



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

January 15, 2025

**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  
**I&E Comments**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Comments of the Bureau of Investigation and Enforcement to the Tentative Opinion and Order Modifying the Joint Petition for Approval of Settlement 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  
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MLS/ac  
Enclosures

cc: Administrative Law Judge John M. Coogan (*via email* – [jcoogan@pa.gov](mailto:jcoogan@pa.gov))  
Office of Special Assistants (*via email* – [ra-OSA@pa.gov](mailto:ra-OSA@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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**COMMENTS OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT  
TO THE TENTATIVE OPINION AND ORDER  
MODIFYING THE JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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

Pursuant to Ordering Paragraph 5 of the Commission’s Tentative Opinion and Order entered December 16, 2024 at the above-referenced docket (“Tentative Order”), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files the within Comments to the Tentative Order which modified the Initial Decision of Administrative Law Judge John M. Coogan (“ALJ”) issued on August 29, 2024, by modifying the Joint Petition for Approval of Settlement (“Settlement Agreement or Settlement”) between I&E and Planet Energy (Pennsylvania) Corp. d/b/a RiteRate Energy d/b/a/ Value Plus Energy (“Planet Energy” or “Company”). The Tentative Order afforded the parties the opportunity to withdraw from the modified settlement or file comments to the modified settlement within twenty (20) business days from the entry date of the Tentative Order. I&E avers that the terms of the Settlement Agreement as originally filed are just and reasonable and in the public interest and, while I&E does not disagree with the importance of

collecting civil penalties as set forth in the Tentative Order, such collection in this instance cannot be accomplished.

## **I. BACKGROUND**

Planet Energy operated as a jurisdictional electric generation supplier (“EGS”) licensed by the Commission at Docket No. A-2011-2223534 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”).

On or about June 1, 2023, following an extensive investigation, I&E filed a formal complaint against Planet Energy at Docket No. C-2023-3041126 (“I&E Complaint”) alleging that Planet Energy had unilaterally canceled customer fixed-rate contracts without proper notification and failed to abide by the terms and conditions of the customers’ fixed-rate contracts and seeking a civil penalty and various remedial measures.

After various procedural filings and directives from the assigned ALJ, the Parties served written testimony that was entered into the record at the telephonic evidentiary hearing held on January 23, 2024. Subsequently, the Parties provided the ALJ with ongoing status reports regarding ongoing settlement efforts and on June 5, 2024, I&E and Planet Energy filed their Joint Petition for Approval of Settlement. Neither OCA nor OSBA elected to actively oppose the Settlement. By Initial Decision dated August 29, 2024, the ALJ approved the Settlement in its entirety as filed as being in the public interest.

The Commission exercised its right to review the ALJ’s Initial Decision. By Tentative Opinion and Order entered December 16, 2024, the Commission modified the

Settlement by removing the provision that the Commission would not pursue collection of the civil penalty imposed in the Settlement Agreement. Pursuant to Ordering Paragraph 5 of the Tentative Order, I&E has elected to file the within Comments to the Modified Settlement.

## **II. COMMENTS**

In its Tentative Order modifying the negotiated Settlement Agreement between I&E and Planet Energy, the Commission stated, in pertinent part:

[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 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.

Tentative Order at 24.

I&E appreciates the concerns conveyed by the Commission and wholeheartedly agrees that it is important to not send the wrong signal to potential bad actors and that it is imperative to preserve the integrity of this Commonwealth's retail energy market. With that said, I&E posits that its Settlement with Planet Energy, as set forth in the body of the Settlement Agreement as filed and as reinforced in the Joint Statement in Support appended

thereto, is already adequately and unequivocally aligned with both of these principles without the need to modify the Settlement.

**A. The Provision in the Settlement as filed to not seek recovery of the imposed civil penalty is warranted under the unique facts and circumstances of this case**

The provision of the Settlement that is at issue is:

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.

Joint Petition for Approval of Settlement at 8.

In fact, recovery of any civil penalty here is more than “unlikely” – it is impossible.

