

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

Public Meeting held November 7, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Bureau of Investigation and Enforcement

C-2023-3041126

v.

Planet Energy Corporation d/b/a/RiteRate
Energy d/b/a/ Value Plus Energy

TENTATIVE OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) John Coogan, issued on August 29, 2024, approving the Joint Petition for Approval of Settlement (Joint Petition or Settlement) filed by the Commission's Bureau of Investigation and Enforcement (I&E) and the Planet Energy Corporation d/b/a/ RiteRate Energy d/b/a/ Value Plus Energy (Planet Energy or the Company), a licensed electric generation supplier (EGS) (collectively, the Joint Petitioners). No Exceptions to the Initial Decision have been filed. However, we have

exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa.C.S. § 332(h). For the reasons stated below, we shall modify the Initial Decision and modify the Settlement, consistent with this Opinion and Order.

I. Background

Planet Energy is a jurisdictional EGS that is licensed by the Commission to operate in the following electric distribution companies' (EDCs) service territories: Duquesne Light Company; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company, PPL Electric Utilities and West Penn Power Company. As an EGS, Planet Energy is considered a public utility as defined under the Code, 66 Pa.C.S. § 102 for the purposes as described in Sections 2809 and 2810 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et al.*

This matter originated on or about August 19, 2022, when the Commission's Bureau of Consumer Services (BCS) referred its finding that Planet Energy unilaterally cancelled customer fixed-rate contracts without proper notification and failed to abide by the terms and conditions of the customers' fixed rate contracts to I&E. In its referral, BCS stated that it had received complaints from Planet Energy's customers who had reported that they were returned to default service, after they had entered into fixed-rate contracts with the Company but prior to the respective contracts' expirations, without receiving notice of the switch.

Based on BCS' referral, on or about October 6, 2022, I&E began an investigation into the complaints which included serving a set of Data Requests to Planet Energy. Then on April 7, 2023, I&E served a second set of Data Requests as part of its investigation. On October 25, 2022, and April 11, 2023, respectively, Planet Energy filed timely responses to the two Data Requests.

As a result of its investigation, I&E filed the Formal Complaint (Complaint) at this docket seeking civil penalties and other remedies. The Settlement resolves the allegations brought by I&E in its Complaint, which alleged that Planet Energy failed to comply with several Commission Regulations at Sections 54.5, 54.10, 54.41, and 54.43 governing notification for changes to, or abandonment of, contracts by licensed EGSs.

II. History of the Proceeding

On June 1, 2023, I&E filed its Complaint against the Company at Docket No. C-2023-3041126. The Complaint was served on Planet Energy on June 6, 2023. In its Complaint I&E alleged that from January until October of 2022, Planet Energy terminated nearly 5,700 fixed-rate contracts for Pennsylvania customers with no prior notice. I&E also alleged that customers were unaware that their contracts had been terminated until they received notice from their utility that they had been returned to default service. As noted in the Initial Decision, Planet Energy's Canadian parent company was experiencing financial distress that led it to cancel these Pennsylvania contracts. I.D. at 5.

I&E's Complaint alleged that Planet Energy, a jurisdictional EGS licensed by the Commission at Docket No. 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 asserted that BCS 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 EDC, not Planet Energy. Accordingly, I&E alleged that Planet Energy violated Sections 54.5, 54.10, 54.43, and 54.41 of the Commission's regulations, 52 Pa. Code §§ 54.5, 54.10, 54.43,

54.41 and proposed a total civil penalty of \$2,845,000. Additionally, I&E sought 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 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, ALJ Coogan issued a prehearing order, setting forth various rules that would govern the evidentiary hearing.

On July 13, 2023, the Office of Consumer Advocate (OCA) filed a notice of intervention and public statement. On July 24, 2023, the 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, ALJ Coogan 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, ALJ Coogan issued an order directing the Parties to submit briefs regarding whether the Canadian bankruptcy proceeding of Planet Energy's parent entity affects the process of the proceeding. On October 19, 2023, Planet Energy

and I&E filed briefs in response to the October 11, 2023 order. On October 27, 2023, ALJ Coogan issued an order directing the Parties to continue to adhere to the scheduling order issued on September 20, 2023.

