the event that a party withdraws from this Joint Petition for Approval of Settlement as set forth in this paragraph, I&E and Planet Energy jointly agree that nothing in this Settlement Agreement shall be construed as an admission against or as prejudice to any position which any party might adopt during litigation of this case.

35. I&E and Planet Energy jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201.

36. The Commission will serve the public interest by adopting this Joint Petition for Approval of Settlement.

37. The Joint Petition for Approval of Settlement avoids the time and expense of further litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of briefs, reply briefs,

exceptions, reply exceptions. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the disputed issues through settlement. Attached as Appendices B and C are Statements in Support submitted by I&E and Planet Energy, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

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

39. This Settlement Agreement consists of the entire agreement between I&E and Planet Energy regarding the matters addressed herein. Moreover, this Settlement Agreement represents a complete settlement of all issues related to or raised by I&E in its Formal Complaint in the above-captioned case.

40. This Settlement Agreement is presented without prejudice to any position that either party may have advanced, and without prejudice to the position any party may advance, in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement.

**WHEREFORE**, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Planet Energy (Pennsylvania) Corporation respectfully request that the Commission enter an Order granting the Joint Petition for Approval of Settlement and approving the terms of the Settlement Agreement in their entirety without modification as being in the public interest. [SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, we have unto set our hands and seals on this 5th day of June 2024.

Date: June 5, 2024

/s/ David Sieradzki  
David Sieradzki  
Managing Director  
***KSV Restructuring Inc.***  
***(on behalf of the Licensed Insolvency Trustee of the estate of Planet Energy (Ontario) Corp.)***

Date: June 5, 2024

/s/ Brian J. Boyle  
Brian J. Boyle  
DLA Piper LLP  
***Attorney for KSV Advisory Inc. and Planet Energy (Pennsylvania) Corp.***

Date: June 5, 2024

  
Michael L. Swindler  
Deputy Chief Prosecutor - Enforcement  
***Bureau of Investigation & Enforcement***  
***Pennsylvania Public Utility Commission***

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement :  
 :  
v. : Docket No. C-2023-3041126  
 :  
Planet Energy (Pennsylvania) Corp. d/b/a :  
RiteRate Energy d/b/a Value Plus Energy :

**PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Petition for Approval of Settlement filed on June 5, 2024 between the Commission’s Bureau of Investigation and Enforcement and Planet Energy (Pennsylvania) Corporation is granted and the underlying Settlement Agreement is approved in its entirety as submitted without modification.

2. That, the Commission assesses a civil penalty, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, in the amount of One Million dollars (\$1,000,000) in order to illustrate the Commission’s fervent disapproval of Planet Energy’s actions as described herein.

3. That due to the bankruptcy proceeding of Planet Energy’s parent company in Canada impacting Planet Energy as described, *supra.*, I&E accepts that recovery of any civil penalty imposed herein is unlikely and agrees not to pursue the collection thereof.

4. That Planet Energy shall, within thirty (30) days of entry of the Commission’s Final Order, surrender its license to operate as an EGS in the Commonwealth of Pennsylvania and to comply with all applicable rules and orders regarding the same.

5. That Planet Energy agrees to refrain from conducting business in the Commonwealth of Pennsylvania as an EGS or otherwise in perpetuity.

6. That the Bureau of Investigation and Enforcement shall withdraw its protests/comments filed in Docket Nos. A-2023-3040904 and M-2023-3037455.

7. That the above-captioned matter shall be marked closed.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement :  
 :  
v. : Docket No. C-2023-3041126  
 :  
Planet Energy (Pennsylvania) Corp. d/b/a :  
RiteRate Energy d/b/a Value Plus Energy :

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

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**TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) along with Planet Energy (Pennsylvania) Corp. d/b/a RiteRate Energy d/b/a/ Value Plus Energy (“Planet Energy” or “Company”) hereby submit this Joint Statement in Support of the Joint Petition for Approval of Settlement (“Settlement Agreement or Settlement”) in the above-docketed matter between I&E and Planet Energy (hereinafter collectively referred to as the “Parties”). The Parties aver that the terms of the Settlement Agreement are just and reasonable and in the public interest for the reasons set forth in the Settlement Agreement and as set forth herein.

