



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

IN REPLY PLEASE
REFER TO OUR FILE

October 21, 2015

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Public Power LLC
Docket No. M-2015-

Dear Secretary Chiavetta:

Enclosed please find the Settlement Agreement and Statements in Support of Settlement Agreement of both the Bureau of Investigation and Enforcement and Public Power LLC in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 43319

Enclosure

cc: As per certificate of service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility
Commission Bureau of
Investigation and Enforcement

v.

Public Power LLC

Docket No. M-2015-_____

SETTLEMENT AGREEMENT

I. Introduction

1. The parties to this Settlement Agreement (Settlement Agreement) are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (I&E), by its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, and Public Power LLC, a Pennsylvania limited liability company (Public Power or Company), 1055 Washington Boulevard, 7th Floor, Stamford, CT 06901.

2. The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within this Commonwealth pursuant to the Public Utility Code (Code), 66 Pa.C.S. §§ 101, *et seq.*

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3. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities.

Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities,

Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

5. Public Power is a jurisdictional electric generation supplier (EGS) certificated by the Commission to operate in Pennsylvania within the electric distribution company (EDC) service territories of Duquesne, Met Ed, PECO, Penelec, Penn Power, PPL and West Penn.¹

6. Public Power is an EGS in Pennsylvania as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-10.

7. Public Power, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Public Utility Code.

8. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Public Power in its capacity as an EGS serving customers in Pennsylvania.

¹ “Electric generation supplier” is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812; also see, 52 Pa. Code § 57.171.

9. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

10. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both.

11. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s).

12. As a result of negotiations between Public Power and I&E (hereinafter Parties), the Parties have agreed to resolve their differences as encouraged by the Commission's policy to promote settlements. See, 52 Pa. Code § 5.231. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

II. Background

13. On or about July 1, 2014, a Public Power customer alleged in an informal complaint filed with the Commission's Bureau of Consumer Services (BCS) that her rate was higher than the capped rate she was promised by the Company at the time of enrollment.

14. In Public Power's July 24, 2014 response to the investigation letter sent by BCS, the Company admitted that the customer in question was billed an incorrect, higher

rate than the capped rate that was set forth in the customer's enrollment contract. The Company advised that a refund was sent to the customer. The Company acknowledged that the customer was enrolled in "...the variable rate plan with price protection for one year, guaranteed not to exceed 15% of the introductory rate of \$.0769/kWh" (The 15% Price Protection Plan). The Company further admitted in its response to BCS that this customer's rate "was not properly programmed and exceeded 15% of her introductory rate on 11 billing cycles during the term..."²

15. BCS referred the matter-involving Public Power to I&E for an informal investigation or other action as deemed appropriate.

16. I&E initiated an informal investigation of Public Power on or about September 9, 2014, consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and 52 Pa. Code § 3.113.

17. As a result of its investigation, I&E determined that with regard to Public Power's "15% Price Protection Plan" for the the monthly invoices of January through April 2014 in the EDC service territories of Duquesne, PECO and PPL where Public Power offered the "15% Price Protection Plan," there were a total of 119 instances, impacting 50 customers, in which Public Power did not keep the customer's rate protected as promised and therefore resulted in customers being billed charges in excess of the guaranteed pricing.

² The Company confirmed in response to an I&E data request that it intended to state that no rate *increase* was to exceed the introductory rate by more than 15% of that rate for a period of one year after enrollment.

III. Alleged Violations

18. Based on information obtained through its investigation as described above and a review of the Commission's regulations and relevant statutes, I&E was prepared to contend by the filing of a formal complaint that Public Power violated certain provisions of Title 52 of the Pennsylvania Code and the Public Utility Code in that:

- A. The action or inaction of the Company resulted in EGS prices billed that failed to reflect the marketed prices and the agreed upon prices in the disclosure statement in 119 instances impacting 50 customers.

If proven, this would have violated Chapter 54 of the Commission's regulations, specifically Section 54.4(a) of the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code § 54.1, *et seq.* (119 counts).