In its Response to Formal Complaint (“Answer”), Planet Energy’s Vice President of Regulatory Affairs and Compliance explained, in pertinent part:

Planet Energy has been in a legal dispute with another company (the “Plaintiff”) over the past several years, and recently the Ontario Court of Appeal dismissed Planet Energy’s appeal. Planet Energy was ordered by the Court to pay an arbitration reward [sic] to the Plaintiff *which greatly exceeds* Planet Energy’s financial capabilities.” (Emphasis added.)

...

As part of the [Notice of Intention to Make a Proposal] process, the Plaintiff moved before the Ontario Court to have an Interim Receiver appointed over Planet Energy’s assets pursuant to section 47.1(1) of the [Canadian Bankruptcy and Insolvency Act (“BIA”)] while the NOI proceedings unfolded, in order to preserve and protect those assets for the benefit of Planet Energy’s creditors. The Court granted that request and by Order dated June 8, 2023, the Court appointed KSV Restructuring Inc. (“KSV”) as Interim Receiver (the “IR”). As a result of the IR

Order, the IR has control and possession of Planet Energy’s assets and decision-making control over Planet Energy’s operations....

Answer at Numbered Paragraphs 33, 36.

As set forth in the Parties’ Joint Statement in Support, “[T]he reality of the situation is that there are *no financial resources* from which a civil penalty can be recovered.” Statement in Support at 12 (emphasis added). It was clearly recognized based on the record of this proceeding that any attempt at financial recovery of any kind would be a fruitless exercise. Moreover, even if monetary assets existed, the Commission had not inserted itself as a creditor and thus retained no rights to share in the distribution of such assets. Following the filing of the Settlement Agreement, even the Office of Consumer Advocate (“OCA”) acknowledged the futility of any collection action against Planet Energy. By letter dated June 28, 2024, counsel for OCA noted that the OCA determined not to actively oppose the settlement “...in light of the insolvency of Planet Energy....” Without a seat at the creditor table, I&E is hard-pressed to discern how any “attempt to collect” would be achieved or to whom the exercise would be assigned.

**B. The Remedial Measures in the Settlement as Filed - Even Sans Recovery of the Imposed Civil Penalty - Adequately Preserve the Integrity of the Commonwealth’s Retail Energy Market**

The Settlement as filed summarily resolves the issue of Planet Energy’s noncompliance with the Commission’s EGS regulations without collection of a monetary civil penalty and sends a clear signal to the industry that egregious business practices will not be overlooked by the Commission’s prosecutory body or tolerated by the Commission. The terms of the Settlement as filed do not dismiss consideration of a monetary deterrent due to the circumstances, but rather still impose a substantial civil penalty despite its uncollectibility, as well as demand the forfeiture of Planet Energy’s EGS license and confirm

Planet Energy's intention to permanently exit the energy supply market in Pennsylvania. The departure of this energy supplier from the Commonwealth, in and of itself, inures to the benefit of the consuming public and serves the public interest. The Settlement terms recognize the unusual circumstances of this case and the reality that there are no financial resources from which a civil penalty can be recovered. As I&E addressed in the Statement in

Support of Settlement:

I&E accepts that there can be no recovery of any civil penalty imposed, but finds it imperative to "impose" a civil penalty anyway. This was 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.

Statement in Support at 13.

Nevertheless, in concert with the non-monetary terms of the Settlement as filed, 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 thus preserving the integrity of the Commonwealth's retail energy market.

**C. The Settlement as Filed and Without Modification Serves the Public Interest**

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 Tentative Order suggests that it is not in the public interest to waive "even the attempt to collect" a civil penalty. As a general rule, I&E agrees with the Commission. However, under the specific facts and circumstances of this case, as reiterated above, absolutely

nothing was to be gained by attempting to collect something that was known not to exist. As part of its negotiations to reach an amicable settlement, I&E concluded that it would not have been in the “public interest” to pursue in vain a monetary civil penalty where clearly no financial resources existed. Rather, the resolution reached in the Settlement as filed is a reasonable, administratively efficient use of limited resources as the Parties sought to uphold the Commission’s “policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a). The public interest was served by acknowledging this fact and not expending I&E’s limited resources for an unrecoverable civil penalty.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the Settlement filed at the above-captioned docket should be granted and Settlement approved without modification as being in the public interest.

Respectfully submitted,



Michael L. Swindler  
Deputy Chief Prosecutor  
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Date: January 15, 2025

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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 **Comments** dated January 15, 2025, 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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