**I. BACKGROUND**

Planet Energy is a jurisdictional EGS licensed by the Commission at Docket No. A-2011-2223534 and operated in the service territories of Duquesne Light Company (“Duquesne”), Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), PECO Energy Company (“PECO”), PPL Electric Utilities (“PPL”), and West Penn Power Company (“West Penn”).

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

On or about August 19, 2022, the Bureau of Consumer Services (“BCS”) referred to I&E its finding that Planet Energy unilaterally canceled customer fixed-rate contracts without proper notification and failed to abide by the terms and conditions of the customers’ fixed-rate contracts.

BCS stated that it received complaints from customers of Planet Energy who reported entering into fixed-rate contracts with Planet Energy, but who were subsequently returned to default service prior to the expiration of those contracts without notice.

On or about October 6, 2022, following the referral by BCS, I&E initiated an investigation into Planet Energy’s actions.

As part of the investigation, I&E served two sets of Data Requests to Planet Energy, on October 6, 2022, and on April 7, 2023.

Planet Energy timely responded to the Data Requests on October 25, 2022, and on April 11, 2023, respectively.

At the conclusion of its investigation, I&E filed a formal complaint against Planet Energy on or about June 1, 2023, at Docket No. C-2023-3041126 (“I&E Complaint”), seeking civil penalties and other remedies.

Planet Energy filed an Answer to the I&E Complaint on June 20, 2023, denying the allegations of the Complaint and raising several defenses based on the facts and circumstances of the case.

Even though I&E and Planet Energy are willing and able to vigorously prosecute or defend this matter, the specific facts and circumstances surrounding this matter suggest that entering into a settlement and avoiding protracted litigation that would result in limited or no benefit to the Parties, past Planet Energy customers, energy supply consumers or the public in general would serve the interests of justice and all Parties. As such, the resolution reached herein is deemed by the Parties to be a more reasonable, administratively efficient use of limited resources as the Parties seek to uphold the Commission’s “policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a).

To that end, the Parties have stipulated to the facts as follows:

- a. Planet Energy is an electric generation supplier licensed by the Commission to operate in Pennsylvania.
- b. Planet Energy operated in the Commonwealth under the names, “Planet Energy,” “RiteRate Energy,” and “Value Plus Energy.”
- c. From January 1, 2022, to October 6, 2022, Planet Energy canceled approximately 5,690 fixed-rate contracts of customers in Pennsylvania.
- d. Planet Energy did not provide 90 days’ prior written notice to the Commission, the EGS’s customers, the affected distribution utilities, and the default service providers before ceasing service as an EGS.

- e. Planet Energy’s rapid exit from the Pennsylvania energy market was a result of perceived economic conditions and financial distress of its parent entity in Canada.<sup>1</sup>
- f. Planet Energy (Ontario), on behalf of Planet Energy, entered into a Letter of Credit (“LOC”) with the Bank of Nova Scotia (“BNS”) with the Commission as Beneficiary. Planet Energy (Ontario) posted cash collateral with BNS as security for the LOC (the “BNS Cash Collateral”). The LOC stipulates that, “Proceeds of the [LOC] may not be used to pay penalties or fines.”
- g. For the avoidance of doubt, nothing in this Settlement Agreement provides for or allows payment of any penalties or fines from the LOC.

Upon investigation and following multiple discussions with Planet Energy counsel, the Parties reached an amicable settlement that reflects an adequate resolution of the issue referred to I&E. Concurrent with the filing of this Joint Statement in Support, the Parties filed a Joint Petition for Approval of Settlement resolving the issues raised in the I&E Complaint.