- B. The action or inaction of the Company resulted in agreed upon prices in the disclosure statement not reflecting the billed prices in 119 instances impacting 50 customers.

If proven, this would have violated Chapter 54 of the Commission's regulations, specifically Section 54.5(a) of the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code § 54.1, *et seq.* (119 counts).

- C. The action or inaction of the Company resulted in prices advertised that failed to reflect billed prices in 119 instances impacting 50 customers.

If proven, this would have violated Chapter 54 of the Commission's regulations, specifically Section 54.7(a) of the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code § 54.1, *et seq.* (119 counts).

- D. The Company failed to furnish and maintain adequate, efficient, safe and reasonable service in that it failed to provide sufficient oversight in the provision of service as an electric generation supplier.

If proven, this would have violated 66 Pa.C.S. § 1501 (119 counts).

19. If the matter had been litigated, Public Power would have contended that its actions did not violate the Pennsylvania Code or the Public Utility Code and that it should not be fined or penalized for any offense.

20. If the matter had been litigated, Public Power would have further contended that upon the acquisition of Public Power by Crius Energy, Crius Energy discontinued the 15% Price Protection Plan offering. The employee who oversaw and implemented the product offering left the Company which resulted in a small number of operational errors during the merger of the companies' billing systems.

21. Throughout the entire investigatory process, Public Power and I&E remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in this Settlement Agreement. During the investigatory process, Public Power complied with I&E's requests for information and documentation. Throughout the investigation, Public Power and I&E maintained ongoing communications.

22. I&E acknowledges that Public Power has fully cooperated with this investigation.

IV. Settlement Terms

23. Public Power and I&E desire to: (i) terminate I&E's informal investigation and (ii) settle this matter completely without moving forward to formal litigation.

24. Although Public Power disputes or disagrees with the allegations above, it fully acknowledges the seriousness of the allegations and has implemented measures both

prior to this settlement and as described herein to prevent the reoccurrence of similar incidents. Moreover, the Parties recognize that this is a disputed claim and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues.

25. Public Power and I&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. Public Power will pay a civil penalty of Seventy Two Thousand Five Hundred Dollars (\$72,500.00) to resolve all allegations of unauthorized business practices related to prices billed that failed to reflect the marketed prices and the agreed upon prices from invoices dated January 2014 through April 2014 and to fully and finally settle all possible liability and claims of alleged violations of the Pennsylvania Code and the Public Utility Code arising from, or related to, said improper billing. Said payment shall be made by check to "Commonwealth of Pennsylvania" and presented to the Commission within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement and no portion of this payment shall be recovered from the Pennsylvania generation customers of Public Power.

B. Public Power has provided or will provide a refund for that amount of the electric generation portion of the bill that was greater than the amount due based on marketed prices as set forth in the disclosure statement for all 119 instances of overbilling identified by Respondent. These customer refunds,

totaling \$6,558.21, have been made as of November 17, 2014. No portion of this payment was recovered or shall be recovered in the future from the Pennsylvania generation customers of Public Power.

C. Public Power has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against erroneous billing. The pertinent portions of Public Power's modified marketing and /or billing procedures are briefly described as follows:

- Public Power built a central contract database to house and keep track of the specifics of each customer's contract. The database keeps track of customers' contract start dates and end dates, triggers any applicable consumer notices and the appropriate timing of rate changes. This database also electronically tags customers with their applicable promotion codes.
- Public Power also increased regularly conducted quality control tests to ensure that its central contract database matches the information in its electronic data interchange system.
- Public Power's VP of Operations instituted a meeting three times a week with representation from a cross section of the business, including representatives from Sales, Compliance, Operations, and Customer Care to discuss any potential issues or discrepancies that may have surfaced regarding customer rates.

- Public Power's VP of Operations also developed a series of reports, and runs these reports frequently and systematically to ensure that customers are charged the appropriate rate for the appropriate contact term.

D. In exchange for the action taken by Public Power as described above, I&E agrees not to institute any formal complaint relating to the unauthorized customer billings that are the subject of this Settlement Agreement.

