



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
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Bp8# 2165364

April 1, 2014

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

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**RE: Pennsylvania Public Utility Commission, Law Bureau
Prosecutory Staff v. Duquesne Light Company;
Docket No. M-2014-2165364**

Dear Ms. Chiavetta:

Enclosed for filing are the original and one copy of the Settlement Agreement in the above-captioned proceeding. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

If you have any further questions regarding this matter, please contact me at 717-783-3459.

Sincerely,

Terrence J. Buda
Assistant Counsel

Enclosures

cc: As per Certificate of Service

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PENNSYLVANIA PUBLIC UTILITY COMMISSION,
LAW BUREAU PROSECUTORY STAFF INFORMAL INVESTIGATION OF
DUQUESNE LIGHT COMPANY'S REAL PROPERTY ACQUISITION and
DISPOSITION PRACTICES

SETTLEMENT AGREEMENT

I. Introduction

1. The Parties to this Settlement Agreement (Agreement) are the Pennsylvania Public Utility Commission's (Commission) Law Bureau Prosecutory Staff (Prosecutory Staff), P.O. Box 3265, Harrisburg, PA 17105-3265, and Duquesne Light Company (Duquesne or Company), 411 Seventh Avenue, 16th Floor, Pittsburgh, PA 15219. Duquesne is a certificated electric distribution company in Pennsylvania providing these services to residential, commercial, and industrial customers.

2. This matter concerns an informal investigation regarding Duquesne's compliance with the Public Utility Code and Commission regulations. As a result of negotiations, the Parties have agreed to resolve this matter as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Agreement agree to the settlement terms set forth herein, and urge the Commission to approve them as being in the public interest.

II. Prosecutory Staff Investigation

3. On March 19, 2010, Prosecutory Staff initiated an informal investigation of Duquesne focusing on the Company's real property acquisition and disposition practices. Specifically, Prosecutory Staff investigated the acquisition and disposition of the real

property for the Moon-Sewickley tap project, Moon Township, Allegheny County, Pennsylvania. Prosecutory Staff investigated whether this specific transaction and Duquesne's practices and procedures for acquiring and disposing of real property and obtaining all necessary regulatory approvals are in compliance with all Commission regulations and the Public Utility Code.

4. Throughout the entire investigatory process, Prosecutory Staff and Duquesne remained active in informal discovery and continued to explore the possibility of resolving this investigation, which culminated in this Settlement Agreement. During the discovery process, Duquesne complied with Prosecutory Staff's requests by, among other things, providing to Prosecutory Staff substantial amounts of information and documentation. Throughout the investigation, Duquesne and Prosecutory Staff likewise engaged in discussions and maintained ongoing communication.

5. Prosecutory Staff acknowledges that Duquesne has cooperated fully with this investigation.

III. Settlement Terms

6. Prosecutory Staff and Duquesne representatives conducted settlement negotiations concerning the informal investigation, and these negotiations culminated in this Agreement.

7. Duquesne and Prosecutory Staff desire to settle fully and completely and without further litigation all matters related to Duquesne's real property acquisition and

disposition for the Moon-Sewickley tap project, and all other Duquesne acquisition and sales of property through December 31, 2012.

8. Nothing contained herein may be taken as, or construed to be, an admission or confession of any violation of law or regulation, or any other matter of fact or law.

9. Prosecutory Staff and Duquesne recognize the benefits of amicably resolving these differences. In recognition of the cost of further litigation, the time and expense of holding a hearing, and the merits of the Parties' respective positions, the Parties have entered into negotiations and have agreed to settle the investigation according to the terms and conditions set forth herein.

10. Prosecutory Staff and Duquesne, intending to be legally bound and for consideration given, desire to conclude this informal investigation and agree to stipulate as to the following terms:

a) Solely for purposes of this Agreement, Prosecutory Staff alleges Duquesne acquired and disposed of one parcel of real property without obtaining a *certificate of public convenience*, in violation of Section 1102(a)(3) of the Public Utility Code, which requires Commission approval by obtaining a separate certificate of public convenience for each transaction. Duquesne disagrees that such a certificate was required under the facts and circumstances of this case and believes that its actions with respect to this property were in full accordance with long-standing Commission practice and precedent.

b) Duquesne agrees to follow the notification requirements of Section 57.91 of the Commission's regulations, 52 Pa.Code §57.91 whether or not the property in question is condemnable.

c) Duquesne agrees to pay a civil penalty in the amount of \$2,500.00 to the Commonwealth pursuant to Section 3301 of the Public Utility Code, to resolve, through this Agreement, Prosecutory Staff's investigation. Duquesne shall remit the entire amount within 30 days from the date that the Commission approves this Agreement. The check shall be made payable to the "Commonwealth of Pennsylvania" and addressed to "Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265."

d) Duquesne agrees to pay \$17,500 to the Dollar Energy Fund.

e) Parties agree that the Agreement is non-precedential on the issue of when a certificate of public convenience is required for the future acquisition or sale of future use property.

f) Duquesne agrees that it will not employ straw purchasers when acquiring any interest in real property for the siting and construction of overhead transmission lines, subject to any future action by the Commission on this issue.

