

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3041126
	:	
Planet Energy (Pennsylvania) Corporation d/b/a	:	
RiteRate Energy d/b/a Value Plus Energy	:	

**INITIAL DECISION**

Before  
John M. Coogan  
Administrative Law Judge

**INTRODUCTION**

I&E filed a Formal Complaint alleging Planet Energy, a jurisdictional electric generation supplier, unilaterally canceled customer fixed-rate contracts without proper notification and failed to abide by the terms and conditions of the customers’ fixed-rate contracts. This decision approves the settlement of the Complaint as in the public interest.

**HISTORY OF THE PROCEEDING**

On June 1, 2023, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) filed a Formal Complaint against Planet Energy (Pennsylvania) Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy (“Planet Energy”), docket number C-2023-3041126. The Formal Complaint was served on Planet Energy on June 6, 2023.

I&E's Formal Complaint alleges Planet Energy, a jurisdictional electric generation supplier ("EGS") licensed by the Commission at docket number A-2011-2223534, unilaterally canceled customer fixed-rate contracts without proper notification and failed to abide by the terms and conditions of the customers' fixed-rate contracts. I&E asserts the Commission's Bureau of Consumer Services received numerous complaints from Planet Energy customers who reported entering into fixed-rate contracts with Planet Energy and subsequently were returned to default service prior to the expiration of the contract where the only notification of the change in the electric generation service was through notice by the local electric distribution company, not Planet Energy. Accordingly, I&E alleges Planet Energy violated Sections 54.10, 54.5, 54.43, and 54.41 of the Commission's regulations, 52 Pa. Code §§ 54.10, 54.5, 54.43, 54.41, and proposes a total civil penalty of \$2,845,000. Additionally, I&E seeks revocation of Planet Energy's license to provide electric generation services in Pennsylvania.

On June 19, 2023, Planet Energy filed an answer to I&E's Formal Complaint.

On June 21, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for August 2, 2023, at 10:00 a.m. On June 22, 2023, I issued a prehearing order, setting forth various rules that would govern the evidentiary hearing.

On July 13, 2023, the Pennsylvania Office of Consumer Advocate ("OCA") filed a notice of intervention and public statement. On July 24, 2023, the Pennsylvania Office of Small Business Advocate ("OSBA") filed a notice of intervention and public statement.

On July 25, 2023, Planet Energy filed a motion for continuance, requesting a 30-day continuance of the August 2, 2023 hearing. On July 31, 2023, an order was issued granting the motion, and setting a prehearing conference for September 20, 2023.

The prehearing conference was held as scheduled on September 20, 2023. Counsel for Planet Energy, I&E, the OCA, and the OSBA participated. Also on September 20, 2023, I issued a scheduling order memorializing the procedural matters discussed and agreed to

by the parties during the prehearing conference, including due dates for submission of pre-served written testimony and an evidentiary hearing date of January 23, 2024.

On October 11, 2023, I issued an order directing parties to submit briefs regarding whether the Canadian bankruptcy proceeding of Planet Energy's parent entity affects the process of this proceeding. On October 19, 2023, Planet Energy and I&E filed briefs in response to the October 11, 2023, order. On October 27, 2023, I issued an order directing parties to continue to adhere to the scheduling order issued on September 20, 2023.

Also on October 27, 2023, I issued an order approving the parties' request for a second Administrative Law Judge ("ALJ") to serve as a Settlement Judge to this proceeding. On December 6, 2023, ALJ Steven K. Haas issued an order, terminating the Settlement Judge procedure established in the October 27, 2023, order.

Planet Energy, I&E, and the OCA filed pre-served written direct testimony on November 30, 2023. I&E and the OCA filed pre-served rebuttal testimony on January 4, 2024. A telephone evidentiary hearing was held on January 23, 2024. The following pre-served testimony and associated exhibits were admitted into the record at the evidentiary hearing:

- I&E Statement No. 1;
- I&E Statement No. 2;
- I&E Statement No. 2-R;
- I&E Exhibits 1 through 13;
- Planet Energy Statement No. 1;
- Planet Energy Exhibits A through D;
- OCA Statement No. 1;
- OCA Exhibits A through C;
- OCA Statement No. 1-R.

During the evidentiary hearing, parties also stated that settlement discussions were ongoing. Therefore, I directed parties to provide me a status report by February 13, 2024.

