**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 28, 2011

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 Wayne E. Gardner

 James H. Cawley

 Pamela A. Witmer

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| Pennsylvania Public Utility Commission v.Peoples Natural Gas Company, LLC  |  |  M-2011-2157542 |

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# Opinion and Order

**BY THE COMMISSION:**

 Before the Commission for consideration and disposition is a Settlement Agreement (Settlement or Settlement Agreement) filed on March 14, 2011, by the Commission’s Law Bureau Prosecutory Staff (Prosecutory Staff) and Peoples Natural Gas Company, LLC (Peoples or the Company) (collectively, the Parties), with respect to an Informal Investigation conducted by the Prosecutory Staff. Along with the Settlement Agreement, the Parties submitted a Joint Statement in Support of the Settlement Agreement (Joint Statement). The Parties submit that the proposed Settlement Agreement is in the public interest and complies with the Commission’s Policy Statement (*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*. Joint Statement of Support at 3. Further, the proposed Settlement is submitted as contingent on the Commission’s approval without any modification. Settlement at 13-14, ¶ 40. If the Commission proposes any change or modification in the Settlement, either Party may elect to withdraw from the Settlement. *Id*. at 14, ¶ 41.

**History of the Case**

 The Commission’s Gas Safety Division instituted this informal investigation following a series of service outages during periods of cold weather. Settlement at 2, ¶ 8. As a result of negotiations, the Parties resolved their differences and executed the Settlement. As stated previously, the Settlement was filed on

March 14, 2011. By Order entered June 10, 2011, this Commission provided an opportunity for interested parties to comment on the proposed Settlement. In response to that Order, Prosecutory Staff filed comments which will be addressed, below.

**Background**

The proposed Settlement Agreement has been brought before the Commission by the Parties in order to resolve allegations of multiple violations of Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501, relating to the failure to provide adequate, efficient, safe and reasonable service. The events which are the subject of the proposed Settlement Agreement occurred during the period of

February 2009 to April 2009 and the period of November 2009 to January 2010.

 During the period of February 2009 to April 2009, and the period of November 2009 to January 2010, residential customers at 5915 Pine Drive, 5800 Broad Avenue, 5801 Broad Avenue and 5821 Broad Avenue in Altoona, Pennsylvania (hereinafter, the customers) experienced unscheduled natural gas service outages during periods of cold weather. On most occasions, water was found in the gas meter which had frozen and impeded the flow of natural gas through the meter into the residence. On most occasions, when the Company found water in the meter and/or in the customer’s service line, the Company drained the water from the service line, changed the meter and wrapped the meter set with insulation. Settlement at 4-5, ¶ 15.

 The Company made twenty-seven service visits to four customers within a block of each other. Those service visits revealed twenty-four gas outages, twenty-two findings of water or ice in the meter and/or service line, and resulted in eighteen meter changes. In some instances, there were three service calls over a period of four consecutive days where water was found in the meter or service line each time. Each time, the Company took action to remove water and/or change the meter, but failed to address the underlying condition. Settlement at 5-6, ¶ 19.

 On December 7, 2009, the Company determined that the source of the water was a leak in the main line on Broad Avenue. The Company completed the repair of the main gas pipeline on Broad Avenue on January 28, 2010. Settlement at 5, ¶ 18.

 Had this matter been litigated, Prosecutory Staff would have alleged that Peoples’ conduct was in violation of Section 1501 of the Code, 66 Pa. C.S. § 1501, by failing to furnish and maintain adequate, efficient, safe and reasonable service for the period of February 2009 to April 2009 and for the period of November 2009 to

January 2010 regarding the provision of natural gas to the customers. Prosecutory Staff would have alleged that, despite receiving multiple service calls of a similar nature, Peoples failed to adequately investigate and correct the underlying common problem. Settlement at 6, ¶ 21.

 Had this matter been litigated, Peoples would have denied or answered and defended against all of the allegations and, in particular, would have averred that it timely responded to and restored service following each outage and took reasonable action in the circumstances to locate and repair the source of the water infiltration that caused the service outages. Settlement at 7, ¶ 22.

**Terms of the Settlement Agreement**

 The proposed Settlement contains a series of material terms, but those terms do not constitute an admission, a finding of any fact, or a finding of culpability on the part of Peoples in this or any other proceeding.