11. The parties agree that any party may petition the Commission for hearing if *the Commission substantively modifies the terms of this Settlement*. In that event, any party may give notice to the other parties that it is withdrawing from this Settlement. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order which

adopts this Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

12. None of the provisions of this Agreement shall be considered an admission or finding of any fact or culpability in this or any subsequent proceeding. This Agreement is proposed by the Parties without any admission against, or prejudice to, any position that either Party may adopt during any subsequent proceeding of whatever nature.

13. The Parties agree that this Settlement Agreement should be presented directly to the Commission for review pursuant to 52 Pa. Code § 5.232(g).

14. Prosecutory Staff and Duquesne agree to file, if necessary, responsive pleadings contesting or rebutting any attempts by any party or commentator seeking to modify or challenge this Agreement.

IV. Statement in Support of Settlement

15. Pursuant to the Commission's Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements that are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004).

16. The Commission has determined that all alleged violations of the Public Utility Code and Commission regulations shall be subject to review under the standards enunciated in *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000); *Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000). Prosecutory Staff and Duquesne submit that this Settlement Agreement complies with the requirements set forth in *Rosi* and that the terms of this Agreement are in the public interest.

17. The Parties further assert that approval of this Settlement is consistent with the Commission's Policy Statement regarding factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201.¹ Under this Policy Statement, while many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases the 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). The ten factors of the Policy Statement, as applied to this case are addressed herein.

18. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa Code Section 69.1201(c)(1). The parties acknowledge that this proceeding relates to compliance with the Public Utility and Code and Commission regulations, which is a serious matter. However, there is no

¹ This policy statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.

allegation that the alleged violations were intentional, and Duquesne disagrees that any violation occurred on the facts presented in this case.

19. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). This alleged violation should not be deemed serious as the actions discussed in this investigation do not involve personal injury or property damage.

20. 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.* Since this matter is being resolved by settlement of the parties, this standard is not relevant here.

21. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Duquesne has agreed to follow the notification requirements of 52 Pa. Code § 57.91, whether or not the property is condemnable.

22. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company’s actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). Although the public is adversely affected by a violation of Commission regulations, there is no finding in this Settlement that Duquesne violated any regulations, and individual customers were not affected by the alleged conduct by Duquesne.

23. The sixth factor to be considered under the Policy Statement relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Duquesne has a satisfactory compliance history with the Public Utility Code and the Commission's regulations.

24. The seventh and eighth factors to be considered under the Policy Statement relate to whether the Respondent cooperated with the Commission's investigation and the appropriate settlement amount. 52 Pa. Code § 69.1201(c)(7), (8). Duquesne fully cooperated with the Commission's Staff in this proceeding during the investigative phase and settlement discussions. Furthermore, consistent settlement amounts are a reliable method for assuring that public utilities are compliant with the Public Utility Code and Commission regulations. Prosecutory Staff submits that Duquesne's payment of the agreed \$2,500.00 constitutes a reasonable and appropriate resolution of the dispute in this proceeding.

25. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. The parties are not aware of any Commission decisions in similar matters.

26. This Agreement represents the entire agreement between the Prosecutory Staff and Duquesne with respect to the matters addressed herein. The Agreement addresses and attempts to remedy all allegations raised in this matter. The Law Bureau Prosecutory Staff and Duquesne request that the Commission adopt an order approving the terms of this Agreement as being in the public interest.

IN WITNESS WHERE OF, the Prosecutory Staff and Duquesne by their authorized representatives have hereunto set their hands and seals, intending to be legally bound hereby.

David T. Foglio

Duquesne Light Company
411 Seventh Avenue, 16th Floor
Pittsburgh, PA 15219

Date: March 11, 2014

Terrence J. Buda

Terrence J. Buda, Assistant Counsel
Law Bureau Prosecutory Staff
Pennsylvania Public Utility Commission

Date: March 31, 2014

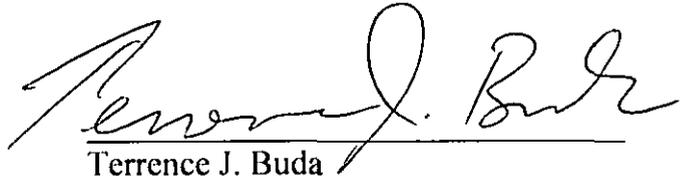
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Anthony D. Kanagy, Esquire
Post & Schell
12th Floor
17 North Second Street
Harrisburg, PA 17101-1601



Terrence J. Buda
Assistant Counsel
Law Bureau Prosecutory Staff
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: April 1, 2014

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