

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**BART DUNSTAN
V.
DUQUESNE LIGHT COMPANY**

**PUBLIC MEETING
March 12, 2009
2051332-ALJ*
Docket No. F-2008-2051332**

MOTION OF COMMISSIONER KIM PIZZINGRILLI

Before the Commission for consideration is the Initial Decision (ID) of an Administrative Law Judge (ALJ) approving a settlement agreement negotiated by the parties. This agreement provides payment terms pursuant to which the Complainant can retire his overdue account balance. I note that the utility requested that the terms of the settlement be placed into the record "so this counts as a payment agreement from the PUC". NT at 8.

The Commission is generally prohibited from establishing any payment agreement that is not compliant with mandates set forth in the Responsible Utility Customer Protection Act (Chapter 14), 66 Pa. C.S. §§ 1401 *et seq.* The Commission has determined that the requirements of Chapter 14 prevent it from directing or enforcing a second or subsequent payment agreement, absent evidence of a change in income or a significant change in circumstances. 66 Pa.C.S. §1405(d). See also *Implementation Order*, entered March 4, 2005 at Docket No. M-00041802F0002; *Leech v. T.W. Phillips Gas and Oil Co.*, Order entered August 9, 2005 at Docket No. F-01638980; *Scott v. Columbia Gas of Pa., Inc.*, Order entered June 23, 2005 at Docket No. Z-01750768.

These limits imposed upon the Commission do not extend to utilities and the Commission has a continuing policy of encouraging settlements between the utilities and their customers. Here, the ALJ placed the terms of the settlement into the record and based his ID on various statements by the utility's attorney regarding the income level and household size of the Complainant. These unsworn statements do not meet the requirement for oral testimony provided in our regulations and, thus, cannot be relied upon as evidence to support an evaluation of the settlement terms for compliance with Chapter 14. See 52 Pa. Code § 5.411. In order to accommodate the company's request that the settlement be considered a PUC agreement, a full evidentiary hearing, containing sworn testimony and exhibits would be necessary to ensure that a fully developed record could be considered to determine whether the agreed to payment terms were consistent with the statute.

While I agree with the ALJ's ultimate conclusion that the settlement should be approved in the public interest; the settlement cannot be considered a PUC payment agreement and the ID should be modified accordingly. The ID is simply a memorialization of the payment terms agreed to by the parties.

The Commission continues its policy of promoting settlements and encourages parties to negotiate payment terms outside the restrictions of Chapter 14. However, in cases where an agreement, satisfying the formal complaint allegations, is negotiated the appropriate and preferred course of action is for the utility to file a certificate of satisfaction so that the case can be closed

administratively. The filing of a certificate of satisfaction for settlements in these types of cases, preserves the parties ability to enter into payment agreements, protects the public interest and disposes of cases in a manner that ensures the efficient utilization of administrative resources.

Finally, the ALJ, *sua sponte*, added an additional term to the negotiated settlement, namely the waiver of late payment charges. Since the ID is not a Commission established payment agreement, it is not appropriate for conditions to be added that were not explicitly agreed to by the parties. However, I note that the company, in its management discretion, may waive these fees to the extent they apply.

THEREFORE, I MOVE THAT:

1. The Initial Decision is modified, consistent with this Motion.
2. The Office of Special Assistants prepare an Order consistent with this Motion.

March 12, 2009
Date

KIM PIZZINGRILLI, COMMISSIONER