**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

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| Pennsylvania Public Utility Commission,  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 |  | M-2013-2325122 |

**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]](#footnote-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]](#footnote-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.

**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]](#footnote-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*.

**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]](#footnote-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]](#footnote-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). 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

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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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
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). [↑](#footnote-ref-3)
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. [↑](#footnote-ref-4)
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. [↑](#footnote-ref-5)