Parties provided ongoing status reports. On May 9, 2024, I issued a Settlement and Briefing Order, setting June 14, 2024, as the due date for a settlement to be filed, and if a

party was not joining the settlement, June 28, 2024, as the due date for comments or objections to the settlement. Additionally, if parties were unable to reach a settlement, then July 12, 2024, would be the due date for main briefs, and July 26, 2024 would be the due date for reply briefs.

On June 5, 2024, I&E and Planet Energy filed a Joint Petition for Approval of Settlement (“Joint Petition or Settlement”) and Statement in Support (“Joint SIS”).<sup>1</sup>

On June 28, 2024, the OCA filed a letter, stating that it does not support the Joint Petition, but that it does not actively oppose the Settlement given the constraints of other litigation and in light of the insolvency of Planet Energy. Also on June 28, 2024, the OSBA e-mailed me and the parties, stating that the OSBA does not join or oppose the settlement.

On July 1, 2024, I issued an order closing the record. For the reasons discussed below, the Joint Petition is approved in its entirety, without modification.

#### FINDINGS OF FACT

1. Planet Energy is a jurisdictional EGS licensed by the Commission at Docket No. A-2011-2223534.
2. Planet Energy no longer operates in Pennsylvania. Planet Energy St. 1, p. 2, 21-22.
3. Planet Energy operated in the Commonwealth under the names, “Planet Energy,” “RiteRate Energy,” and “Value Plus Energy.” Joint Petition at 5.
4. From January 1, 2022, to October 6, 2022, Planet Energy canceled approximately 5,690 fixed-rate contracts of customers in Pennsylvania. Joint Petition at 6.

---

<sup>1</sup> Also on June 5, 2024, counsel for Planet Energy filed its Withdrawal of Appearance. In an e-mail sent June 18, 2024, former counsel for Planet Energy confirmed that David Sieradzki of KSV Advisory would receive service for Planet Energy going forward.

5. 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. Joint Petition at 6.

6. 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. 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*. Joint Petition at 6.

7. 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. Joint Petition at 6.

8. Both Planet Energy (Ontario) and Planet Energy (BC) were unable to restructure and became bankrupt. Joint Petition at 6.

9. 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. Joint Petition at 6.

10. Planet Energy (Ontario)'s liabilities are approximately \$42.7 million and its assets are approximately \$10 million. Planet Energy Exhibits B and C.

11. 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." Joint Petition at 6.

12. The Settlement Agreement does not provide for or allow payment of any penalties or fines from the LOC. Joint Petition at 6.

### SETTLEMENT TERMS

The Joint Petitioners agreed to the following specific settlement terms:<sup>2</sup>

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

---

<sup>2</sup> The paragraph numbering is consistent with the numbering in the Joint Petition.

(\$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.

Settlement, pp. 7-9.

#### CONDITIONS OF SETTLEMENT

The Joint Petitioners agreed to the following specific settlement conditions:<sup>3</sup>

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

---

<sup>3</sup>

The paragraph numbering is consistent with the numbering in the 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 [to the Settlement Agreement] 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.

Settlement, pp. 9-11.

#### LEGAL STANDARDS

The Pennsylvania Public Utility Commission is an 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. §§ 101–3316. 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).

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

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).

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 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.

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. 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).

### DISCUSSION

The Joint Petition states that, 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.
- 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.

Joint Petition at 6-7.

The Joint Petition also states that had this matter been fully litigated, Planet Energy would have defended against each and every one of I&E's claims. Joint Petition at 7.

Although I&E avers it would have proven its claims had this matter been fully litigated, I&E is satisfied that approval of the Settlement is in the public interest. Joint SIS at 4. The Joint SIS states that the Settlement resolves the issue of Planet Energy's noncompliance with the Commission's regulations of EGSs and will save the time and expense that would be incurred in continuing this matter before the Commission. Joint SIS at 4-5.

