

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held September 21, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Conflict Statement
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

M-2023-3037937

v.

Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement Agreement or Settlement) filed on August 14, 2023, by the Commission's Bureau of Investigation and Enforcement (I&E) and Duquesne Light Company (Duquesne Light, Duquesne or Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. The Parties submit 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*. Settlement at 12.

Before issuing a final decision on the merits of the Settlement, and consistent with the requirements of 52 Pa. Code § 3.113(b)(3), we shall publish the Settlement in the *Pennsylvania Bulletin* and provide an opportunity for interested parties to file comments regarding the Settlement and issue the Settlement for comments.¹

History of the Proceeding

This matter concerns the alleged termination of service to three hundred (300) customers without providing the customers with 10-day termination notices as required by the Commission’s Regulations. On November 22, 2022, Duquesne discovered that termination notices had not been sent to the affected customers on November 1, November 8, and November 15, 2022. Of the three hundred customers affected, two hundred and six (206) were charged and paid reconnection fees in order to have their service restored and sixty-four (64) of these three hundred (300) customers were assessed and paid a security deposit as a condition to having their service restored. Settlement at 5.

On December 2, 2022, Duquesne voluntarily notified I&E that it had terminated service to customers without providing a 10-day termination notice. Duquesne provided additional information to I&E and the Commission’s Bureau of Consumer Services (BCS) regarding the terminations that occurred without a 10-day

¹ As discussed, *infra*, due to the nature of the violations and the number of customers affected, it is appropriate to publish the Settlement in the *Pennsylvania Bulletin*.

notice on December 29, 2022. Settlement at 3. Based on the additional information, BCS referred the matter to I&E. Settlement at 3-4.

I&E instituted an informal investigation of Duquesne Light based on the information referred to I&E by BCS. Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. Settlement at 4. The Parties filed the instant Settlement on August 14, 2023.

Background

On January 30, 2023, BCS summarized its discussions with Duquesne in a memo and referred the matter to I&E regarding Duquesne Light's alleged termination of service to customers without the 10-day notice. Settlement at 4.

The Settlement provides the following information describing Duquesne Light's procedures for issuing 10-day termination notices prior to the termination of electric service:

- Duquesne's Customer Care and Billing System ("CC&B") is the system that Duquesne utilizes for customer communication and collections actions, including the termination of residential service. Before residential service termination occurs, the CC&B is programmed to proceed through several prerequisite steps. Relevant to this matter, the CC&B is configured to require the provision of a 10-day termination notice as a precondition of proceeding with residential termination.

- KUBRA, Duquesne’s external printing and mailing vendor², prints the 10-day termination notices and mails the notices out to the affected customers. Duquesne monitors KUBRA mailings via a “dashboard” that displays job status.

Settlement at 5-6.

Duquesne Light averred that, upon investigation, the root cause of the termination notice issue was an error in the software used by KUBRA, a print vendor not affiliated with Duquesne Light that it hired to prepare and send the notices. Duquesne Light provided that KUBRA deployed a software update that contained a defect that prevented certain production jobs from printing. Duquesne Light explained that certain Duquesne Light print jobs exceeding 5,000 pages including the termination notices failed to print. Settlement at 6.

Duquesne Light identified contributing causes that led to the termination notice issue as follows:

- KUBRA’s testing of the software update did not include test jobs exceeding 5,000 pages, so KUBRA did not identify the software error before it began to affect Duquesne print jobs on November 1, 2022.
- KUBRA failed to appropriately and timely escalate the issue internally or to Duquesne.
- Due to the late stage in KUBRA’s print process at which the printing of the 10-day termination notices failed, the notices appeared in the

² According to the Settlement, KUBRA is a provider of customer experience management solutions to utility, government and insurance entities in North America. <https://www.kubra.com>. KUBRA is not affiliated with Duquesne Light Company. Settlement at 6.

CC&B as if they had been mailed on schedule. Therefore, the terminations of the affected customers proceeded erroneously.³

- Due to human error, the Duquesne employee monitoring the KUBRA “dashboard” in November 2022 did not identify that the three termination notice mailings at issue (on November 1, November 8, and November 15, 2022) had failed to print.
- Upon identifying the failure of the 10-day termination notices to print, Duquesne employees failed to appropriately escalate the issue for corrective action.

Settlement at 6-7.

Duquesne Light has implemented or will implement various quality and control measures in response to this incident. Settlement at 8-11.

By letter dated April 12, 2023, I&E issued a Data Request Letter informing Duquesne Light of the scope of its investigation and requesting a response to I&E’s Set I consisting of eleven (11) data requests. Duquesne Light provided its responses on May 2, 2023. Settlement at 5.

I&E avers that had this matter been fully litigated, I&E would have proffered evidence that Duquesne Light had violated Sections 56.91(a), 56.191(a) and 56.35(a)(1)(i) Commission’s Regulations as follows:

- 52 Pa. Code § 56.91(a) – which states that prior to termination of service to a customer, utilities shall provide written notice of the termination to the customer at least ten (10) days prior to the date of the proposed termination. (300 counts).

³ The 10-day termination notice print failure did not affect Duquesne Light’s processes for completing pre-termination personal contact as required by 52 Pa. Code § 56.93. Duquesne Light contacted or attempted to contact each affected customer at least 3 days prior to terminating the customer’s service. Settlement at 6, n. 4.

- 52 Pa. Code § 56.191(a) – which states that reconnection fees can only be required for the reconnection of service following lawful termination of the service. (206 counts).
- 52 Pa. Code 56.35(a)(1)(i) – which states, in summary, that a utility can require a cash deposit from an applicant who previously received public utility distribution services and was a customer of the public utility and whose service was terminated for nonpayment of a undisputed delinquent account. (64 counts).

Settlement at 7-8.

The results of I&E’s investigation, which included a review of Duquesne Light’s discovery responses and corrective actions already taken by Duquesne or directed to be taken by Duquesne Light’s vendor, formed the basis for the instant Settlement Agreement. Settlement at 11.

The proposed Settlement, which is attached to this Opinion and Order, has been filed by the Parties to provide a complete settlement of I&E’s investigation of Duquesne Light’s alleged violations of the Public Utility Code and the Commission’s Regulations as it related to the termination of customer service without the required 10-day notice. The Parties urge the Commission to approve the Settlement as being in the public interest. Settlement at 11.

Terms of the Settlement

Pursuant to the proposed Settlement, I&E and Duquesne Light have agreed to the following:

1. Duquesne Light shall pay a civil penalty of Fifty Thousand Dollars (\$50,000.00) to fully and finally resolve all possible claims of alleged violations of the Public Utility Code and the Commission’s regulations in connection with the above

alleged violations. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) or passed through as an additional charge to Duquesne's customers in Pennsylvania.