## II. THE PUBLIC INTEREST

I&E is satisfied that approval of the proposed Settlement is in the public interest. As set forth at Section 5.231(a) of the Commission’s regulations, it is the Commission’s policy to encourage settlements, 52 Pa. Code § 5.231(a). This Joint Petition for Approval of Settlement resolves the issue of Planet Energy’s noncompliance with the Commission’s regulations of EGSs. The Settlement will save the Parties the time and expense that would

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<sup>1</sup> Specifically, Planet Energy (Ontario) Corp. (“Planet Energy (Ontario)”), the parent entity of Planet Energy (Pennsylvania), and its subsidiary, Planet Energy (B.C.) Corp. (“Planet Energy (BC)”, and with Planet Energy (Ontario), “Planet Energy (Canada)”), filed for creditor protection under the provisions of the Canadian *Bankruptcy and Insolvency Act* (the “BIA”). KSV Restructuring Inc. (“KSV”), a licensed insolvency trustee operating was appointed the “Interim Receiver” of Planet Energy (Ontario) by the Ontario Superior Court of Justice (the “Ontario Court”) overseeing those restructuring proceedings. Both Planet Energy (Ontario) and Planet Energy (BC) were unable to restructure and became bankrupt. KSV was appointed the Licensed Insolvency Trustee of Planet Energy (Ontario)’s bankruptcy estate by the Ontario Court and the interim receivership proceedings on Planet Energy (Ontario) terminated at that time. *See*, Exhibit C to Planet Energy Statement 1.

be incurred in continuing this matter before the Commission. The proposed Settlement helps avoid the time and expense of further litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of briefs, reply briefs, exceptions, reply exceptions and more. Given the entity's non-viable financial position coupled with the fact that Planet Energy has already permanently exited the energy supply market in Pennsylvania, the departure of this energy supplier inures to the benefit of the consuming public. Furthermore, since the signatory parties have agreed to the terms of this Joint Petition for Approval of Settlement, adopting it will eliminate the possibility of an appeal from a Secretarial Letter or Final Order, thus saving the signatory parties the time and expense that might have been incurred in such an appeal.

### **III. TERMS OF SETTLEMENT**

I&E and Planet Energy, intending to be legally bound and for consideration given and received, desire to conclude this investigation and agree that a decision from the Presiding Officer recommending approval of the Settlement and subsequent Commission Order adopting the recommended decision and approving the Settlement Agreement without modification shall create the following obligations:

- a. The Parties agree to the entry of a civil penalty in order to amicably resolve this matter in the amount of One Million (\$1,000,000) Dollars, which takes into account the nature and extent of the violations, the harm caused, the benefit gained, the history of compliance, and the deterrent effect.
- b. The Parties agree to the admission into the record of all pleadings and testimonies submitted to date for the purpose of creating a record from which the presiding officer and Commission can review and use to support the assessment of said civil penalty and ultimate overall approval of this Settlement Agreement.
- c. While I&E desires that this Commission enter an Order assessing a civil penalty in the amount of One Million (\$1,000,000) Dollars as a means to

illustrate the Commission's fervent disapproval of Planet Energy's actions and to deter similar actions by other energy suppliers serving consumers in this Commonwealth, I&E accepts that recovery of any civil penalty imposed herein is unlikely due to the bankruptcy proceeding of Planet Energy's parent company in Canada impacting Planet Energy as described, *supra*, and agrees not to pursue the collection thereof.

- d. Planet Energy does not admit and expressly denies any violation of law or other wrongdoing by itself, any affiliated entities, and all current or former officers, directors, employees, agents, attorneys, contractors, or other persons who ever acted on behalf of Planet Energy.
- e. Planet Energy agrees to surrender its license to operate as an EGS in the Commonwealth of Pennsylvania and to comply with all applicable rules and orders regarding the same.
- f. Planet Energy agrees to refrain from conducting business in the Commonwealth of Pennsylvania, as an EGS or otherwise, in perpetuity from the date of entry of the Commission's Final Order, unless otherwise authorized by the Commission.
- g. I&E agrees to withdraw its protests/comments filed in Docket Nos. A-2023-3040904 and M-2023-3037455.
- h. The Parties agree that this Settlement Agreement resolves all issues in this case, fulfills all factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations, and constitutes a full and final settlement of all claims and disputes among the Parties arising from or related to this case.
- i. The Parties agree that this Settlement Agreement eliminates all litigation between I&E and Planet Energy and I&E does not oppose actions taken by Planet Energy intended to gain immediate release/return of its Letter of Credit from the Commission.
- j. The Parties agree to cooperate in good faith and use their best efforts to execute the terms of this Settlement Agreement in a timely and effective manner subject to the conditions of this Settlement Agreement.