In its Formal Complaint, I&E originally sought a penalty of \$2.845 million and revocation of Planet Energy's license to operate as an EGS in Pennsylvania. I&E Formal Complaint, ¶¶ 49-50. By contrast, the proposed Settlement includes a \$1 million civil penalty and revocation of Planet Energy's EGS license. Joint Petitioners aver that the Settlement is consistent with the Commission's policy statement and associated 10 *Rosi* factors for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201 (Commission policy statement). Joint SIS at 6-8.<sup>4</sup> Joint Petitioners highlight that the Commission's policy statement states that the *Rosi* factors should not be strictly construed in settled cases, and parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." Joint SIS at 9. Nonetheless, Joint Petitioners' Statement in Support provides a discussion on each *Rosi* factor. Joint SIS at 9-13.

As explained below, I do not agree with every aspect of Joint Petitioners' *Rosi* factor analysis. However, given the unique circumstances of this case, I ultimately agree with the Joint Petitioners that the Settlement is consistent with the Commission policy statement and should be approved as in the public interest. The first *Rosi* factor considers whether the conduct

---

<sup>4</sup>

The "*Rosi* factors" are found at 52 Pa. Code § 69.1201(c)(1)-(10).

at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 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.* Although I&E considers the conduct at issue to be of a serious nature, Planet Energy continues to deny any violation of law. Joint SIS, pp. 9-10. I agree that I&E's allegations are of a serious nature. There is no dispute that Planet Energy unilaterally and without prior notice cancelled its contracts with its customers. However, I also agree that this factor must be viewed in the context of a Settlement, where, despite Planet Energy cancelling its contracts with its customers, Planet Energy maintains that it has not violated the law.

The second factor considers whether the resulting consequences of the conduct in question were 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.* I agree with Joint Petitioners that I&E's allegations do not involve any personal injury or property damage. Joint SIS, p. 10.

The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). The Joint Petitioners correctly note that the third *Rosi* factor states that it is only to be considered in evaluating litigated cases. Joint SIS, p. 10.

The fourth factor to be considered is whether Planet Energy made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Although there is no evidence that Planet Energy made internal efforts to correct the allegations at issue, I agree with Joint Petitioners that the fourth *Rosi* factor should be viewed in the unique context that Planet Energy no longer operates in Pennsylvania, and it has sought to exit the Pennsylvania market. Joint SIS, pp. 10-11; *see* Planet Energy St. 1, pp. 2, 21-22.<sup>5</sup> Additionally, approval of the Settlement will effectuate Planet Energy's exit from the Pennsylvania market as an EGS.

---

<sup>5</sup> On May 25, 2023, Planet Energy filed a letter at docket number A-2023-3040904, requesting that it voluntarily submit an Application for License Abandonment. On June 8, 2023, I&E filed comments at docket

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). I agree with the Joint Petitioners statement that, from January 1, 2022, to October 6, 2022, Planet Energy canceled approximately 5,690 fixed-rate contracts of customers in Pennsylvania, which constitutes Planet Energy's entire customer base. Joint SIS, p. 11. Although Joint Petitioners attempt to contextualize this factor, claiming little, if any, financial harm was experienced by customers, the fifth *Rosi* factor only looks to number of customers affected and duration of the violations. *Id.*

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). The provision provides that "[a]n isolated incident from an otherwise compliant company may result in a lower penalty." *Id.* Citing multiple formal complaint dockets against Planet Energy, Joint Petitioners state there is indication that Planet Energy has a poor compliance history with the Commission. Joint SIS, p. 11. None of the formal complaint dockets cited by Joint Petitioners resulted in a judgment entered against Planet Energy. Therefore, I do not find that Joint Petitioners have presented evidence of Planet Energy's poor compliance history with the Commission. However, this proceeding involves Planet Energy's actions affecting thousands of customers over a number of months, as opposed to an isolated incident. Therefore, I agree with Joint Petitioners that this *Rosi* factor is implicated, and that the Settlement serves as a deterrence to other utilities in the Pennsylvania Energy market from engaging in the same behavior. *See* Joint SIS, pp. 11-12.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I agree Planet Energy has cooperated with the Commission's investigations in order to address the violations alleged. *See* I&E St. No. 1, pp. 6-9.

