

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3042656
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision adopts a Joint Petition for Settlement that resolves a Formal Complaint filed by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement against West Penn Power Company for an incident where a displaced West Penn Power Company primary distribution line came into contact with a light pole, causing damage to a hotel’s electrical equipment and a power outage at the hotel. The Joint Petition for Settlement is adopted in its entirety without modification because it is reasonable and is in the public interest.

HISTORY OF THE PROCEEDINGS

On September 1, 2023, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) filed a Formal Complaint with the Commission against West Penn Power Company (“WPP” or “the Company”).¹ I&E alleged

¹ On December 7, 2023, the Commission entered an Order at Docket Nos. A-2023-3038771, et al. approving, among other things, the merger of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and WPP into FirstEnergy Pennsylvania Electric Company (“FE PA”) with FE PA

that, on November 15, 2020, a windstorm displaced an energized WPP primary distribution line causing it to come into contact with a light pole located in the parking lot of the Meadows Racetrack and Casino in Washington, Pennsylvania (“the Casino”). This incident caused damage to electrical equipment and a power outage at the Hyatt Place Hotel (“the Hotel”) at the Casino. The displacement of the distribution line, I&E alleged, was due to the line having excessive slack to such an extent that it sagged and was able to be blown by the wind into the light pole. I&E further alleged that WPP failed to identify and remedy the excessive sag prior to the incident. As a result, I&E alleged that WPP’s actions violated certain provisions of the Pennsylvania Public Utility Code, the Commission’s regulations, and the National Electric Safety Code (“NESC”). For relief, I&E requested that WPP be ordered to pay a \$25,000 civil penalty and ordered to comply with the Commission’s regulations, the Pennsylvania Public Utility Code, and the NESC on a going-forward basis.

On September 21, 2023, WPP filed an Answer with New Matter to the Complaint, wherein it admitted or denied the various allegations made by I&E in its Complaint. In its New Matter, properly endorsed with a Notice to Plead, WPP recited the relief sought by I&E in its Complaint.

On October 5, 2023, I&E filed a Reply to WPP’s New Matter, wherein it argued that WPP’s New Matter did not qualify as appropriate New Matter because WPP did not raise an affirmative defense or material facts, pursuant to 52 Pa. Code § 5.62.²

On October 10, 2023, the Commission issued a Hearing Notice to the parties, scheduling an initial evidentiary telephonic hearing in this matter for December 1, 2023, at 10:00 a.m., and assigned the undersigned as Presiding Officer.

On November 2, 2023, the undersigned issued a Prehearing Order to the parties, setting forth the procedural rules that would govern the evidentiary hearing.

as the surviving entity. For the purposes of this Initial Decision, the Respondent will continue to be referred to as “WPP” or “the Company.”

² *Answers raising new matter.* An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of “New Matter.” A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading. 52 Pa. Code § 5.62(b).

On November 21, 2023, I&E informed the undersigned that it and WPP reached a settlement in this matter. As a result, a Hearing Cancellation Notice was issued on this date cancelling the December 1, 2023, evidentiary hearing.

On December 18, 2023, I&E and WPP filed a Joint Petition for Approval of Settlement (“Settlement” or “Joint Petition”). The parties requested that the Commission approve the terms of the Joint Petition as submitted as being in the public interest.

On March 22, 2024, the parties filed a Joint Stipulation of Facts.

On March 25, 2024, the Commission issued my Interim Order, which admitted the Joint Stipulation of Facts into the evidentiary record in this proceeding and closed the record.

For the reasons discussed below, the Settlement is approved in its entirety without modification because it is reasonable and is in the public interest.

STIPULATED FACTS

The parties have stipulated to the following facts which are recited verbatim, below, with the same numbering and lettering as they appear in the Joint Stipulation of Facts:

1. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania authorized and obligated by Section 501(a) of the Pennsylvania Public Utility Code, (“the Code”), 66 Pa.C.S. § 501(a), to execute and enforce the provisions of the Code.

