**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held October 31, 2013

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.  PPL Electric Utilities Corporation |  | M-2013-2275471 |

# Opinion and Order

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Settlement Agreement (Settlement) filed on March 29, 2013, by the Commission’s Bureau of Investigation and Enforcement (I&E) and PPL Electric Utilities Corporation (PPL or Company) (collectively, the Parties), with respect to an Informal Investigation conducted by I&E. Both Parties submitted a Statement in Support of the Settlement. I&E submits that the proposed 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* (Policy Statement). I&E Statement in Support at 5. For the reasons set forth herein, we find that the Settlement should be adopted.

**History of the Case**

On April 26, 2012, in response to the receipt of an anonymous letter from a person representing himself/herself as an employee of PPL to the Commission’s Bureau of Consumer Services (BCS), I&E instituted an informal investigation pertaining to PPL’s alleged improper transfer of a restoration crew working to restore electric service in the wake of an October 29, 2011 snowstorm. The informal investigation concerned the allegation that the restoration crew was transferred from a higher priority job in order to restore service to a lower priority job and the determination of whether the Company violated the Commission’s Regulations, the Public Utility Code or its own restoration procedures.

Based on its investigation, I&E determined that PPL may have violated Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501, and its own internal policy and practices regarding service restoration priority. As a result of negotiations between I&E and PPL, the Parties have agreed to resolve their differences and urge the Commission to approve the Settlement as being in the public interest. Settlement ¶ 9, at 3.

By Order entered August 29, 2013 (*August 2013 Order)*, we provided interested parties with the opportunity to file comments on the proposed Settlement. No comments were filed with the Commission.

**Background**

The proposed Settlement was filed by the Parties in order to resolve allegations of certain violations of Section 1501 of the Code relating to the failure to provide adequate, efficient, safe, and reasonable service. Had this matter been litigated, I&E would have alleged that PPL violated its duty to furnish and maintain adequate, efficient, safe and reasonable service and facilities when it reassigned a storm restoration crew from a higher priority job to restore service to a lower priority job, which resulted in a delay in the restoration of electric service to the higher priority area. Settlement ¶ 16, at 4.

The allegations stem from an October 29, 2011, snowstorm which impacted PPL’s entire service territory, causing approximately 388,318 customer interruptions. Due to the significant number of outages and the limited available resources, PPL was required to prioritize which areas within its service territory should be restored first. PPL’s restoration priorities are set forth in Section 5.3 of the Company’s Emergency Response Plan.

While PPL fully cooperated with the investigation, PPL does not admit to any of these allegations. While I&E has conducted an extensive investigation, there has been no evidentiary hearing before any tribunal and no sworn testimony taken. *Id*. ¶¶ 20 and 21, at 5.

**Terms of the Settlement**

Pursuant to the proposed Settlement, PPL has taken corrective action that will act as safeguards against a similar incident occurring in the future. Specifically, PPL will add a provision to its storm restoration procedures instructing its personnel not to deviate from the Company’s guidelines when assigning storm restoration crews. In addition to the operational initiatives, PPL will pay a civil penalty settlement amount of $60,000. Also, pursuant to 52 Pa. Code § 5.591, PPL will file a report(s) with the Commission’s Secretary which specifies the Company’s compliance with the terms of this Settlement. The terms that have been agreed upon by the Parties are set forth in greater detail in the Settlement. *Id.* ¶ 22, at 6.

I&E agrees to forbear from initiating a Formal Complaint relative to the allegations that are the subject of the proposed Settlement. The proposed Settlement 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 sanctions may be imposed by the Commission for any actions identified in the Settlement. Settlement ¶ 23, at 6-7. The Settlement provides that none of the provisions of the Settlement or statements therein shall be considered an admission of any fact or culpability. *Id.* ¶ 30, at 8. The Settlement makes no findings of fact or conclusions of law and, therefore, it is the Parties’ intent that this document and the related Statements in Support not be admitted as evidence in any future proceeding regarding this matter*.* *Id.* ¶ 24, at 7.

