PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 5, 2014

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer
Gladys M. Brown

Pennsylvania Public Utility Commission, M-2013-2325122
Bureau of Investigation and Enforcement

v.

Energy Services Providers, Inc. d/b/a
Pennsylvania Gas & Electric

And

U.S. Gas & Electric, Inc. d/b/a
Pennsylvania Gas & Electric

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a revised Settlement Agreement (Revised Settlement) filed on April 1, 2014, by the Commission's Bureau of Investigation and Enforcement (I&E) and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, and U.S.

Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric (together, PaG&E or Company) (collectively, the Parties), with respect to an Informal Investigation conducted by I&E. Both Parties submitted a Statement in Support of the Revised Settlement. I&E submits that the Revised Settlement is in the public interest and is consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. I&E Statement in Support at 7. We will issue the Revised Settlement for comment.

History of the Case

On September 19, 2012, the Commission's Office of Competitive Market Oversight (OCMO) received complaints pertaining to PaG&E's marketing practices as an electric generation supplier (EGS) and as a natural gas supplier (NGS) within Pennsylvania. Specifically, PECO Energy Company, an electric distribution company (EDC), alleged that the electric and natural gas accounts of several large commercial customers in the EDC's service territory were subject to the switching of service without customer authorization. Upon OCMO's request, I&E initiated an informal investigation of PaG&E's marketing practices.

Based on its investigation, I&E determined that one telephone sales representative (TSR) was responsible for the unauthorized switching of several hundred commercial electric and natural gas accounts to receive supply service provided by PaG&E. According to I&E, the individual – who was employed by a third party vendor that contacts businesses with multiple locations and markets PaG&E's programs for potential enrollment – willfully circumvented the quality controls of PaG&E's sales system.[1]

I&E determined that PaG&E may have violated certain provisions of Chapters 54 and 57 of the Commission's Regulations, 52 Pa. Code §§ 54.42(a)(9), 54.43(f), and 57.171-177, based on allegations that the Company's agent initiated the process of switching the EGS for 194 customer accounts and switched the EGS on 80 of those accounts without authorization. Further, I&E concluded that the Company may have violated certain provisions of Chapters 59 and 62 of the Commission's Regulations, 52 Pa. Code §§ 59.91-59.99, 62.113(c), and 62.114(e), based on allegations that PaG&E's agent began the process of switching the NGS on 125 customer accounts and switched the NGS on 28 of those accounts without authorization.

As a result of negotiations between I&E and PaG&E, the Parties agreed to resolve their differences and initially filed a Settlement Agreement (Initial Settlement) on November 14, 2013. On March 4, 2014, we issued an Opinion and Order rejecting the Initial Settlement and referring the matter back to I&E for any further action it deemed warranted.[2] Thereafter, the Parties conducted additional settlement negotiations and filed the Revised Settlement on April 1, 2014. The Parties urge the Commission to approve the Revised Settlement as being in the public interest. Revised Settlement at 5.

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[1] I&E claimed that the TSR began the process of switching 319 accounts to PaG&E's electric or natural gas supply service. According to I&E, the agent fully transferred 108 of these accounts, which then received supply service from the Company. The TSR's alleged actions affected ten customers at 191 locations in the Philadelphia area. I&E Statement in Support of Settlement at 3-4.

[2] In our Opinion and Order rejecting the Initial Settlement, we concluded that: (1) the civil penalty of $75,000 was insufficient to remedy the situation or to deter future violations of the Public Utility Code (Code), 66 Pa. C.S. § 101 *et seq.*, or Commission Regulations; (2) the slamming allegations were among the most egregious that I&E has investigated; and (3) the apparent lack of internal controls to prevent the volume of the alleged incidents and the failure to self-report the matter to the Commission were troubling.

Background

The Revised Settlement has been filed by the Parties in order to resolve allegations that the Company violated the standards for marketing and switching customers' EGSs and NGSs, and engaged in "slamming" of those affected customers.[3] Had this matter been litigated, I&E would have alleged that PaG&E: (1) initiated the process of switching the EGS on 194 customer accounts and physically switched 80 of those accounts without authorization in violation of 52 Pa. Code §§ 54.42(a)(9) and 54.43(f), and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-179; and (2) initiated the process of switching the NGS on 125 customer accounts and physically switched 28 of those accounts without authorization in violation of 52 Pa. Code §§ 62.113(c) and 62.114(e), and the Standards for Changing a Customer's Natural Gas Supplier at 52 Pa. Code §§ 59.91-59.99. Revised Settlement at 10-11.

If this matter had been litigated, PaG&E would have contended that its actions and those of its agent did not violate the Code or the Commission's Regulations and that no penalty should be imposed. Further, PaG&E states it would have argued that, if the offenses as alleged had occurred, the Company was the victim of the intentional acts of an individual who engaged in harmful acts despite PaG&E's best efforts to ensure otherwise. *Id.* at 11.

PaG&E fully cooperated with the investigation and complied with I&E's requests for information, documentation and other records. *Id*.

[3] "Slamming" is an unauthorized change to a customer's supply service. *EDC Customer Account Number Access Mechanism for EGSs*, Docket No. M-2013-2355751 (Order entered April 18, 2013).

Terms of the Settlement

Pursuant to the Revised Settlement, PaG&E will pay a civil penalty of $150,200. The civil penalty represents the following: $108,000 for the 108 customer accounts that were physically switched to PaG&E; and $42,200 for the 211 customer accounts which were in the process of being switched to PaG&E. Further, for those customers who had one or more of the 108 accounts physically switched to PaG&E, the Company will provide a refund for the entire electric generation or natural gas supply portion of their bill for the period of time they were served by PaG&E.[4] The Company also acknowledges that it has taken corrective action and implemented revisions to its operating procedures as safeguards against future unauthorized switches of customer accounts initiated by third-party vendors. In particular, PaG&E implemented a courtesy call procedure for any third-party verification[5] that contains more than five accounts per commercial or residential customer. Revised Settlement at 12-13.