Also on October 27, 2023, ALJ Coogan issued an order approving the Parties' request for a second 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 telephonic 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, the Parties also stated that settlement discussions were ongoing. Therefore, ALJ Coogan directed the Parties to provide a status report by February 13, 2024.

The Parties provided ongoing status reports. On May 9, 2024, ALJ Coogan 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 the Parties were unable to reach a settlement, then Main Briefs would be due by July 12, 2024, and Reply Briefs by July 26, 2024.

On June 5, 2024, I&E and Planet Energy filed the Settlement and a Joint Statement in Support (Joint Statement or Jt. St.).

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 ALJ Coogan and the Parties, stating that OSBA does not join or oppose the Settlement.

On July 1, 2024, ALJ Coogan issued an order closing the record. On August 29, 2024, the Commission issued ALJ Coogan's Initial Decision.

III. Discussion

A. Legal Standards

This Commission has a policy of encouraging settlements. *See*, 52 Pa. Code § 5.231(a); *see also*, 52 Pa. Code §§ 69.401 et seq., relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process (Mediation), 52 Pa. Code § 69.391, et seq. Settlements lessen the time and expense that Parties must expend litigating a case and, at the same time, conserve administrative resources. This Commission has stated that results

achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

This Commission’s evaluation of whether to approve a settlement is not based on a “burden of proof” standard, as is utilized for contested matters. *See*, I.D. at 15; *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Opinion and Order entered July 14, 2011), at 11. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. PUC LBPS v. PPL Utilities Corporation*, Docket No. M-2009-2058182 (Opinion and Order entered November 23, 2009); *Pa. PUC v. Phila. Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004); *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); 52 Pa. Code § 69.1201.

We evaluate whether a proposed settlement satisfies the “public interest” standard by a preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*) (“substantial” public interest standard discussed in the context of a merger reviewed under Section 1103 of the Code, 66 Pa.C.S. § 1103). The pertinent inquiry of a reviewing court in the context of the analysis of the public interest of Section 1103 of the Code, *supra*, is stated as follows:

In summary, as indicated in *City of York*, the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the

underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky, 937 A.2d at 1057.

This Commission has historically defined the public interest as including ratepayers, shareholders, and the regulated community. *See, Pa. PUC v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. R-00953409 (Order entered September 29, 1995). What is in the public interest is decided by examining the effect of the proposed Settlement on these “stakeholder” entities. *Id.* The public interest is best served, however, by ensuring that the underlying transaction complies with applicable law. *See Dauphin County Indus. Dev. Auth. v. Pa. PUC*, 2015 WL 5238841, 2015 Pa. Commw. LEXIS 381 (September 9, 2015) (Commonwealth Court Order reversing Commission approval of a joint settlement due to the Court’s plenary review and disapproval of the Commission’s interpretation of Section 2807(f)(5) of the Act, 66 Pa.C.S. § 2807(f)(5)).

Additionally, we note that the statutory provisions of Sections 501 and 2809 of the Code, 66 Pa.C.S. §§ 501, 2809, apply to this Commission’s regulation of EGS companies. *See, e.g., Comm. of Pa., et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014) (IDT Order). We have recently, in the IDT Order, interpreted our general authority pursuant to Section 501 of the Code, to apply to, *inter alia*, billing and other disputes arising between an EGS and a customer. As a general rule, the interpretations of the agency charged with a statute’s administration and execution are entitled to great weight and the Legislature is presumed to favor public interests over private interests. *See, e.g., Chappell v.*

Pa. PUC, 425 A.2d 873 (Pa. Cmwlth. 1981); *Muscarella v. Comm. of Pa.*, 87 A.3d 966 (Pa. Cmwlth. 2014), citing *Community Car Pool Service, Inc. v. Pa. PUC*, 533 A.2d 491 (Pa. Cmwlth. 1987); *Carol Lines, Inc. v. Pa. PUC*, 477 A.2d 601 (Pa. Cmwlth. 1984); 1 Pa.C.S. §§ 1921(c)(8), 1922(5).