Settlement at 11-12.

In response, I&E agrees that its informal investigation relating to Duquesne Light's conduct as described in the Settlement Agreement shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification, payment of the civil penalty, and completion of the remedial measures. Settlement Appendix B at 4-5.

The proposed Settlement is conditioned on the Commission's approval without modification of any of its terms or conditions. 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. Settlement at 13.

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).

In reviewing settlements that resolve informal investigations, the Commission will provide other potentially affected parties with the opportunity to file comments regarding a proposed settlement prior to issuing a decision. The Commission's Regulations at 52 Pa. Code § 3.113(b) provide as follows:

§ 3.113. Resolution of informal investigations.

* * *

(b) Under 65 Pa. C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

* * *

(3) When the utility, or other person subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. **Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected persons with the opportunity to submit exceptions**

thereon or to take other action provided for under law.

52 Pa. Code § 3.113(b) (emphasis added). *See also Pa. PUC, Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Order entered September 13, 2012); *Pa. PUC, Bureau of Investigation and Enforcement v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered August 8, 2019).

Conclusion

Before issuing a decision on the merits of the proposed Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we believe it is appropriate to publish the Settlement in the *Pennsylvania Bulletin* and provide an opportunity for interested parties to file comments regarding the proposed Settlement. Accordingly, we will: (1) publish this Opinion and Order and a copy of the proposed Settlement and Statements in Support, attached hereto, in the *Pennsylvania Bulletin*;⁴ and (2) provide an opportunity for interested parties to file comments regarding the proposed Settlement within twenty-five (25) days after the date of publication in the *Pennsylvania Bulletin*; **THEREFORE,**

IT IS ORDERED:

1. That the Secretary's Bureau shall duly certify this Opinion and Order along with the attached Joint Petition for Approval of Settlement and the

⁴ Attached to this Opinion and Order for publication is the Settlement, Attachments, which include the redacted versions of Attachments A and B, and Appendices.

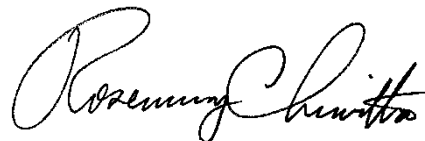
Statements in Support thereof, at Docket No. M-2023-3037937, and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. That within twenty-five (25) days after the date that this Opinion and Order and the attached Joint Petition for Approval of Settlement and the Statements in Support thereof are published in the *Pennsylvania Bulletin*, interested parties may file comments concerning the proposed Settlement.

3. That a copy of this Opinion and Order, together with the attached Joint Petition for Approval of Settlement and the Statements in Support thereof, at Docket No. M-2023-3037937, shall be served on the Office of Consumer Advocate and the Office of Small Business Advocate.

4. That, subsequent to the Commission's review of any comments filed in this proceeding, at Docket No. M-2023-3037937, a final Opinion and Order will be issued.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 21, 2023

ORDER ENTERED: September 21, 2023

ATTACHMENT



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 14, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Duquesne Light Company
Docket No. M-2023-3037937

Joint Petition for Approval of Settlement and Statements in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement** in the above-referenced matter including Attachments A, B and C and the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B – Statement in Support of the Bureau of Investigation and Enforcement; and (2) Appendix C - Statement in Support of Duquesne Light Company.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'mswindler'.

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319
(717) 783-6369
mswindler@pa.gov

MLS/ac
Enclosures

cc: Kimberly A. Hafner, Acting Director - Legal, OSA (*via email only – Word Version*)
E. Festus Odubo, Deputy Director - Technical, OSA (*via email only – Word Version*)
Richard A. Kanaskie, Director, I&E (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3037937
	:	
Duquesne Light Company	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Duquesne Light Company (“Duquesne” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based upon information provided by the Commission’s Bureau of Consumer Services (“BCS”).

As part of this Settlement Agreement, I&E and Duquesne (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Statements in Support of the Settlement expressing the individual views of I&E and Duquesne are attached hereto as Appendix B and Appendix C, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorney, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA, 17120, and Duquesne Light Company with a business address of 411 Seventh Avenue, Pittsburgh, PA 15219.

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

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011)(delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. 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.

5. Duquesne (Utility Code 110150) is a "public utility" as that term is defined at 66 Pa.C.S. § 102,¹ as it is engaged in providing electric utility services to the public for

¹ 66 Pa.C.S. § 102 "**Public Utility**"

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

compensation. Duquesne currently provides electric service to more than 600,000 customers in the Commonwealth of Pennsylvania.²

6. Duquesne, as a public utility, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

7. 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, the Commission's regulations, and/or orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

8. 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 Code, Commission's regulations, and/or orders.

9. On December 2, 2022, Duquesne reached out to I&E to self-report to the Commission that it terminated service to customers without providing the customers with 10-day termination notices as required by the Commission's regulations. Among these customers were customers who were charged reconnection fees and customers who were assessed security deposits to restore their service. Duquesne subsequently provided additional information to I&E and BCS on December 29, 2022. Based on this

² [About Us | Duquesne Light Company \(https://duquesnelight.com/company/about\)](https://duquesnelight.com/company/about)

information, BCS referred the matter to I&E. I&E determined that an informal investigation was warranted to ascertain whether the actions of Duquesne violated any regulations, laws, or orders that the Commission has jurisdiction to administer.

10. As a result of successful negotiations between I&E and Duquesne, the Parties have reached an agreement on an appropriate outcome to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Parties agree to the settlement terms set forth herein and urge the Commission to approve the Settlement in its entirety as submitted as being in the public interest.

II. BACKGROUND

11. On December 2, 2022, Duquesne reached out to I&E to inform the Commission that it had terminated service to customers without providing the customers 10-day termination notices as required by the Commission's regulations. Among these customers were customers who were charged reconnection fees and customers who were assessed a security deposit to restore their service.

12. On December 29, 2022, Duquesne contacted I&E and BCS to provide additional information regarding the service terminations.

13. On January 30, 2023, BCS summarized its discussions with Duquesne in a memo and referred the matter to I&E.

14. On April 12, 2023, I&E submitted I&E Data Requests – Set I (“Data Requests”) to Duquesne. The Data Requests informed Duquesne that I&E had initiated an investigation concerning the issues raised in BCS’s memo and requested a response to eleven (11) data requests.

15. On May 2, 2023, Duquesne submitted responses to I&E Data Requests – Set I (“Responses”).

16. Duquesne’s responses revealed the following: (1) that three-hundred (300) customers had their service terminated without being provided with 10-day termination notices prior to termination, (2) that two-hundred and six (206) of these 300 customers were charged and paid reconnection fees in order to have their service restored, and (3) that sixty-four (64) of these 300 customers were assessed and paid a security deposit as a condition to having their service restored.