In addition, PaG&E will conduct background checks for all potential independent contractors or agents pursuant to 52 Pa. Code § 111.4. Moreover, for each prospective third-party vendor, PaG&E will affirmatively inquire whether the TSR responsible for this matter is employed by or associated with the vendor. PaG&E will also remind its agents about the Commission's Regulations pertaining to consumer protection and the prohibition on slamming. The Company also agrees to provide a single point of contact to Commission staff for resolution of consumer inquiries and complaints received by the Commission's Bureau of Consumer Services (BCS).

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[4] PaG&E states that it is currently processing refunds in excess of $67,000 in rates paid by customers whom it actually served. PaG&E Statement in Support of Settlement at 3.

[5] According to the Settlement, PaG&E employed a third-party verification process in which an independent third-party agent called customers to verify sales transactions. The Company's TSR, however, obtained false third-party verifications by directing calls to an accomplice, who posed as the customer. Revised Settlement at 6-7.

Furthermore, PaG&E will continue to respond to any inquiries and complaints relating to marketing violations in accordance with BCS requirements, including the provision of the customer contract and any audio recordings of the verification call to BCS staff. Revised Settlement at 14.

For one year following entry of the Commission's final order, PaG&E will provide quarterly reports detailing: (1) the number of customer complaints received by the Company by category (i.e., slamming, do-not-call violations, etc.); and (2) any process improvements or organizational changes that were implemented to reduce or eliminate similar future complaints. *Id.* at 14-15.

In response, I&E agrees to forbear from initiating a formal complaint relative to the allegations that are the subject of the Revised Settlement. The Revised Settlement will not, however, affect the Commission's authority to receive and resolve any formal or informal complaints filed by any affected party, except that no further penalties beyond the agreed civil penalty may be imposed by the Commission for any actions identified in the Revised Settlement. *Id.* at 15.

The Revised Settlement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission does not give its approval, or makes any change or modification, either Party may elect to withdraw from the Revised Settlement. *Id.* at 17.

Discussion

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004);

Pa. PUC v. CS Water and Sewer Assoc., 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Conclusion

Before issuing a decision on the merits of the Revised Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we are providing an opportunity for interested parties to file comments regarding the Revised Settlement; **THEREFORE,**

IT IS ORDERED:

1. That this Opinion and Order, together with the attached Settlement Agreement and the Statements in Support thereof, shall be issued for comments by any interested party.

2. That a copy of this Opinion and Order, together with the attached Settlement Agreement and the Statements in Support thereof, shall be served on the Office of Consumer Advocate and the Office of Small Business Advocate.

3. That comments regarding the proposed Settlement Agreement will be considered timely if filed within twenty (20) days of the date of entry of this Opinion and Order.

4. That, subsequent to the Commission's review of comments filed in this proceeding, an Opinion and Order will be issued.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 5, 2014

ORDER ENTERED: June 5, 2014

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
v.	:	
Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric	:	**Docket No. M-2013- 2325122**
And	:	
U. S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric	:	

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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The parties to this Settlement Agreement ("Settlement Agreement" or "Agreement") are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E"), by its counsel, P.O. Box 3265, Harrisburg, PA 17105-3265, and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric and U. S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric ("PaG&E," collectively), with corporate offices located at 3700 Lakeside Drive, 6th Floor, Miramar, Florida 33027.

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

3. 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.

4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

5. PaG&E is a licensed electric generation supplier ("EGS") and natural gas supplier ("NGS") as defined by 66 Pa.C.S. §§ 2803 and 2202, respectively. PaG&E is engaged in offering and furnishing supply electric generation and aggregator services, and natural gas supply services in territories as authorized by its licenses within the Commonwealth of Pennsylvania.[1]

6. PaG&E, as a licensed provider of electric generation service and natural gas supply service, is subject to the power and authority of the Commission pursuant to Sections 501(c), 2809(e) and 2208(e) of the Public Utility Code.

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over PaG&E's actions as both an EGS and an NGS that serves customers in Pennsylvania.

[1] PaG&E was granted Commission approval to operate as an electric generation supplier and aggregator on May 9, 2011 at Docket No. A-2010-2212421. PaG&E was granted Commission approval to operate as a natural gas supplier and broker/marketer engaged in the business of supplying natural gas on November 20, 2009 at Docket No. A-2009-2121686.

8. 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 or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s). Specifically with regard to the standards for changing a customer's electric generation supplier and the standards for changing a customer's natural gas supplier, the Commission is empowered to assess fines under the aforementioned 66 Pa.C.S. Chapter 33, pursuant to 52 Pa. Code §§ 57.177(e) and 59.97(e).

9. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

10. This matter concerns an informal investigation initiated by I&E prosecutory staff at the request of the Commission's Office of Competitive Market Oversight ("OCMO"). OCMO received allegations from an Electric Distribution Company ("EDC") that electric and/or natural gas accounts of several large commercial customers in the EDC's service territory had been switched to PaG&E without the customers' authorization. These allegations suggested that a further investigation be conducted to

examine whether the actions of PaG&E or PaG&E's third party vendor violated Commission regulations and orders.

