# **PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held April 16, 2020

Commissioners Present:

 Gladys Brown Dutrieuille, Chairman

 David W. Sweet, Vice Chairman

 Andrew G. Place

John F. Coleman, Jr.

Ralph V. Yanora

Pennsylvania Public Utility Commission, M-2020-3011455

Bureau of Investigation and Enforcement

 v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement) filed on February 7, 2020, by the Commission’s Bureau of Investigation and Enforcement (I&E) and PPL Electric Utilities Corporation (PPL or Company). Both I&E and PPL filed a Statement in Support of the Settlement (Statement in Support). I&E submits that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at [52 Pa. Code § 69.1201](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=I216e77ef0bde11e4a795ac035416da91&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.History*oc.Search)), *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations— statement of policy* (Policy Statement). *See* Settlement at ⁋⁋ 10, 31, *infra*.

Before issuing a decision on the merits of the proposed Settlement, and consistent with the requirement of [52 Pa. Code § 3.113(b)(3)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS3.113&originatingDoc=I216e77ef0bde11e4a795ac035416da91&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.History*oc.Search)), we shall provide an opportunity for interested parties to file comments regarding the proposed Settlement and issue the Settlement for comments.

**History of the Proceeding**

By a letter dated October 28, 2019,[[1]](#footnote-1) I&E informed PPL that it had initiated a formal investigation of PPL’s billing practices for a possible violation of 52 Pa. Code § 56.11(a)[[2]](#footnote-2) (*October Letter*). The *October Letter* further advised the Company that, based on I&E’s investigation, it was determined that there was sufficient cause to proceed further with formal action regarding the specific allegations of the Company’s billing practices in that during 2017 and 2018, PPL failed to timely bill at least five residential customers for multiple consecutive months. PPL did not notice the billing issues and contacted the five affected customers after each of the customers were issued a large bill for a prior billing period. Based on the receipt of relatively large make-up bills, each customer filed informal complaints with the Commission’s Bureau of Consumer Services (BCS).

The *October Letter* further advised that the Company’s failure to notice the billing issues over several consecutive months was conduct of a serious nature and resulted in serious consequences for the affected PPL customers. As noted, each customer was presented with a large make-up bill. I&E stated that such large bills could prove “. . . both traumatic and problematic for the affected customers upon receipt of an eventual make-up bill.” *See*, *October Letter*. The letter advised that there was no evidence or documentation that the billing failures were intentional, however. Rather, it appeared that the failure to render timely bills was the result of technical issues. *Id*.

Finally, the *October Letter* advised that it was the intent of I&E to proceed with the filing of a formal complaint in the matter. However, in lieu of a formal complaint, I&E presented PPL with the option of engaging in settlement discussions to reach an amicable resolution of the investigation and avoid formal proceedings.[[3]](#footnote-3)

**Background**

I&E instituted an informal investigation of PPL based on information

referred to I&E by the Commission’s BCS. Settlement at ⁋ 9. Between June 2018 and April 2019, the Commission’s BCS became aware of a billing issue regarding multiple PPL residential customers who complained that PPL failed to provide monthly bills for

consecutive months. Settlement at ⁋ 12. BCS notified I&E that PPL failed to bill five residential customers for consecutive billing periods in violation of 52 Pa. Code § 56.11. I&E, upon investigation, determined that these allegations warranted that further investigation be conducted to examine whether the actions of PPL violated Commission Regulations. Settlement at ⁋ 9.

The following five PPL residential customers filed informal complaints with the BCS stating that PPL failed to issue bills for certain consecutive monthly time periods: 1) Jennifer Cranmer - In her informal complaint submitted to the BCS, she stated that PPL failed to bill her for approximately four consecutive months; 2) Katerine Delacruz - In her informal complaint submitted to the BCS, she stated that PPL failed to bill her for approximately eight consecutive months; 3) Arlene Calvin Green - In her informal complaint submitted to the BCS, this customer stated that PPL failed to bill her for approximately nine consecutive months; 4) Michaeleen Drahus - In her informal complaint submitted to the BCS, she stated that PPL failed to bill her for approximately six consecutive months; and 5) E. Follin Smith - In her informal complaint submitted to the BCS, she stated that PPL failed to bill her for approximately nine consecutive months. Settlement at ⁋ 13.

Each of the five customers eventually received a large bill from PPL for

multiple, consecutive, months of service. *See,* Settlement at ⁋ 14.

