

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held March 2, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

M-2022-3032647

v.

Duquesne Light Company

**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 (Joint Petition, Settlement Agreement or Settlement) filed on November 3, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and Duquesne Light Company (Duquesne Light, Duquesne or Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. The Joint Petition contains terms and conditions representing a comprehensive Settlement, along with Statements in Support of the Settlement, with respect to an informal investigation conducted by I&E

regarding allegations of the unauthorized disclosure of customer information. The Commission’s Opinion and Order entered December 8, 2022 at this docket (*December 2022 Order*), sought comments from interested parties regarding the proposed Settlement Agreement between I&E and Duquesne Light. No comments were filed. The Parties request that the Commission approve the proposed Settlement because it is in the public interest and 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 (Policy Statement)*. Settlement at 10. For the reasons set forth herein, we shall approve the Joint Petition, consistent with this Opinion and Order based on our finding that the Settlement is in the public interest.

### **History of the Proceeding**

This matter concerns the alleged release of certain customer information by Duquesne. On or about April 26, 2022, Duquesne mailed approximately 9,057 letters to its customers providing information on how the customer can access their online account and pay their bill online. Of the 9,057 letters mailed, approximately 3,065 displayed the wrong customer name and account number. Of the 3,065 letters with the incorrect customer name and account number, approximately 2,966 customers were affected, i.e., their name and account number was on the letter. Specifically, the envelope was addressed to the correct customer but the letter inside displayed the incorrect customer name and account number. On April 29, 2022, Duquesne voluntarily notified the Commission’s Bureau of Consumer Services (BCS) of the information disclosure. Settlement at 4.

On or about April 29, 2022, Duquesne Light issued an email notification to the affected customers. On or about May 20, 2022, Duquesne Light issued a follow-up notification to the affected customers via mail. Settlement at 4-5.

On or about May 12, 2022, BCS submitted a memo to I&E outlining its concern with Duquesne Light's alleged inadvertent release of customer information. Settlement at 5-6.

I&E instituted an informal investigation of Duquesne based on the information referred to I&E by BCS. Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. Settlement at 3. The Parties filed the instant Settlement on November 3, 2022.

In our *December 2022 Order*, we provided interested parties with the opportunity to file comments. To be considered timely, the Commission directed those comments be filed no later than twenty-five days after the date that the *December 2022 Order* and the Joint Petition and the Statements in Support thereof are published in the *Pennsylvania Bulletin*, or by January 23, 2023.<sup>1</sup> No comments were filed.

### **Background**

On or about May 12, 2022, BCS initiated a referral to I&E regarding Duquesne Light's alleged release of customer information. Specifically, I&E was advised that an employee of Duquesne Light reported to BCS that Duquesne Light had disclosed certain customer information in its mailers to approximately 3,000 customers. This information included incorrect/different customer name and account number. Settlement at 5-6.

---

<sup>1</sup> The *December 2022 Order* was published in the *Pennsylvania Bulletin* on December 24, 2022, at 52 P. B. 8019.

Duquesne Light does not use customer account numbers for purposes of customer authentication or electric generation supplier switching,<sup>2</sup> and averred that the disclosed customer information cannot be used to enroll a customer with an electric generation supplier or gain unauthorized access to a customer's account. Settlement at 5.

Duquesne Light averred that, upon information and belief, none of the customers whose information was released has been a victim of slamming or other unauthorized account access. *Id.*

Duquesne Light completed a root cause investigation and determined that the incident was the result of unintentional human error. Specifically, the mailing list provided to Duquesne Light's print vendor was reformatted by a Duquesne Light employee to meet the vendor's requirements, which resulted in a misalignment of some customers' names and addresses. *Id.*

Duquesne Light has implemented or will implement various quality and control measures in response to this incident. *Id.*

By letter dated August 1, 2022, I&E issued a Data Request Letter informing Duquesne Light of the scope of its investigation and requesting a response to I&E's twelve (12) data requests. Duquesne Light provided its responses on August 22, 2022, the date the responses were due. Settlement at 6.