11. As a result of negotiations between PaG&E and I&E (hereinafter referred to collectively as "parties"), the parties initially filed a Settlement Agreement and Statements in Support on November 14, 2013. On March 4, 2014, the Commission issued an Opinion and Order rejecting the Agreement and referring the matter back to I&E for any further action deemed to be warranted pursuant to 52 Pa. Code § 3.113(b). The Commission concluded that a $75,000 civil penalty, even when combined with the corrective actions contained in the Settlement, is not enough to remedy the situation or deter potential future violations of the Code or the Commission's regulations. Specifically, the Commission found that the alleged slamming was among the most egregious that I&E has investigated. Further, the Commission was troubled that PaG&E did not appear to have internal controls in place to prevent the volume of slamming that allegedly occurred. The Commission was also troubled that PaG&E failed to self-report the alleged violations to the Commission.

12. The parties conducted additional settlement negotiations concerning I&E's informal investigation and the Commission's March 4, 2014 Opinion and Order. These negotiations culminated in this Agreement wherein the civil penalty is increased to $150,200.

13. The parties believe that this revised Agreement addresses the issues set forth in the Commission's Order and reaches an appropriate outcome to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the revised Agreement, as submitted, as being in the public interest. Statements in Support of the Settlement Agreement have been attached hereto by I&E and PaG&E as Appendix A and Appendix B, respectively.

II. BACKGROUND

14. On September 19, 2012, OCMO conducted a routine bi-weekly telephone conference with a large EDC, PECO Energy Company ("PECO"), to discuss issues affecting the competitive retail electric markets. During this call, PECO advised OCMO that it had received complaints about "serious" incidents of slamming[2] involving large electric and/or natural gas commercial accounts in the Philadelphia area. PECO averred that customers had informed PECO that their accounts had been switched to PaG&E without authorization. If authorization was received, such as in the form of an audio recording, PECO asserted that these customers had questioned the legitimacy of the purported authorizations.

[2] "Slamming" is an unauthorized change to a customer's supply service. *EDC Customer Account Number Access Mechanism for EGSs*, Docket No. M-2013-2355751 (Order entered April 18, 2013).

15. OCMO learned that in some instances, certain large commercial customers complained that multiple accounts, including electric generation service and natural gas supply service, had been enrolled by PaG&E without proper authorization at several locations.

16. OCMO requested that I&E review the matter. An informal investigation was initiated by I&E into whether PaG&E enrolled the accounts of several large commercial customers to their electric generation service and/or natural gas supply service without proper authorization, which would be contrary to the "Standards for Changing a Customer's Electricity Generation Supplier" regulations at 52 Pa. Code §§ 57.171-179 and the "Standards for Changing a Customer's Natural Gas Supplier" regulations at 52 Pa. Code §§ 59.91-59.99.

17. By letters dated September 28, 2012, and February 28, 2013, I&E requested that PaG&E provide responses to data requests related to the above-mentioned slamming allegations. PaG&E complied with I&E's requests.

18. In its responses to I&E's data requests, PaG&E provided audio recordings of third party verifications[3] ("TPV") that took place during the sales telephone calls that enrolled the customers' accounts. The TPVs purport to authorize the switching of the customers' electric and/or natural gas accounts to PaG&E.

[3] Verification is a process used to confirm that the customer authorized the transfer of the account to the supplier. PaG&E uses an independent, third-party agent to verify sales transactions. All TPVs performed over the telephone are recorded.

19. The telephone sales representative ("TSR") on each of the audio recordings is the same individual.

20. The TSR was employed by a vendor utilized by PaG&E whose purpose was to contact businesses with multiple locations and market PaG&E programs for potential enrollment.

21. The TSR was apparently involved in a scheme to obtain third-party verifications by directing the verifications to an accomplice who posed as the customer, thereby enrolling the accounts. Thus, while audio recordings of TPVs were made, the "authorizing" party on the other end was not the customer.

22. In addition, the TSR did not make calls to the customers that resulted in sales transactions. The TSR skipped the transaction process and proceeded straight to the third-party verification service, with an accomplice who acted as the customer on the telephone line.

23. In July 2012, PaG&E first became aware that the vendor had allegedly made sales calls that were not being recorded. This discovery was made in the course of investigating an incident of one customer who contacted PaG&E disputing his or her enrollment. PaG&E cited its concerns to the vendor.

24. In August 2012, PaG&E received additional inquiries from customers alleging that multiple locations had been enrolled without proper authorization. PaG&E's internal investigation revealed that all these enrollments were associated with the same TSR.

25. Immediately after PaG&E learned of this incident, PaG&E initiated a campaign to contact all customers who had been enrolled by this TSR. In some cases, the telephone numbers provided by the TSR were not correct and, therefore, PaG&E was unable to immediately contact all affected customers.

26. Several customers were able to switch to the provider of their choice before receiving electric generation service and/or natural gas supply service from PaG&E. However, in other instances, customers did not rescind service within the appropriate time frame[4] and received one month or more of service from PaG&E before being returned to default service or switched to the provider of their choice.[5]

27. With respect to the customers who received supply service, PaG&E mailed refund checks to customers who experienced any difference between PaG&E's rate and the public utility's rate for the month or more of service they had with PaG&E.

28. PaG&E had internal controls in place and required all vendors to abide by them, including monitoring TSRs for compliance, daily review of all TPVs, and regular audits of enrollments. These control procedures include the following: (1) A TSR cannot use a landline to conduct marketing and is only permitted to use company dialer

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[4] Pursuant to Commission regulations, customers receive a confirmation letter from their distribution company notifying them of their selection of an electric generation or natural gas supplier. 52 Pa. Code §§ 57.173(2) and 59.94. The letter provides a waiting period that is intended to give the customer time to contact the distribution company to cancel the switch in the event that the customer did not authorize the switch to the supplier. *See also Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (Order entered October 25, 2012); the Interim Guidelines shortened the waiting period from 10-days to 5-days.