17. The issue concerning the termination notices was discovered on November 22, 2022, when Duquesne discovered that the notices were not mailed to the affected customers on November 1, November 8, and November 15, 2022.

18. The following relevant information concerns Duquesne’s procedures when it comes to issuing 10-day termination notices prior to the termination of electric service.

- Duquesne’s Customer Care and Billing System (“CC&B”) is the system that Duquesne utilizes for customer communication and collections actions, including the termination of residential service. Before residential service termination occurs, the CC&B is programmed to proceed through several prerequisite steps. Relevant to this matter, the CC&B is configured to require the provision of a 10-day termination notice as a precondition of proceeding with residential termination.

- KUBRA, Duquesne’s external printing and mailing vendor³, prints the 10-day termination notices and mails the notices out to the affected customers. Duquesne monitors KUBRA mailings via a “dashboard” that displays job status.

19. Duquesne determined that the root cause of the termination notice issue that is the subject to the instant I&E investigation was an error in the software used by KUBRA. Specifically, KUBRA deployed a software update that contained a defect that prevented certain production jobs from printing. As a result, certain Duquesne print jobs exceeding 5,000 pages, including 10-day termination notices, failed to print.

20. Duquesne additionally identified contributing causes that led to the termination notice issue. These contributing causes are as follows:

- KUBRA’s testing of the software update did not include test jobs exceeding 5,000 pages, so KUBRA did not identify the software error before it began to affect Duquesne print jobs on November 1, 2022.
- KUBRA failed to appropriately and timely escalate the issue internally or to Duquesne.
- Due to the late stage in KUBRA’s print process at which the printing of the 10-day termination notices failed, the notices appeared in the CC&B as if they had been mailed on schedule. Therefore, the terminations of the affected customers proceeded erroneously.⁴
- Due to human error, the Duquesne employee monitoring the KUBRA “dashboard” in November 2022 did not identify that the three termination notice mailings at issue (on November 1, November 8, and November 15, 2022) had failed to print.

³ KUBRA is an industry-leading provider of customer experience management solutions to some of the largest utility, government and insurance entities in North America. <https://www.kubra.com>. KUBRA is not affiliated with Duquesne Light Company.

⁴ This 10-day termination notice print failure did not affect Duquesne’s processes for effecting pre-termination personal contact as required under 52 Pa. Code § 56.93. Consistent with 52 Pa. Code § 56.93, Duquesne contacted or attempted to contact each affected customer at least 3 days prior to terminating the customer’s service.

- Upon identifying the failure of the 10-day termination notices to print, Duquesne employees failed to appropriately escalate the issue for corrective action.

III. ALLEGED VIOLATIONS

21. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Duquesne violated Sections 56.91(a), 56.191(a), and 56.35(a)(1)(i) of the Commission's regulations.

22. Had this matter been fully litigated, Duquesne would have denied that it violated Sections 56.91(a), 56.191(a), and 56.35(a)(1)(i) of the Commission's regulations, raised defenses and/or mitigating factors in support of its defense, and defended against the same at hearing.

23. Duquesne terminated electric service to 300 customers without first providing the customers with 10-day termination notices.

If proven, this is a violation of Section 56.91(a) of the Commission's regulations, which states that prior to termination service to a customer, utilities shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. *See* 52 Pa. Code § 56.91(a). (300 counts)

24. Duquesne required 206 customers to pay reconnection fees prior to the reconnection of their service where electric service had been improperly terminated.

If proven, this is a violation of Section 56.191(a) of the Commission's regulations, which states that reconnection fees can only be required for the reconnection of service following *lawful* termination of the service. *See* 52 Pa. Code § 56.191(a). (206 counts)

25. Duquesne collected security deposits from 64 customers where electric service had been improperly terminated.

If proven, this is a violation of Section 56.35(a)(1)(i) of the Commission's regulations, which states, in summary, that a utility can require a cash deposit from an applicant who previously received public utility distribution services and was a customer of the public utility and whose service was terminated for nonpayment of an undisputed delinquent account. *See* 52 Pa. Code § 56.35(a)(1)(i). (64 counts)

26. As a result of the 10-day termination notice issue, Duquesne made the following corrections to its procedures:

- In December 2022, as part of its initial response upon identifying the termination notice issue, retrained employees to review daily print jobs on the KUBRA “dashboard.” This December 2022 retraining specifically focused on identifying print jobs that failed to timely print. Duquesne performed additional trainings in connection with subsequent procedure updates, as discussed further below.
- Implemented enhanced monitoring of print/production in February 2023, when 10-day termination notice volume resumed. Process included:
 - a) Assigned additional employees to review the KUBRA “dashboard.”
 - b) Identified and trained backup reviewers.
 - c) Prepared and trained written process document for reviewing KUBRA “dashboard.” This process includes a step-by-step procedure for reviewing and validating print job status, as well as a process for escalating any failed KUBRA print job to departmental management. This supplemented the Company's separate procedure for internal escalation of failures of high-priority KUBRA print jobs (see below), and serves as a redundant safeguard to KUBRA's corrective actions regarding identification and escalation of failed print jobs (see below). *See* Attachment A.

- Implemented and trained procedure for identification and internal escalation of high-priority failed KUBRA print jobs. This procedure provides a list of high-priority print jobs, comprising termination notices, bills, application denial letters, and other time-sensitive letters. The procedure provides that any such high-priority job that fails to timely print will be escalated to multiple departments within Duquesne for corrective action. This procedure serves as a redundant safeguard to KUBRA’s corrective actions regarding identification and escalation of failed print jobs (see below). See Attachment B.
- Validated that Duquesne’s CC&B is configured to require the provision of a 10-day notice as a precondition of proceeding with residential termination.
- Additionally, Duquesne and KUBRA developed a “Corrective Action Plan” under which KUBRA:
 - a) Retrained relevant personnel on identification, escalation, and handling of any issues that prevent a document from printing in accordance with KUBRA’s service level agreement requirements (“SLAs”).
 - b) Implemented processes for creation and escalation of support ticket if an SLA is missed (and/or a job otherwise fails to print) for Duquesne. These include manual processes implemented in January 2023, as well as automated processes implemented in April and May 2023.
 - c) Refined and implemented communication processes for notifying Duquesne stakeholders of production issues/missed SLAs. These processes include:⁵
 - (1) KUBRA to email Duquesne on the same day that an SLA is not met (and/or a job otherwise fails to print) by 8 p.m. for jobs scheduled to print that day. Such emails shall be provided manually, or automatically