---

<sup>2</sup> Duquesne Light uses Supplier Agreement Identification (SA-ID) numbers, which are distinct from utility account numbers, for purposes of electric generation supplier switching. To enroll a Duquesne Light customer, an electric generation supplier must provide the customer's unique SA-ID number. Customer SA-ID numbers were not disclosed as part of this incident. Settlement at 5, n. 1.

Duquesne Light's Privacy Policy<sup>3</sup> defines Customer Information as "a Customer's Personally Identifiable Information or Consumer-specific Energy Usage Data" and defines "Personally Identifiable Information (PII)" as "information that . . . can be used to identify, distinguish, trace, or link to a specific customer." The definition of PII includes a customer's name, address, and utility account number. Settlement at 6-7.

The Privacy Policy provides that Duquesne Light will only share a customer's energy usage data (CEUD) or PII with third parties as required or permitted by law or for legitimate business purposes, as the Privacy Policy discusses in further detail, or upon customer request or in accordance with customer choices regarding the use and disclosure of their information. The Privacy Policy otherwise prohibits the sharing or release of covered customer information to other customers. Settlement at 7.

I&E avers that multiple violations of Duquesne Light's Privacy Policy, 66 Pa. C.S. § 1501, and 52 Pa. Code § 54.8 occurred when Duquesne Light mailed approximately 3,065 mailers which displayed the wrong customer name and account number. Of the 3,065 mailers issued, approximately 2,966 customers were affected, i.e., their name and account number were released. *Id.*

Section 1501 of the Public Utility Code provides that utilities shall "furnish and maintain adequate, efficient, safe, and reasonable service," that such service "shall be in conformity with the regulations and orders of the commission," and that every public utility "may have reasonable rules and regulations governing the conditions under which it shall be required to render service." 66 Pa.C.S. § 1501; *see also* 66 Pa.C.S. § 102 (Definition of Public Utility). *Id.*

---

<sup>3</sup> Duquesne Light's Privacy Policy is publicly available on its website at <https://www.duquesnelight.com/customer-support/policies-forms/privacy-policy>. Settlement at 6, n. 2.

Section 54.8 of the Commission’s Regulations provide that an EDC “may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer’s desire to restrict the release of the private information.” 52 Pa. Code § 54.8. Settlement at 7-8.

The results of I&E’s investigation, which included a review of the email correspondence sent by Duquesne Light reporting the release of customer information and Duquesne Light’s responses to the data requests, formed the basis for the instant Settlement Agreement. Settlement at 6.

The Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. Settlement at 3. The Parties filed the instant Settlement on November 3, 2022.

### **Terms of the Settlement**

Pursuant to the proposed Settlement, I&E and Duquesne Light have agreed to the following:

1. Duquesne Light shall pay a civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00).
2. In addition to the civil penalty, Duquesne Light agrees to memorialize its policies and procedures relating to mailing and confidentiality by February 2023. After the policies and procedures are codified, Duquesne Light will provide written confirmation to I&E and will also provide a copy for I&E’s review.

Settlement at 9.

The civil penalty shall not be tax deductible or passed through as an additional charge to Duquesne Light's customers in Pennsylvania. *Id.*

In response, I&E agrees that its informal investigation relating to Duquesne Light's conduct as described in the Settlement Agreement shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification, payment of the civil penalty, and completion of the remedial measure. Settlement Appendix A at 4.

The proposed Settlement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. Settlement at 9-10.

### **Discussion**

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. 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). In this regard, the Commission's *Policy Statement* at 52 Pa. Code § 69.1201 sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order,

Regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The *Policy Statement* sets forth ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling 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). Based on our review of the Settlement, we find, as discussed in more detail below, that the application of these factors supports approval of the Settlement.

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). According to I&E, the alleged conduct in this matter was an administrative or technical error. Consequently, the less egregious nature of the conduct was considered in arriving at the civil penalty amount in the Settlement Agreement. I&E Statement in Support at 6.