[5] Electric generation supplier switches are executed by EDCs on meter reads according to the customer's regular meter-reading schedule. *Id.*

calls; (2) A TSR must make sales calls to the telephone number presented to them and the calls must be recorded; (3) The telephone numbers are those of potential customers who are on an Eligible Customer List ("ECL"), which is obtained from the utility; (4) A TPV provider verifies every enrollment that results from a sales call and all TSRs must use the services of the TPV provider contracted by PaG&E; and (5) Quality Assurance Analysts select random call recordings of each TSR to ensure that the TSR is complying with procedures. This particular TSR willfully circumvented PaG&E's established control procedures by directly calling the TPV provider from an unrecorded landline and using an acquaintance to pose as the customer. It should be noted that PaG&E's controls and monitoring allowed it to identify the perpetrator and to address the situation before some customers even became aware of the issue. These procedures are in addition to the substantial training that is required for all sales personnel as well as other personnel, such as customer service, that are "customer facing."

29. Immediately after PaG&E learned of this incident, PaG&E implemented an additional procedure consisting of a courtesy call to customers enrolling more than five accounts. This step acts as an extra precaution intended to make it more difficult for a TSR to circumvent PaG&E's established procedures when enrolling multiple accounts.

30. PaG&E did not send commission payments to the vendor for sales conducted by this particular TSR. In addition, PaG&E refuses to retain the services of any vendor who employs this particular TSR and the vendor terminated the TSR's employment.

31. From its investigation, I&E found that multiple accounts of ten commercial customers in the Philadelphia area had been switched to PaG&E without legitimate authorization. These customers include several banks, two stores that sell auto parts, a pet store, a tax preparation store, a medical diagnostic testing place and a school district. With the exception of the school district, all customers operate businesses at numerous locations in Philadelphia. In all, a total of 191 locations were affected among the ten customers. Further, I&E found that at several of the 191 locations, the electric and natural gas accounts were both switched, due to the fact that PaG&E provides both electric generation service and natural gas supply service. Thus, I&E found that PaG&E initiated the process of switching 319 electric and/or natural gas accounts without legitimate authorization from the customers. Of the 319 accounts where PaG&E initiated the process of switching to its supply service, 108 accounts received supply service from PaG&E.

32. This slamming incident was the first blemish on PaG&E's otherwise clean compliance history in Pennsylvania. Within the last month, however, there have been a number of complaints filed with regard to variable rate issues.

III. ALLEGED VIOLATIONS

33. Based on the information obtained through its investigation as described above and a review of the Public Utility Code and Commission regulations, I&E was prepared to allege in a formal complaint that:

a. The action of PaG&E's agent initiated the process of switching the electric generation supplier on 194 customer accounts and resulted in physically switching the electric generation supplier on 80 of those accounts without the authorization of the customers.

If proven, this would have violated 52 Pa. Code §§ 54.42(a)(9) and 54.43(f), and the Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-177.

b. The action of PaG&E's agent initiated the process of switching the natural gas supplier on 125 customer accounts and resulted in physically switching the natural gas supplier on 28 of those accounts without the authorization of the customers.

If proven, this would have violated 52 Pa. Code §§ 62.113(c) and 62.114(e), and the Standards for Changing a Customer's Natural Gas Supplier at 52 Pa. Code §§ 59.91-59.99.

34. If the matter had been litigated, PaG&E would have contended that neither its actions nor the actions of its third party vendor violated either the Public Utility Code or Commission regulations, and that it should not be fined or penalized for any offense. To the contrary, PaG&E would have contended that if there were an offense, it too was the victim. In this case, an individual had purposefully and intentionally engaged in conduct that was harmful both to customers and PaG&E despite PaG&E's best practices, and industry standard efforts to ensure otherwise.

35. Throughout the entire investigatory process, I&E and PaG&E remained active in communications and informal discovery, and continued to explore the possibility of resolving this investigation, which ultimately culminated in this revised Settlement Agreement. During the investigatory process, PaG&E complied with I&E's requests for information, documentation and other records.

IV. SETTLEMENT TERMS

36. PaG&E and I&E desire to: (i) terminate I&E's informal investigation; and (ii) settle this matter completely without litigation.

37. Although PaG&E disputes or disagrees with the allegations above, it fully acknowledges the seriousness of slamming and recognizes the need to prevent the reoccurrence of a similar situation. Moreover, the parties recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, the parties further recognize the benefits of amicably resolving the disputed issues.

38. PaG&E and I&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

a. PaG&E will pay a civil penalty in the amount of one hundred fifty thousand and two hundred dollars ($150,200) to resolve all allegations of slamming and to fully and finally settle all possible liability and claims of alleged violations of the Public Utility Code and Commission regulations arising from, or related to, the conduct investigated herein. The civil penalty represents the following: one hundred eight thousand ($108,000) for the 108 customer accounts that were physically switched to receive electric generation or natural gas supply service from PaG&E; and forty-two thousand ($42,200) for the 211 customer accounts where the process of switching to PaG&E was initiated. Said payment shall be made by check payable to the "Commonwealth of

Pennsylvania" and forwarded to the Commission through the prosecuting attorney within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement. PaG&E's civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

b. PaG&E will provide to each of the customers, who had one or more of the 108 accounts physically switched to PaG&E, a refund for the entire electric generation or natural gas supply portion of their bill for the period of time they were served by PaG&E, net of any amounts already rebated to customers, not to exceed sixty (60) days. These customer refunds will be made within thirty (30) days of the date of the final order approving the Settlement Agreement. Following payment of the refunds, PaG&E will file with the Commission a verification acknowledging that all refund payments have been made, satisfying this settlement provision.