⁵ These items in (c) are a mix of new processes and clarifications of preexisting escalation processes under KUBRA's Service Level Agreement (SLA). (c)(1) adds: (i) clarification that the escalation process applies to any job that fails to print, irrespective of whether it constitutes a "missed" SLA (this clarification addresses KUBRA's initial misclassification of the Nov. 2022 issue); (ii) further detail on the timing and format of escalation notifications; and (iii) a new obligation for KUBRA to automate alerts where a print job fails. (c)(2) adds a new obligation for KUBRA to ensure Duquesne receives escalated items. (c)(3) adds KUBRA's obligation to provide a timeline for corrective actions, which augments their preexisting obligation to timely resolve service level failures.

upon implementation of automated “SLA Late” alerts in April 2023. Such emails will be sent separately from other emails to Duquesne (e.g., routine “completed” or “SLA met” emails)

- (2) Duquesne will acknowledge receipt of such notifications. Should KUBRA not receive such acknowledgement by 9 a.m. the calendar day following the SLA/print issue, KUBRA will successively call Duquesne contacts until reaching an individual.
 - (3) Within a reasonable time following such notification alert, KUBRA will also separately provide information to Duquesne including, for example, KUBRA’s plans of corrective actions and estimated timeline to implement such actions.
- d) Reviewed and updated Duquesne and KUBRA escalation contacts (phone, email).
 - e) KUBRA agreed to notify Duquesne at least 24 hours in advance of when KUBRA puts system updates into production.
 - f) KUBRA added print application testing protocols to ensure that testing covers all reasonably-foreseeable print jobs/conditions.

See Attachment C.

27. Duquesne took the following corrective measures regarding the customers impacted by the 10-day termination issue:

- By December 5, 2022, completed service restoration to two hundred and ninety-eight (298) of the 300 customers who had their service terminated. The premises of the remaining two customers are vacant.
- By December 2, 2022, refunded the reconnection fees (\$4,129 in total) that it collected from the 206 affected customers.

- By January 10, 2023, refunded the security deposits (\$23,029 in total) that it collected from the 64 affected customers.

28. The results of I&E's investigation, which included review of Duquesne's 11 discovery responses and corrective actions already taken by Duquesne or directed to be taken by Duquesne's vendor, formed the basis for the instant Settlement Agreement.

IV. SETTLEMENT TERMS

29. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held discussions that culminated in this Settlement. I&E and Duquesne desire to (1) terminate I&E's informal investigation; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed matter and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms of the Settlement, for which the Parties seek Commission approval, are set forth below:

- a) Duquesne shall pay a civil penalty of Fifty Thousand dollars (\$50,000) to fully and finally resolve all possible claims of alleged violations of the Public Utility Code and the Commission's regulations in connection with the above alleged violations. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) or passed

through as an additional charge to Duquesne's customers in Pennsylvania.

30. In consideration of the Company's payment of a monetary civil penalty of \$50,000, I&E agrees to forgo the institution of any formal complaint that relates to the Company's conduct as described in the 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.

31. I&E and Duquesne jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations of the termination procedure violations that are the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices A and B are Statements in Support submitted by I&E and Duquesne, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

32. 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 Settlement Agreement shall be construed and interpreted under Pennsylvania law, without regard to its conflicts of laws provisions.

33. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Settlement Petition without modification. If the Commission rejects or modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation or take other such action and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

34. The benefits and obligations of this Settlement Agreement shall be binding upon the successors and assigns of the Parties to this Agreement.

35. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, Duquesne has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

36. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

37. If either party should file any pleading, including comments, in response to an order of the Commission, the other party shall have the right to file a reply.

38. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement Agreement does not preclude the Parties from taking other positions in any other proceeding.

39. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Duquesne Light Company respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

[Signature Page to Follow]

Respectfully submitted,

Date: August 14, 2023



Michael Zimmerman
*Manager and Assistant General Counsel,
Regulatory Law
Duquesne Light Company*

Date: August 14, 2023



Michael L. Swindler
*Deputy Chief Prosecutor,
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission*

Attachments A and B

(Attachments were omitted due to confidentiality.)

Attachment C

Corrective Action Plan Agreement

WHEREAS, Duquesne Light Company (“DLC”) and KUBRA Data Transfer Ltd. (“KUBRA”) are parties to an Equipment and Services Terms and Conditions (the “Agreement”) dated October 11, 2018, as amended June 17, 2019, and the KUBRA enterprise service Agreement (“Service Agreement”) dated October 9, 2018;

WHEREAS, pursuant to the Agreement and the Service Agreement, KUBRA agreed, among other things, to mail certain letters known as “Coupon Letters” to DLC customers on behalf of DLC;

WHEREAS, KUBRA failed to print and mail the aforementioned “coupon letters” on three (3) specific dates: November 1, November 8, and November 15, 2022, and failed to notify DLC that the letters were not printed and mailed.

WHEREAS, KUBRA’s failure to provide services in accordance with the Service Agreement resulted in harm to DLC;

WHEREAS, DLC and KUBRA have agreed to certain corrective actions to prevent further harm and to eliminate the risk of future failures on the part of KUBRA to perform as expected under the Agreement and the Service Agreement; and

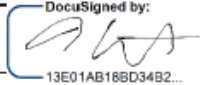
WHEREAS, DLC and KUBRA wish to continue a business relationship under the existing terms of the Agreement and Service Agreement and agree that this Corrective Action Plan Agreement (“CAP Agreement”) shall be put in place to remedy the aforementioned nonperformance;

NOW THEREFORE, in consideration of the terms and conditions of this agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged. DLC and KUBRA, intending to be legally bound hereby, agree as follows:

1. **Recitals:** The foregoing recitals are hereby incorporated by reference as if fully set forth herein.
2. **Term:** This CAP Agreement shall be effective upon the date of execution and will remain in full force and effect for the duration of the relationship between KUBRA and DLC as set forth in the Agreement.
3. **Corrective Action:** The corrective action shall be undertaken as detailed in the Corrective Action Plan attached hereto as Exhibit A and incorporated by reference herein.
4. **Survival:** Any provision of this CAP Agreement which contemplates performance or observance subsequent to any termination or expiration of this CAP Agreement shall survive termination of this CAP Agreement of the Agreement, Service Agreement or CAP Agreement.
5. **Effect:** This CAP Agreement does not affect the validity, legality, or enforceability of any portion or provision of the Agreement or the Service Agreement.

