**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 30, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

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| Pennsylvania Public Utility Commission,  Law Bureau Prosecutory Staff  v.  Columbia Gas of Pennsylvania, Inc. |  | C-2010-2071433 |

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# Opinion and Order

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Settlement Agreement (Settlement) filed on July 10, 2012, by the Commission’s Law Bureau Prosecutory Staff (Prosecutory Staff)[[1]](#footnote-1) and Columbia Gas of Pennsylvania, Inc. (Columbia) (collectively, the Parties), with respect to a formal Complaint filed by the Prosecutory Staff against Columbia on April 8, 2010 (Complaint). For the reasons stated herein, we will approve the Settlement.

**History of the Case**

On September 30, 2008, Columbia informed the Commission’s Bureau of Consumer Services (BCS) that a corrupt database in its bill viewer program temporarily had allowed the bills of twenty-two customers to be viewed by other customers on Columbia’s website between August 25 and September 3, 2008. Upon discovery of the problem on September 3, 2008, Columbia immediately disabled the system and began an investigation to determine the cause of the problem. The release of the customer bills in question included the release of the following standard billing information: customer name, service address, account number, gas consumption, past payments, payment due dates, current balance and current charges. No other confidential information, such as social security numbers, bank account information, credit card information, or telephone numbers, was released. Settlement at 1-2.

During the course of its investigation, Columbia determined that the bills of twenty-two customers had been viewed by other customers who were attempting to view their own bills on Columbia’s website. Columbia sent letters to each of these twenty-two customers, advising them of the situation, describing the steps that Columbia had taken to address the matter, and providing them with information regarding the prevention of identity theft. Of these twenty-two customers, five previously had exercised their option under 52 Pa. Code § 62.78 to restrict the release of their customer information. *Id*. at 2‑3.

After completing its investigation, Columbia notified BCS about the release of the customer information. In response to these events, the Commission’s Prosecutory Staff filed a formal Complaint against Columbia on April 8, 2010. The Complaint alleged that Columbia’s release of confidential customer billing and account information violated Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501, and Section 62.78 of the Commission’s Regulations, 52 Pa. Code § 62.78. *Id.* at 3-4. The relief requested by the Complaint included a civil penalty of $44,000 and a requirement that Columbia review its operational procedures and implement necessary changes to prevent the release of confidential customer information in the future. Complaint at 4.

Following the filing of the Complaint, the Prosecutory Staff and Columbia began to discuss the possibility of settling the matter. As a result of negotiations between the Prosecutory Staff and Columbia, the Parties agreed to resolve their differences without litigation in a manner that minimizes concerns regarding future events of a similar nature. The Parties request that the Commission approve the proposed Settlement as being in the public interest. Settlement at 5-7.

**Terms of the Settlement**

The proposed Settlement does not constitute an admission by Columbia of any of the Prosecutory Staff’s findings or the claim that these events constitute an act or omission in violation of the Code or the Commission’s Regulations. Columbia notes that the Prosecutory Staff’s allegations overlook the fact that Columbia promptly remedied the problem in its software and subsequently replaced the information technology (IT) company providing software support for Columbia’s information retention and retrieval functions. Columbia further notes that it proactively contacted the affected customers; that no critical customer information was compromised; and that no affected customer has filed a complaint against Columbia. *Id.* at 4-5. The Settlement acknowledges that Columbia already had taken remedial action to address the concerns addressed by the Settlement prior to the filing of the Complaint. *Id*. at 6. Nevertheless, Columbia agreed to the Settlement terms in order to avoid costly and lengthy litigation. *Id.* at 5.

The Settlement reflects the Parties’ agreement to the entry of a Commission Order directing Columbia (1) to pay a civil penalty of $5,000, and (2) to continue oversight, implementation and management of software programs and reliance on information technology expertise, including any necessary staff training and internal management procedures, sufficient to prevent the unauthorized release of customer information in the future. *Id.* at 6.

In consideration of Columbia’s agreement to these provisions, the Prosecutory Staff agrees to forbear from instituting any formal complaint or informal investigation that relates to the release of the standard billing information as described in the Settlement. *Id.* at 6-7. Nothing in the Settlement affects the Commission’s authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incidents addressed by the Settlement, except that no further enforcement action, including but not limited to civil penalties, shall be imposed by the Commission for any of the actions addressed by the Settlement. *Id.* at 7.

The proposed Settlement is conditioned on the Commission’s approval without modification to any of its terms or conditions. If the Commission modifies the proposed Settlement, either Party may elect to withdraw from the Settlement within fifteen days of the entry of such a tentative or final Commission Order.  *Id*. at 7.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). Because a presiding officer has not been assigned to this proceeding, the terms of the proposed Settlement are to be reviewed by the Commission pursuant to 52 Pa. Code § 5.232(g).

The Commission has promulgated a 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*), that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. The Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission’s *Policy Statement*. Settlement at 8, 10. The Settlement includes an analysis of the factors to be considered under the Commission’s *Policy Statement*. *Id*. at 8-9.

The first factor we consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.* The Parties submit that the alleged conduct in this case involved the inadvertent release of standard billing information, which does not rise to the level of willful fraud or misrepresentation. Settlement at 8-9. While we view customer privacy as a serious matter, the conduct at issue in this proceeding was inadvertent and was quickly corrected. Accordingly, we agree that the conduct at issue was not of a serious nature within the context of the *Policy Statement*. Consideration of this factor therefore supports a lower penalty amount.