In furtherance of the statutory provisions of the Code that are applicable to this Commission’s review of settlements, we have, as cited above, promulgated detailed Regulations which specifically identify those standards and considerations that will govern our review. Pursuant to the Commission Settlement Guidelines, it is noted that “these factors and standards will be utilized by the Commission in determining if a fine 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 the settlement agreement is in the public interest.” 52 Pa. Code § 69.1201(a). These guidelines further state that “when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

B. Stipulated Facts, Terms of the Settlement Agreement and Conditions of the Settlement¹

1. 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

¹ On May 25, 2023, Planet Energy (Pennsylvania) Corporation (“Planet Energy”) filed an application to abandon its EGS license as a supplier in Pennsylvania. As previously noted, on June 1, 2023, I&E filed its Complaint against Planet Energy at

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.

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

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 Complaint.

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.
- 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.

Settlement at 4-6.

2. Terms of the Settlement

The Joint Petitioners agreed to the following specific settlement terms. For ease of reference, these Settlement terms maintain the paragraph numbers and formatting that appear in the Settlement:

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.

Settlement at 7-9.

3. Conditions of Settlement

Additionally, the Joint Petitioners agreed to the following specific settlement conditions:

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 [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 at 9-11.

C. Positions of the Parties

As previously noted, the Parties filed a Joint Statement. The Joint Petitioners expressed their reasons for support of the Settlement, arguing that the terms therein are just and reasonable and in the public interest.

Specifically, the Joint Petitioners stated that they agreed that the specific facts and circumstances in this case were better suited to a settlement which would avoid lengthy litigation that would result in limited or no benefit to the Parties, past Planet Energy customers, energy supply consumers or the public. Therefore, the Joint

Petitioners submitted that the present Settlement is more reasonable and an administratively more efficient use of resources. Joint St. at 3.

D. ALJ's Initial Decision

The ALJ made twelve (12) Findings of Fact and reached nine (9) Conclusions of Law. I.D. at 4-6, 16-18. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implications.

After setting forth the terms of the Settlement, the ALJ noted that the Joint Petitioners aver that the Settlement is consistent with the Commission's policy statement and associated ten *Rosi* factors for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201. I.D. at 12. The ALJ stated that while he did not agree with every aspect of the Joint Petitioners' *Rosi* factor analysis, he ultimately agreed with them that the Settlement is consistent with the Commission's policy statement and should be approved as in the public interest. *Id.*

Next the ALJ considered each of the *Rosi* factors.²

Rosi factor No. 1: The first *Rosi* factor considers whether the conduct 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.* I.D. at 12-13. Regarding the first factor, I&E

² The "*Rosi* factors" are found at 52 Pa. Code § 69.1201(c)(1)-(10).

alleged the conduct at issue was of a serious nature, however, Planet Energy denied any violation of law. *Id.* at 13.

The ALJ made the following determinations: he agreed with I&E that the allegations against Planet Energy were of a serious nature; that there was no dispute that Planet Energy unilaterally, and without any prior notice, cancelled the customers' contracts with the company; and that Planet Energy maintains that it has not violated the law as set forth in the Settlement even though it cancelled the customers' contracts. I.D. at 13.

Rosi factor No. 2: This 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.* Considering this factor the ALJ agreed with the Joint Petitioners that I&E's allegations do not involve any personal injury or property damage. I.D. at 13 (citing Joint St. at 10).

Rosi factor No. 3: The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). The Joint Petitioners stated that this *Rosi* factor states that it is only to be considered in evaluating litigated cases. Joint St. at 10. In his decision, the ALJ agreed with the Joint Petitioners that this factor was not applicable. I.D. at 13.

