# **PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held August 5, 2021

Commissioners Present:

 Gladys Brown Dutrieuille, Chairman

 David W. Sweet, Vice Chairman

 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 the 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). I&E and PPL have filed Statements in Support of the Settlement (Statements 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*.

By Opinion and Order entered April 16, 2020, we directed that a copy of the Order, together with the attached Settlement and Statements in Support thereof, be issued for comments by any interested party consistent with the requirements 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)). *See Pa. PUC, Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2020-3011455 (Order entered April 16, 2020); 2020 WL1974134 (Pa. P.U.C.). We do not have any indication that any interested party has filed comments. We shall, therefore, issue this final Opinion and Order approving the Settlement consistent with the discussion below.

**Background**

I&E instituted an informal investigation of PPL based on information referred to I&E by the Commission’s Bureau of Consumer Services (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.[[1]](#footnote-1) 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.

Five PPL residential customers filed informal complaints with BCS stating that PPL failed to issue bills for certain consecutive monthly time periods. Specifically, the five customers and their respective allegations are as follows: (1) Jennifer Cranmer – who stated that PPL failed to bill her for approximately four consecutive months; (2) Katerine Delacruz – who stated that PPL failed to bill her for approximately eight consecutive months; (3) Arlene Calvin Green – who stated that PPL failed to bill her for approximately nine consecutive months; (4) Michaeleen Drahus – who stated that PPL failed to bill her for approximately six consecutive months; and (5) E. Follin Smith – who 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. Settlement at ¶ 14.

The proposed Settlement has been filed by I&E and PPL in order to resolve allegations of 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 (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 afore-mentioned customers for multiple consecutive billing cycles. If proven, these allegations would constitute 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 [Advanced Metering Infrastructure] 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 our *Policy Statement* 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.[[2]](#footnote-2) Our *Policy Statement* sets forth the ten factors as 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 advised 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.[[3]](#footnote-3)

Notwithstanding the Parties expression of a belief that there were no other interested parties to the resolution of the instant informal investigation, we issued the proposed Settlement for Comments, consistent with the Commission Regulations at 52 Pa. Code § 3.113 – **Resolution of informal investigations**. Consistent with this provision, we provided other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law. No comments or other exceptions have been noted. The Settlement is now ripe for a final decision to review and adopt.

***Policy Statement* Standards**

The Commission *Policy Statement* factors and standards for consideration of a Settlement are as follows:

(1) Whether the conduct at issue was of a serious nature. 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.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision.  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.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. 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.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § § 69.1201(c).

On application of the factors and standards, we shall approve the Settlement as in the public interest.

On consideration of the first criterion of the *Policy Statement*, whether the conduct at issue was of a serious nature, we find that although the violations of PPL were of a serious nature that there was no evidence indicating that these violations were intentional. I&E Statement in Support at 3. Thus, we find that the violations fall under the “less egregious” classification and are more akin to administrative filing and/or technical errors, so as to warrant a lower penalty. It appears that the billing issues that resulted in the failure to render timely bills in consecutive months to the five customers in question were caused by either a malfunctioning meter that was not promptly replaced, or a billing system issue that was not resolved in a timely fashion. *See* Settlement, Appendix B, PPL Statement in Support. In their Statements of Support, PPL and I&E emphasize the corrective actions and procedures that PPL will implement to avoid future occurrences of this nature. *See* Settlement, Appendix B, PPL Statement in Support at 5‑6; Settlement, Appendix C, I&E Statement in Support at 5-6.

On consideration of the second criterion of the *Policy Statement*, addressing the resulting consequences of the conduct at issue, we note that the conduct of the utility is of a serious nature. However, the serious consequences of the conduct do not involve personal injury or property damage, so as to warrant a higher penalty under our Regulations. The seriousness arises from the fact that each affected customer was presented with a large make-up bill after PPL’s discovery of the administrative billing error. I&E noted in an October 28, 2019, letter notifying PPL of the problem, that such large make-up bills could prove traumatic and problematic for the affected customers. PPL has fully acknowledged the impact on customers of such large, make-up bills. See PPL Statement in Support, Appendix B, page 4 of 7.

On consideration of the third criterion, whether the conduct at issue was deemed intentional or negligent, and the fourth criterion, 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, we find that a lower civil penalty is supported. As noted, the conduct resulting in the failure to issue timely bills was more administrative in nature and inadvertent. The Settlement expressly provides that PPL’s top-level management acted promptly in correcting the conduct, fully cooperated with I&E in adopting processes to substantially minimize future occurrences of this nature. PPL has extensively detailed changes in its internal practices and procedures, including meter replacements, systematic identification of consecutive estimate accounts for the purpose of helping the utility remedy a “no bill” situation prior to a second consecutive bill. PPL Statement in Support, Appendix B, page 6 of 7; I&E Statements in Support, Appendix C, page 5 and 6 of 8.