E. The terms and conditions in this Settlement Agreement cannot be used and will not be admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by Public Power.

26. In consideration of the Company's payment of a monetary civil penalty and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees to forebear 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 settlement amount agreed to herein may be imposed by the Commission for any actions identified herein.

VI. *Applicability of the Commission's Rosi decision and its Policy Statement, Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations*

27. In *Rosi v. Bell Atlantic Pennsylvania, Inc., et al.*, 94 PA PUC 103, Docket No. C-00992409 (Order entered March 16, 2000), the Commission adopted a test for evaluating an enforcement outcome in a slamming case to determine whether it was in the public interest. In *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (December 21, 2000), the Commission adopted the *Rosi* standards for review of all violations of the Public Utility Code and Commission regulations. The *Rosi* standards were reviewed by the Parties in this case. The Parties submit that this Settlement Agreement conforms to the requirements for settlements found in *Rosi* and that the terms of this Settlement Agreement are in the public interest.

28. The Parties further assert that approval of this Settlement Agreement is consistent with the Commission's Policy Statement, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy*, at 52 Pa. Code § 69.1201 ("Policy Statement"). Under the Policy Statement, while many of the *Rosi* standards may still be applied, 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 Commission's Policy Statement provides for ten (10) factors and standards to be considered by the Commission in determining whether the imposition of a civil penalty is justified, and, if so, the extent of the civil penalty, understanding that a civil penalty up to \$1,000 per violation is permitted pursuant to 66 Pa.C.S. § 3301(a).

29. The first standard addresses whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). I&E determined that with regard to Public Power's "15% Price Protection Plan" for the monthly invoices of January through April 2014 in the EDC service territories of Duquesne, PECO and PPL where Public Power offered the "15% Price Protection Plan," there were a total of 119 overbillings impacting 50 customers. It has not been alleged that Public Power's conduct involves willful fraud or misrepresentation. Rather, based on I&E's informal investigation, it appears that the conduct of Public Power which led to the overbilling errors on the affected invoices was unintentional. While the Commission deems all acts of unauthorized marketing practices of an EGS to be serious in nature, sufficient mitigating circumstance exist here so as to negate the imposition of a maximum civil penalty.

30. The second standard addresses whether the resulting consequence of the conduct in question was of a serious nature. 52 Pa. Code § 69.1201(c)(2). The I&E investigation has determined that, regardless of their unintended nature, the overbillings resulting from the failure to associate a customer with the proper enrolled plan, and the failure of Company oversight to discover the error until brought to the Company's attention by the filing of a customer complaint with the Commission's BCS, has been recognized by the Commission as a serious consequence. Accordingly, I&E believes that the resulting consequence of the action of Public Power, whether intentional or not, was of a serious nature.

31. The third standard addresses whether the conduct was intentional or unintentional. 52 Pa. Code § 69.1201(c)(3). Since this standard may apply to litigated

proceedings, it is not applicable here. I&E has nevertheless determined that the unintentional nature of the conduct in question is a valid mitigating factor in this case.

32. The fourth standard addresses whether the Company made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). The Company voluntarily implemented modifications to its internal operating procedures, as described in Paragraph 25.C, above, to prevent this type of error from recurring. As such, the Company is taking appropriate action to address concerns and decrease the likelihood of similar incidents in the future.

33. In the process of negotiating this Settlement Agreement, all of the other factors in the Policy Statement were considered. Specifically, the Parties reviewed the number of customers affected, the compliance history of the Company, the Company's cooperation with the Commission, and the amount necessary not only to deter future violations but to recognize alleged violations in the past. This Settlement Agreement was amicably negotiated and recognizes the Respondent's good faith efforts to comply with the Commission's regulations and other mitigating factors, including the extraordinary showing of cooperation among all parties involved to resolve the error while minimizing any impacts upon the affected electric customers.

34. The Parties submit that a settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement agrees to pay a lesser sum to avoid the possibility of a larger fine or penalty resulting

from litigation. This settlement represents a compromise by both Public Power and I&E of their respective litigation positions. Any fines and penalties resulting from a litigated proceeding, such as *Rosi*, typically are different from payments resulting from a settlement.

