

PENNSYLVANIA UTILITY LAW PROJECT

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August 31, 2011

VIA ELECTRONIC FILING (E-FILING)

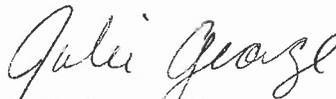
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pa. PUC v. PPL Electric Utilities Corporation
Docket No. M-2011-2196342

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding, please find the comments of the Pennsylvania Utility Law Project. These comments are submitted pursuant to the Commission Opinion and Order in this proceeding entered August 11, 2011.

Very truly yours,


Julie George, Esq.

Enclosures
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania PUC v.
PPL Electric Utilities Corporation**

Docket No. M-2011-2196342

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing Comments upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA FIRST CLASS MAIL

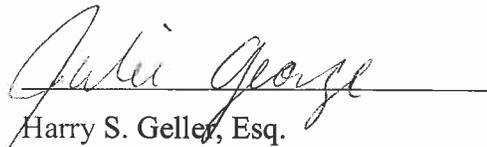
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Dated: August 31, 2011

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

**Pa. Public Utility Commission, Law
Bureau Prosecutory Staff v. PPL
Electric Utilities Corporation**

Docket No. M-2011-2196342

COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT

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Dated: August 31, 2011

I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) respectfully submits these comments regarding the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Settlement Agreement between PPL Electric Utilities Corporation (“PPL”) and the Law Bureau Prosecutory Staff (“Law Bureau”).¹ PULP, part of the Pennsylvania Legal Aid Network, a nonprofit network of legal service providers representing the interests of low income Pennsylvanians, is the specialized project providing statewide representation, advice, and support in energy and utility matters on behalf of low income, residential utility consumers.

PULP submits these comments pursuant to the Opinion and Order entered on August 11, 2011.² PULP’s comments address both the financial and non-financial terms of the Settlement Agreement. The Settlement Agreement directs PPL to contribute \$10,000 to its Operation HELP program, pay \$5,000 in a civil penalty³, provide additional staff training and address a number of internal procedural deficiencies.

Operation HELP provides emergency financial aid to pay electric bills for families with financial hardships. Operation HELP is funded by customers, employees and PPL and is administered by a network of local agencies. The contribution to Operation Help is in the public interest and PULP supports its inclusion in this Settlement Agreement; however we respectfully submit that a greater financial contribution by PPL is required. As an alternative to Operation HELP, or as an additional contribution, we strongly encourage the Commission to consider the direct public interest benefits to be achieved by directing funds to a variety of activities, most

¹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342 (Order entered August 11, 2011).

² Ordering paragraph number 4 of the Commission’s Opinion and Order entered August 11, 2011 states, “That, subsequent to the Commission’s review of the comments filed in this proceeding, a final Opinion and Order will be issued.”

³ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342 (Settlement Agreement dated May 20, 2011) at para 31(g).

specifically, the Low-Income Usage Reduction Program (“LIURP”). Funds spend through the LIURP program constitute win-win-win propositions. The public wins because conservation occurs. The customer wins because his or her bill is lowered, and other ratepayers win because Universal Service costs are lowered. PULP supports the Commission in promoting and approving settlement agreements which provide that settlement proceeds are paid into LIURP and other Universal Service programs. Utility company contributions to such funds will act most effectively to advance the public welfare.

These comments address the adequacy of the financial sanction as well as the lack of added value regarding some of the non-financial terms. Any settlement that resolves alleged unlawful conduct by a company must act as a true deterrent for the company and the entire industry. The application of settlement proceeds should clearly benefit customers and not the company. Similarly, the internal modifications to practices and procedures should heighten the level of service and protection customers receive, not mimic existing requirements or duplicate settlement terms agreed upon in previous cases. PULP is concerned that this settlement fails to achieve these goals and should either be rejected or modified by the Commission.

PULP thanks the Commission for this opportunity to be heard in this proceeding.

II. BACKGROUND

This proceeding involves the death of Warren Candler, an 85 year old disabled veteran who resided at 304 West 5th Street, Unit C, Quarryville, Pennsylvania. Mr Candler, a PPL customer whose service had been terminated on June 10, 2010, died on on June 25, 2010. On June 28, 2010, Mr. Candler’s daughter called PPL and informed the company of his death. The Law Bureau became aware of this incident because of the *Interim Reporting Requirement for*

*Regulated Electric and Gas Utilities to File Reports Regarding Any Incidents Involving Death at Locations where Residential Utility Service has been Terminated.*⁴

The Prosecutory Staff alleged PPL may have violated Chapter 56 provisions during contacts with the customer of record prior to termination of electric service at the residence.