c. PaG&E has taken corrective action and implemented revisions to its operating procedures, which will act as safeguards against the unauthorized switch of customer accounts initiated by a third party vendor. Specifically, PaG&E implemented a courtesy call procedure for any TPV that contains more than five (5) accounts per commercial or residential customer. Enrollment will not be submitted to the utility until the customer who completed the TPV has confirmed switching the accounts to PaG&E.

d. PaG&E shall conduct background checks with all potential independent contractors or agents pursuant to 52 Pa. Code § 111.4.

e. For each third party vendor with whom PaG&E seeks to engage in business, PaG&E will affirmatively inquire about whether the TSR, whose actions are the cause of the present matter, is employed by or associated with the company.

f. PaG&E shall continue to ensure that its agents are reminded of the Commission's regulations regarding consumer protection, with an emphasis on those prohibiting slamming.

g. PaG&E shall provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by the Bureau of Consumer Services ("BCS").

h. PaG&E will continue to respond to all consumer inquiries and complaints relating to fraudulent, deceptive or otherwise unlawful acts in the process of marketing supplier products and/or services in accordance with BCS requirements, including providing to BCS staff a copy of the customer contract and any audio recordings of the verification call, when such recordings are available to PaG&E.

i. For a term of twelve (12) months starting after the date of entry of the Commission's order approving settlement in this matter, PaG&E shall provide to staff, in the first week of each calendar quarter, a report for the prior quarter that captures the following data concerning customer complaints filed directly with PaG&E: (1) the number of complaints by category, i.e. slamming, do-not-call list violations, incorrect charges, etc.; and (2) any process improvements, organizational changes, etc. that were implemented to reduce or eliminate similar complaints going forward.

j. In exchange for the action taken by PaG&E described above, I&E agrees not to institute any formal complaint relating to the unauthorized customer enrollments that are the subject of this Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.

k. The terms and conditions in this Settlement Agreement cannot be used and will not be admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by PaG&E.

V. CONDITIONS OF SETTLEMENT

39. The parties submit that a settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement

agrees to pay a lesser sum to avoid the possibility of a larger fine or penalty resulting from litigation. This settlement represents a compromise by both PaG&E and I&E of their respective litigation positions. Any fines and penalties resulting from a litigated proceeding typically are different from payments resulting from a settlement.

40. The Settlement Agreement meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201, which are more fully addressed in the parties respective Statements in Support. The parties submit that the Settlement Agreement is in the public interest because it effectively addresses the slamming issue that was the subject of I&E's investigation, avoids the time and expense of litigation, which entails hearings, travel for PaG&E's out-of-state witnesses, and the preparation and filing of briefs, exceptions, reply exceptions and possible appeals.

41. With the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest, PaG&E agrees to, along with the non-monetary terms set forth above, pay a civil penalty in the amount of $150,200, plus customer refunds, within thirty (30) days of the date of the order approving this Settlement Agreement, to completely resolve the allegations raised by I&E's investigation.

42. This Settlement Agreement is a complete and final resolution of the Commission's investigation related to the issues as described above.

43. PaG&E and I&E have agreed to this settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

44. PaG&E and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is subject to all applicable administrative and common law treatments of settlements, settlement offers and/or negotiations. The validity of this Settlement Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. Accordingly, this Settlement Agreement is made without any admission against or prejudice to any position which any party might adopt during litigation of this case if this settlement is rejected by the Commission or withdrawn by any of the parties as provided below. This Settlement Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of the terms and conditions contained herein without modification or amendment.

45. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Agreement shall be construed and interpreted under Pennsylvania law.

46. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or of any culpability. I&E acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Public Utility Code and the Commission's regulations.

47. If either party should file exceptions to the tentative or final order of the Commission, the other party shall have the right to file a reply to the exceptions.

48. If the Commission fails to approve by tentative and final order this Settlement Agreement, including any of the terms or conditions set forth herein, without modification, addition, or deletion, then either party may elect to withdraw from this Settlement Agreement by filing a withdrawal in response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Settlement Agreement shall be considered an admission of fact or law or be binding upon the parties of one of them files a withdrawal.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric and U. S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

Respectfully submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

By:____________________
Stephanie M. Wimer
Prosecutor
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Date: 4/1/2014

Energy Services Providers, Inc. d/b/a
Pennsylvania Gas & Electric

And

U.S. Gas & Electric, Inc. d/b/a
Pennsylvania Gas & Electric

By:____________________
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Date: 4/1/14

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, **Bureau of Investigation and Enforcement**	: :	
v.	: : :	
Energy Services Providers, Inc. d/b/a **Pennsylvania Gas & Electric**	: :	**Docket No. M-2013-2325122**
And	: : :	
U. S. Gas & Electric, Inc. d/b/a **Pennsylvania Gas & Electric**	: :	

STATEMENT IN SUPPORT OF BUREAU OF INVESTIGATION AND ENFORCEMENT

The Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") hereby submits this Statement in Support of the revised Settlement Agreement that was entered into by I&E and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric ("PaG&E," collectively) in the above-captioned matter. The Settlement fully resolves all issues related to I&E's investigation into the enrollment of commercial customers to receive supply service from PaG&E without obtaining proper authorization. I&E respectfully submits that the revised Settlement is in the public interest and requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

PaG&E fully cooperated and assisted I&E with its investigation into the unauthorized switching of electric and natural gas accounts to receive supply service from PaG&E. In addition, PaG&E has been proactive with I&E staff related to identifying practices and procedures that can be improved to prevent a third party vendor from engaging in slamming in the future. The Settlement reflects a carefully balanced compromise of the interests of I&E and PaG&E in this matter.

