

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on January 23, 2025

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
James S. Alesi  
David J. Valesky  
John B. Maggiore  
Uchenna S. Bright  
Denise M. Sheehan  
Radina R. Valova

CASE 23-M-0166 - Proceeding on Motion of the Commission to Seek  
Consequences against Atlantic Energy, LLC for  
Violations of the Uniform Business Practices.

ORDER ADOPTING SETTLEMENT AGREEMENT

(Issued and Effective January 28, 2025)

BY THE COMMISSION:

INTRODUCTION

This Order adopts the terms and conditions of a settlement agreement (Settlement Agreement) executed by Atlantic Energy, LLC (Atlantic) and the Department of Public Service (Department or DPS) Office of Investigations and Enforcement, attached hereto as Appendix 1, that fully resolves all claims asserted in the Order to Show Cause (OTSC) issued by the Commission on August 18, 2023. As discussed in more detail below, the Settlement Agreement resolves three alleged violations of the Commission's Uniform Business Practices (UBP) and alleged failure to comply with the Commission's December 12, 2019 Order Adopting Changes to Retail Access Energy Market and

Establishing Further Process (December 2019 Order). Pursuant to the terms and conditions of the Settlement Agreement, Atlantic: (1) acknowledges that it enrolled over 250 customers on non-compliant products that offered inappropriate inducements; (2) acknowledges that it transferred 25 expired customers to renewable energy products without those customers' affirmative consent; and (3) neither admits nor denies that it failed to take corrective action in response to a Notice of Apparent Violation (NOAV) that preceded the OTSC. Based on these acknowledgments, Atlantic has agreed to remit a civil settlement to the State Treasury of \$100,000 (Settlement Funds). Atlantic has further agreed to refund its customers a collective total of \$3,234.67 (Refund).

FACTUAL AND PROCEDURAL BACKGROUND

The Commission's UBP established various eligibility conditions for Energy Service Companies (ESCOs), such as Atlantic, to access utility-owned distribution systems for the purpose of selling energy services to customers, which the Commission has authority to enforce. In addition, on December 12, 2019, the Commission issued the December 2019 Order in Case 15-M-0127 et al., In the Matter of Eligibility Criteria for Energy Service Companies, which instituted enhanced eligibility requirements for ESCOs and changed the energy service products that ESCOs were authorized to offer in New York State.

On August 18, 2023, the Commission issued the OTSC, ordering Atlantic to show cause within 30 days why its eligibility to act as an ESCO in New York State should not be revoked or, alternatively, why other consequences as set forth in the Commission's UBP should not be imposed. The OTSC alleged that Atlantic committed three violations of the UBP and also

failed to comply with the terms and conditions of the December 2019 Order.

The OTSC first contended that Atlantic “enrolled over 250 customers on apparently non-compliant products that offered inappropriate inducements.”<sup>1</sup> Specifically, the OTSC alleged that, following Department Staff’s review of Atlantic’s contracts during an annual renewable energy audit, it appeared that 250 executed Atlantic contracts “included promotional items and inducements” that are prohibited by the December 2019 Order.<sup>2</sup> These 250 contracts also apparently lacked revised inducement language, as required by UBP Section 2.4.a.<sup>3</sup>

Second, the OTSC alleged that Atlantic “apparently did not obtain customer consent to move legacy customers to renewable products following the December 2019 Order.”<sup>4</sup> Department Staff identified 25 of Atlantic’s legacy customer contracts that expired prior to or after April 16, 2021, the effective date of the December 2019 Order. Staff alleged that Atlantic apparently moved customer accounts to renewable energy products without those customers’ affirmative consent, and that

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<sup>1</sup> OTSC, p. 4.

<sup>2</sup> Id., pp. 4-5.

<sup>3</sup> Id., p. 5. UBP Section 2.4.a provides that ESCOs must submit “[a] description of any major change in the Retail Access Eligibility Application form and/or application package,” including “a revision in the terms and conditions applicable to the business relationship between the ESCO and its customers[.]”