Upon completing the initial review, the Commission's BCS determined that PPL representatives may have violated Chapter 56 provisions concerning dispute and termination procedures, including, *inter alia*, failure to provide reasonable and adequate service, failure to advise the customer of his opportunity to contact the Commission, failure to diligently attempt to negotiate a payment arrangement, failure to refer the customer to available customer assistance programs, failure to discuss the customer's account with his protective services program representative and failure to properly determine satisfaction at the conclusion of the customer contacts.⁵

Commission Staff and counsel for PPL conducted settlement negotiations that resulted in the Agreement filed on May 20, 2011.⁶ The Settlement requires PPL to pay a \$5,000 civil penalty, make a \$10,000 contribution to Operation HELP and address certain internal procedural deficiencies more fully discussed below. PPL shall not seek recovery of any of these monies in any future rate proceeding. The Commission opened the Settlement Agreement up to public comment.⁷

⁴ These reporting requirements were incorporated in the final regulations concerning Chapter 56 at 52 Pa. Code §56.100(j). The final Order was entered on June 13, 2011 at Docket No. L-00060182.

⁵ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342, (Settlement Agreement filed May 20, 2011) at para 17.

⁶ *Id.*

⁷ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342, (Order entered August 11, 2011).

III. COMMENTS

PULP supports and endorses the Commission's ongoing practice of approving settlement agreements which (1) direct public utility companies to pay money into their LIURP or other Universal Service programs; and (2) promote changes and improvements to internal company procedures affecting customer rights and protections. PULP's support is based on the fact that these payments and internal changes are in the public interest.

However, PULP submits that settlement agreements are most effective when they include significant sanctions which serve as a strong deterrent and which most effectively serve the public interest. This includes directing the payment of these monies towards those Universal Service programs that benefit the neediest customers the most and utility companies the least, as well as toward internal improvements and corrections that are not duplicative of the utility's prior obligations, responsibilities, and efforts. PULP's support for the Settlement Agreement is based on the fact that these payments are in the public interest, solidly grounded on both legal and public policy foundations.

A. Commission Authority to Promote and Modify Settlements

The Commission has clear authority to direct and modify both the financial and non-financial terms of a settlement agreement. The general powers granted in Title 66, Chapter 5 and the specific charge contained in Title 66, Chapter 15 to ensure public utilities provide safe and reasonable service combine to provide authority to the Commission to review and approve settlement agreements, both formally and informally.⁸ These general powers are made explicit in Title 52, Chapters 3 and 5 of the Pennsylvania Code, wherein the Commission expressly reserves the right to review settlement agreements.⁹

⁸ 66 Pa.C.S. §§ 501, 504-506, and 1501.

⁹ 52 Pa. Code §§ 3.113 and 5.232.

Commission regulations also support the actions in this proceeding. The Commission has made it a longstanding policy to encourage settlement agreements between parties on grounds of administrative efficiency.¹⁰ The Commission adopted a Policy Statement which established standards for determining whether a fine for a violation is appropriate, as well as if a proposed settlement, both financial and non-financial terms, is reasonable and in the public interest.¹¹ This Policy Statement provides flexibility to the Commission and parties in crafting settlement agreements, a flexibility which supports the Commission's ability and authority to modify settlement agreements so they are in the public interest, including directing settlement proceeds into public utility company Universal Service programs and adjusting internal procedures beyond existing requirements. In promulgating the Policy Statement codified at 52 Pa. Code §69.1201, the Commission stated:

Commission precedent may be considered in both litigated and settled cases; however, parties in settled cases will have flexibility in determining whether and how this factor should be applied within the specific facts of the case in order to develop innovative solutions and to reach an equitable agreement.¹²

B. PULP's Recommended Modifications of Financial Terms of Settlement

Prior to approving a settlement agreement, the Commission must ensure it is in the public interest.¹³ PULP supports the \$10,000 contribution to Operation HELP, but submits that a greater amount is warranted in these circumstances. Operation HELP reduces the overall cost of service for residential ratepayers now and into the future. Unpaid arrearages eventually turn into uncollectible expenses that the utility passes on to its residential customers in the form of higher

¹⁰ 52 Pa. Code § 5.231(a).