I. BACKGROUND

This matter involves PaG&E, an electric generation supplier ("EGS") licensed by the Commission to operate within the service territories of the following electric distribution companies in Pennsylvania: Duquesne Light Company, PECO Energy Company ("PECO"), Pike County Light & Power Company, PPL Electric Utilities, Pennsylvania Power Company, Metropolitan Edison Company, Pennsylvania Electric Company and West Penn Power. PaG&E is also a natural gas supplier ("NGS") licensed by the Commission to operate within the service territories of the following natural gas distribution companies in Pennsylvania: Columbia Gas of Pennsylvania, Inc., National Fuel Gas Distribution Corporation, PECO Gas and UGI Utilities, Inc.

In September 2012, the Commission's Office of Competitive Market Oversight ("OCMO") learned about complaints that PECO received concerning incidents of slamming involving large commercial electric and/or natural gas accounts in the

Philadelphia area. The complaints indicated that PaG&E may have enrolled accounts without proper authorization to do so, contrary to the "Standards for Changing a Customer's Electricity Generation Supplier" regulations at 52 Pa. Code §§ 57.171-179 and the "Standards for Changing a Customer's Natural Gas Supplier" regulations at 52 Pa. Code §§ 59.91-59.99.

OCMO requested that I&E review the matter and, subsequently, an informal investigation was initiated by I&E. I&E's informal investigation concluded that sufficient data had been gathered to substantiate the alleged violations of the Public Utility Code and Commission regulations in connection with the complaints that PECO received.

Upon investigation, I&E determined that one Telephone Sales Representative ("TSR") was responsible for the unauthorized switching of hundreds of commercial electric and natural gas accounts to receiving supply service from PaG&E. This individual was employed by a third party vendor that PaG&E utilizes to contact businesses with multiple locations and market PaG&E programs for potential enrollment. The TSR willfully circumvented the quality controls of PaG&E's sales system by skipping the sales transaction process and proceeding directly to the third party verification service, using an accomplice who posed as the customer on the telephone to verify the switch to PaG&E.

The TSR initiated the process of switching 319 accounts to electric or natural gas supply service from PaG&E, and 108 of those accounts were fully transferred and received supply service from PaG&E. A total of ten customers and 191 locations were affected; all are located in the Philadelphia area.

When PaG&E became aware of this individual's actions, it immediately took steps to sever its business relationship with that individual and began to conduct an extensive internal investigation. PaG&E contacted the affected customers and mailed refund checks to customers who were enrolled without legitimate authorization and experienced a more expensive rate under PaG&E. Further, PaG&E refused to send commission payments to the third party vendor for the sales conducted by the TSR.

In making a determination that the revised settlement was appropriate, I&E weighed the Commission's clear "zero tolerance" mandate[1] regarding slamming against various mitigating circumstances that are present here. Importantly, I&E acknowledges that PaG&E fully cooperated with I&E's investigation. PaG&E promptly responded to I&E's numerous requests for information about the customers' complaints and provided I&E with records, correspondence and other documents, as well as audio recordings, associated with the customers' complaints. Moreover, throughout the entire investigatory process, PaG&E and I&E remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

[1] *See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc.*, M-2012-2201861 (Opinion and Order entered May 3, 2012) (noting that the "Commission has made it clear on numerous occasions that it will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania.")

II. TERMS OF SETTLEMENT

I&E alleges that in connection with this slamming incident, PaG&E committed several violations of the Commission's regulations. While the alleged slamming was committed by an agent or employee of a third party vendor, I&E submits that PaG&E remains liable for this conduct under the Commission's regulations. *See* 52 Pa. Code §§ 54.43(f) and 62.114(e); *See also* 52 Pa. Code 111.3(b) (relating to Marketing and Sales Practices for the Retail Residential Energy Market; Supplier Liability for Its Agent), which became effective on July 6, 2013, after the alleged conduct described herein occurred.

Based on I&E's allegations, I&E requests that the Commission approve the terms of the Settlement, which include directing PaG&E to pay the largest civil penalty ever imposed on a supplier for allegations of slamming, and implement measures that PaG&E has agreed to perform in order to prevent slamming conducted by an agent of a third party vendor from happening in the future. Under the terms of the Settlement, PaG&E has agreed as follows:

A. PaG&E will pay a civil penalty in the amount of one hundred fifty thousand two hundred dollars ($150,200). PaG&E's civil penalty will not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. PaG&E will provide to each of the customers, who had one or more of the 108 accounts physically switched to PaG&E, a refund for the <u>entire</u> electric generation or natural gas supply portion of their bill for the period of time they were served by PaG&E, net of any amounts already rebated to customers, not to exceed sixty (60) days. Following payment of the refunds, PaG&E will file with the Commission a verification acknowledging that all refund payments have been made.

C. PaG&E has taken corrective action and implemented revisions to its operating procedures, which will act as safeguards against the unauthorized switch of multiple accounts of a single customer. Specifically, PaG&E implemented a courtesy call procedure for any Third Party Verification ("TPV") that contains more than five (5) accounts per commercial or residential customer. Enrollment will not be submitted to the utility until the customer who completed the TPV has confirmed switching the accounts to PaG&E.

D. PaG&E will conduct background checks with all potential independent contractors or agents.

E. For each third party vendor with whom PaG&E seeks to engage in business, PaG&E will affirmatively inquire about whether the TSR, whose alleged actions are the cause of the present matter, is employed by or associated with the company.

F. PaG&E will ensure that its agents are reminded of the Commission's regulations regarding consumer protection, with an emphasis on those prohibiting slamming.

G. PaG&E will provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by the Bureau of Consumer Services ("BCS").

H. PaG&E will continue to respond to all consumer inquiries and complaints relating to fraudulent, deceptive or otherwise unlawful acts in the process of marketing supplier products and/or services in accordance with BCS requirements, including providing to BCS staff a copy of the customer contract and any audio recordings of the verification call, when such recordings are available to PaG&E.