---

number A-2023-3040904, opposing Planet Energy's application given the pending Formal Complaint at this docket. Additionally, a tentative order was entered on May 18, 2023 at docket number M-2023-3037455, tentatively cancelling Planet Energy's EGS license. On June 7, 2023, I&E filed comments at docket number M-2023-3037455, opposing cancellation of Planet Energy's EGS license given the pending Formal Complaint at this docket.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that the negotiated civil penalty amount of \$1 million considers the nature and extent of the violations, the harm caused, the benefit gained, the history of compliance, as well as the unusual circumstances of this case. Joint SIS, p. 12. The Commission is authorized to impose a maximum civil penalty of \$1,000 per day. 66 Pa.C.S. § 3301. I&E initially sought a civil penalty of \$500 per customer. I&E Formal Complaint, ¶ 49. A \$1 million civil penalty would represent a civil penalty of approximately \$175 per customer.<sup>6</sup> Although less than initially sought by I&E, I find that this amount represents a reasonable settlement compromise.

A critical aspect of the \$1 million civil penalty in the Settlement is I&E's acknowledgement that this civil penalty is unlikely to be recovered. Joint Petitioners aver that the reality of the situation is that there are no financial resources from which a civil penalty can be recovered. Nevertheless, Joint Petitioners state that 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. Joint SIS, pp. 12-13.

Planet Energy's parent company, Planet Energy (Ontario) is currently in bankruptcy proceedings in Canada. Planet Energy St. 1, pp. 22-24. Orders issued by the Ontario Superior Court of Justice show that Planet Energy (Ontario) has assets of approximately \$10 million, but liabilities of approximately \$42.7 million. Planet Energy Exhibits B and C. Additionally, as stipulated by I&E and Planet Energy, Planet Energy's LOC with the Commission sets forth that the LOC may not be used for the payment of penalties or fines.<sup>7</sup> Given these circumstances, I agree with Joint Petitioners that the imposition of a \$1 million civil penalty is important, but at the same time recognize that recovery of the penalty is unlikely.

---

<sup>6</sup> \$1,000,000 / 5,690 customers = \$175.75.

<sup>7</sup> I&E has consistently argued that a civil penalty may not be recovered through the Letter of Credit. See I&E Brief on Bankruptcy, filed October 19, 2023. I&E also asserted that, in addition to the Letter of Credit, 52 Pa. Code § 54.40 prevents a claim for civil penalties. *Id.*

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E’s witnesses testified that they were unaware of prior complaints or situations similar to the allegations in I&E’s Formal Complaint. I&E St. 1, p. 16; I&E St. 2, p. 21. Given the unique circumstances of this case, I agree with I&E’s position that the Settlement 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). Similar to the eighth factor discussed above, I&E accepts that, due to the bankruptcy proceeding of Planet Energy’s parent company in Canada impacting Planet Energy, there can be no recovery of any civil penalty imposed herein but finds it imperative to “impose” a civil penalty anyway. Joint SIS, p. 13. For the same reasons discussed above, I agree that it is important to set a civil penalty in this proceeding, while recognizing that recovery of the civil penalty is unlikely.

The only other two parties to this case were the OCA and the OSBA. Although the OCA did not support the settlement, the OCA does not actively oppose the settlement, in part recognizing the unique circumstances regarding insolvency in this case. The OSBA similarly does not oppose settlement. Given the totality of circumstances in this case, I agree with Joint Petitioners that the Settlement is in the public interest and should be approved.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 501(a), 701.

2. 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.

3. 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).

4. The Commission is authorized 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). 66 Pa.C.S. § 3301.

5. The Commission is authorized to impose fines and/or suspend or revoke the license of an 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. 52 Pa. Code §§54.42(a)(7)-(9).

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

7. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985); 52 Pa. Code § 69.1201.

8. The Commission has adopted a policy statement setting forth ten factors that the Commission will 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. 52 Pa. Code § 69.1201.

9. The Joint Petition for Settlement is in the public interest as its terms provide for an appropriate resolution to I&E's Formal Complaint and the terms and conditions

contained in the Joint Petition for Settlement are just, reasonable and in the public interest. *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Settlement at Docket No. C-2023-3041126 submitted by the Commission's Bureau of Investigation and Enforcement and Planet Energy (Pennsylvania) Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy is approved in its entirety without modification.
2. That, the Commission assesses a civil penalty against Planet Energy (Pennsylvania) Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy, 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 (Pennsylvania) Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy's parent company in Canada impacting Planet Energy, and its unlikely ability to pay the civil penalty imposed in Ordering Paragraph No. 2 above, I&E agrees not to pursue the collection of the civil penalty.
4. That Planet Energy (Pennsylvania) Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy shall, within 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.