<sup>4</sup> OTSC, p. 5.

this action constituted a "material change" requiring affirmative customer consent, pursuant to UBP Section 5.B.5.d.<sup>5</sup>

Finally, the OTSC contended that Atlantic failed to take sufficient action in response to an NOAV, issued on November 10, 2022, that preceded the OTSC and requested that Atlantic provide Staff with certain supporting documentation.<sup>6</sup> Atlantic filed its initial response to the NOAV on December 2, 2022. Thereafter, Staff identified apparently missing documentation in Atlantic's submission. Accordingly, the OTSC alleged that Atlantic apparently violated UBP Section 2.D.6.a.2 when it failed to submit "documentation that demonstrates it took corrective action to supply refunds to customers or return customers back to their respective utilities."<sup>7</sup>

SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

The Settlement Agreement would resolve all claims asserted in the OTSC against Atlantic, including the three alleged violations of the UBP and alleged failure to comply with the December 2019 Order. Pursuant to the terms and conditions of the Settlement Agreement, Atlantic and the Department agree as follows:

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<sup>5</sup> UBP Section 5.B.5.d provides that "no material changes shall be made in the terms or duration of any contract for the provision of energy by an ESCO without the express consent of the customer obtained under the methods authorized in the UBP."

<sup>6</sup> Atlantic initially approached Staff regarding aberrations in its electric load calculations. Staff confirmed the existence of these errors, leading to the issuance of the NOAV.

<sup>7</sup> OTSC, p. 8. UBP Section 2.D.6.a.2 provides that "[t]he Commission may impose consequences listed in subparagraph b of this paragraph if (a) ESCO fails to take corrective actions or provide remedies within the cure period[.]"

- (a) Atlantic (1) acknowledges that it enrolled approximately 250 customers on non-compliant products, (2) acknowledges that it failed to obtain customer consent following a change to 25 sales agreements, and (3) neither admits nor denies that it failed to take corrective action in response to the NOAV.
- (b) Following the issuance of the OTSC, Atlantic demonstrated a proactive, cooperative, transparent, and responsible approach to the alleged violations by voluntarily suspending its marketing and enrollment activities in the State of New York and undertook extensive measures to enhance its compliance framework and prevent the recurrence of similar violations.
- (c) Atlantic will pay the Settlement Funds - a \$100,000 civil penalty funded exclusively at Atlantic shareholder expense - to the State Treasury no later than 30 days from the date of Commission approval of the Settlement Agreement.
- (d) Atlantic will issue the Refund to affected customers no later than 30 days from the date of Commission approval of the Settlement Agreement. The Refund represents the difference between what the utilities operating in relevant jurisdictions would have charged Atlantic's customers had those customers received utility electric service as compared to what Atlantic charged those customers from April 16, 2021 (when the December 2019 Order took effect) to December 2, 2022 (when Atlantic filed its response to the NOAV).

- (e) Atlantic has implemented and will continue to implement internal controls and training modules to inform its employees and agents of the requirements of the December 2019 Order and will audit its operations at least annually to ensure continued compliance with authorized product offerings.
- (f) The Settlement Agreement fully and finally resolves all issues and claims in connection with the OTSC.

#### DISCUSSION AND CONCLUSION

In reviewing the Settlement Agreement, the Commission seeks to ensure that its terms are in the public interest. An appropriate compromise should be consistent with the environmental, social, safety, consumer, economic, and legal policies of the Commission and the State. An acceptable agreement should also produce results that are within the range of reasonable results that would have likely arisen from a Commission decision in a litigated proceeding. An agreement should likewise endeavor to balance the interests of consumers, shareholders, and public safety, consistent with the applicable legal framework.<sup>8</sup>

Here, the Commission finds that approval of the Settlement Agreement is in the public interest because Atlantic has identified and taken affirmative steps to correct the

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<sup>8</sup> These public interest inquiries are consistent with the considerations noted in, for example, Cases 90-M-0255 et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992).

alleged violations identified in the OTSC.<sup>9</sup> In the Settlement Agreement, Atlantic acknowledges that it enrolled approximately 250 customers on non-compliant products and failed to obtain customer consent following a change to 25 sales agreements. Furthermore, in response to the OTSC allegations, Atlantic voluntarily ceased marketing activities in New York State and undertook reforms to improve its internal controls and operating procedures to prevent the recurrence of similar violations in the future. Atlantic will also continue to educate its employees and agents about Commission rules and regulations and regularly audit its operations. The admissions and reforms referenced in the Settlement Agreement indicate that Atlantic takes the alleged violations and future compliance seriously.