¹¹ The *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* became final on December 22, 2007, upon publication in the Pennsylvania Bulletin. See 37 Pa.B. 6755 (December 22, 2007).

¹² *Id* at 6758 (December 22, 2007).

¹³ *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768, (Order entered January 7, 2004).

rates. Operation HELP helps low-income customers reduce their past arrearages and prevents current arrears from getting out of hand and becoming uncollectible accounts.

While PULP supports the Commission's decision to direct settlement funds to Operation HELP, we suggest that since funds directed towards this organization are a benefit to the utility as well as to the customer, other targeted beneficiaries, which will not redirect funds to the benefit of the sanctioned company, should also be considered by the Commission. A settlement agreement directing the payment of funds into LIURP accomplishes this goal. There are many reasons directing the payment of funds into LIURP is in the public interest.

First, LIURP cost-effectively reduces energy consumption among low income families. The Commission's own analysis concludes that LIURP treatment can result in significant reductions in energy consumption.¹⁴ Moreover, LIURP reduces energy consumption in a cost effective manner, meaning that the money spent on the program is a smart investment, not just a means to reduce energy consumption.¹⁵

Second, LIURP reduces the overall cost of service for residential ratepayers now and into the future. Other residential ratepayers benefit from the reduced energy consumption of low income households achieved through LIURP because other residential customers contribute to the funding of the Universal Service programs that serve low income families. Reducing energy consumption results in lower Universal Service costs.

Third, LIURP has a beneficial economic effect in the Commonwealth. Weatherization programs, like LIURP, have been shown to produce substantial economic benefits in the communities in which they exist. Much of the economic impact from weatherization programs

¹⁴ See on the Commission's website the annual *Reports on Universal Service Programs and Collections Performance* by the Bureau of Consumer Services documenting consistent household energy savings as a result of LIURP treatment. Found at http://www.puc.state.pa.us/general/publications_reports/universal_service_reports.aspx.

¹⁵ John Shingler, *Long Term Study of Pennsylvania's Low Income Usage Reduction Program: Results of Analyses and Discussion*, Consumer Services Information Project of Penn State University, January 2009, at p. 47.

like LIURP is in the creation of good, stable jobs; these jobs have good wages, which circulate back into the local economy and further stimulate local economic activity and development.

Fourth, LIURP can improve the health and well-being of low income families.

Households with extra money from LIURP treatment can use these funds to prevent termination of service or redirect them to other life-essential necessities, thereby improving the welfare of the entire household. As noted earlier, participation in LIURP can produce significant energy usage reductions for a household. LIURP households, because of the money saved from energy usage reductions, have additional resources with which to purchase clothing, nutritious food, and medicine. As a result, household members may enjoy improved health and well-being.

Fifth, LIURP provides a long-term benefit to the customer without rewarding the utility.

The Commission serves the public interest most by directing settlement payments into this Universal Service program. When settlement funds are directed Operation HELP, or any hardship fund, the benefit goes to both the customer and the utility. By directing the funds from a settlement agreement to LIURP, customers receive the full benefit of the utility's payment made in compensation for the alleged violation, without recycling the money back to the company. By receiving LIURP funds, rather than a one-time hardship fund payment, customers are able, through weatherization, to decrease usage on an on-going, long-term basis.

PULP supports the Prosecutory Staff's position that any settlement that resolves this type of unlawful conduct must act as deterrent not only for the erring company, but also for the entire industry.¹⁶ Operation Help is worthy and beneficial for low-income customers. However, PPL's payment of its contribution into a program that ultimately returns the funds to itself is not the most effective sanction or deterrent. "The end result is simply that the Company is merely

¹⁶ *Pennsylvania Public Utility Commission Prosecutory Staff v. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power company d/b/a FirstEnergy, M-2009-2112849, (September 9, 2009).*

‘paying itself’ the penalty amount...this type of settlement has no deterrent effect.’¹⁷ PULP respectfully suggests that the currently proposed financial settlement amounts of the \$5,000 civil penalty and \$10,000 Operation HELP contribution are inadequate to have a deterrent effect and that the Company be directed to increase its contribution by an additional \$10,000 directed towards LIURP.