IN WITNESS WHEREOF, KUBRA and DLC have executed this Corrective Action Plan Agreement:

as

DUQUESNE LIGHT COMPANY	KUBRA DATA TRANSFER LTD.
By: <i>Edwin Schuck</i>	By:  13E01AB18BD34B2...
Title: Interim Director, Revenue Management	Title: President and CEO
Date: 3/10/23	Date: 5/18/2023

Corrective Action Plan

KUBRA Bill and Letter Printing and Mailing Processes

Deficiencies Identified:

KUBRA failed to print and mail certain letters (those in a specific batch known as “coupon letters”) on behalf of Duquesne Light Company (DLC) on 3 specific dates: November 1, November 8, and November 15, 2022.

Kubra failed to notify DLC that these letters were not printed.

Root Cause(s):

Defect in Coupon Letter XML Application update:

On October 28, 2022, KUBRA made an update to its Coupon Letter XML application. This application update included a defect that prevented certain production jobs exceeding 5,000 pages from printing. KUBRA's testing of the application update did not include test jobs exceeding 5,000 pages, and KUBRA did not detect this defect until it began to affect DLC projection jobs on November 1, 2022.

Failure to properly classify the defect as critical and escalate for resolution:

KUBRA's Operations team identified the first issue on November 1, 2022, and notified KUBRA's Support team, but did so through a support ticket classified as “change request” rather than “critical”, as it should have been.

KUBRA's Support team created a new support ticket but also failed to mark the ticket as “critical” or a “production error.”

As a result, KUBRA initially did not assign a high priority to the tickets, and did not assign or escalate the tickets to Kubra's Application support team responsible for correcting the defect.

The sequence described above repeated on November 8 and 15, when DLC's coupon letter batch included more than 5,000 pages.

In each instance, KUBRA's Support and Operations teams did not escalate the issue to KUBRA senior management. Additionally, because KUBRA did not identify the issue as a production error, KUBRA did not follow a process to notify DLC on the same day that it identifies a production error affecting a DLC job.

Immediate Action Taken to Prevent Further Issues:

KUBRA identified the defect in the Coupon Letter XML Application update, and rolled back the update on November 22, 2022. KUBRA has also implemented and trained certain processes to improve the timely identification and escalation of defects affecting print production, as dismissed further herein.

Corrective Action Plan:

Note: KUBRA will provide written confirmation to DLC indicating the completion of each Action noted below, as they are completed.

	Action	Responsible	Due Date
1	KUBRA to train Operations team and Support team on process to (i) classify issues affecting production as “production errors,” (ii) assign such issues highest priority for resolution, and (iii) and internally escalate issues where documents of any type (bills, letters, coupon letters, etc.) fail to print and/or SLAs are not met.	KUBRA	Complete
2	Provide documentation (to DLC) of a communication plan that has been created to address critical issues and provide responses to DLC stakeholders (as noted in Incident Report provided by KUBRA to DLC).	KUBRA	Complete
3	<p>KUBRA to implement <i>manual</i> process to create a support ticket if an SLA is missed (and/or a job otherwise fails to print) for DLC.</p> <ul style="list-style-type: none"> • KUBRA to manually create ticket if any SLA is not met (and/or a job otherwise fails to print) by 8 p.m. for jobs scheduled to print that day; and • KUBRA to train and retrain relevant teams on a continuing basis to ensure that such support tickets are treated as a production error – i.e., assigned the highest priority and resolved at the earliest opportunity; and • Initiate communication processes as outlined in (6) below. 	KUBRA	Complete

4	KUBRA to implement system enhancements to <i>automate</i> support ticket creation process identified in (3) above	KUBRA	5/31/2023
5	KUBRA to implement system enhancements (in addition to manual checks) to <i>automatically</i> generate an “SLA Late” alert if an SLA is missed (and/or a job otherwise fails to print, and/or a job does not reach “Job Complete / DONE” status) for DLC jobs scheduled to print that day.	KUBRA, DLC	4/30/2023
6	<p>Refine and implement communication processes for notifying DLC stakeholders of production issues/missed SLAs. Processes to include:</p> <ul style="list-style-type: none"> • KUBRA to email DLC on the same day that an SLA is not met (and/or a job otherwise fails to print) by 8 p.m. for jobs scheduled to print that day. Such emails shall be provided manually pursuant to item (3), or automatically as part of “SLA Late” alerts when such process is implemented pursuant to (5). Such emails will: <ul style="list-style-type: none"> ○ Be sent separately from other emails to DLC (e.g., routine “completed” or “SLA met” emails) • DLC will acknowledge receipt of such notifications. Should KUBRA not receive such acknowledgement by 9 a.m. the calendar day following the SLA/print issue, KUBRA will successively call DLC contacts identified under item (7) below until reaching an individual. • Within a reasonable time following such notification alert, KUBRA will also separately provide information to DLC including, for example, KUBRA’s plans of corrective actions and estimated timeline to implement such actions. 	KUBRA, DLC	Complete

7	Review and update DLC and KUBRA escalation contacts (phone, email)	KUBRA, DLC	Complete
8	Implement process to notify DLC 24 hours in advance of when KUBRA puts system updates into production.	KUBRA	Complete
9	To the extent “killed jobs” are not recorded as missed SLAs, KUBRA and DLC to identify process to provide notification of all “killed jobs” to DLC stakeholders and escalation contacts.	KUBRA, DLC	Complete
10	Review print application testing protocols to ensure that testing covers all reasonably-foreseeable print jobs/conditions.	KUBRA	Complete

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2023-3037937
 :
Duquesne Light Company :

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on August 14, 2023 between the Commission’s Bureau of Investigation and Enforcement and Duquesne Light Company is approved in its entirety without modifications.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date this Order becomes final, Duquesne Light Company shall pay Fifty Thousand dollars (\$50,000), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That the civil penalty shall not be tax deductible or passed through as an additional charge to Duquesne’s customers in Pennsylvania.

4. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That the above-captioned matter shall be marked closed upon receipt of Duquesne Light Company's payment of the civil penalty.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
v. : Docket No. M-2023-3037937
Duquesne Light Company :

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Duquesne Light Company (“Duquesne” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and Duquesne are collectively referred to herein as the “Parties.”

I. Background

In December 2022, Duquesne reached out to the Commission’s Bureau of Consumer Services (“BCS”) to self-report to the Commission that it had terminated service to certain customers without providing 10-day termination notices as required by the Commission’s regulations. Among these customers were customers who were ultimately charged reconnection fees and customers who were assessed a security deposit to restore their service.

On January 30, 2023, BCS summarized its discussions with Duquesne in a memo and referred the matter to I&E.

On April 12, 2023, I&E submitted I&E Data Requests – Set I (“Data Requests”) to Duquesne. The Data Requests informed Duquesne that I&E had initiated an investigation concerning the issues raised in BCS’s memo and requested a response to eleven (11) data requests. On May 2, 2023, Duquesne timely provided its responses to the Data Requests.