On consideration of the fifth criterion, the number of customers affected and the duration of the violation, the record indicates five customers were the subject of informal complaints referred from BCS. The duration of the billing infrequency spanned four months to nine months. The imposition of a civil penalty should account for the number of customers and the duration of the violation. PPL notes that the civil penalty of $5,000 represents the serious nature of the “no bill” violation balanced against the Company’s cooperation with I&E in the investigation, PPL’s work with the affected customers to establish payment plans, and the Company’s steps toward corrective actions. *See* Appendix B, PPL Statement in Support, page 4 of 7.

On consideration of the sixth criterion the compliance history of the regulated entity which committed the violation, the record does not show a widespread issue with regard to PPL’s compliance with the Commission’s billing frequency Regulations at issue in this matter. Rather, we find that the record demonstrates that the violations may be classified as more isolated and not frequent or recurrent violations by PPL. Therefore, a lower civil penalty is warranted.

On consideration of the seventh criterion, PPL has, as noted by I&E, fully cooperated with I&E in its investigation. There are no facts or indications suggesting bad faith, active concealment of violations, or attempts to impede I&E in its efforts to identify and correct the source of the problem resulting in untimely billing. Therefore, a lower civil penalty is warranted.

When we consider the eighth criterion - the amount of the civil penalty or fine necessary to deter future violations and the ninth criterion - past Commission decisions in similar situations, we find that a civil penalty of $5,000, accomplishes the dual goals of an amount necessary to deter future violations and is consistent with penalties imposed for similar situations. A civil penalty of $5,000, equates to one-thousand dollars of penalty associated with each ratepayer which was the subject of the informal investigation. We note that each ratepayer was permitted to amortize the make-up portion of the bill over a period of time consistent with our Regulations. Therefore, the civil penalty is appropriate.

 We note that this proceeding is factually distinguishable from those considerations which we found appropriate in finding a violation of Section 1501 of the Code and supporting the imposition of a civil penalty for make-up utility bills for prior, unbilled service. In those cases involving a different utility, and different facts, ratepayers failed to receive bills or have their consumption accurately recorded for periods which spanned, in certain instances, a number of years. The failure to render bills over an extended period of time, though a similar type of violation to the present case, *i.e*., directly or indirectly related to meter replacement efforts of the utility, created extreme hardship and extreme surprise to utility ratepayers. *See, e.g., Lawrence Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984 (Order entered July 16, 2020), 2020 WL 4207498 (Pa. P.U.C.), discussing Marcus Love v. Philadelphia Gas Works, Docket No. F-2013-2355580 (Order entered February 18, 2015) (Marcus Love); [William Edney v. Philadelphia Gas Works, Docket No. F-2013-2393858 (Order entered December 18, 2014)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2035153058&pubNum=0004031&originatingDoc=I9ffe9a0fcc5911eab1faf5a0aee61ce8&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)); [Michael Morales v. Philadelphia Gas Works, Docket No. C‑2018‑3002466 (Order entered May 21, 2020)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2051148009&pubNum=0004031&originatingDoc=I9ffe9a0fcc5911eab1faf5a0aee61ce8&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).

We do not find any other relevant factors to substantially affect our conclusion.

**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)). Based on our consideration of the factors set forth in our *Policy Statement* and on review of the terms of the Settlement, we conclude that the Settlement is in the public interest and is approved; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement filed on February 7, 2020, by the Commission’s Bureau of Investigation and Enforcement and PPL Electric Utilities Corporation is, hereby, determined to be in the public interest and is approved.

2. That within sixty (60) days of the entry date of this Opinion and Order, PPL Electric Utilities Corporation shall remit $5,000, payable by certified check or money order, to “Commonwealth of Pennsylvania” with the docket numbers of this proceeding listed, and sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA  17120[[4]](#footnote-4)

3. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That the Secretary’s Bureau shall mark this proceeding closed upon receipt of the $5,000 payment, as directed in Ordering Paragraph No. 2 above.

**BY THE COMMISSION:**

 Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 5, 2021

ORDER ENTERED: August 5, 2021

1. 52 Pa. Code § 56.11. Billing frequency., states, in pertinent part:

**§ 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-1)
2. See also [Joseph A. Rosi v. Bell Atlantic-*Pennsylvania*, Inc., Docket No. C‑00992409 (Order entered March 16, 2000)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000537351&pubNum=0004031&originatingDoc=If36850913dfd11e8bbbcd57aa014637b&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) ([Rosi), 2000 WL 1407936 (Pa. P.U.C.)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000537351&pubNum=0000999&originatingDoc=If36850913dfd11e8bbbcd57aa014637b&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). [↑](#footnote-ref-2)
3. *See* 52 Pa. Code § 56.14 “Previously unbilled public utility service.” [↑](#footnote-ref-3)
4. We clarify here that the penalty and assessment should be sent to the address listed in Ordering Paragraph No. 2, rather than the P.O. Box listed in the Settlement. [↑](#footnote-ref-4)