C. PULP’s Support for the Non-Financial Terms of Settlement

The Settlement Agreement also provides for non-financial terms, many of which PULP supports. Specifically, the terms of this Settlement Agreement include:

- Training to call center personnel, including Customer Service Representatives (CSRs), to review customer confidentiality policy and exceptions that allow for disclosure of customer information.
- Training to Customer Contact Center (CCC) supervisors and CSRs to not enter “zero” as a household’s income in the web-based system, Customer Transition Program (CTP), thereby precluding an OnTrack referral.
- Training CSRs in assessing customer satisfaction and fully informing customers of dispute procedures and rights.
- Installation of a voice analytics system to enhance ability to monitor customer calls and strengthen compliance with Commission regulations
- Revise procedures so residential customers with a high balance can immediately speak to a representative to discuss a payment arrangement, instead of requiring a separate telephone contact.
- PPL will meet with various Area Agency of Aging offices to discuss confidentiality policy, low-income programs, collection procedures, and billing and payment options. PPL will specifically inform AAA offices that they qualify for as an exception on the prohibition of releasing customer information to third parties.
- PPL will provide written proof to the Bureau of Consumer Services (“BCS”) for CSR training regarding confidentiality policies, dispute procedures and evaluating customer satisfaction.
- PPL will provide written proof to BCS for AAA training.
- PPL will provide BCS with monthly call monitoring reports for six months.

Each of these provisions is a positive step forward to ensure PPL’s compliance with Commission regulations and increase the customer protections available to PPL customers.

¹⁷ *Pennsylvania Public Utility Commission Prosecutory Staff v. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power company d/b/a FirstEnergy, M-2009-2112849*, Comments of the Pennsylvania Public Utility Commission Prosecutory Staff (September 9, 2009) at 3.

PULP supports the intent of these settlement terms and agrees they are helpful in improving the quality of consumer protections received by PPL customers. PULP specifically endorses the following:

First, the installation of a new voice analytics system to better monitor customer calls will allow PPL to more quickly identify areas of non-compliance and provide their employees with the additional training needed to bring them in line with PUC regulations. Earlier identification of problems leads to earlier remedies, benefitting PPL customers and serving the public interest.

Second, PULP agrees that any PPL customer with a high balance seeking a payment arrangement should be able to speak to a representative qualified to assist him or her immediately. Requiring a separate telephone contact delays the customer's ability to resolve the dispute. The delay may unnecessarily result in additional charges to the customer's account or termination. PULP supports revision of PPL procedures to provide an immediate payment arrangement discussion and agrees this is in the public interest.

Third, PULP supports all terms of this Settlement Agreement that require written proof to be provided to the Bureau of Consumer Services regarding training and updated procedures. PULP supports PPL providing BCS with monthly call monitoring reports. This oversight by BCS is appropriate and in the public interest.

D. Suggested Modifications to the non-financial terms of the Settlement Agreement

While PULP is generally supportive of the non-financial terms of the settlement agreement, PULP has a few concerns.

For example, PPL's CTP is currently set up to automatically refer low-income customers to OnTrack. PULP supports this efficient promotion of Universal Service programs and encouragement for low-income customers to take advantage of the bill assistance programs that

PPL has available. However, the CTP is currently structured to preclude a referral of any customer who reports \$0 income. The theory behind this policy is that it would be a futile act to refer a 'zero income' customer into any payment plan, including On Track, since there are no household resources to support payments. PULP is concerned that the proposed correction fails to focus on the underlying problem with PPL policy; and therefore does not provide an appropriate corrective action. The proposed correction is simply not to enter "zero" as the sum in the web. PULP supports training for CSRs not to enter \$0 income when the income of a customer is unknown, thereby denying them an OnTrack referral. However, both CSR training and CTP parameters should be changed to provide an OnTrack referral *regardless* of income reported. A referral does not require PPL to accept the applicant into the OnTrack program, but it does provide PPL the opportunity to determine if those neediest customers may have only a temporary loss of income; need to be referred to LIHEAP or Operation HELP; have had a significant change in circumstances or recent medically caused loss of income. This opportunity to review the circumstances of these zero income customers is crucial. The settlement should therefore clarify that PPL is modifying its policy toward zero income customers and not simply replacing a number. The Commission should take this opportunity to encourage a change in PPL's policy and not preclude low-income customers from an OnTrack referral simply because they report having \$0 income.