In light of the facts uncovered in I&E’s informal investigation, the Parties began discussing settlement to amicably resolve the instant matter.

On August 14, 2023, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between the Parties in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. The Public Interest

Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest, the Parties discussed settlement of this matter. These discussions culminated in the Settlement Agreement, which, once approved, will

resolve all issues related to I&E's informal investigation involving allegations: (1) that Duquesne terminated electric service to three-hundred (300) customers without providing the customers with 10-day termination notices prior to termination, in violation of Section 56.91(a) of the Commission's regulations, (2) that Duquesne required reconnection fees from two-hundred and six (206) customers for the reconnection of their service following the unlawful termination of their service, in violation of Section 56.191(a) of the Commission's regulations, and (3) that Duquesne collected security deposits from sixty-four (64) customers whose electric service had been improperly terminated, in violation of Section 56.35(a)(1)(i) of the Commission's regulations.

As discussed in the Settlement, Duquesne asserted that the external and internal issues that led to the alleged violations have been corrected and that no further terminations have resulted from the now corrected issues. Duquesne has further asserted, to which I&E acknowledges, that it moved quickly to rectify the damage done to the affected customers. Specifically, Duquesne restored service to the affected customers and refunded the reconnection fees and security deposits collected from the affected customers.

Had this matter proceeded to litigation, I&E intended to prove the factual allegations set forth in its investigation at hearing to which Duquesne would have disputed. The Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. Here, Duquesne has already

implemented the appropriate remedies that have rectified the damage done to the affected customers and, to date, have proven to have effectively resolved the violations that were the subject of I&E's informal investigation.

I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, and noting that Duquesne has already completed implementation of all appropriate non-monetary remedial measures, I&E and Duquesne have agreed to the following:

- b) Duquesne shall pay a civil penalty of Fifty Thousand dollars (\$50,000.00) to fully and finally resolve all possible claims of alleged violations of the Public Utility Code and the Commission's regulations in connection with the above alleged violations. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) or passed through as an additional charge to Duquesne's customers in Pennsylvania.

Upon approval by the Commission of the Settlement Agreement without modification and in consideration of the Company's payment of a monetary civil penalty

of \$50,000.00, I&E agrees that its informal investigation relating to Duquesne's conduct as described in the Settlement Agreement referenced herein shall be terminated and marked closed.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against Duquesne at the Commission that relates to the Company's conduct as described in the Settlement Agreement.

IV. Legal Standard for Settlement Agreements

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. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the*

Public Utility 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 (10) 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.

The Commission will not apply the factors 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 as long as the settlement is in the public interest.” *Id.* (*emphasis added*).

The first factor considers whether the conduct at issue was of a serious nature. 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. 52 Pa. Code § 69.1201(c)(1). I&E acknowledges that the unlawful terminations at issue, and the reconnection fees and security deposits unlawfully collected as a result, were caused primarily by technical errors and not the result of willful fraud or misrepresentation. Specifically, the cause of the failure of the 10-day termination notices to be mailed to 300 customers prior to service termination was a defect in the software used by Duquesne’s external printing and mailing vendor KUBRA that prevented certain Duquesne

production jobs, including the production of 10-day termination notices, from printing. KUBRA did not identify the software defect until the defect began to impact Duquesne print jobs. Due to the late stage in KUBRA's print process at which the printing of the notices failed, the notices appeared in Duquesne's Customer Care and Billing System ("CC&B") as if the notices had been mailed on schedule.² Thus, termination on the affected customers proceeded erroneously. Once the technical errors were discovered, Duquesne worked quickly in conjunction with KUBRA to resolve the issues. As the conduct at issue involved technical errors with KUBRA's software and Duquesne's CC&B, review of this factor weighs in favor of a lower penalty.³

The second factor considers whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E's informal investigation did not result in any finding that Duquesne's alleged conduct resulted in personal injury or property damage. Nonetheless, the consequences of Duquesne's conduct resulted in the termination of electric service to 300 customers and the collection of improper fees from 206 customers who paid reconnection fees to Duquesne and 64 customers who paid security deposits to Duquesne. I&E acknowledges that Duquesne worked quickly to restore service to the affected customers and to refund the reconnection fees and security deposits to the affected customers. However, the potential safety consequences and inconveniences that

² The CC&B is configured to require the provision of a 10-day termination notice as a precondition of proceeding with residential termination.

³ Although the violations stemmed from KUBRA's actions and were not intentional, Duquesne remains legally responsible for the alleged violations.

the affected customers had to endure without electricity, albeit for a short period of time, are consequences of a serious nature. The inconveniences caused by customers being without money that they would otherwise have if they had not paid improper fees for service restoration are also consequences of a serious nature. Therefore, review of this factor weighs in favor of a higher penalty.

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty. 52 Pa. Code § 69.1201(c)(3). This factor does not apply in this matter because this matter has been resolved through settlement, not litigation.

The fourth factor considers 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. These modifications may include activities such as training and improving company techniques and supervision. 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). I&E acknowledges that Duquesne modified its internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications include: (1) implementing several initiatives to ensure that Duquesne's CC&B is configured to require the provision of a 10-day notice as a precondition of proceeding with residential termination safeguard functions appropriately, (2) retraining employees when it comes to

reviewing the KUBRA “dashboard,”⁴ as well as employing additional employees to review the “dashboard,” and (3) implementing procedures for the internal escalation of print job failures. These modifications have been completed by Duquesne as of the date of the Settlement. Additionally, KUBRA has made several corrections to its practices to prevent similar conduct from reoccurring in the future. As of the date of the Settlement, I&E is not aware of any further illegal terminations caused as a result of the conduct discussed in the Settlement. In summary, review of this factor weighs in favor of a lower penalty.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). As noted above, Duquesne unlawfully terminated electric service to 300 customers. Of those 300 customers, 206 customers unlawfully paid reconnection fees to restore their service, and 64 customers unlawfully paid a security deposit to restore their service. Given that Duquesne provides electric service to over 600,000 customers in Pennsylvania, Duquesne’s violations only affected a small portion of its customer base. With respect to the duration of the violations, these violations occurred in November 2022 and Duquesne self-reported these violations to the Commission in December 2022. Service was restored to all but two of the affected customers by December 5, 2022.⁵ The reconnection fees were refunded to all 206 affected customers by December 2, 2022, and the security deposits were refunded to all 64 affected customers by January 10, 2023. Given the information above, Duquesne

⁴ Duquesne monitors KUBRA mailings via a “dashboard” that displays the job status of Duquesne’s KUBRA production jobs.