Rosi factor No. 4: The fourth factor is whether Planet Energy took any 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). After considering the evidence, the ALJ found that there is no evidence that Planet Energy failed to make any internal efforts to correct the allegations at issue. Therefore, the ALJ agreed with the Joint Petitioners that: (1) since Planet Energy no longer operates in

Pennsylvania and in fact sought to exit that market; (2) that this factor should be viewed in that unique context; and (3) additionally, approval of the Settlement will effectuate Planet Energy's exit from the Pennsylvania market as an EGS. I.D. at 13 (citing Joint St. at 10-11; Planet Energy St. 1, at 2, 21-22).³

Rosi factor No. 5: This factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). The Joint Petitioners stated that, from January 1, 2022 to October 6, 2022, Planet Energy canceled the fixed-rate contracts of its entire customer base in Pennsylvania, or approximately 5,690 customers. I.D. at 14 (citing Joint St. at 11). The ALJ agreed that although the Joint Petitioners attempted to contextualize this factor, claiming little, if any, financial harm was experienced by customers, this factor does not look at anything other than the number of customers affected and the duration of the violations. I.D. at 14.

Rosi factor No. 6: The sixth factor considers the compliance history of the company and provides that “[a]n isolated incident from an otherwise compliant company may result in a lower penalty.” 52 Pa. Code § 69.1201(c)(6). The Joint Petitioners stated that there is indication that Planet Energy has a poor compliance history with the Commission, citing the multiple formal complaint dockets against Planet Energy. Joint St. at 11. The ALJ noted that none of the formal complaint dockets cited by the Joint Petitioners resulted in a judgment entered against Planet Energy and found that the Joint Petitioners have presented evidence of Planet Energy's poor compliance history

³ 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 Number A-2023-3040904, opposing Planet Energy's application given the pending 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 Complaint at this docket.

with the Commission. Furthermore, the ALJ stated that since this matter involves Planet Energy's actions affecting thousands of customers over a number of months, as opposed to an isolated incident, he agreed with the 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. I.D. at 14 (citing *Id.* at 11-12).

Rosi factor No. 7: The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). The ALJ agreed with the Joint Petitioners that Planet Energy had cooperated with the Commission's investigations in order to address the violations alleged. I.D. at 14; *see*, I&E St. No. 1, at 6-9.

Rosi factor No. 8: The next factor addressed in *Rosi* is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). In this case I&E stated that the negotiated civil penalty amount of \$1 million is based on 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 St. at 12. In addition, while it was noted that the Commission is authorized to impose a maximum civil penalty of \$1,000 per day per violation, as set forth in 66 Pa.C.S. § 3301, I&E initially only sought a civil penalty of \$500 per customer. I&E Formal Complaint, ¶ 49. The negotiated amount of a \$1 million civil penalty would represent a civil penalty of approximately \$175 per customer.⁴ The ALJ found this negotiated lesser amount to be a reasonable compromise. I.D. at 15.

The ALJ further stated that a critical part of the Settlement is I&E's acknowledgement that this civil penalty is unlikely to be recovered. The Joint Petitioners

⁴ \$1,000,000 ÷ 5,690 customers = \$175.75.

averred that since there are no financial resources from which a civil penalty can be recovered, given the scenario of this case, 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. I.D. at 15 (citing Joint St. at 12-13).

By way of further explanation, the ALJ noted that Planet Energy's parent company, Planet Energy (Ontario) is currently in bankruptcy proceedings in Canada. I.D. at 15 (citing Planet Energy St. 1, at 22-24). The ALJ also noted that the Ontario Superior Court of Justice has issued orders that show that while Planet Energy (Ontario) has assets of approximately \$10 million, it also has liabilities of approximately \$42.7 million. I.D. at 15 (citing Planet Energy Exhibits B and C). Additionally, the ALJ noted that both I&E and Planet Energy have stipulated that Planet Energy's Letter of Credit (LOC) with the Commission sets forth that the LOC may not be used for the payment of penalties or fines.⁵ The ALJ found that given the circumstances, he agreed with the Joint Petitioners that the imposition of a \$1 million civil penalty is important, but at the same time he recognized that recovery of the penalty is unlikely. I.D. at 15.

Rosi factor No. 9: 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 Complaint. I.D. at 16 (citing I&E St. 1 at 16; I&E St. 2 at 21). Given the unique circumstances of this case, the ALJ agreed with I&E's position that the Settlement should be viewed on its own merits and that it is fair and reasonable. I.D. at 16.