Additionally, the adequacy of these settlement terms must also be evaluated in light of previous settlements and the standards for evaluating settlement terms as outlined in 52 Pa. Code §69.1201. Section 69.1201(a) of the Commission's Policy Statement directs the Commission to use these standards to determine "if a fine 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.” In evaluating reasonableness and public interest, it is helpful to review the immediate proposed settlement in light of other recent PPL settlement cases that involve similar alleged behavior. This current settlement repeats allegations of similar violations which were the subject of past settlements and which were intended to be corrected, but are now alleged to have reoccurred. PULP respectfully submits that in light of these recurring allegations, the Commission modify the terms of the proposed settlement to provide a stronger, more effective deterrent.

In recent years, PPL has been involved in two other settlement cases that involved residences whose electric service had been terminated, one involving extensive property damage and the other involving a fatality. Some of the non-financial terms of this proposed Settlement Agreement are duplicative of obligations that PPL already had already assumed under these previous agreements. Furthermore, specifically in the case of the confidentiality policy training, there appears to be the need of additional clarification in order to avoid any confusion with the settlement terms previously agreed upon.

In *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation* at Docket No. M-20092058182, a technical issue delayed posting of payment that resulted in the customer’s account appearing to be in default.¹⁸ A post-termination conversation between the customer and CSR involved no discussion of medical certification or dispute rights information. The alleged violations included ‘account terminated in error’, ‘failure to provide dispute rights’ and ‘failure to provide accurate restoration requirements.’¹⁹ One day after termination, a fire broke out at the residence resulting in the death of the resident. The settlement

¹⁸ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

¹⁹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-20092058182 (Joint Petition for Settlement Agreement dated July 2, 2009) at para 16.

(“Settlement Agreement-Lancaster”) required an updated script for recognizing dispute situations, subject to BCS review, and confidentiality policy training to CSRs to ensure no unauthorized disclosures of private information, including to a customer’s doctor calling to provide information for a medical certificate. The Settlement Agreement-Lancaster also included providing updated training materials for review and approval by BCS, an updated script regarding medical certificates, a temporary moratorium on Friday terminations, and monitored compliance with the terms of settlement.

The rights of customers who have a dispute with a company are guaranteed by Commission regulations. Those rights were intended to be strengthened by the Settlement Agreement-Lancaster. The dispute rights provision in the currently proposed settlement simply reasserts these pre-existing obligations required by both Commission regulations and Settlement Agreement-Lancaster. As such, these terms do not impose new responsibilities on the company. Thus, the required training of CSRs on proper dispute procedures and evaluation of customer satisfaction, adds no value to this Settlement Agreement as that training is already mandated and thereby does not address the most recent alleged violations by PPL.

Although the requirement for training regarding the disclosure of information to AAA representatives is new, it may conflict with the previously ordered confidentiality that has been ordered as a part of the Settlement Agreement–Lancaster. In that settlement, CSRs were to be trained to maintain customer confidentiality to any unauthorized third party, specifically medical professionals calling to provide a medical certificate on the customer’s behalf. In the present Settlement Agreement, PPL is called upon to allow for disclosure of information to all AAA representatives that call on behalf of a customer. PPL is to train both internal and external parties on this new policy.

There is the potential for conflict and confusion as to these different settlement terms, and the Commission should take this opportunity to provide guidance. Though medical professionals and AAA representatives are both third parties, a distinction must be made regarding the protective nature of the service AAA provides. AAA representatives may need to discuss a PPL customer's account to help that customer maintain service. Medical professionals do not require any account information from PPL in order to provide a medical certificate. Disclosure of account information should only be made to the benefit of the customer and limited to those protective services, like Area Agencies on Aging, who are working to maintain a customer's service.