The proposed Settlement has been filed by the Parties in order to resolve allegations of certain violations of [Section 1501](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PA66S1501&originatingDoc=I216e77ef0bde11e4a795ac035416da91&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.History*oc.Search)) of the Public Utility Code, 66 Pa. C.S. § 1501, relating to the failure to provide adequate, efficient, safe, and reasonable service, and provisions of Chapter 56 of the Commission’s Regulations concerning billing frequency, *supra*.

Based on information obtained through its investigation 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 PPL violated certain provisions of Title 52 of the Pennsylvania Code based on information that PPL failed to bill the five customers in question for multiple consecutive billing cycles. If proven, these averments would be a violation of 52 Pa. Code § 56.11(a) (five (5) counts). Settlement at ⁋ 18.

There is no evidence or documentation indicating that the violations were intentional. Rather, these violations were caused by technical issues. Settlement at ⁋ 22.

PPL accepted the nature of the allegations that I&E would have asserted in a formal complaint, acknowledged its errors accordingly, and put into effect appropriate measures that have been approved by I&E to ensure that such oversight is not likely to reoccur. Settlement at ⁋ 21.

As a mitigating factor to the above allegations, I&E states that PPL fully cooperated with I&E’s investigation. During the investigatory process, PPL

complied with I&E’s requests for information and documentation and provided I&E with records, correspondences, and other documents as requested by I&E. Further, throughout the investigatory process, I&E and PPL remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement. Settlement at ⁋ ⁋ 23-24.

**Terms of the Settlement Agreement**

The Parties state that the purpose of the Settlement is intended to terminate I&E’s informal investigation and settle this matter completely without litigation. It is noted that there has been no formal complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident. Settlement at ⁋ 25.

The Parties additionally state that PPL does not dispute the allegations. Settlement at ⁋ 26. The Parties represent that they do not believe that there are any other potentially affected parties with respect to the subject of the Settlement that should receive notice. Settlement at ⁋ 27. The salient terms of the Settlement are reprinted below:

\* \* \*

A. PPL will pay a civil penalty amount of five thousand dollars ($5,000.00) to resolve all allegations regarding billing violations relating to the five customers in question and to fully and finally settle all possible liability and claims of alleged violations of the Commission’s regulations arising from, or related to, the billing violations investigated herein. No portion of this civil penalty payment shall be recovered from Pennsylvania consumers by any future proceeding, device, or manner whatsoever. Said payment shall be made within thirty (30) days of the date of the Commission’s final order approving the Settlement Agreement and shall be made by certified check or money order made payable to the

 “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

B. PPL will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future billing issues. Specifically, it was determined that that the billing issues in question were caused by either a malfunctioning meter that is not promptly replaced, or a billing system issue that is not resolved in a timely fashion.

C. With regards to meter replacements, PPL has implemented an aggressive plan to reduce the backlog of change meter orders. With the AMI rollout there was an increase in the backlog of change meter orders which was the cause of some of the no bill situations. However, with the AMI rollout concluding, and the increased attention to promptly resolving meter malfunctions, PPL has been able to substantially reduce its backlog of change meter orders. PPL’s new procedures are designed to identity and replace malfunctioning meters in a timeframe that does not affect the customer’s billing cycle.

D. With regards to billing systems issues, there has been a concerted effort by PPL to identify all accounts that have had consecutive estimates and resolve the issue causing the consecutive estimates. The systematic identification of consecutive estimate accounts allows PPL to discover and assess the billing system issue which is causing the no bill issue to occur. This procedure allows PPL to identify and remedy a no bill situation prior to the second estimated bill being generated and sent to the customer.

*See*,Settlement at 7-8.

The Parties agree that in exchange for the actions taken by PPL, as described above, I&E agrees not to institute any formal complaint relating to the failure to provide a bill for each billing cycle to the five customers that are the subject of this Settlement. Settlement at ⁋ 29.

Additionally, the Parties stipulate that in consideration of the Company’s payment of a monetary civil penalty and its compliance with the non-monetary terms of this Settlement, I&E agrees to forgo the institution of any formal complaint that relates to the Company’s conduct as described in the Settlement. Also, nothing contained in this Settlement 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 penalty amount agreed to herein may be

imposed by the Commission for any actions identified herein. Settlement at ⁋ 30.

**Discussion**

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010 2179103, *et al.* (Opinion and Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.*, citing, *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *see* *also*, [*Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991212349&pubNum=0000930&originatingDoc=I12347a98817611e38914df21cb42a557&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). The Commission must 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).

Pursuant to the Commission’s Regulations at [52 Pa. Code § 5.231](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS5.231&originatingDoc=Ic3124394af4811e8ab20b3103407982a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), it is the Commission’s policy to promote settlements. Consistent with the Commission’s policy to promote settlements, we have promulgated a Policy Statement at [52 Pa. Code § 69.1201](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic3124394af4811e8ab20b3103407982a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or a statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted.