35. The Settlement Agreement meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses the billing issue that was the subject of I&E's investigation, avoids the time and expense of litigation, which entails hearings, travel for the company's out-of-state witnesses and counsel, and the preparation and filing of briefs, exceptions, reply exceptions, and possible appeals.

36. With the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest, Public Power agrees to, along with the non-monetary terms set forth above, pay a civil settlement amount of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00), plus refunds of \$6,558.21, for total relief of \$79,058.21. The civil penalty shall be paid within thirty (30) days of the date of the Order approving this Settlement Agreement, to resolve completely the allegations raised by I&E's investigation. Moreover, Public Power agrees not to seek recovery of any portion of this settlement amount from its Pennsylvania generation customers.

37. This Settlement Agreement is a full and final resolution of the Commission's investigation related in any way to the matters described in this Settlement Agreement.

38. Public Power and I&E have agreed to this settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

39. Public Power and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is subject to all applicable administrative and common law treatments of settlements, settlement offers, and/or negotiations. The validity of this Settlement Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. Accordingly, this Settlement Agreement is made without any admission against or prejudice to any position which any Party might adopt during litigation of this case if this settlement is rejected by the Commission or withdrawn by any of the parties as provided below. This Settlement Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of the terms and conditions contained herein without modification or amendment.

40. If the Commission fails to approve by tentative and final order this Settlement Agreement, including any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Settlement Agreement by filing a withdrawal in response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Settlement Agreement shall be considered an admission of fact or law or be binding upon the Parties if one of them files a withdrawal.

41. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

42. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Settlement Agreement is entered into with the express purpose of settling the asserted, disputed claims regarding the specific alleged violations of the Commission's regulations and Public Utility Code.

WHEREFORE, Public Power LLC and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

By: 

Michael L. Swindler
Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105
717.783.6369
mwindler@pa.gov

Date: 20 OCT 15

Respectfully Submitted,

Public Power LLC

By: 

Barbara A. Clay, Esquire
Executive V.P. & General Counsel
Public Power LLC
1055 Washington Blvd.
7th Floor
Stamford, CT 06901

Date: October 13, 2015

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PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Settlement Agreement filed on _____, 2015, between the Commission's Bureau of Investigation and Enforcement and Public Power LLC, is approved in its entirety. or [,as modified, subject to the condition(s) set forth in Ordering Paragraph No. 2.]

[2. That, within twenty days of the entry of this Opinion and Order, any Party may file with the Secretary of the Commission at this docket number a notice that it is withdrawing from the Settlement Agreement entered into between the Commission's Bureau of Investigation and Enforcement and Public Power LLC, and filed with this Commission on _____, 2015. If any Party withdraws from the Settlement Agreement, the Agreement shall be disapproved without further action by this Commission and this matter shall be referred to the Bureau of Investigation and Enforcement for such further action as may be warranted.]

3. That, if no Party withdraws from the Settlement Agreement pursuant to Ordering Paragraph No. 2, this Opinion and Order shall become final without further Commission action, and it is further ordered:

a. 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, Public Power LLC shall pay a civil penalty in the amount of \$72,500. Said payment shall be made by check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

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

b. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That this matter be marked closed.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED:

ORDER ENTERED:

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(EDC) service territories of Duquesne, Met Ed, PECO, Penelec, Penn Power, PPL and West Penn. I&E's investigation focused on the Company's billing and marketing practices as an electric generation supplier within Pennsylvania specifically regarding an allegation that the Company was charging a rate higher than the capped rate certain customers were promised by the Company at the time of enrollment. In Public Power's July 24, 2014 response to the investigation letter sent by BCS, the Company admitted that one such customer was billed an incorrect, higher rate than the capped rate that was set forth in the customer's enrollment contract. The Company advised that a refund was sent to that customer. The Company acknowledged that the customer was enrolled in "...the variable rate plan with price protection for one year, guaranteed not to exceed 15% of the introductory rate of \$.0769/kWh" (The 15% Price Protection Plan). The Company further admitted in its response to BCS that this customer's rate "was not properly programmed and exceeded 15% of her introductory rate on 11 billing cycles during the term..."¹

Public Power investigated and confirmed that some customers enrolled in The 15% Price Protection Plan were overbilled, in violation of the Company's Disclosure Statement as well as the Commission's regulations.