The second factor we consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). The Parties submit that the Parties have not been apprised of any adverse consequences to any of the twenty-two affected customers attributable to the release of their standard billing information. The Parties note that none of the affected customers have filed a complaint against Columbia in any forum related to the release of billing information. Settlement at 9. Based on the factual allegation of the Settlement, we agree that it does not appear that there have been any adverse consequences resulting from the release of the customer billing information in this instance. Consideration of this factor accordingly supports a lower penalty amount.

The third factor, whether the conduct was intentional or unintentional, is not applicable here because it pertains only to litigated proceedings. 52 Pa. Code

§ 69.1201(c)(3).

The fourth factor is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). The Parties submit that Columbia has corrected the software malfunction, replaced its IT provider, and agreed to modify its internal procedures, thereby satisfying the fourth factor to be considered under the *Policy Statement*. Settlement at 9. We agree. Consideration of this factor supports a lower penalty amount.

The Parties state that all of the remaining factors in the *Policy Statement* were considered in the process of negotiating the Settlement, but were not particularly relevant to this proceeding. Settlement at 9. The Parties state that the Settlement recognizes Columbia’s good faith efforts to comply with the Commission’s Regulations. *Id*. Although the Parties did not specifically address the remaining factors in the *Policy Statement*, we will do so briefly.

The fifth factor we consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Here, only twenty-two customers were affected, and the violation was quickly discovered and corrected by Columbia. Accordingly, consideration of this factor supports a lower penalty amount.

The sixth factor relates to the utility’s compliance history with the Commission. 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). We have reviewed our records and found only three other cases in which Columbia has been ordered to pay a civil penalty during the last five years. In *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.,* Docket No.   
M-2009-15053996 (Order entered August 3, 2010), we approved a settlement in which Columbia agreed to pay a civil penalty of $10,000 to resolve allegations that it failed to keep adequate maps and records of its distribution system. In *White v. Columbia Gas of Pennsylvania, Inc.,* Docket No. F-2009-2096158 (Order entered February 26, 2010), Columbia was ordered to pay a civil penalty of $250 because it failed to provide actual meter readings to a customer as frequently as is required by our Regulations. Finally, in *Harris v. Columbia Gas of Pennsylvania, Inc.,* Docket No. C-2011-2241198 (Order entered January 20, 2012), Columbia was ordered to pay a civil penalty of $500 for failing to provide reasonable and adequate customer service in accordance with its tariff and Commission Regulations. On the whole, we find that Columbia has a good compliance history with the Commission, which supports a lower penalty amount.

The seventh factor relates to whether the utility cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). The Parties state that Columbia was cooperative and pro-active in addressing the Prosecutory Staff’s concerns. Settlement at 6. Consideration of this factor supports a lower penalty amount.

The eighth factor involves consideration of whether the penalty amount is sufficient to help deter future violations. 52 Pa. Code § 69.1201(c)(8). Here, Columbia has agreed to pay a civil penalty of $5,000. Given the liability to which a utility could be exposed as a result of the unauthorized release of customer information, independently of any civil penalties imposed by the Commission, we find that the proposed penalty is sufficient to help deter future violations in this instance.

The ninth factor examines whether the results of a proposed settlement are consistent with past Commission decisions in similar situations. 52 Pa. Code

§ 69.1201(c)(9). Based on our review of recent Commission-approved settlements, we find the proposed Settlement consistent with past Commission decisions in similar situations.

The tenth standard provides that the Commission may consider other relevant factors in assessing a penalty. 52 Pa. Code § 69.1201(c)(10). We are not aware of any other relevant factors.

Based on the foregoing, we find that the proposed civil penalty of $5,000 is consistent with the *Policy Statement*. Although the unauthorized release of customer information is a serious matter, in this instance the inadvertent release was limited to a small number of customers, and was quickly discovered and corrected by Columbia. When considering the appropriateness of a financial penalty, we are cognizant of the fact that the primary purpose of a penalty is to influence future behavior and to ensure that similar events are avoided in the future. Here, the non-financial terms of the proposed Settlement appropriately ensure that Columbia’s procedures are revised so that customer information will not be inadvertently released in the future.

**Conclusion**

Based on the above discussion, we find that the proposed Settlement is in the public interest and consistent with our *Policy Statement*; **THEREFORE,**

**IT IS ORDERED:**

1. That the Settlement Agreement filed on July 10, 2012, by the Commission’s Law Bureau Prosecutory Staff and Columbia Gas of Pennsylvania, Inc., is approved.

2. That Columbia Gas of Pennsylvania, Inc. shall pay a civil penalty of Five Thousand Dollars ($5,000) within twenty (20) days of the entry of this Opinion and Order by sending a certified check payable to the Commonwealth of Pennsylvania addressed to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

3. That Columbia Gas of Pennsylvania, Inc. shall not claim or include any portion of this civil penalty in any future rate proceeding.

4. That Columbia Gas of Pennsylvania, Inc. shall continue oversight, management, and implementation of software programs and reliance on Information Technology expertise sufficient to prevent incidents of the nature covered within the Settlement Agreement from occurring in the future. Such ongoing commitment shall include any necessary staff training and internal management procedures.

5. That a copy of this Opinion and Order shall be served on the Commission’s Office of Administrative Services, Financial and Assessment Section.

6. That upon the payment of the civil penalty required by Ordering Paragraph No. 2, above, this proceeding shall be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 30, 2012

ORDER ENTERED: August 31, 2012

1. After the Complaint in this case was filed, the Law Bureau’s prosecutory functions were transferred to the Bureau of Investigation and Enforcement. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices,* Docket No.   
   M-2008-2071852 (Order entered August 11, 2011). [↑](#footnote-ref-1)