2. I&E is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Section 2804(1)(ii) of the Code, 66 Pa.C.S. § 2804(1)(ii), requires the Commission “to ensure the continuation of safe and reliable electric service to all consumers in the Commonwealth, including . . . [t]he installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric Safety Code [(“NESC”)].” See also 52 Pa. Code §§ 57.193-194.

4. West Penn is a “public utility” as that term is defined at 66 Pa. C.S. § 102 as it is engaged in providing public utility service as an electric distribution company (“EDC”) in the Commonwealth of Pennsylvania to the public for compensation.

5. West Penn, as an EDC, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

6. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of West Penn in its capacity as an EDC.

7. On August 2, 2021, the Commission’s Bureau of Consumer Services (“BCS”) referred a complaint to I&E’s Electric Safety Division (“ESD”) regarding a storm incident where a West Penn primary distribution line, attached between West Penn Pole Nos. 18660 and 154287, made contact with a light pole causing damage (hereinafter referred to as “incident”).

8. The 7,200-volt phase-to-ground primary line is near the public parking lot of the Hyatt Place Hotel.

9. I&E’s ESD initiated an investigation. The following background consists of a summary of the findings of ESD’s investigation:

- a. On or about November 15, 2020, a windstorm hit the Washington, Pennsylvania area displacing an energized primary distribution line of West Penn, located on the property of Meadows Racetrack and Casino at 212 Racetrack Road in Washington, Pennsylvania.
- b. The energized primary line came into contact with one of the light poles located in the parking lot of Meadows Racetrack and Casino.
- c. The cause of the extended primary line displacement was due to excessive sag.
- d. The high voltage from this primary line burned the light pole and sent high voltage through the grounding system of the property's inter-connected exterior lighting circuits, causing extensive over voltage damages to the lighting system lines and electrical protection equipment.
- e. On November 15, 2020, Meadows Hotel Associates LLC reported a power outage to West Penn.
- f. The following day, on November 16, 2020, a West Penn hazard responder arrived at the scene of the incident and noted that the customer still had power.
- g. On November 25, 2020, West Penn removed the excessive sag from all three primary line(s) that had allowed the field-side line to blow into the light pole and cause damage.
- h. Upon further inspection by an electrical contractor, Rozzo Electric, it was determined that West Penn's line made contact with the pole twice, created burn marks on the pole and the primary conductor, and the high voltage travelling through the pole while trying to find ground damaged grounding conductors on two poles and the hotel lighting panel.

i. The horizontal clearance of the primary line in question was measured by West Penn to be eight (8) feet to the light pole under ordinary conditions.

j. The absence of West Penn oversight contributed to the creation of an unsafe condition/environment which allowed the primary distribution line to be displaced during a windstorm and cause damage to the parking lot lighting system.

k. I&E determined that West Penn failed to maintain adequate horizontal (wind displacement) clearance to the light pole and that West Penn failed to recognize the compliance issue during their overhead circuit inspections.

10. Based on the findings of the investigation, I&E filed a Complaint with the Commission on September 1, 2023, at Docket No. C-2023-3042656.

11. West Penn filed an Answer and New Matter on September 21, 2023.

12. I&E filed its reply to New Matter on October 5, 2023.

13. Subsequent to these filings, the Parties entered into settlement negotiations. As a result of successful negotiations between I&E and West Penn, the Parties reached an agreement on an appropriate resolution to the Complaint.

14. On December 18, 2023, the Parties filed a Joint Petition for Approval of Settlement with proposed ordering paragraphs. Additionally, the Parties each filed their own Statement in Support.

SETTLEMENT TERMS

The Settlement is a twelve-page document signed by the parties. Accompanying the Settlement are appendices A, B, and C, as follows:

- Appendix A – Proposed Ordering Paragraphs
- Appendix B – I&E’s Statement in Support of the Settlement
- Appendix C – WPP’s Statement in Support of the Settlement

The essential terms of the Settlement are set forth on pages 7-9, paragraph numbers 24-29 of the Joint Petition. Those terms are recited verbatim below, with the same numbering and lettering as they appear in the Joint Petition.

24. Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest, I&E and West Penn held a series of discussions prior to and after the filing of I&E’s Complaint that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E’s Complaint and to settle this matter completely without further litigation. Although I&E filed a formal Complaint, there has been no evidentiary hearing before any tribunal, and no sworn testimony has been taken in any proceeding related to this incident.
25. West Penn fully acknowledges the seriousness of I&E’s allegations and recognizes the need to prevent the reoccurrence of the misconduct which was the subject of I&E’s instant Complaint.
26. The Parties recognize that their positions and claims are disputed and given that the precise outcome of a contested proceeding is uncertain, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement.
27. I&E and West Penn, intending to be legally bound and for consideration given, desire to fully and finally conclude this Complaint and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- A. West Penn will pay a civil penalty in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

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

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) and shall not be passed through as an additional charge to West Penn's customers in Pennsylvania.

- B. West Penn has taken corrective action to bring the conductor into compliance and implemented revisions to its operating procedures which will act as safeguards against future misconduct. The pertinent portions of West Penn's modified procedures are briefly described as follows:

- 1) West Penn, including all contracted employees, shall be retrained to recognize potential clearance issues from West Penn's lines to all structures and objects;
- 2) The new heightened awareness training shall be appended to West Penn's overhead lines and equipment inspection policy and procedures with clear guidelines for specified minimum clearances; and
- 3) Documentation of successful training verification shall be kept on file by West Penn for future reference.

28. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any other complaints or initiate other action against West Penn at the Commission with respect to the allegations which were the subject of I&E's instant Complaint.

29. I&E and West Penn jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E's formal Complaint and avoids the time and expense of further litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and West Penn, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.^[3]

CONDITIONS OF THE SETTLEMENT

Further, the parties agreed on standard settlement conditions that are typical of settlements before the Commission. These settlement conditions are set forth on pages 10 and 11, paragraph numbers 30-35 of the Joint Petition and are recited verbatim below, with the same numbering and lettering as they appear in the Joint Petition.

30. 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.
31. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

³

Joint Petition at 7-9.

32. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this complaint proceeding. It is further understood that, by entering into this Settlement Agreement, West Penn has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.
33. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.
34. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.
35. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.^[4]

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Joint Petition at 10, 11.

LEGAL STANDARDS

The parties submitted a settlement of all issues in this proceeding. It is the policy of the Commission to encourage settlements.⁵ Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.⁶ 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.⁷ Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest.⁸

The Commission may impose a civil penalty upon a utility that is found to be in violation of a statute, regulation, or order of the Commission.⁹

Consistent with the Commission’s policy to promote settlements, the Commission has adopted a policy statement setting forth the standards it will consider in evaluating litigated and settled proceedings before the Commission.¹⁰ The policy statement sets forth ten factors that the Commission will 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 a proposed settlement agreement is in the public interest.¹¹ The Commission will not apply the factors as strictly in settled cases as in litigated cases. In settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and

⁵ 52 Pa. Code § 5.231(a).

⁶ 52 Pa. Code § 69.401.

⁷ *Pa. Pub. Util. Comm’n v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011).

⁸ *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996); *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991)).

⁹ 66 Pa.C.S. § 3301.

¹⁰ 52 Pa. Code § 69.1201.

¹¹ 52 Pa. Code § 69.1201(a).

other matters as long as the settlement is in the public interest.”¹² These factors and standards 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.

¹²

52 Pa. Code § 69.1201(b).

- (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.^[13]

DISCUSSION

Having set forth the terms and conditions of the Settlement, as well as the legal standards utilized in evaluating settled cases for a violation of a statute, regulation, or order of the Commission, I will now address why approving and adopting the Settlement is in the public interest. I&E and WPP have addressed the factors set forth in 52 Pa. Code § 69.1201 in their respective Statements in Support and represent that the Settlement is in the public interest and is fully consistent with the Commission's Policy Statement. Application of these ten factors supports approval of the Settlement as in the public interest.