I&E and Planet Energy reiterate here that approval of the Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and

Commission regulations. 52 Pa. Code § 69.1201. The Presiding Officer and Commission will serve the public interest by approving this Joint Petition for Approval of Settlement without modification. It is the Commission’s long-standing policy to promote settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.

Settlements should be approached under the framework of what is in the public interest. As “the focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered July 14, 2011). Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

The Parties submit that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission’s Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations (“Policy Statement”), 52 Pa. Code § 69.1201; *see also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten (10) factors (“*Rosi* factors”) that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa.

Code § 69.1201. The factors and standards that will be considered by the Commission include the following:

- 1) Whether the conduct at issue was 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.
- 2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- 3) Whether 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.
- 4) 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.
- 5) The number of customers affected and the duration of the violation.
- 6) The compliance history of the regulated entity which committed the violation. 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.
- 7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- 8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- 9) Past Commission decisions in similar situations.
- 10) Other relevant factors.

It is important to note that the Commission will not apply the *Rosi* factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). As this matter is a settled case, the *Rosi* factors should not be strictly construed. 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.* (*emphasis added*). By the filing of this Joint Petition for Approval of Settlement, I&E and Planet Energy have declared that they have in good faith negotiated an amicable resolution that benefits the public, the Parties, and this Commission. I&E asks that the Commission acknowledge and accept this flexibility when considering the terms negotiated and entered into in this Settlement Agreement.

The first *Rosi* factor considers whether the conduct at issue was of a serious nature, such as fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a less serious nature warrants a lesser civil penalty. 52 Pa. Code § 69.1201(c)(1). To determine the level of seriousness, the Commission looks toward the impact of the issue, such as if it involved personal injury or property damage. *See* HIKO Energy, LLC v. Pa. PUC, 163 A.3d 1079, 1111, 2017 Pa. Commw. LEXIS 325, \*78, 2017 WL 2471054. I&E avers that the noncompliance from Planet Energy is important to address and is of a serious nature. The noncompliance and cancellation of customer fixed-rate contracts prior to their expiration without proper notification causes unknown hardship and is impactful. *Id.* at \*79. Therefore, I&E considers the conduct at issue to be of a serious nature. Planet Energy strongly disputes this. It denies any violation of law and contends that at most, I&E’s allegations suggest an administrative

or technical issue. Both positions were taken into consideration in arriving at the agreed-to civil penalty.

The second factor considers whether the resulting *consequences* of Planet Energy's noncompliance with the Commission's regulations pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c) regarding cancellation of customer fixed-rate contracts prior to their expiration were of a serious nature. 66 Pa.C.S. § 501(c). Similarly situated to factor one, when consequences of a serious nature are involved, this may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). Here, the issue at hand did not result in any personal injury or property damage, and the consequences of Planet Energy's violation were financial and administrative in nature.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether Planet Energy's alleged conduct was intentional or negligent does not apply here, since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Planet Energy has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As noted in the Joint Petition, this Settlement is unique as Planet Energy has already exited from the Pennsylvania energy market because of perceived economic conditions and the financial distress of its Canadian parent and thus of this Pennsylvania entity. As a term of settlement, Planet Energy has agreed to expressly surrender its license to operate as an EGS in the Commonwealth of Pennsylvania and to comply with all applicable

rules and orders regarding the same. Therefore, through this Settlement Planet Energy will be prevented from engaging in similar conduct in the future.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). From January 1, 2022, to October 6, 2022, Planet Energy canceled approximately 5,690 fixed-rate contracts of customers in Pennsylvania. This amount constitutes Planet Energy's entire customer base. Despite its entire customer base being "affected" in that their supplier of electricity was abruptly changed, Planet Energy's testimony reflects that little, if any, financial harm was experienced by customers. Accordingly, all customers were adversely affected, but not all customers were adversely affected financially. This will be addressed in more detail, below.