 In order to settle the Informal Investigation, Peoples has agreed to the following:

a. Peoples will take immediate corrective action within ninety (90) days of the date of the Order approving of this settlement, if such action has not already been taken, to repair or replace the defective section of the main serving the customers in question so as to alleviate the existing water leakage into the customers’ service lines and meters and avoid similar outages in the future.

b. Peoples will compensate those customers affected by these outages at the rate of $50.00 per outage, for a total compensation of $1,200. Proof that said compensation was made shall be presented to the Commission within thirty (30) days of the date of the Order approving this settlement.

c. Peoples shall pay a civil penalty pursuant to 66 Pa. C.S.A. § 3301(c) in the amount of twenty thousand dollars ($20,000.00). Said payment shall be made by certified check to the Commonwealth of Pennsylvania and presented to the Commission within thirty (30) days of the date of the Order approving this settlement.

d. Peoples will investigate and consider acquiring and operating the natural gas delivery facilities and equipment making up the Fink gas system in and around Cowansville, Armstrong County, or otherwise providing natural gas distribution service to the premises served by the Fink gas system. The decision to proceed with any such proposed acquisition and operation of natural gas facilities or with providing natural gas service shall be at Peoples’ sole discretion. Peoples will notify the Commission’s Gas Safety division in writing of the status of its investigation every three months from the date of the Order approving this settlement. Additionally, Peoples will notify the Commission’s Gas Safety division in writing of its final decision regarding the acquisition.

Settlement Agreement at 8-9, ¶ 26a-d.

 The proposed Settlement Agreement and payment of the specified civil penalty of $20,000 would result in Commission Prosecutory Staff forbearing from prosecuting any formal complaint relative to Peoples’ conduct as described in the Settlement Agreement. It would not, however, affect the Commission’s authority to receive and resolve any formal or informal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified in the Settlement Agreement.

Settlement Agreement at 9, ¶ 27.

 As we observed above, if the Commission proposes changes or modifications to the Settlement Agreement, either Party may elect to withdraw from the Settlement Agreement. Settlement Agreement at 14, ¶ 41.

**Discussion**

 Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Parties provide their own analysis of the proposed Settlement Agreement in light of the *Policy Statement* in their Joint Statement. However, the Commission must 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); 52 Pa. Code § 69.1201.

We have set forth ten factors to be considered in the evaluation of a settlement in these types of proceedings in our *Policy Statement*. The Parties provided a thorough discussion of those factors as they relate to the terms of the Settlement Agreement. Settlement Agreement at 10-12.

 The first factor we consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id*. In the Settlement Agreement, Prosecutory Staff states that it believes the inability of Peoples to promptly respond and correct the overarching water leakage problem to constitute a serious service inadequacy.

Settlement Agreement at 10, ¶ 30. Based upon the multiple number of outages and the extended time period involved before the problem was corrected, we agree with the Prosecutory Staff.

 The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Here, the Prosecutory Staff asserts that while the consequences did not include personal injury or property damage, “the Company’s failure to use the warmer weather months to resolve the problems that appeared in one winter period and reoccurred in the following winter period” elevates this particular situation to a serious event.

Settlement Agreement at 10-11, ¶ 31. We concur that this case involves conduct of a serious nature.

The third factor is not applicable here because it pertains only to litigated proceedings. 52 Pa. Code § 69.1201(c)(3).

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). The Parties submit that “the Company has taken the appropriate action to improve Company responses to future outages to include immediate investigation and resolution of such outages where it is clear, as in this instance, that there is a common cause to the multiple and recurring outages experienced by the affected customers.”

Settlement Agreement at 11, ¶ 33; 12, ¶ 36. We specifically note the provisions in the Settlement Agreement relating to immediate correction of the root cause of the outages at issue here, as well as compensation to the customers affected. *See*, Settlement Agreement at 8, ¶ 26. It should also be noted that repair of the natural gas line involved was completed in late January 2010. Settlement Agreement at 5, ¶ 18.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Here, it appears that four customers were affected and the services outages occurred at various times during a relatively long period of time. Settlement Agreement at 3-4, ¶¶ 9-13. We agree with the Parties that the provisions of the Settlement Agreement adequately take into account both the number of affected customers and the duration of the problem at issue.

The sixth factor relates to Peoples’ compliance history with the Commission. “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(6). The Parties state that the provisions of the Settlement Agreement are appropriate given the Company’s compliance history. Settlement Agreement at 12, ¶ 34. We agree.