The July 2014 incident raised a concern with BCS regarding Public Power's compliance with the Commission's regulations that require suppliers to bill prices that reflect the marketed prices and the agreed upon prices in the disclosure statement. It was

¹ The Company confirmed in response to an I&E data request that it intended to state that no rate *increase* was to exceed the introductory rate by more than 15% of that rate for a period of one year after enrollment.

alleged that the Company, as a result of these billing and/or marketing actions, may have violated provisions of Chapters 54 and 57 (52 Pa. Code), among other statutes and regulations, concerning the standards regarding marketing and sales practices of an electricity generation supplier.

An informal investigation into Public Power's billing practices as an EGS in Pennsylvania was initiated by I&E. I&E's informal investigation concluded that sufficient data had been gathered to substantiate allegations of violations of the Public Utility Code and/or other applicable statutes and regulations in connection with the billing of customers enrolled in the Company's 15% Price Protection Plan.

In making a determination that the instant settlement was appropriate, I&E weighed the Commission's clear "zero tolerance" mandate that it would "not tolerate unlawful activity that threatens to harm Pennsylvania consumers and thereby the burgeoning retail electricity market in Pennsylvania"² against various mitigating circumstances present here. Importantly, I&E acknowledges that Public Power fully cooperated with I&E's investigation. The Company promptly responded to I&E's requests for information and provided I&E with records, correspondence, and other documents relevant to the investigation. Moreover, throughout the entire investigatory process, Public Power and I&E remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

² See, *Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc.*, M-2012-2201861 (Opinion and Order entered May 3, 2012)(*"MXenergy"*).

The Settlement Agreement addresses the allegations raised in I&E's informal investigation while avoiding the time and expense of litigation, including but not limited to, discovery, preparation of witness testimony, hearings, briefs, exceptions, and appeals. The Settlement Agreement, as proposed, is in the public interest and should be approved by the Commission. The Settlement Agreement sets forth the following terms:

a. Public Power will pay a civil penalty of Seventy Two Thousand Five Hundred Dollars (\$72,500.00) to resolve all allegations of unauthorized business practices related to prices billed that failed to reflect the marketed prices and the agreed upon prices from invoices dated January 2014 through April 2014 and to fully and finally settle all possible liability and claims of alleged violations of the Pennsylvania Code and the Public Utility Code arising from, or related to, said improper billing. Said payment shall be made by check to "Commonwealth of Pennsylvania" and presented to the Commission within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement and no portion of this payment shall be recovered from the Pennsylvania generation customers of Public Power.

b. Public Power has provided or will provide a refund for that amount of the electric generation portion of the bill that was greater than the amount due based on marketed prices as set forth in the disclosure statement for all 119 instances of overbilling identified by Respondent. These customer refunds, totaling \$6,558.21, have been made as of November 17, 2014. No portion of this payment was recovered or shall be recovered in the future from the Pennsylvania generation customers of Public Power.

c. Public Power has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against erroneous billing. The pertinent portions of Public Power's modified marketing and /or billing procedures are briefly described as follows:

- Public Power built a central contract database to house and keep track of the specifics of each customer's contract. The database keeps track of customers' contract start dates and end dates, triggers any applicable consumer notices and the appropriate timing of rate changes. This database also electronically tags customers with their applicable promotion codes.

- Public Power also increased regularly conducted quality control tests to ensure that its central contract database matches the information in its electronic data interchange system.

- Public Power's VP of Operations instituted a meeting three times a week with representation from a cross section of the business, including representatives from Sales, Compliance, Operations, and Customer Care to discuss any potential issues or discrepancies that may have surfaced regarding customer rates.