⁵ 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.*

Rosi factor No. 10: The tenth and final factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). As discussed previously, I&E accepted 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 found it imperative to “impose” a civil penalty anyway. I.D. at 16 (citing Joint St. at 13). For the same reasons as he discussed previously, the ALJ agreed that it is important to set a civil penalty in this proceeding, while also recognizing that recovery of the civil penalty is unlikely. I.D. at 16.

The ALJ further noted that both OCA and OSBA did not oppose the settlement, in part recognizing the unique circumstances regarding insolvency in this case. Therefore, looking at this case in total the ALJ concurred with the Joint Petitioners that the Settlement was in the public interest and should be approved. I.D. at 16.

E. Disposition

We note that any 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*, 625A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review of the pleadings and applicable law, we shall modify the Initial Decision, and shall also modify the Settlement, consistent with the following discussion.

The actions of Planet Energy in this case, if proven, would constitute gross violations of Commission regulations and of its responsibility as a licensed supplier. The

Settlement terms, specifically, the agreed-upon civil penalty amount, appropriately reflect the severity of the allegations while considering the complicating factor of the parent company's bankruptcy.

However, we believe that it is necessary to modify one of the Settlement terms. More specifically, in the Settlement, I&E has agreed not to pursue collection of the \$1,000,000 civil penalty. We find it is against the public interest for the Commission to impose civil penalties while waiving its right to even attempt to pursue them. Doing so would signal to other potential bad actors that even egregious business practices could go unpunished simply because the pursuit of Commission-imposed penalties may be difficult.

As such, we believe that the Settlement should be modified to remove any provisions stating that the Commission will not pursue the civil penalties imposed on Planet Energy, as those provisions are contrary to the public interest. Preserving the integrity of Pennsylvania's retail electricity market is an essential function of this Commission and no entities licensed by this Commission should operate under the misapprehension that its penalties are meaningless.

Given that we are modifying the Settlement, I&E and Planet Energy may elect to withdraw from the modified Settlement within twenty (20) business days after the entry date of this Tentative Opinion and Order modifying the Settlement. In addition, if I&E and Planet Energy elect to withdraw from the modified Settlement, the Settlement shall be void, and this proceeding returned to OALJ for further action, as necessary.

Additionally, we deem it appropriate that I&E, Planet Energy, the OSBA, and the OCA, as parties to this proceeding, shall have twenty (20) business days after the entry date of this Tentative Opinion and Order to file comments. If any adverse

comments are filed, we shall address the comments. If no adverse comments are filed, this Tentative Order shall become final.

IV. Conclusion

Based on our review of the ALJ's Initial Decision, the pleadings, and the applicable law, we shall modify the Settlement and the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on August 29, 2024, is modified, consistent with this Tentative Opinion and Order.

2. That the Joint Petition for Approval of Settlement between the Commission's Bureau of Investigation and Enforcement and Planet Energy Corporation d/b/a RiteRate Energy d/b/a Value Plus at Docket No. C-2023-3041126 is modified, consistent with this Tentative Opinion and Order.

3. That, the Bureau of Investigation and Enforcement and Planet Energy Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy may elect to withdraw from the modified Joint Petition for Approval of Settlement within twenty (20) business days after the entry date of this Tentative Opinion and Order modifying the Joint Petition for Approval of Settlement.

4. That, if the Bureau of Investigation and Enforcement and Planet Energy Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy elect to withdraw from the modified Joint Petition for Approval of Settlement, the Settlement shall be void and the proceeding returned to the Office of Administrative Law Judge for further action, as necessary.

5. That the Bureau of Investigation and Enforcement, Planet Energy Corporation d/b/a RiteRate Energy d/b/a Value Plus Energy, the Office of Small Business Advocate, and the Office of Consumer Advocate, as parties to this proceeding, shall have twenty (20) business days after the entry date of this Tentative Opinion and Order to file comments.

6. That, should any adverse comments be filed, the Commission shall address such comments in a Final Opinion and Order.

7. That, should no adverse comments be filed, this Tentative Opinion and Order shall become final and the proceeding at Docket No. C-2023-3041126 shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 7, 2024

ORDER ENTERED: November 7, 2024