I. For a term of twelve (12) months starting after the date of entry of the Commission's order approving settlement in this matter, PaG&E will provide a report the first week of each calendar quarter to staff capturing the following data concerning customer complaints filed directly with PaG&E: (1) the number of complaints by category, i.e. slamming, do-not-call list violations, incorrect charges, etc.; and (2) any process improvements, organizational changes, etc. that were implemented to reduce or eliminate similar complaints going forward.

The terms of the Settlement are designed to act as additional safeguards, beyond PaG&E's existing internal controls, to prevent slamming in the future. Consequently, the terms of the Settlement will benefit the Pennsylvania retail electric and natural gas markets.

III. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *See Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement in this matter is consistent with the Commission's Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The first factor considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty. I&E alleges that the conduct in this case is the following: an agent of a third party vendor that PaG&E utilizes to contact businesses with multiple locations and market PaG&E programs for potential enrollment switched, without authorization, 319 electric and natural gas accounts to receive supply service from PaG&E. Of the 319 accounts where the process of switching had been initiated, 108 accounts actually received supply service from PaG&E. A total of ten commercial customers, with multiple business locations, were affected. When the slamming was brought to PaG&E's attention, PaG&E contacted the affected customers and mailed refund checks to customers who experienced any difference between PaG&E's rate and the public utility's rate for the month or more of service they had with PaG&E. PaG&E did not send commission payments to the vendor for sales conducted by this particular agent. In addition, PaG&E refused to retain the services of any vendor who employs this agent and the vendor terminated the agent's employment. Due to the willfulness of the conduct of this agent, I&E submits that the alleged slamming is of a serious nature and was considered in arriving at the civil penalty in this Settlement.

In addition, PaG&E did not report the conduct of its vendor's agent to the Commission when it discovered the problem. While self-reporting is not a regulatory requirement, many suppliers voluntarily notify the Commission of issues affecting the retail electric and natural gas markets as they occur. The fact that PaG&E did not self-report the unauthorized switching to its supply service has been reflected in the increased civil penalty.

The second factor considered is whether the resulting consequences of the conduct in question were of a serious nature. I&E's investigation has determined that the customers who received electricity or natural gas supply from PaG&E before being switched back to the EGS or NGS of their choice may have experienced a more expensive rate. However, PaG&E promptly rectified the situation by sending refund checks to customers who were adversely financially affected. Nevertheless, the enrollments were unauthorized and the act of enrolling customers to receive supply service without proper customer authorization has been recognized by the Commission as a serious consequence. Accordingly, I&E asserts that the resulting consequence of the action of PaG&E or its agent was of a serious nature.

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor is only to be considered when evaluating litigated cases. 52 Pa. Code § 69.1201(c)(3). Therefore, this factor does not apply to the present case because this proceeding is a settled matter.

The fourth factor to be considered is whether PaG&E made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. PaG&E voluntarily implemented a courtesy call procedure for any TPV that contains more than five (5) accounts per commercial or residential customer. PaG&E will not submit enrollment to the utility until the customer who completed the TPV has confirmed switching the accounts to PaG&E. As such, PaG&E is taking appropriate action to address concerns and decrease the likelihood of similar incidents in the future.

The fifth factor considers the number of customers affected and the duration of the violation. In this matter, 108 accounts of ten commercial customers were physically switched to receive electric generation or natural gas supply service from PaG&E without their authorization. The duration of this violation lasted until the affected customers could switch back to the EGS or NGS of their choice, which was approximately 30 days or one billing cycle.

The sixth factor considers the compliance history of the company. This slamming incident was the first infraction on PaG&E's otherwise clean compliance history in Pennsylvania. Within the last month, however, there have been a number of formal complaints regarding variable rate issues. These complaints are pending and have not been resolved or adjudicated.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. PaG&E has cooperated with Commission staff throughout all phases of this investigation and settlement process.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. I&E submits that a civil penalty in the amount of $150,200, which may not be tax deductible, is substantial and sufficient to deter PaG&E from committing future violations. If approved, this would be the largest civil penalty ever imposed on a supplier for allegations of slamming,

The ninth factor examines past Commission decisions in similar situations. The revised agreement between I&E and PaG&E provides a civil penalty of $1,000 for the 108 accounts that were physically switched to PaG&E's supply service without authorization, for a total of $108,000. This amount is similar to the Commission's decisions in the *Pa. Public Utility Commission v. ACN Energy, Inc.*, Docket No. M-00021618 (April 18, 2000) and *Pa. Public Utility Commission, Law Bureau Prosecutory*

Staff v. MXenergy Electric, Inc., Docket No. M-2012-2201861 (August 29, 2013) cases where the alleged slamming was intentional in nature and a $1,000 penalty per account switched was imposed. One-thousand dollars for each account that was slammed would have been the maximum civil penalty that I&E would have requested in a complaint.

In addition, the revised settlement agreement provides a $200 civil penalty for the 211 accounts where the switching process was initiated but not completed, for a total of $42,200. This amount is consistent with the *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Public Power, LLC,* Docket No. M-2012-2257858 (December 19, 2013) and *ACN Energy, Inc.* and cases wherein penalties less than $1,000 per account were levied for accounts that were not physically switched.

Further, just as was the case in previous slamming matters, PaG&E agreed to undertake corrective action designed to prevent similar misconduct from occurring in the future.