- Public Power's VP of Operations also developed a series of reports, and runs these reports frequently and systematically to ensure that customers are charged the appropriate rate for the appropriate contact term.

d. In exchange for the action taken by Public Power as described above, I&E agrees not to institute any formal complaint relating to the unauthorized customer billings that are the subject of this Settlement Agreement.

e. The terms and conditions in this Settlement Agreement cannot be used and will not be admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by Public Power.

Public Power has, as stated above, agreed to pay a fair and equitable civil settlement amount totaling \$72,500.00, and has taken appropriate corrective action to its billing procedures. These monetary and non-monetary settlement terms are in accord and satisfaction of disputed claims and not an admission of liability of any sort by Public Power. This settlement was reached after taking into consideration past settlements regarding similar incidents that were approved by this Commission which acted as a

foundation from which the Parties could determine reasonable settlement terms in this case.³

All necessary factors were considered in reaching a settlement amount that would be deemed by this Commission as an appropriate balance of all mitigating factors while adequately reflecting the seriousness of the allegations and promoting ongoing regulatory compliance and compliance with Commission policy. It is the position of I&E that the settlement reached, including a civil settlement amount to be paid by Public Power of \$72,500.00, in addition to the non-monetary operational improvements implemented by Public Power, is reasonable and should be found by this Commission to be in the public interest.

The agreement of the Parties to settle this case is made without any admission or prejudice to any position that the Parties might adopt during subsequent litigation, including but not limited to, in the event that this settlement is rejected by the Commission or otherwise properly withdrawn by any of the Parties.

Had this matter proceeded to hearing, I&E would have alleged that the Company committed numerous violations of the Public Utility Code. Specifically, I&E would have alleged in its case-in-chief as follows:

- a. The action or inaction of the Company resulted in EGS prices billed that failed to reflect the marketed prices and the agreed upon prices in the disclosure statement in 119 instances impacting 50 customers.

If proven, this would have violated Chapter 54 of the Commission's regulations, specifically Section 54.4(a) of the Electricity Generation

³ A recent example is the *MXenergy* case wherein this Commission stated, "[W]e simply do not believe that a \$500-per-customer penalty, even when combined with the corrective actions, is enough to remedy this situation or to deter potential future violations of the Code or our Regulations by an EGS."

Customer Choice and Competition Act, 52 Pa. Code § 54.1, *et seq.* (119 counts).

b. The action or inaction of the Company resulted in agreed upon prices in the disclosure statement not reflecting the billed prices in 119 instances impacting 50 customers.

If proven, this would have violated Chapter 54 of the Commission's regulations, specifically Section 54.5(a) of the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code § 54.1, *et seq.* (119 counts).

c. The action or inaction of the Company resulted in prices advertised that failed to reflect billed prices in 119 instances impacting 50 customers.

If proven, this would have violated Chapter 54 of the Commission's regulations, specifically Section 54.7(a) of the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code § 54.1, *et seq.* (119 counts).

d. The Company failed to furnish and maintain adequate, efficient, safe and reasonable service in that it failed to provide sufficient oversight in the provision of service as an electric generation supplier.

If proven, this would have violated 66 Pa.C.S. § 1501 (119 counts).

In *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 PA PUC 103, Docket No. C-00992409 (Order entered March 16, 2000), as set forth in *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (December 20, 2000), the Commission adopted and utilized standards for determining whether a particular enforcement outcome is in the public interest. The standards set forth in *Rosi* were reviewed by I&E. I&E submits that this Settlement Agreement complies with the requirements for settlements found in *Rosi* and that the terms of the Settlement Agreement are in the public interest.

I&E further asserts that approval of this Settlement Agreement is consistent with the Commission's Policy Statement, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy*, at 52 Pa. Code § 69.1201 ("Policy Statement"). Under the Policy Statement, while many of the *Rosi* standards may still be applied, 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 Commission's Policy Statement provides for ten (10) factors and standards to be considered by the Commission. The first standard addresses whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). The overbilling that occurred from January through April 2014 does not appear to have been overt or intentional, but the fact that the billed rate exceeded her introductory rate by more than a 15% increase was, in and of itself, a serious event. While there was no evidence that such activity was indicative of the Company's overall billing practices for its EGS services in Pennsylvania, the conduct at issue was in fact of a serious nature, and impacted a substantial number of customers.