Second, the Commission finds that the Settlement Agreement is a fair compromise because Atlantic has agreed to both pay a civil settlement as well as make whole customers impacted by its admitted non-compliance. The Settlement Agreement requires that Atlantic remit the Settlement Funds - a \$100,000, Atlantic shareholder-funded civil penalty - to the State Treasury. Atlantic has also agreed to issue a proportionate share of the Refund to customers who were served on Atlantic's non-compliant products at a rate higher than the rate charged by those customers' jurisdictional utilities between when the December 2019 Order took effect and when Atlantic filed its response to the NOAV. The Commission determines that payment of both the Settlement Funds and the Refund are appropriate enforcement-related remedies and comport with the public interest.

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<sup>9</sup> The Commission further notes the assessment of DPS Staff that Atlantic has been cooperative and forthcoming during this process. For instance, Atlantic voluntarily reported potential errors in its electric load to Staff, leading to the issuance of the NOAV.

The Settlement Agreement includes remedies that provide an equitable and fair compromise between the parties and is consistent with the environmental, social, and economic policies of the Commission. The Commission finds that the Settlement Agreement's terms and conditions are within the range of reasonable outcomes that could be expected to be included in a litigated proceeding and provides a benefit to Atlantic's customers. Therefore, consistent with the above discussion, the Commission hereby adopts and approves the Settlement Agreement.

The Commission orders:

1. The terms of the Settlement Agreement, which is attached to this Order as Appendix 1, are adopted.
2. In the Secretary's sole discretion, the deadlines set forth in this Order and accompanying Settlement Agreement may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.
3. This proceeding is closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary

Appendix 1

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**23-M-0166:** Proceeding on Motion of the Commission to Seek Consequences against Atlantic Energy, LLC for Violations of the Uniform Business Practices.

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is by and between the New York State Department of Public Service (“DPS” or “DPS Staff”) and Atlantic Energy, LLC (“Atlantic” or “the Company”) (each individually a “Signatory Party” and collectively, the “Signatory Parties”). This Agreement resolves all pending alleged violations arising out of the New York State Public Service Commission’s (“Commission”) Order to Show Cause, issued and effective August 18, 2023 (“2023 Order to Show Cause”), in Case 23-M-0166.

**RECITALS**

**WHEREAS**, on December 12, 2019, the New York State Public Service Commission (“Commission”) issued an Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (“December 2019 Order”) in Case 15-M-0127 et al., In the Matter of Eligibility Criteria for Energy Service Companies, which instituted enhanced eligibility requirements for Energy Service Companies (“ESCOs”) and changed the energy service products that ESCOs were authorized to offer in New York.

**WHEREAS**, the Commission’s Uniform Business Practices (“UBP”) established various eligibility conditions for ESCOs to access utility-owned distribution systems for the purpose of selling energy services to customers, which the Commission has authority to enforce;

**WHEREAS**, DPS Staff and the DPS Office of Investigations and Enforcement (“OIE”) conducted an investigation to determine whether Atlantic failed to comply with the December 2019 Order<sup>1</sup> and the UBP after DPS Staff conducted a routine renewable energy audit regarding Atlantic’s business practices and energy service products;

**WHEREAS**, in connection with the investigation, DPS Staff and DPS OIE identified three (3) alleged violations relating to Atlantic’s business practices, as follows:

**1. UBP Section 2.D.4.a**

a. **Regulation:** ESCOs must submit “[a] description of any major change in the Retail

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<sup>1</sup> On September 18, 2020, the Commission issued an order on rehearing, affirming the terms of the December 2019 Order. See Case No. 15-M-0127, In the Matter of Eligibility Criteria for Energy Service Companies, Order on Rehearing, Reconsideration, and Providing Clarification (issued and effective September 18, 2020).

Access Eligibility Application Form and/or application package,” including “a revision in the terms and conditions applicable to the business relationship between the ESCO and its customers[.]”

- b. **Alleged Violation:** Atlantic enrolled over two hundred and fifty (250) customers on non-compliant products that offered inappropriate inducements.

**2. UBP Section 5.B.5.d**

- a. **Regulation:** “[N]o material changes shall be made in the terms or duration of any contract for the provision of energy by an ESCO without the express consent of the customer obtained under the methods authorized in the UBP.”
- b. **Alleged Violation:** Atlantic failed to obtain customer consent following a material change to twenty-five (25) sales agreements.