In addition to the Settlement Agreement–Lancaster, the settlement agreement in *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation* at Docket No. M-2009-2059414, (“Settlement Agreement–Mechanicsburg”) provides even stronger support as to why many of the non-financial terms of the current Settlement Agreement do not sufficiently promote the public interest. The Settlement Agreement–Mechanicsburg case involved another allegation of inadequate explanation of medical certification and dispute rights; in this instance it involved an OnTrack customer. Post-termination, a fire broke out and destroyed six homes. The settlement terms required an updated CSR script, subject to BCS review and approval; an updated training manual, subject to BCS review and approval; CSR training regarding specific actions for termination calls; and refresher training on medical certificate procedures. These terms were agreed upon explicitly in light of past recent actions by PPL.²⁰

²⁰ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2059414 (Order entered November 23, 2009) at 5.

Immediately prior to these two 2009 settlements, PPL spent \$1 million in computer changes with a revised script for medical certificates, information on dispute processes and stronger referrals to low-income programs. PPL also spent \$250,000 on CSR training in customer disputes, medical certificates, universal service program referrals and Commission regulation compliance. The Law Bureau supporting the Settlement Agreement-Mechanicsburg, which included a \$21,000 financial penalty, stated these terms were reasonable in light of recent expenditures and changes by PPL.²¹ The Commission, in approving these contemporaneous settlement agreements, which included many similar requirements, did so in light of the changes and improvements PPL had then recently made and were required to make per these agreements.²²

In evaluating the current Settlement Agreement, the Commission should view its terms in light of the repeated allegations of similar violations in the past and modify the terms to provide a stronger, more effective deterrent. Of the non-financial settlement terms, two require clarification to avoid conflict with current confidentiality policies. Furthermore, the requirement that PPL adequately train its CSRs on customer dispute rights is duplicative of the efforts made by PPL in its computer improvements, as well as per Settlement Agreement-Lancaster *and* Settlement Agreement-Mechanicsburg. The fact that this provision was a part of two previous settlement agreements, yet still persists, clearly demonstrates a deficiency that had not been adequately addressed by PPL.

The alleged violations in this case are significant enough to require substantive deterrents. By failing to properly provide a customer with information regarding low-income bill

²¹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2059414 (Response of Law Bureau Prosecutory Staff to Public Comments dated October 21, 2009).

²² *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009) at 17.

assistance programs or dispute procedures, Mr. Candler was essentially stripped of a significant number of his consumer protections. The Settlement Agreement calls for a \$5,000 civil sanction, \$10,000 contribution and increased training. Considering the previous settlements discussed above, this is hardly adequate, nor can it be expected to provide the desired deterrent to PPL or the industry. In this regard, the Settlement Agreement falls short.

In addition, while the change to the company's use of their CTP to improve referrals to OnTrack, the immediate availability of a CSR to discuss payment arrangements, and the oversight provided by BCS provide improvements to the service PPL customers will receive, some other settlement terms that address training and system changes are duplicative of previous settlement terms in similar cases before the PUC.

The Pennsylvania Code lays out the standards and factors by which the Commission must judge whether a settlement is reasonable and in the public interest.²³ In settlement cases, these standards also apply, though parties are afforded some flexibility in reaching amicable resolutions as long as the settlement is in the public interest.²⁴ In this case, each standard must be evaluated not only based on the circumstances of these alleged violations, but based on whether similar terms have achieved the desired result in the past.

The first standard the Commission must consider is whether the conduct was of a serious nature, administrative errors warranting a lower penalty than willful fraud.²⁵ Although there is no willful fraud alleged in this case, the Law Bureau has stated that the Commission deems any termination of essential utility service to be a serious concern.²⁶ In each of the cases discussed in

²³ 52 Pa. Code §69.1201.

²⁴ 52 Pa. Code §69.1201(b).

²⁵ 52 Pa. Code §69.1201(c)(1).

²⁶ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2011-2196342 (Law Bureau Prosecutory Staff Statement in Support of Settlement Agreement dated May 20, 2011)(Hereafter "LBPS Statement") at para 7.

these comments, PPL failed to provide customers with information that could have potentially allowed them to avoid termination.

The second standard to consider is whether the consequences of the behavior in question were of a serious nature.²⁷ Again, the termination of electric service to a residential customer is deemed by the Commission to be a serious event.²⁸

The third standard regarding intent does not apply to settlement cases.²⁹

The fourth standard is “whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision.”³⁰ This standard is particularly relevant in this case. In evaluating the non-financial terms of the 2009 settlement agreements, the Commission may have justifiably felt they met the fourth standard, despite some recurring terms, as they were approved contemporaneously and on the heels of significant internal upgrades at PPL. In the present case it calls into question the appropriateness of simply repeating those terms. PULP respectfully submits that since previous efforts to modify internal practices have not succeeded in preventing similar conduct, the fourth standard now requires stronger enforcement and sanctions. Because many of these terms are duplicative of previous obligations, stronger deterrents are necessary.