The second standard addresses whether the resulting consequence of the conduct in question was of a serious nature. 52 Pa. Code § 69.1201(c)(2). The I&E investigation determined that this overbilling resulted in a complete review by the EGS's billing procedure and that changes were implemented to avoid a similar incident occurring in the future. I&E avers that any inappropriate EGS billing practices are recognized by the

Commission as a serious consequence.⁴ Accordingly, I&E avers that the resulting consequence of the action of Public Power, whether intentional or unintentional, was of a serious nature, that resulted in positive modifications to the Company's billing procedure and internal oversight of its procedure.

The third standard addresses whether the conduct was intentional or unintentional. 52 Pa. Code § 69.1201(c)(3). Since this standard may apply to litigated proceedings and this matter has instead resulted in an amicable Settlement Agreement, it is not applicable here.

The fourth standard addresses whether the Company made efforts to modify *internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.* 52 Pa. Code § 69.1201(c)(4). As previously stated, the Company has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against erroneous billing, as described in Paragraph 25.C of the Settlement Agreement, to prevent this type of violation from recurring. As such, the Company is taking appropriate action to address concerns and decrease the likelihood of similar incidents in the future.

In the process of negotiating this Settlement Agreement, the remaining factors in the Policy Statement were also considered. Specifically, the Parties reviewed the number of customers affected, the compliance history of the Company, the Company's

⁴ As stated, *infra*, the Commission maintains a "zero tolerance" regarding slamming and made clear in the *MXenergy* case, among others, that it "will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania." Order at 5.

cooperation with the Commission, and the monetary penalty necessary not only to deter future violations but to recognize alleged violations in the past. The Settlement Agreement was amicably negotiated and recognizes the Company's good faith efforts to comply with the Commission's regulations.

Finally, a settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement avoids the possibility of a greater fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding, such as *Rosi*, have always been different from those that result from a settlement. I&E submits that this is the reason that *Rosi* listed whether penalties arise from a settlement or a litigated proceeding as one of its tests.

The Settlement Agreement is in the public interest because it effectively addresses the allegations identified by the informal investigation, avoids the time and expense of litigation which entails hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. The Company has also agreed to pay a fair and equitable civil settlement amount and has improved its procedural safeguards regarding conducting criminal background checks to avoid such matters in the future. Moreover, the Settlement Agreement 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.*

Commission Rules and Regulations encourage the settlement of proceedings and, consequently, Public Power and I&E convened a number of discussions during the course of this investigation. These discussions ultimately resulted in the foregoing Settlement Agreement which is a full and final resolution of I&E's investigation.

In addition to the foregoing reasons, based upon I&E's analysis of these matters, acceptance of this proposed settlement is in the public interest because resolution of this case by settlement rather than litigation will avoid the substantial time and expense involved in continuing to formally pursue all allegations in this proceeding. Moreover, acceptance of the Settlement Agreement at this time will ensure that the Company will immediately implement the changes in their policies enumerated in the Settlement Agreement instead of at the end of what could be protracted litigation.

WHEREFORE, I&E represents that it supports the settlement of this matter as memorialized by the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the foregoing Settlement Agreement, including all terms and conditions contained therein in its entirety.

Respectfully submitted,



Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement

Dated: October 21, 2015

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Pennsylvania Public Utility
Commission Bureau of Investigation
and Enforcement**

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Docket No. M-2015-

v.