The Parties to the Settlement in this instance have each filed Statements in Support. *See* Appendix B and C to Settlement which are Statements of Support of PPL and I&E, respectively. Appendix A to the Settlement are proposed ordering paragraphs for the Commission’s approval.

We note that the Parties represent that:

27. The Parties do not believe that there are any other potentially affected parties with respect to the subject of this Settlement Agreement who should directly receive notice hereof.

Settlement at ⁋ 27.

PPL advises that, upon being informed of the issues by the Commission’s BCS, the Company promptly contacted the five affected customers and worked out payment plans that would amortize the past due balances over a number of months. Appendix B, page 2 of 7.[[4]](#footnote-4)

Notwithstanding the Parties express a belief that there are no other interested parties to the resolution of the instant informal investigation, Commission Regulations provide, as follows:

**§ 3.113. Resolution of informal investigations.**

 (a)  The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding the condition and management of a public utility or other person subject to its jurisdiction. The informal investigations are typically undertaken to gather data or to substantiate allegations of potential violations of the act and may be conducted with or without hearing.

 (b)  Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission’s official actions resolving informal investigations will be as follows:

    (1)  When the Commission staff determines that no violation or potential violation of the act has occurred, the informal investigation will be terminated by letter.

    (2)  When the Commission staff determines that a violation or potential violation of the act has occurred and when formal action is deemed to be warranted, the Commission staff will initiate a docketed on-the-record proceeding to resolve the issues.

    (3)  When the utility, or other person subject to the Commission’s jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission’s consideration of the settlement or approval of the utility’s action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. Before the Commission makes a final decision to adopt the settlement or to approve the utility’s action, the Commission will provide other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.

52 Pa. Code § 3.113; (emphasis supplied).

**Conclusion**

It is the Commission’s policy to promote settlements. [52 Pa. Code § 5.231](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS5.231&originatingDoc=Ic3124394af4811e8ab20b3103407982a&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). Before issuing a decision on the merits of the proposed Settlement, and consistent with the requirement of [52 Pa. Code § 3.113(b)(3)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS3.113&originatingDoc=I216e77ef0bde11e4a795ac035416da91&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), we are providing an opportunity for interested parties to file comments regarding the proposed Settlement. *See*, *Pa. PUC Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M‑2011‑2196342 (Order entered August 11, 2011); 2011 WL 3647098 (Pa.P.U.C.); *Pa. PUC, Bureau of Investigation and Enforcement* *v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Order entered September 13, 2012); 2012 WL 4320565 (Pa.P.U.C.); **THEREFORE**,

**IT IS ORDERED:**

1. That this Opinion and Order, together with the attached Settlement and the Statements in Support thereof, shall be issued for comments by any interested party.

2. That a copy of this Opinion and Order, together with the attached Settlement and the Statements in Support thereof, shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission’s Bureau of Consumer Services’ service list for the five informal residential customers identified in this Opinion and Order.

3. That comments regarding the proposed Settlement and the Statements in Support thereof, will be considered timely if filed within twenty (20) days of the date of entry of this Opinion and Order. Comments to the proposed Settlement Agreement may be filed either through eFiling for those parties who have an eFiling user account with the Pennsylvania Public Utility Commission or by paper copy. Paper copies shall be filed with the Secretary’s Bureau at the following address:

 Rosemary Chiavetta, Secretary

 Pennsylvania Public Utility Commission

 Commonwealth Keystone Building

 400 North Street

 Harrisburg, PA 17120

4. That, subsequent to the Commission’s review of comments filed in this proceeding, an Opinion and Order will be issued.

**** **BY THE COMMISSION:**

 Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 16, 2020

ORDER ENTERED: April 16, 2020

1. PPL states the date of October 31, 2019 as the date it was informed of the formal investigation. *See* PPL Statement in Support, Appendix “B,” page 2 of 7. [↑](#footnote-ref-1)
2. *See*,52 Pa. Code § 56.11. **Billing frequency.**

 (a)  A public utility shall render a bill once every billing period to every residential customer in accordance with approved rate schedules. [↑](#footnote-ref-2)
3. I&E also noted that, at all times material to its procedures, PPL, through its representatives, fully cooperated with the investigation performed by BCS. [↑](#footnote-ref-3)
4. *See*,52 Pa. Code § 56.14 “Previously unbilled public utility service.” [↑](#footnote-ref-4)