The fifth standard to consider is the number of customers affected and the duration of the violation.³¹ Given the procedural nature of the alleged violations in this case, it is likely that they have affected larger number of customers. This assumption, though not proven nor alleged in this

²⁷ 52 Pa. Code §69.1201(c)(2).

²⁸ LBPS Statement at para 8.

²⁹ 52 Pa. Code §69.1201(c)(3).

³⁰ 52 Pa. Code §69.1201(c)(4).

³¹ 52 Pa. Code §69.1201(c)(5).

case, can reasonably be taken into account considering the repeated necessity to include dispute process training in settlement agreements.

The sixth standard to consider is the compliance history of the regulated entity which committed the violation and the seventh standard to consider is whether the regulated entity cooperated with the Commission's investigation. "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."³² PPL has been cooperative with the Law Bureau and Commission staff in the investigations for all settlement cases; however, the Commission should consider that these are recurring violations.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations.³³ As discussed earlier, the total financial obligation under the current terms of this Settlement Agreement is \$15,000. PPL is one of the largest electric distribution companies in the Commonwealth. Given its size, this amount is not adequate to provide the proper incentive for the company to address these flaws customer protection.

The ninth factor is considering past Commission decisions in similar cases.³⁴ Again, it is when the Commission looks at past decisions, that it becomes clear that stronger protections or harsher sanctions must be included in the Settlement Agreement.

The tenth standard asks the Commission to consider any other relevant factors.³⁵

Something different and innovative must be included in the Settlement Agreement to achieve the public interest required to approve this settlement. Additional, not duplicative,

³² 52 Pa. Code §69.1201(c)(6).

³³ 52 Pa. Code §69.1201(c)(8). The size of the utility may be considered to determine an appropriate penalty amount.

³⁴ 52 Pa. Code §69.1201(c)(9).

³⁵ 52 Pa. Code §69.1201(c)(10)

consumer protections or a significantly higher deterrent must be incorporated into the Agreement.

PULP suggests any or all of the following:

- Increasing the contribution to universal service and directing the funds to LIURP
- Extending the moratorium on Friday terminations until January 1, 2018.³⁶
- Establishing a work group, including outside stakeholders like the Office of Consumer Advocate, AAA representatives, BCS and PULP, to help develop and review training materials and scripts

Incorporating these terms will place an appropriate obligation on PPL proportionate to the alleged violations, and in light of their repetition.

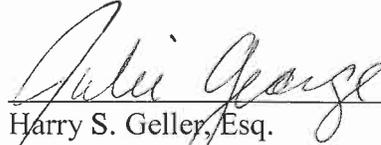
IV. CONCLUSION

PULP supports the Commission in promoting and approving settlement agreements which provide that settlement proceeds are paid into LIURP and other Universal Service programs. We strongly encourage the Commission to consider the direct public interest benefits to be achieved by directing funds to LIURP. Utility company contributions to such funds will act most effectively to advance the public welfare. PULP argues that the amount of the financial sanction is inadequate given the history of PPL settlement cases before the Commission and the similar violations alleged in those cases. Those cases have already mandated similar settlement provisions resulting in a lack of value-added regarding some of the non-financial terms of this settlement. Any settlement that resolves unlawful conduct by a company must act as a true deterrent for the company and the entire industry. The financial deterrent must be significant and the procedural and customer service changes must supplement existing obligations.

³⁶ The moratorium on Friday terminations was part of Settlement Agreement-Lancaster and set to expire on January 1, 2013. Although a Friday termination was not an issue in this case, given the similarities in alleged violations between Docket No. M-2009-2058182 and this one, PULP submits that extending this protection is appropriate and in the public interest.

PULP thanks the Commission for this opportunity to submit these comments on this matter of importance to low income families throughout Pennsylvania.

Respectfully submitted,

A handwritten signature in cursive script that reads "Julie George". The signature is written in black ink and is positioned above the typed name.

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