

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

Public Meeting held December 7, 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 (Joint Petition, 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. The Joint Petition contains terms and conditions representing a comprehensive Settlement, along with Statements in Support of the Settlement, with respect to an informal investigation conducted by I&E

regarding allegations of the termination of service to customers without providing the required ten-day written termination notice. The Commission’s Opinion and Order entered September 21, 2023, at this docket (*September 2023 Order*), sought comments from interested parties regarding the proposed Settlement Agreement between I&E and Duquesne Light. No comments were filed. The Parties request that the Commission approve the proposed Settlement because it 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)*. Settlement at 12. For the reasons set forth herein, we shall approve the Joint Petition, consistent with this Opinion and Order, based on our finding that the Settlement is in the public interest.

History of the Proceeding

This matter concerns the alleged termination of service to three hundred (300) customers without providing the customers with ten-day written termination notices as required by the Commission’s Regulations. On November 22, 2022, Duquesne discovered that the ten-day written termination notices had not been sent to the affected customers who were terminated 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 customers were assessed and paid a security deposit as a condition to having their service restored.¹ Settlement at 5.

On December 2, 2022, Duquesne voluntarily notified I&E that it had terminated service to the affected customers without providing a ten-day written

¹ As will be discussed, *infra*, the reconnection fees and security fees were refunded.

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 ten-day written termination notice on December 29, 2022. 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 ten-day written termination notice. Settlement at 3-4.

I&E instituted an informal investigation of Duquesne Light based on the information that was referred to it 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.

In our *September 2023 Order*, we provided interested parties with the opportunity to file comments. To be considered timely, the Commission directed those comments be filed no later than twenty-five days after the date that the *September 2023 Order* and the Joint Petition and the Statements in Support thereof were published in the *Pennsylvania Bulletin*, or by November 1, 2023.² No comments were filed.

Background

The Settlement provides the following information describing Duquesne Light's procedures for issuing ten-day written 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,

² The *September 2023 Order* was published in the *Pennsylvania Bulletin* on October 7, 2023, at 53 *Pa.B.* 6331.

including the termination of residential service. Before residential service termination occurs, the CC&B is programed 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.

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.³

Settlement at 5-6.

Duquesne Light averred that, upon investigation, the root cause of the written 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 written termination notices, failed to print. Settlement at 6.

³ Although the Commission is not familiar with KUBRA status in the industry of customer experience management solutions, we will note that KUBRA is not affiliated with Duquesne Light Company.

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

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.

Settlement at 6-7.

Duquesne Light has implemented or will implement various quality and control measures in response to this incident, that included, *inter alia*, retraining

employees to review daily print jobs on KUBRA, implemented enhanced monitoring of print/production in February 2023, implemented and trained procedure for identification and internal escalation of high-priority failed KUBRA print jobs, and Duquesne Light and KUBRA developed a “Corrective Action Plan.” 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 averred 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).
- 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 an 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 as well as the 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 has been filed by the Parties to provide a complete settlement of I&E's investigation of Duquesne Light's alleged violations of the Code and the Commission's Regulations as it related to the termination of customer service without the required ten-day written termination 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:

* * *

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 12 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.

* * *

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. I&E Statement in Support 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

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlt. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). In this regard, the Commission's *Policy Statement* at 52 Pa. Code § 69.1201 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 ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). Based on our review of the Settlement, we find, as discussed in more detail below, that the application of these factors supports approval of the Settlement.

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). According to I&E, the alleged conduct in this matter was an administrative or technical error. I&E provided that the cause of the failure to mail the ten-day written termination notices to 300 customers prior to service termination was a defect in the software used by Duquesne's external printing and mailing vendor, KUBRA. Although the software error prevented the ten-day written termination notices from printing, the notices appeared in Duquesne's CC&B as if the notices were sent on schedule. The CC&B requires the ten-day written termination notice before a residential termination can proceed. I&E noted that once the technical errors were discovered, Duquesne worked quickly to resolve the issues. Consequently,

the less egregious nature of the conduct was considered in arriving at the civil penalty amount in the Settlement Agreement. I&E Statement in Support at 6-7.

The second factor considers whether the resulting consequences of Duquesne Light's alleged conduct 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 submitted that no personal injury or property damage occurred as a result of the alleged violations, but the consequences of Duquesne's conduct resulted in the termination of electric service to 300 customers and the collection of improper fees and security deposits. While Duquesne worked quickly to restore service and refund the reconnection fees and security deposits, I&E noted that the inconvenience experienced by the affected customers and potential safety issues are consequences of a serious nature. Therefore, we find that review of this factor weighs in favor of a higher penalty. *Id.* at 7-8.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* at 8. In this case, this factor does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Duquesne Light has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Duquesne Light completed a root cause investigation to determine what caused the service terminations that were completed without the mailing of the ten-day written termination notice and to determine what steps should be taken to prevent this type of incident from reoccurring. I&E provided that, as of the date of the Settlement, the Company modified its internal practices and procedures as follows: (1) implementing several initiatives to ensure that Duquesne's CC&B safeguard mechanism that is configured to require the provision of a ten-day written termination