First and Second Factors

The first factor considers 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.¹⁴ The second factor considers 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.¹⁵

¹³ 52 Pa. Code § 69.1201(c); *see also, Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000).

¹⁴ 52 Pa. Code § 69.1201(c)(1).

¹⁵ 52 Pa. Code § 69.1201(c)(2).

The conduct at issue in this matter involved WPP's failure to maintain adequate horizontal (wind displacement) clearance from a WPP primary distribution line to a light pole and WPP's failure to recognize this compliance issue during its overhead circuit inspections.¹⁶ The clearance issue was the result of the line having excessive sag.¹⁷ As a consequence of this conduct, the line became displaced during a windstorm, causing the line to come into contact with one of the light poles located in the parking lot of the Casino.¹⁸ The high voltage of the primary distribution line burned the light pole and sent high voltage through the grounding system of the property's inter-connected exterior lighting circuits, causing extensive over voltage damages to the lighting system lines and electrical protection equipment, specifically, the grounding conductors on two poles and the Hotel lighting panel.¹⁹ The Hotel reported a power outage to WPP the day of the incident (November 15, 2020).²⁰

I&E submitted that the conduct at issue was of a serious nature. I&E further submitted that the consequences of the conduct at issue were of a serious nature, noting that the Hotel lost power for a period of time and suffered electrical damage to its equipment. I&E additionally noted that the incident could have presented a serious safety hazard had anyone been near the light pole at the time of the incident.²¹

WPP submitted that the terms and conditions of the Settlement adequately take the alleged conduct into account and adds that electric safety is a paramount concern of the Company, and that WPP continually strives to provide safe electric service to its customers. WPP submitted that the terms and conditions of the Settlement recognize the seriousness of the incident and are designed to enhance WPP's safety and service reliability and to minimize the likelihood of a similar incident occurring in the future. WPP asserted that it promptly responded to the incident and has begun training employees to recognize potential clearance issues as well

¹⁶ Stipulated Facts, ¶ 9k.

¹⁷ Stipulated Facts, ¶ 9c.

¹⁸ Stipulated Facts, ¶ 9a, 9b.

¹⁹ Stipulated Facts, ¶ 9d, 9h.

²⁰ Stipulated Facts, ¶ 9e.

²¹ I&E St. in Support at 6.

as heightened awareness training regarding specified minimum clearance for WPP's overhead lines.²²

I agree that the terms and conditions of the Settlement adequately take the nature of the alleged conduct at issue into account. As highlighted in the terms and conditions of the Settlement, the Company has agreed to, and has already undertaken, corrective measures to enhance the safety and service reliability of the Company's distribution system and to minimize the likelihood of a similar incident occurring in the future. The Company has also agreed to pay a \$17,500 civil penalty, an amount of which I find to be fair and reasonable under the circumstances in that although I&E submitted that the conduct at issue was of a serious nature, neither party suggested that the conduct was the result of willful fraud or misrepresentation or of any other extreme intentional act by the Company.

Furthermore, I also agree with the parties that the terms and conditions of the Settlement recognize the seriousness of the resulting consequences of the conduct. The consequences of the alleged conduct did not result in personal injury, which might have warranted the assessment of a higher civil penalty in this matter. The consequences resulted in property damage to the Hotel in the form of electrical damage to its equipment which caused the Hotel to lose power for a period of time. Under these circumstances, the civil penalty agreed to by the parties is reasonable.

The terms and conditions of the Settlement, including the level of the agreed upon civil penalty, adequately reflect consideration of these two factors.

Third Factor

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has

²² WPP St. in Support at 8.

been deemed intentional, the conduct may result in a higher penalty.²³ This factor will not be considered in this proceeding because this matter is being resolved via settlement.