The seventh factor relates to whether the utility cooperated with a Commission investigation. 52 Pa. Code § 69.1201(c)(7). The Parties state that Peoples has cooperated with the investigation throughout all phases. Settlement Agreement at 12, ¶ 34.

The eighth factor involves consideration of whether the penalty amount is sufficient to help deter future violations. 52 Pa. Code § 69.1201(c)(8). The Parties submit that the proposed penalty of $20,000 is sufficient to deter future violations. Settlement Agreement at 8, ¶ 26; 13, ¶ 37. Peoples has agreed that this sum will not be recoverable through rates. Settlement Agreement at 13, ¶ 37. We agree with the Parties’ position on this factor.

The ninth factor examines whether the results in this proposed Settlement Agreement are consistent with past Commission decisions in similar situations.

52 Pa. Code § 69.1201(c)(9). The Parties do not directly address this issue, but forcefully argue that the Settlement Agreement was “amicably negotiated and recognizes the Respondent’s good faith efforts to comply with the regulations.” Settlement Agreement at 12, ¶ 26. Based on our review of recent Commission-approved settlements, we find the proposed Settlement Agreement sufficiently consistent with past Commission decisions in similar situations.

The tenth factor provides that we may consider other relevant factors in assessing a penalty. 52 Pa. Code § 69.1201(c)(10). The Parties state the following:

The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses the issues identified by the Commission’s Gas Safety Division inspector, avoids the time and expense of litigation which entails hearings, filing[] of briefs, exceptions, reply exceptions, and possible appeals. The Company has also agreed to pay a fair and equitable penalty and to improve its service outage response procedures. Moreover, the Settlement Agreement clearly meets the standards set forth in the Commission’s Policy Statement at 52 Pa. Code § 69.1201.

Settlement Agreement at 12, ¶ 36.

 As we noted above, the Settlement Agreement was initially presented for comment by our Order entered June 10, 2011, at this docket. In a separate statement issued with that Order, then-Commissioner Christy requested that parties submitting comments address the appropriateness of directing Peoples to contribute $20,000 to the Company’s Hardship Fund rather than pay a $20,000 civil penalty. In its comments filed June 30, 2011, Prosecutory Staff asserts when a regulatory body such as the Commission takes action to force an entity to take remedial measures to correct issues, there should usually be some remedy which also penalizes the offending entity. That type of action provides an incentive to the entity to prevent such occurrences in the future. In actions before the Commission, the payment of a fine or civil penalty serves that function since that type of payment results in a loss of revenue for shareholders. Prosecutory Staff Comments at 3. Conversely, Prosecutory Staff asserts that payment to a community assistance program will not result in any loss of revenue. That type of payment “will likely result in a reduction of the company’s otherwise uncollectible accounts, with the result that the company will merely be ‘paying itself’ the penalty amount.” *Id*. at 3-4. We agree.

**Conclusion**

Upon consideration of all of the factors here, we find that the proposed Settlement Agreement meets the standards of our *Policy Statement*, is in the public interest and should be approved without modification; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Settlement Agreement filed on March 14, 2011, at this docket is approved as filed.

2. That Peoples Natural Gas Company, LLC, shall comply with the terms of the Settlement Agreement, including but not limited to the provisions requiring that periodic notices be sent to the Commission’s Gas Safety division regarding Peoples’ investigation of the possible acquisition of the Fink gas system in and around Cowansville, Armstrong County.

 3. That Peoples Natural Gas Company, LLC shall pay a civil penalty of Twenty Thousand Dollars ($20,000.00) within thirty (30) days of the entry of this Opinion and Order by sending a certified check or money order payable to the Pennsylvania Public Utility Commission addressed to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

 4. That Peoples Natural Gas Company, LLC will compensate those customers affected by the outages at issue at the rate of $50.00 per outage, for a total compensation of $1,200. Proof that said compensation was made shall be filed with the Commission within thirty (30) days of the entry of this Opinion and Order.

 5. That the sums paid by Peoples Natural Gas Company, LLC as directed in Ordering Paragraphs 3 and 4 above, shall not be recoverable through rates.

 6. That a copy of this Opinion and Order shall be served on the Commission’s Office of Administrative Services, Financial and Assessment Section.

 7. That upon payment of the civil penalty required by Ordering Paragraph 3 and the filing of proof of compensation required by Ordering Paragraph 4, above, the Secretary of the Commission shall mark this proceeding closed.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: July 28, 2011

ORDER ENTERED: July 28, 2011