It should also be noted that mitigating circumstances unique to this case exist. All the unauthorized switching was performed by a single sales representative and there is no indication that these actions were a company-wide problem. PaG&E promptly identified this individual and severed business relations with him. For all of these reasons, I&E submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

The parties submit that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines, penalties and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise, but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

I&E and PaG&E fully support the terms and conditions of this Settlement Agreement. The foregoing terms of this Agreement reflect a carefully balanced compromise of the interests of the parties in this proceeding. The parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement fully supports the Settlement Agreement and respectfully requests that the Commission adopt an order approving the terms and conditions of this Settlement Agreement in its entirety.

Respectfully submitted,

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207552

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: April 1, 2014

APPENDIX B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
v.	:	
Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric	:	**Docket No. M-2013-2325122**
And	:	
U. S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric	:	

STATEMENT IN SUPPORT OF REVISED SETTLEMENT OF U.S. GAS & ELECTRIC, INC. D/B/A PENNSYLVANIA GAS & ELECTRIC

U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric ("PAG&E"), by and through its counsel in the above-captioned matter, Hawke, McKeon & Sniscak, LLP, hereby submits this Statement in Support of the Revised Settlement Agreement ("Settlement") that resolves the above referenced informal investigation of the Bureau of Investigation and Enforcement ("I&E"). PAG&E again commends I&E for its professionalism in its conduct of the investigation in this matter, which followed PAG&E's own internal investigation. While PAG&E believes that the initial Settlement was in the public interest and was a reasonable resolution of this matter, the Commission chose to reject that initial resolution, concluding that the civil penalty was insufficient. The Settlement at hand will impose a civil penalty that is more than twice that of the initial resolution. PAG&E believes that this level of civil penalty is more than sufficient to deter any future conduct of a similar nature, indeed, PAG&E has since undertaken a number of additional procedures which include additional reporting requirements as part of this Settlement. The Settlement continues to consider PAG&E's position and its role in the events that transpired and provides for a fair and reasonable Settlement of the issues raised by I&E during the investigation process. PAG&E therefore, requests that the Pennsylvania Public Utility Commission ("Commission") approve the Settlement without modification.

Prior to being contacted by I&E regarding the allegations in this matter, PAG&E was conducting its own investigation of the allegations, as it had been alerted by its own internal procedures. At that point, however, PAG&E had not conferred with counsel and was not institutionally aware of the Commission's preference for self reporting. Nonetheless, after initial contact with I&E, PAG&E cooperated fully with I&E's investigation and provided timely, and thorough responses to each of I&E's data requests and other questions. PAG&E has had two face to face meetings with I&E, both of which included its CEO and members of its upper management team. Since the rejection of the initial resolution, PAG&E has since had additional discussions with I&E and this Settlement is the result.

As the Settlement document explains, this matter concerns allegations raised by ten commercial customers in the PECO service territory that PAG&E had changed their electricity and/or natural gas supplier without their consent. Based upon its own investigation, PAG&E believes that its conduct in connection with the alleged change in suppliers was lawful and in compliance with Commission guidelines and regulations. It nonetheless recognizes that Commission policy is to hold EGS/NGSs responsible for the acts of their agents. PAG&E takes compliance very seriously, and has never had a substantiated complaint of slamming. In fact, PAG&E has put a tremendous amount of effort into ensuring that no customer could be switched without his or her consent. These processes include rigorous training of personnel, regular auditing of sales calls and third party verifications, operating a customer service department and quality assurance department that addresses customer complaints and concerns, monitoring and substantial oversight at each juncture to ensure that all sales and TPV operators are using approved scripts, and creating a corporate culture of compliance. It should be noted that the entirety of the allegations in this matter concern the actions of a single individual working for a single vendor and occurred over a very short period of time. All of the alleged switches involve this agent's employee deliberately acting in a manner that was contrary to all policy and training. Upon discovery, this person was not only terminated, but permanently embargoed. That is, PAG&E will not participate in any relationship with any vendor that employs this individual. PAG&E deeply regrets that this event ever happened, as it provided a negative experience for the customers involved and blemished PAG&E's heretofore spotless record. As a result of this incident, PAG&E has strengthened its internal policies and procedures, such as instituting follow-up calling for multi account switches and further restrictions on vendors, to make such occurrences even less likely in the future.

As noted in the Settlement, because PAG&E took immediate action once it became clear what had happened, it was able to ensure that most of the enrollments never resulted in an actual switch, and PAG&E cooperated fully with PECO to return the others at the earliest possible moment. It paid any rate differential to the few customers whose PAG&E rate was higher than what they would have paid on their existing service and is now in the process of preparing to refund in excess of $67,000 in rates paid by the customers whom it actually served. The Settlement contains other conditions, including reporting requirements that should provide the

Commission with further comfort that PAG&E will continue to cooperate with I&E and other staff the ensure that the customer experience is as it should be.

The Settlement appropriately makes no findings of fact or conclusions of law, and contains no finding or admission of any violation of the Public Utility Code, the Commission's Regulations, Orders or guidelines. Accordingly, the Settlement reflects that this matter was resolved amicably and without any adjudication of the issues. Moreover, and beyond the terms of the Settlement, PAG&E commits to continue to work with Commission staff to improve its operations and also to assist in relating these experiences and the lessons learned, no matter how painful, to ensure that other suppliers do not suffer the same fate. The Settlement allows the investigation to be completed without litigation, and the time and expense of a formal proceeding.

WHEREFORE, PAG&E respectfully submits that the above-captioned Settlement is in the public interest and should be approved and; therefore, request that the Commission approve such Settlement without modification.

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Respectfully submitted,

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Counsel for U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric

DATED: April 1, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Settlement Agreement and Statements in Support, upon the person(s) listed and in the manner indicated below:

Notification by First Class Mail:

Todd S. Stewart, Esq.
Hawke, McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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Dated: April 1, 2014

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