The sixth factor to be considered relates to the compliance history of Planet Energy. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty whereas frequent, recurrent violations by a jurisdictional entity may warrant a higher penalty. Here, there is indication that Planet Energy has a poor compliance history with the Commission, hence why revoking its license to operate as an EGS in the Commonwealth of Pennsylvania is a necessary part of this Settlement. Since Planet Energy's application at Docket No. A-2010-2216375 in 2010, multiple docketed formal complaints have been brought against the utility for poor compliance or violations of Commission regulations.<sup>2</sup> This revocation serves as a deterrence to other utilities in the

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<sup>2</sup> See generally Docket Nos. C-2014-2445224, C-2015-2476826, C-2015-2503887, F-2016-2538292, C-2016-2540686, C-2016-2543343, C-2016-2562424, F-2017-2582814, C-2017-2605417, F-2017-2606086, C-2017-2606115, F-2017-2615999, C-2017-2618121, A-2010-2216375.

Pennsylvania Energy market from engaging in the same behavior and it encourages good compliance with Commission regulations.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Planet Energy has cooperated with I&E's investigation in order to address the violation alleged. Together, the Parties have agreed that Planet Energy will refrain from conducting business in the Commonwealth of Pennsylvania, as an EGS or otherwise, in perpetuity from the date of entry of the Commission's Final Order, unless otherwise authorized by the Commission and an appropriate civil penalty. The Parties further determined that it was in their respective best interest, as well as in the public interest, to settle this matter and to reach an amicable agreement as to an appropriate civil penalty amount that adequately balances all the relevant interests under the circumstances of this case. A fair and equitable civil penalty has been reached in this Settlement Agreement without the need to pursue formal enforcement action, which avoids the time and expense of further litigation in this matter before the Commission given the inherent unpredictability of the outcome of a contested proceeding.

The eighth factor to be considered is the appropriate civil penalty necessary to address the instant matter and to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that the negotiated civil penalty amount of One Million (\$1,000,000) Dollars, considers the nature and extent of the violations, the harm caused, the benefit gained, the history of compliance, and the deterrent effect is a fair, substantial and sufficient result to find that this Settlement Agreement is in the public interest. It also considers the unusual circumstances of this case. The reality of the situation is that there are no financial resources from which a civil penalty can be recovered. Nevertheless, the token imposition of such a monetary

deterrent is imperative in order to illustrate I&E's - and this Commission's - fervent disapproval of Planet Energy's alleged conduct and to send a stern message to all energy suppliers.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement Agreement should be viewed on its own merits and that it is fair and reasonable.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). Due to the bankruptcy proceeding of Planet Energy's parent company in Canada impacting Planet Energy, I&E accepts that there can be no recovery of any civil penalty imposed herein but finds it imperative to "impose" a civil penalty anyway. This is an important factor to consider as it communicates to other energy suppliers that the Commission takes violations seriously and will enforce its regulations, despite roadblocks. Adopting the Settlement helps ensure that the Commission sends a signal to other utilities and that this acts as a deterrent for future violations.

Lastly, while not alleged in I&E's complaint, for the purpose of leaving no doubt that this Settlement, albeit a creative one, is in the public interest, the Parties address any concern that consumers may have been or were harmed as a result of Planet Energy's conduct as set forth in the I&E Complaint and outlined in the record. While there is no doubt that customers of Planet Energy were surprised and inconvenienced by the Company's actions, there is no evidence of "financial harm" to its customers. To reiterate, there was no allegation of financial harm set forth in the I&E Complaint. In the testimony phase of this

proceeding, the direct testimony of Planet Energy witness Jordan Small<sup>3</sup> noted:

**Q. DID THE FORMAL COMPLAINT SHOW CUSTOMERS WRE HARMED?**

A. Within the Formal Complaint, I&E did not show that any customers, not even one, was harmed by Planet Energy's actions. In fact, many customers financially benefitted from Planet Energy's actions because of lower costs when returned to the system.