Public Power LLC

**PUBLIC POWER LLC STATEMENT IN SUPPORT
OF SETTLEMENT AGREEMENT**

Public Power, LLC (“Public Power”) submits this statement in support of the Settlement Agreement reached with the Commission’s Bureau of Investigation and Enforcement (“I&E”) intended to amicably resolve the above referenced informal investigation without the need to engage in timely and costly litigation. The settlement is a reasonable resolution of a one-time situation that resulted from an operational error related to a product that was discontinued in January 2013. Public Power is fully committed to ensuring compliance with all regulatory requirements and ensuring that its customers are properly and accurately billed. As explained in the Settlement Agreement, Public Power has taken reasonable steps to ensure regulatory compliance, has held harmless all customers impacted by the operational error and has agreed to pay a reasonable civil penalty to fully resolve this matter. Thus, approval of the Settlement Agreement is in the public interest and Public Power urges the Commission to approve the settlement as submitted. In further support of the Settlement Agreement, Public Power offers the following additional information for the Commission’s consideration.

First, the 15% Price Protection Plan that was offered by Public Power in 2012 was discontinued in January 2013. As such, Public Power has not offered this product in the Pennsylvania marketplace for nearly three years now. Therefore, there is no potential for on-

going or future potential negative consequences resulting from this Public Power offering.

Second, the 15% Price Protection Plan was offered by Public Power prior to the acquisition of Public Power by Crius Energy, LLC. (“Crius”). At the time of the acquisition, operational errors resulting from the merger of the two companies’ billing systems lead to the customer issues underlying this informal investigation. More specifically, over reliance was placed on a Public Power employee to carefully monitor the few remaining customers on the 15% Price Protection Plan to ensure that the customers were properly billed during the transition of Public Power to Crius. When this employee ceased working for Public Power shortly after the acquisition, the remaining monitoring system failed to ensure that the remaining customers on the 15% Price Protection Plan were properly billed. Therefore, the situation that caused the issues underlying this investigation resulted from a one-time operational error related to transition issues from an acquisition that has now been completed. As such, there is little to no likelihood of the same situation occurring again in the future.

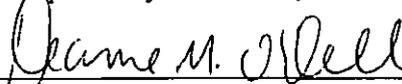
Third, as explained in more detail in the Settlement Agreement, corrective actions have been taken and revisions have been implemented to Public Power’s operating procedures to ensure, *intra alia*, that duplicate systems are in place to act as safeguards against future erroneous billings. (Settlement Agreement at ¶ 25.C).

Fourth, Public Power has ensured that the 50 customers impacted by the operational error leading to this Settlement Agreement have been held harmless by issuing refunds in the amount of \$6,558.21 to the impacted customers. The amount of the refund was calculated based on the amount of the price billed that exceeded the amount guaranteed as part of the 15% Price Protection Plan. No portion of these payments was recovered or will be recovered from Pennsylvania customers. (Settlement Agreement at ¶25.B).

Finally, Public Power's voluntary agreement to pay a civil penalty of seventy two thousand five hundred dollars (\$72,5000.00) represents a reasonable way to redress the situation that occurred here while recognizing that it was a one-time operational error involving a product that was discontinued nearly three years ago. Importantly, no allegations are made in this proceeding that Public Power engaged in slamming or that Public Power engaged in deceptive or unauthorized marketing practices. Rather, this proceeding involved a one-time operational error that has been fully addressed and, due to the unique circumstances that existed at the time of the error, is not likely to be repeated in the future.

In conclusion, Public Power urges the Commission to find that the Settlement Agreement is in the public interest and should be approved for the following reasons: (1) all customers impacted by the one-time operational error forming the basis of this informal investigation have been held harmless; (2) the 15% Price Protection Plan has not been offered in Pennsylvania for , nearly three years; (3) the billing systems of Public Power and its new owner Crius have been integrated; (4) Public Power has implemented various internal corrective actions and revisions to its operating procedures to prevent future erroneous billing; and, (5) Public Power has voluntarily agreed to pay a reasonable civil penalty to resolve this matter obviating the need for further costly and timely litigation.

Respectfully submitted,



Deanne M. O'Dell, Esquire

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Date: October 20, 2015

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CERTIFICATE OF SERVICE

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

Service by Electronic Mail and First Class Mail:

Deanne M. O'Dell, Esquire
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Michael L. Swindler
Deputy Chief Prosecutor
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Dated: October 21, 2015

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