**3. UBP Section 2.D.6.a.2**

- a. **Regulation:** “The Commission may impose consequences listed in subparagraph b of this paragraph if (a) ESCO fails to take corrective actions or provide remedies within the cure period[.]”
- b. **Alleged Violation:** Atlantic failed to take corrective action in response to a November 10, 2022 Notice of Apparent Violation (“NOAV”) from Staff.

**WHEREAS,** DPS OIE concluded that reasonable cause and a factual basis existed to initiate an enforcement proceeding, under the New York State Public Service Law, against Atlantic regarding the above alleged violations;

**WHEREAS,** on August 18, 2023, the Commission issued the referenced 2023 Order to Show Cause in this case;

**WHEREAS,** the 2023 Order to Show Cause alleged various apparent deficiencies by Atlantic and directed Atlantic to show cause why the Commission should not revoke Atlantic’s eligibility to operate as an ESCO in the State of New York, or impose other consequences, as described in UBP Section 2.D.6;

**WHEREAS,** the Signatory Parties have been engaged in settlement discussions;

**WHEREAS,** the Signatory Parties agree that, after the 2023 Order to Show Cause, Atlantic demonstrated a proactive, cooperative, transparent, and responsible approach to the alleged violations by voluntarily suspending its marketing and enrollment activities in the State of New York to facilitate a thorough investigation into the allegations. The Signatory Parties further recognize that Atlantic undertook extensive measures to enhance its compliance framework, including the development and implementation of robust, comprehensive internal controls and operating procedures designed to prevent the recurrence of similar violations and to ensure continued

adherence to all regulatory requirements;

**WHEREAS**, the Signatory Parties agree that Atlantic will pay a civil settlement amount of One Hundred Thousand Dollars (\$100,00.00) (“Settlement Funds”), subject to the enumerated terms and conditions of this Agreement;

**WHEREAS**, the Signatory Parties further agree that Atlantic will refund its customers a collective total of three thousand two hundred and thirty four dollars and sixty seven cents (\$3,234.67) (“Refund”);

**WHEREAS**, the Signatory Parties further agree that this Agreement resolves all three (3) alleged violations relating to Atlantic’s alleged failure to comply with the December 2019 Order and UBP Sections 2.D.4.a, 5.B.5.d, and 2.D.6.a.2.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, agreements, and representations set forth herein, the receipt and sufficiency of which are hereby agreed to and acknowledged, the Signatory Parties, intending to be bound, agree as follows:

**1. Settlement Consideration**

- a. **Acknowledgment**: As alleged on page 4 of the 2023 Order to Show Cause, Atlantic acknowledges that it: (i) enrolled approximately two hundred and fifty (250) customers on non-compliant products; (ii) did not obtain customer consent following a change to twenty-five (25) sales agreements; and (iii) neither admits nor denies that it failed to take corrective action in response to the NOAV.
- b. **Settlement Funds**: Atlantic will pay the Settlement Funds, funded exclusively at Atlantic shareholder expense, to the New York State Treasury, with interest to be applied at the pre-tax rate of return, no later than thirty (30) days from Commission approval of this Agreement. Atlantic shall provide a check with the Settlement Funds to the attorney representing the Commission for delivery to the State Treasury, pursuant to instructions provided by DPS Staff. A Commission representative shall confirm such delivery to the State Treasury.
- c. **Refund**: Exhibit A to this Agreement calculates the Refund, which represents the difference between what the utilities operating in relevant jurisdictions would have charged Atlantic’s customers had they received service from those utilities as compared to what Atlantic charged those customers. The relevant time period covered by the Refund is April 16, 2021 (when the December 2019 Order took effect) to December 2, 2022 (when Atlantic filed its response to the NOAV). Atlantic shall issue a proportionate share of the Refund to the affected customers on Exhibit A no later than thirty (30) days from Commission approval of this Agreement and update DPS Staff when these Refund checks have been issued. If Refund checks remain uncashed for thirty (30) days beyond the void date of the checks and Atlantic’s customers do not request reissuance of any uncashed Refund checks within this thirty-day period, Atlantic shall inform DPS Staff and remit the

remaining unclaimed amounts in a check to the State Treasury. Atlantic shall provide this check with the remaining share of the Refund to the attorney representing the Commission for delivery to the State Treasury, pursuant to instructions provided by DPS Staff. A Commission representative shall confirm such delivery to the State Treasury.