Planet Energy Statement 1, Direct Testimony of Jordan Small at 25.

Moreover, the testimony of Mr. Small revealed that "approximately 72% of customers either saw no change in their pricing, or saw a decrease in pricing from being reverted to system supply." *Id.* at 30.

Mr. Small's testimony continued:

However, it should be noted that for customers which saw an increase in their bills, many only saw an increase of \$0.004 per kWh. For context, an average median residential customers usage is approximately 800 kWh's per month, which means that the customers billed usage would have increased by approximately \$3.20 for the month.

Conversely, for the customers which saw a decrease in their bills, many saw a decrease of \$0.02 per kWh. Using the same average of 800 kWh's per month, customers billed usage would have decreased by \$16.00 for the month.

*Id.* at 31.

Planet Energy's testimony included an overview of informal customer complaints that had been raised before the Commission's Bureau of Consumer Services ("BCS") regarding the Company's early discontinuance of service.<sup>4</sup> In each of these specific examples, the Company's testimony noted that "customers were satisfied after the explanation regarding

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<sup>3</sup> Jordan Small was the vice president of regulatory affairs and compliance at Planet Energy (Pennsylvania) Corporation. Planet Energy Statement 1 at 1.

<sup>4</sup> A copy of the BCS cases was attached to Planet Energy Statement 1 as "Exhibit D."

the cancellation of their accounts, many of which did not request nor seek additional actions by the PUC or by Planet Energy.” *Id.* at 29. In each of the specific examples, the BCS concluded that the Company was within its right to cancel the agreement and the informal complaint was dismissed.

At the hearing conducted before ALJ Coogan on January 23, 2024, no party, including the Office of Consumer Advocate (“OCA”), had any cross-examination of Planet Energy’s witness. T.11. Planet Energy Statement 1 and accompanying Exhibits A through D were admitted into the record without objection and thus should be relied upon by the Presiding Officer and this Commission. T.16.

In conclusion, I&E and Planet Energy fully support the terms of the Settlement Agreement. The terms of the Settlement Agreement reflect a compromise of the interests of the Parties in this proceeding. Planet Energy has agreed to refrain from conducting business in the Commonwealth of Pennsylvania, as an EGS or otherwise, as they exit the Pennsylvania energy market. This Settlement comprises an understandably unique resolution to a complex factual scenario but results in an economical and judicially and administratively efficient conclusion to Planet Energy’s departure from the EGS market in Pennsylvania and is in the public interest and serves as a deterrent for future violations of a similar nature to the whole of the energy supplier industry.

[SIGNATURE PAGE TO FOLLOW]

WHEREFORE, the Joint Petition for Approval of Settlement filed at the above-captioned docket should be granted and Settlement approved without modification as being in the public interest.

Respectfully submitted,

Date: June 5, 2024

/s/ David Sieradzki  
David Sieradzki  
Managing Director  
***KSV Restructuring Inc.***  
***(on behalf of the Licensed Insolvency Trustee of the estate of Planet Energy (Ontario) Corp.)***

Date: June 5, 2024

/s/ Brian J. Boyle  
Brian J. Boyle  
DLA Piper LLP  
***Attorney for KSV Advisory Inc. and Planet Energy (Pennsylvania) Corp.***

Date: June 5, 2024

  
Michael L. Swindler  
Deputy Chief Prosecutor - Enforcement  
***Bureau of Investigation & Enforcement***  
***Pennsylvania Public Utility Commission***

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2023-3041126
	:	
Planet Energy (Pennsylvania) Corp. d/b/a	:	
RiteRate Energy d/b/a Value Plus Energy	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statement in Support** dated June 5, 2024, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Served via Electronic Mail Only**

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