⁵ The premises of the remaining two customers are vacant.

discovered and acknowledged its wrongdoings shortly after they occurred and acted expediently to rectify the violations. In fact, Duquesne had rectified the violations long before the initiation of I&E's informal investigation into the matter on April 12, 2023. In summary, review of this factor weighs in favor of a lower penalty.

The sixth factor considers the compliance history of the regulated entity which committed the violation. 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). I&E is not aware of any Informal or Formal Complaints filed with the Commission against Duquesne relating to the conduct at issue. Review of Duquesne's compliance history with the Commission reveals that Duquesne has a strong compliance history regarding customer service terminations, especially given the size of the Company. In addition, neither the Code nor the Commission's Regulations require utilities to provide constantly flawless service to its customers. Therefore, review of this factor weighs in favor of a lower penalty.

The seventh factor considers whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty. 52 Pa. Code § 69.1201(c)(7). I&E submits that Duquesne fully cooperated in the informal investigation in this matter, including timely responding to I&E's Data Requests as well as participating in settlement discussions. Therefore, review of this factor weighs in favor of a lower penalty.

The eighth factor considers the amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount. 52 Pa. Code § 69.1201(c)(8). Analysis of the majority of the *Rosi* factors addressed above weigh in favor of a lower penalty, and I&E submits that the amount of the civil penalty amicably agreed to herein is substantial and sufficient to deter Duquesne from committing future violations involving the conduct at issue.

The ninth factor considers past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). While recognizing that each settlement should be based on the individual facts and circumstance of that case and that the parties have flexibility in crafting agreements that will be palatable to the settling parties, I&E nevertheless considered a number of prior Commission decisions in arriving at the civil penalty in this matter, including the following: *Pa. Pub. Util' Comm Prosecutory Staff v. Metropolitan Edison Co., Pennsylvania Electric Co. and Pennsylvania Power Co. d/b/a FirstEnergy, and Pennsylvania Power Co. d/b/a FirstEnergy*, M-2009-2112849 (Opinion and Order entered December 7, 2009) (492 customers had their service terminated without receiving the required 10-day termination notice. The Commission approved a Settlement with modifications, ordering First Energy to make contributions in the amount of \$200,000 to hardship programs, in addition to the credits First Energy agreed to make towards its customers); *Pa Pub. Util' Comm Bureau of Investigation and Enforcement v. PECO Energy Co.*, M-2021-3014286 (Opinion and Order entered December 8, 2022) (48,536 distinct customers had their service terminated without being personally contacted by PECO prior to termination as required by the Public

Utility Code and Commission’s regulations. The Commission approved a Settlement with modifications, ordering PECO to pay a \$200,000 civil penalty in addition to providing a \$100,000 contribution to its Matching Energy Assistance Fund. The civil penalty and contribution were increased from the amounts proposed in the Settlement to account for the Settlement’s failure to address penalties associated with PECO’s unlawful collection of reconnection fees from the customers in violation of the Public Utility Code and Commission’s regulations); *Pa Pub. Util’ Comm Bureau of Investigation and Enforcement v. Aqua Pa Inc.*, M-2023-3031237 (Opinion and Order entered June 15, 2023) (67 customers had their service terminated following expiration of their 10-day termination notices. The Commission approved a Settlement without modifications, ordering Aqua to pay a \$33,500 civil penalty). In support of the civil penalty reached here, it is important to again note that Duquesne worked quickly to restore service to the affected customers and to refund the reconnection fees and security deposits to the affected customers and that all procedural modifications had already been completed by the time the Parties had agreed to the Settlement.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits 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 governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and 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 while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement 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 proceedings at what would have been a substantial cost in time and resources to the Parties and this Commission.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



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Dated: August 14, 2023

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2023-3037937
 :
Duquesne Light Company :

**DUQUESNE LIGHT COMPANY’S
STATEMENT IN SUPPORT OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby submits this Statement in Support of the Joint Petition for Approval of Settlement (“Settlement”) entered by the Company and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”). This Settlement, if approved, resolves all issues in the above-captioned proceeding, which concerns I&E’s informal investigation into certain terminations of residential service on three nonconsecutive days in November of 2022.

Duquesne Light provides electric distribution, transmission, and default supply service to approximately 600,000 customers in its certificated service territory, which comprises approximately 817 square miles in Allegheny County and Beaver County, Pennsylvania. Duquesne Light is a “public utility” and “electric distribution company” as those terms are as defined under the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

In December 2022, the Company contacted I&E and BCS to inform the Commission that it had terminated service to certain customers in November 2022, without providing the customers 10-day termination notices as required by the Commission's regulations. Among these customers were customers who were charged reconnection fees and customers who were assessed a security deposit to restore their service. On January 30, 2023, BCS summarized its discussion with the Company in a memo to I&E and on April 12, 2023, I&E submitted Data Requests-Set I ("Data Requests") to the Company. The parties exchanged information and engaged in settlement negotiations as part of this informal investigation. As a result of these efforts, the parties reached a Settlement that resolves all issues without the need for litigation. Under this Settlement, the Company will pay a civil penalty of \$50,000. This Settlement also obviates the need for the parties and the Commission to devote resources to a litigated formal complaint proceeding. For these reasons and as set forth below, the Settlement is just and reasonable, and should be approved.

II. **COMMISSION POLICY FAVORS SETTLEMENT**

Commission policy favors settlements. *See* 52 Pa. Code § 5.231(a). Settlements lessen the time and expense the parties must expend litigating a case and conserve administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. To accept a settlement, the Commission must determine that the proposed terms and conditions are in the public

interest. *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2071433 (August 31, 2012).

III. **THE SETTLEMENT IS IN THE PUBLIC INTEREST**

a. Background

The parties achieved this Settlement following a thorough investigation by I&E, including written data requests, into the customer terminations that occurred in November 2022. The parties agree that the Settlement constitutes a reasonable compromise of the issues I&E identified through its investigation. The parties further agree that the Settlement “avoids the time and expense of litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of briefs, reply briefs, exceptions, reply exceptions” (Settlement ¶30), and that “adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that [the parties] might incur in such an appeal.” (Settlement ¶30.)

Pursuant to Settlement ¶¶28-29, the Company shall pay a civil penalty of \$50,000, which “shall not be tax deductible or passed-through as an additional charge to Duquesne Light’s customers in Pennsylvania.” The Company shall make payment of the civil penalty within 30 days of a Commission Order or Secretarial Letter approving the Settlement without modification. Settlement, Proposed Ordering Paragraph ¶2. In exchange for stipulating to these terms, I&E has agreed to conclude its informal investigation and not institute any Formal Complaint related to these issues. *See* Settlement ¶29.