notice as a precondition of proceeding with residential termination is functioning appropriately; (2) retraining employees when it comes to reviewing the KUBRA “dashboard” as well as employing additional employees to review the “dashboard;” and (3) implementing procedures for the internal escalation of print job failures. Additionally, I&E provided that KUBRA has made several corrections to its practices to prevent similar conduct from recurring. I&E was not aware of any further terminations without the ten-day written termination notice occurring as of the date of the Settlement. Review of this factor weighs in favor of a lower penalty as Duquesne Light made efforts to investigate the cause of the incident and implemented the appropriate actions in a timely manner. *Id.* at 8-9.

The fifth factor to be considered relates to the number of customers affected by Duquesne Light’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Duquesne has over 600,000 customers and only a small number were affected by the terminations without written notice. As noted above, Duquesne terminated service to 300 customers without the required ten-day written termination notice. Of those 300 customers, 206 customers were required to pay reconnection fees to restore service and 64 customers were required to pay a security deposit to restore service. These violations occurred in November 2022 and Duquesne self-reported these violations to the Commission in December 2022. Service was restored by December 5, 2022. The reconnection fees were refunded by December 2, 2022, and the security deposits were returned by January 10, 2023. I&E noted that Duquesne Light acted quickly to acknowledge and correct the violations expediently. I&E provided that Duquesne Light had rectified the violations before the initiation of I&E’s informal investigation on April 12, 2023. These facts were considered when calculating the civil penalty and weigh in favor of a lower penalty. *Id.* at 9-10.

The sixth factor to be considered relates to the compliance history of Duquesne Light. An isolated incident from an otherwise compliant company may result

in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. 52 Pa. Code § 69.1201(c)(6). I&E noted that, to date, it is unaware of any formal complaint or proceeding which relates to the conduct at issue. I&E provided that Duquesne Light has a strong compliance history regarding customer service terminations, especially given the size of the Company. I&E noted that neither the Code nor the Commission's Regulations require utilities to provide constantly flawless service to its customers. Given the Company's compliance history, a review of this factor weighs in favor of a lower penalty. *Id.* at 10.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submitted that Duquesne Light fully cooperated in the investigation of this matter, including timely responding to I&E's Data Requests as well as participating in settlement discussions. We find that review of this factor supports a lower penalty. *Id.* at 10.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submitted that a civil penalty amount of \$50,000.00, which is not tax deductible, is substantial and sufficient to deter Duquesne Light from committing future violations. Accordingly, we agree, and therefore find that the civil penalty is appropriate. *Id.* at 11.

The ninth factor to be considered relates to 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 provided that it nevertheless considered a number of prior Commission decisions in arriving at the civil penalty in this matter, including the following: *Pa. PUC 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 ten-day written termination notice. The Commission approved a Settlement with modifications, ordering FirstEnergy to make contributions in the amount of \$200,000 to hardship programs, in addition to the credits FirstEnergy agreed to make towards its customers); *Pa PUC, 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 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. PUC 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 Light 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 to prevent a similar occurrence from happening again had already been completed by the time the Parties had agreed to the Settlement. *Id.* at 11-12.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submitted 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 penalty or other remedial action. Both parties negotiate from their initial litigation positions. The 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. I&E Statement in Support at 12-13. Duquesne Light provided that the terms of the Settlement are just and reasonable and are in the public interest. Duquesne Light Statement in Support at 4. Duquesne Light noted that it voluntarily self-reported this issue to Commission staff pre-investigation, and it is in the public interest to settle this matter to avoid the expense and uncertainty of litigation. *Id.* at 8. We agree that it is in the public interest to settle this matter. Therefore, we are of the opinion that other relevant factors weigh in favor of approval of the agreed upon civil penalty, as well as the other settlement terms established in the Settlement.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

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 and the Commission's Regulations and Policy Statements, we find that the proposed Settlement between I&E and Duquesne Light is in the public interest and merits approval. We will therefore approve the Settlement consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

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 modification.

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 shall pay a civil penalty of Fifty Thousand Dollars (\$50,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated with the certified check or money order 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 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 Light’s customers in Pennsylvania, consistent with this Opinion and Order.

4. That, in addition to the civil penalty, Duquesne Light Company agrees to promptly take the numerous corrective actions as expressly set forth in the Settlement Agreement that have yet to be implemented, if any.

5. That Duquesne Light Company shall file a notice of compliance documentation with the Secretary of the Commission, accompanied by a verification,

confirming that it has taken the corrective actions as set forth in the Settlement Agreement, and serve a copy of this filing on the Bureau of Investigation and Enforcement, within thirty (30) days of completion of this action.

6. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

7. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and Duquesne Light Company's notice and verification of compliance with Ordering Paragraph Nos. 4 and 5 above.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2023

ORDER ENTERED: December 7, 2023