- d. Remedial Action: Atlantic has implemented and will continue to implement internal controls and training modules to inform its employees and agents of the requirements of the December 2019 Order and will audit its operations at least annually to ensure continued compliance with the authorized product offerings.

## 2. Release From Actions

- a. Resolution of Settled Matters: This Agreement fully and finally resolves all issues, concerns, claims, and actions raised and/or asserted, or that could properly have been raised and/or asserted, in connection with or as a result of Atlantic's alleged failure to comply with the December 2019 Order and UBP Sections 2.D.4.a, 5.B.5.d, and 2.D.6.a.2, and the facts and allegations set forth in the 2023 Order to Show Cause up to the date of the 2023 Order to Show Cause ("Settled Matters").
- b. Non-Settled Matters: This Agreement does not resolve or address any issues, concerns, claims, or actions outside the scope of the three (3) alleged violations of UBP Sections 2.D.4.a, 5.B.5.d, and 2.D.6.a.2, identified in the 2023 Order to Show Cause.
- c. Waiver: DPS and the Commission fully and finally waive and relinquish any right to seek penalties or any other remedy at law or equity from Atlantic, its directors, officers, employees, agents, shareholders, or affiliates arising out of or related to the Settled Matters.
- d. Prohibition on Actions: Neither DPS, the Commission, nor the Attorney General of the State of New York will institute or cause to be instituted against Atlantic, its directors, officers, employees, agents, shareholders, or affiliates any action under the Public Service Law, or under any other statute, regulation, or Commission order, directly or indirectly related to the Settled Matters.
- e. No Third-Party Actions: The Commission will not entertain a request by another person or entity seeking penalties or other administrative remedies against Atlantic that is directly or indirectly related to the Settled Matters.
- f. Voluntary Settlement: This Agreement has been entered into voluntarily by the Signatory Parties. The Signatory Parties have determined the Agreement constitutes a fair and reasonable resolution of all outstanding issues relating to Case 23-M-0166 and avoids litigation. No representations, inducements, promises, or agreements have been made by any party, or anyone acting on behalf of any party, which are not contained within this Agreement. This Agreement is a settlement of

potential penalties stated in the 2023 Order to Show Cause and should not be construed as an assessment of a fine or penalty. Furthermore, this Agreement does not necessarily represent the position that any one of the Signatory Parties would have adopted had this matter been fully litigated. This Agreement is entered into without prejudice to the positions the Signatory Parties may have taken in the absence of the Agreement or may take if the Commission does not approve this Agreement.

**3. Governing Law**

This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws thereof.

**4. Authorization**

The execution, delivery and performance of this Agreement by each Signatory Party hereto is within its corporate or statutory powers, as appropriate, has been duly authorized by all necessary corporate or statutory action, and does not and will not: (i) require any governing or governmental consent or approval except as required in Paragraph Five below; (ii) contravene its organizational documents or enabling legislation; or (iii) violate applicable law.

**5. Effectiveness of the Agreement**

This Agreement is subject to ratification or approval by the Commission and will have no effect in the absence thereof. If the Commission does not approve this Agreement in its entirety, without modification, Atlantic may withdraw its acceptance of this Agreement by serving written notice on the Commission and shall be free to pursue its position without prejudice. If the Commission approves this Agreement or modifies it in a manner acceptable to Atlantic, the parties intend that this Agreement thereafter be implemented in accordance with its terms. The Commission order approving this Agreement is enforceable under the Public Service Law to ensure Atlantic complies with its terms herein.

**6. Counterparts**

This Agreement is being executed in counterpart originals and will be binding on each Signatory Party when the counterparts have been executed.

*[Remainder of page left blank for signatures]*

IN WITNESS WHEREOF, each of the Signatory Parties hereto has executed this Agreement as of the day and year written below.

**STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE**

By:  Date: 1/2/2025

Title: Alison E. Wrynn, Assistant Counsel  
Office of Investigations and Enforcement

**ATLANTIC ENERGY, LLC**

By:  Date: 12/17/2024

Title: CFO