The terms of the Settlement are just and reasonable and are in the public interest. The customer terminations affected approximately 300 customers, each of whom had their service terminated without being provided with a 10-day termination notice, where 206 of these 300 customers were charged and paid reconnection fees to be restored, and 64 of the 300 customers were assessed and paid a security deposit to be restored. *See* Settlement ¶15. The Settlement recognizes the seriousness of these issues, balanced with: (1) the Company's full cooperation in I&E's informal investigation; (2) the Company's prompt, voluntary notification of the Commission of the customer terminations; (3) the unintentional nature of the customer terminations; and (4) the Company's prompt corrective actions, investigation, and implementation of protective measures.

b. The Settlement Conforms to Applicable Commission Standards

Approval of the Settlement Agreement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201 ("Policy Statement").

The Policy Statement outlines ten (10) factors that the Commission may consider when evaluating whether a civil penalty for violating a Commission order, regulation, or statute. 52 Pa. Code § 69.1201. The Commission applies the factors more strictly in litigated cases; in settled matters, parties have flexibility in reaching amicable resolutions, so long as the settlements serve the public interest. 52 Pa. Code § 69.1201(b).

The first factor assesses the seriousness of the conduct involved. Conduct that involves fraud or misrepresentation is more serious and may warrant a higher civil penalty, while administrative or technical errors are less serious and may warrant a lower penalty.

52 Pa. Code § 69.1201(c)(1). Here, the erroneous terminations were caused by a technical error, *see* Settlement ¶19, which weighs in favor of a lower civil penalty.

The second factor takes into account the severity of the consequences resulting from the Company's alleged misconduct. Consequences involving serious matters such as personal injury or property damage may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). The Company acknowledges that the termination of service to customers without 10-day termination notices¹ is serious and can have negative impacts to affected customers. However, the Company has is not aware of any instances of personal injury or property damage attributable to these terminations.

The third factor, which considers whether the alleged conduct was intentional or negligent, only applies to litigated cases. 52 Pa. Code § 69.1201(c)(3). This factor does not apply here because this matter is being resolved by Settlement.

Under the fourth factor, the Commission considers:

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. These modifications may include activities such as training and improving company techniques and supervision. 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).

¹ The software error that caused 10-day termination notices to fail did not affect Duquesne Light's other procedures related to service termination. For example, although the affected customers did not receive 10-day termination notices, Duquesne contacted or attempted to contact each affected customer at least 3 days prior to terminating the customer's service pursuant to 52 Pa. Code § 56.93. *See* Settlement FN 4.

Here, the Company undertook prompt and comprehensive actions to address the erroneous terminations and prevent future recurrences. In the immediate term upon identifying the issue, the Company acted swiftly to restore service to affected customers, and refunded security deposits and reconnected fees shortly thereafter. *See* Settlement ¶¶26. The Company also implemented interim protective measures to ensure against issue recurrence while it investigated further. *See* Settlement ¶¶25.

The Company then performed a thorough investigation to determine the root cause and contributing causes underlying the issue. *See* Settlement ¶¶19-20. Although the Company's investigation indicated that the root cause of the issue – a software error – had already been corrected, the Company developed and implemented a range of additional corrective actions to protect against future notice printing issues, and to better identify, escalate, and correct issues that do occur. *See* Settlement Attachments A-C. These corrective actions included a formal Corrective Action Plan between the Company and KUBRA, under which KUBRA implemented several technology and process improvements to address issues identified through the Company's root cause investigation. *See* Settlement Attachment C. The Company also implemented new and updated internal procedures, which serve in part as redundant safeguards to KUBRA's technological and process controls. *See* Settlement ¶¶25.

Notably, the Company undertook these efforts on its own violation prior to the initiation of investigation by the Bureau of Investigation & Enforcement. The Company's prompt, thorough, and voluntary actions demonstrate the seriousness with which it

addressed this issue, as well as its commitment to preventing future reoccurrence. These facts weigh in favor of a lower civil penalty.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa.Code § 69.1201(c)(5). 300 customers were affected, i.e., their service was terminated without first receiving a 10-day termination notice. This number of customers is not insignificant; however, it is comparatively small. These affected customers constitute less than 0.06% of the Company's approximately 540,000 residential customers. These facts were considered when calculating the civil penalty.

The sixth factor considers the Company's compliance history. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, while frequent, recurrent violations by a utility may result in a higher penalty." *Id.* The Company's compliance history is strong. Prior to this incident, the Company's CC&B system and related procedures consistently ensured appropriate issuance of 10-day termination notices to residential customers. The Company's failure to mail such notices to affected customers on the three days in November 2022 was an isolated incident. This weighs in favor of a lower civil penalty.

The seventh factor concerns the Company's cooperation with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Here, the Company fully cooperated with I&E in its investigation. The Company proactively self-reported this issue to I&E on December 2, 2022, and followed up with additional information on December 29, 2022. *See* Settlement ¶¶11-12. Upon I&E's initiation of its informal investigation, the Company

provided timely and complete responses to I&E's discovery requests (*see* Settlement ¶¶14-15), and engaged actively with I&E to arrive at the instant Settlement. This cooperation weighs in favor of a lower civil penalty.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). A civil penalty amount of \$50,000.00, which is not tax deductible, is substantial and sufficiently incents the Company to prevent future occurrences of this issue.²

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Company is not aware of prior Commission decisions that are on point here.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). In regard to this factor, the Company submits that its pre-investigation cooperation with Commission staff is relevant here. Specifically, the Company voluntarily self-reported this issue to Commission staff on December 2, 2022, and followed up with further information on December 29, 2022. *See* Settlement ¶¶11-12. Additionally, it is in the public interest to settle this matter so as to avoid the expense and uncertainty of litigation. These factors weigh in favor of the civil penalty provided under the Settlement.

² In fact, as noted above in its discussion of the fourth factor (52 Pa. Code § 69.1201(c)(4)), the Company promptly investigated this issue and took corrective actions on its own volition, before facing a Commission investigation or administrative penalty. This proposed administrative penalty of \$50,000 further amplifies the Company's demonstrated pre-existing incentives to prevent reoccurrences of this issue.

In light of the foregoing, a civil penalty of \$50,000 is appropriate under the specific circumstances of this case, and the Commission should approve this settlement provision without modification.

IV. CONCLUSION

WHEREFORE, for the reasons explained above, and those set forth in the Settlement, the terms of the Settlement are just and reasonable and in the public interest, and the Pennsylvania Public Utility Commission should approve the Settlement without modification.

Respectfully Submitted,



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Dated: August 14, 2023

Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3037937
	:	
Duquesne Light Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statements in Support** dated August 14, 2023, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via Electronic Mail

Michael Zimmerman
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