The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. *Id.* ¶ 27, at 7-8. If the Commission does not approve the proposed Settlement, or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. *Id.* ¶ 28, at 8.

**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). After a review of the terms of the Settlement, we find that the Settlement is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor to 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*. This matter involved an alleged reassignment of a storm restoration crew working to restore electric service in the wake of an October 29, 2011, snowstorm from a higher priority job to first restore service to a lower priority job. The Commission believes that the restoration of electric service is an important issue in the aftermath of wide-scale electric outages and understands that the assignment of crews to restore service involves a number of factors. While this particular incident appears to be of a singular, non-recurring nature, we conclude that the acts alleged in the Settlement constituted conduct of a serious nature warranting a higher penalty.

The second factor 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.* The conduct which was the subject of this investigation resulted in a delay in the restoration of electric service and did not involve personal injury or property damage. In this instance, the Company’s actions did not result in consequences of a serious nature that would warrant a higher penalty under this factor.

The third factor pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3). Because this proceeding was settled, this factor is not applicable to this Settlement.

The fourth factor 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). In this case, the Parties have acknowledged the modifications already made to the Company’s internal operating procedures and the additional changes agreed to by the Company in the Settlement to avoid the recurrence of this type of incident. Specifically, PPL has agreed to add a provision to its storm restoration procedures instructing its personnel to not deviate from the Company’s guidelines when assigning storm restoration crews. Settlement ¶ 22, at 6. I&E Statement in Support at 5-6. Accordingly, we conclude that this factor warrants the imposition of a lower penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). PPL noted that I&E alleged that 1,326 customers in the higher priority area experienced a four-hour delay in the restoration of their electric service as a result of PPL’s alleged reassignment of a storm restoration crew. PPL Statement in Support at 9. Accordingly, we conclude that this factor warrants the imposition of a higher penalty.

The sixth factor is the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). “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.” *Id.* Upon review of our records regarding complaints against, and investigations of PPL, we find that the Company’s compliance history has been satisfactory and that this incident appears to be of a singular, non-recurring nature. As such, the Company’s compliance history poses no barrier to approval of the Settlement. We conclude that this factor warrants the imposition of a lower penalty.

The seventh factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). “Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.” *Id.* In this case, PPL has fully cooperated with the Commission staff throughout the investigation and complied with I&E’s requests for information. Settlement ¶ 21, at 5. Thus, we conclude that this factor warrants the imposition of a lower penalty.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). As a result of the Settlement negotiated in this proceeding, PPL has agreed to pay a civil settlement amount of $60,000. PPL may not seek recovery of any portion of this payment from its ratepayers in any future ratemaking or other proceeding. Settlement ¶ 22, at 6. Given the serious nature of the allegations in this case, as well as consideration of all of the above factors taken collectively, we find that a civil settlement amount of $60,000 is appropriate and consistent with our determinations in other proceedings.

The tenth factor is other relevant factors. 52 Pa. Code § 69.1201(c)(10). We believe that it is in the public interest to settle this matter so as to avoid the additional expense of litigation. In addition, the Parties have indicated that PPL has and will be conducting proactive remediation measures that will provide a public benefit to its customers.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement, and the Statements in Support of the Settlement, we find that the proposed Settlement between I&E and PPL is in the public interest, is consistent with the terms of our Policy Statement and our past decisions, and merits approval; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Settlement Agreement filed on March 29, 2013, between the Commission’s Bureau of Investigation and Enforcement and PPL Electric Utilities Corporation is approved.

2. That, within thirty (30) days of the date of entry of this Opinion and Order, PPL Electric Utilities Corporation shall pay a civil settlement in the amount of Sixty Thousand Dollars ($60,000) in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301. Said payment shall be made by certified check made payable to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

3. That a copy of this Opinion and Order be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That this proceeding be marked closed upon payment of the civil settlement amount.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 31, 2013

ORDER ENTERED: October 31, 2013