The second factor considers whether the resulting consequences of Duquesne Light’s alleged conduct 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. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations, but that the release of certain customer information is a serious violation and could have a negative impact on the affected customer. I&E acknowledges that Duquesne Light, upon information and belief, reported no evidence of unauthorized account access by the affected customers. *Id.*

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether Duquesne Light’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Duquesne Light has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Duquesne Light completed a root cause investigation to determine what caused the release of customer information and what steps should be taken to prevent this incident from reoccurring. After completing the investigation, Duquesne Light created a list of recommendations which it implemented/will implement by February 2023. Thus, Duquesne Light made efforts to investigate the cause of the incident and determined the appropriate actions which needed to be taken to prevent similar incidents from occurring in the future. I&E Statement in Support at 7.

The fifth factor to be considered relates to the number of customers affected by Duquesne Light’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Approximately 3,065 letters displayed the incorrect customer name and account number. Of these 3,065 letters, approximately 2,966 customers were affected, i.e., their information was on the letter. These facts were considered when calculating the civil penalty. I&E Statement in Support at 7.

The sixth factor to be considered relates to the compliance history of Duquesne Light. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* I&E noted that, to date, it is unaware of any formal complaint or proceeding which relates to Duquesne Light’s inadvertent release of certain customer information. I&E Statement in Support at 7.

The seventh factor to be considered relates to whether the company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that Duquesne Light fully cooperated in the investigation of this matter, including cooperating in both informal discovery as well as settlement discussions. I&E Statement in Support at 7.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$12,500.00, which is not tax deductible, is substantial and sufficient to deter Duquesne Light from committing future violations. Accordingly, we agree, and therefore find that the civil penalty is appropriate. I&E Statement in Support at 8.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement Agreement should be viewed on its merits as I&E found no past Commission decisions that are directly on point to this matter. I&E Statement in Support at 8.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser penalty or other remedial action. Both parties negotiate from their initial litigation positions. The penalties and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions. I&E Statement in Support at 8. Duquesne Light provides that the terms of the Settlement are just and

reasonable and are in the public interest. Duquesne Light Statement in Support at 3. In addition, the Settlement provides for the Company to take corrective actions to “memorialize its policies and procedures relating to mailing and confidentiality by February 2023. After the policies and procedures are codified, Duquesne Light will provide written confirmation to I&E and will also provide a copy for I&E’s review.” Duquesne Light Statement in Support at 5 (citing Settlement at ¶ 40).<sup>4</sup> These actions will provide a public benefit to all of Duquesne Light’s customers. We agree that it is in the public interest to settle this matter. Therefore, we are of the opinion that other relevant factors weigh in favor of approval of the agreed upon civil penalty, as well as the other settlement terms, established in the Settlement.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

### **Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case and the Commission’s Regulations and policy statements, we find that the proposed Settlement between I&E and Duquesne Light is in the public interest and merits approval. We will therefore approve the Settlement consistent with this Opinion and Order; **THEREFORE**,

---

<sup>4</sup> Pursuant to 52 Pa. Code § 5.591, we will also direct Duquesne Light to file a verified notice of compliance documentation with the Commission confirming that it has codified its policies and procedures relating to mailing and confidentiality, and serve a copy of this filing on I&E, within thirty days of completion of this action.

**IT IS ORDERED:**

1. That the Joint Settlement Petition for Approval of Settlement filed on November 3, 2022, between the Commission’s Bureau of Investigation and Enforcement and Duquesne Light Company is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within sixty (60) days of the date this Order becomes final, Duquesne Light shall pay a civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated with the certified check or money order and shall be sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

3. That the civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) or passed through as an additional charge to Duquesne Light’s customers in Pennsylvania.

4. That, in addition to the civil penalty, Duquesne Light Company agrees to memorialize its policies and procedures relating to mailing and confidentiality by February 2023. After the policies and procedures are codified, Duquesne Light Company will provide written confirmation to the Bureau of Investigation and Enforcement and will also provide a copy for its review.

5. That Duquesne Light Company shall file a notice of compliance documentation with the Secretary of the Commission, accompanied by a verification, confirming that it has codified its policies and procedures relating to mailing and confidentiality, and serve a copy of this filing on the Bureau of Investigation and Enforcement, within thirty days of completion of this action.

6. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

7. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and Duquesne Light Company's notice and verification of compliance with Ordering Paragraph Nos. 4 and 5 above.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being the most prominent.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: March 2, 2023

ORDER ENTERED: March 2, 2023