Fourth Factor

The fourth factor considers 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.²⁴

I&E submitted that WPP has made efforts to modify its internal practices and procedures to avoid the conduct responsible for the incident and prevent similar future line contact incidents. I&E argued that the terms and conditions of the Settlement details the practices and procedures modified and notes that WPP agreed to adhere to these revised procedures.²⁵

WPP submitted that it has made efforts to modify its internal practices and procedures to prevent similar conduct in the future and to further enhance the safety and reliability of its service. WPP argued that the terms and conditions of the Settlement properly acknowledge WPP's efforts to modify and adopt internal practices and procedures to address the alleged issues.²⁶

I agree with the parties that WPP has made efforts to modify its internal practices and procedures to prevent similar conduct from occurring in the future. The modifications that WPP has made, pursuant to the Settlement, include: (1) re-training all contracted employees to

²³ 52 Pa. Code § 69.1201(c)(3).

²⁴ 52 Pa. Code § 69.1201(c)(4).

²⁵ I&E St. in Support at 7.

²⁶ WPP St. in Support at 9.

recognize potential clearance issues from WPP's lines to all structures and objects; (2) appending the new heightened awareness training to WPP's overhead lines and equipment inspection policy and procedures with clear guidelines for specified minimum clearances; and (3) documenting successful training verification for future reference.²⁷ WPP further attested that it has already taken corrective action to bring the conductors impacted by the incident into compliance.²⁸ The Settlement terms demonstrate that WPP has made, and will continue to make, the actions appropriate to enhance the safety of its distribution system, improve the reliability of its operations, and prevent similar occurrences in the future. Given WPP's strong and prompt efforts to modify its internal practices and procedures following the incident, consideration of this factor weighs in favor of a lower civil penalty. I find that the terms and conditions of the Settlement, including the level of the agreed upon civil penalty, adequately reflect consideration of this factor.

Fifth Factor

The fifth factor considers the number of customers affected and the duration of the violation.²⁹

I&E submitted that one customer, the Hotel, was affected by the incident. In that regard, I&E submitted that the hotel lost power for several hours and that the damage caused to the hotel as a result of the incident exceeded \$20,000.³⁰

WPP submitted that property damage and a system outage was reported at the Hotel on November 15, 2020, and noted that the Hotel still had power when WPP responded to the incident on November 16, 2020.³¹ On November 25, 2020, WPP removed the excessive sag

²⁷ Joint Petition at ¶ 27B.

²⁸ *Id.*

²⁹ 52 Pa. Code § 69.1201(c)(5).

³⁰ I&E St. in Support at 7.

³¹ WPP St. in Support at 9.

from its power lines.³² Given the above, WPP submitted that it promptly responded to the incident.³³

The parties agree that one customer – the Hotel – was affected by the incident. The duration of the power outage to the Hotel did not last long as the Hotel had power when WPP responded to the incident the following day. Given that only one customer was impacted for a short duration of time, consideration of this factor weighs in favor of a lower civil penalty. The terms and conditions of the Settlement, including the level of the agreed upon civil penalty, adequately reflect consideration of this factor.

Sixth Factor

The sixth factor considers 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.³⁴

I&E submitted that WPP has a history of compliance with the Code and the Commission's regulations but has engaged in conduct that violated the Code and the Commission's regulations in the past, citing to *Dennis v. West Penn Power Co.*, C-2020-3019952 (Final Order entered Mar. 5, 2021) and *Pennsylvania Public Utility Commission v. West Penn Power Co.*, C-2021-3024913 (Order entered Mar. 10, 2022).

WPP did not address its history of compliance in its Statement in Support but submitted that since the incident it has brought the conductors impacted by the incident into compliance and implemented revisions to its operating procedures. These changes, WPP

³² Stipulated Facts, ¶ 9g.

³³ WPP St. in Support at 9.

³⁴ 52 Pa. Code § 69.1201(c)(6).

submitted, will benefit customers in the future and enhance the safety and reliability of its electrical system.³⁵

The record in this matter does not contain evidence that WPP has a compliance history of concern, particularly with respect to incidents similar to this matter, such that would warrant a higher civil penalty. Even though it submitted that WPP has a history of compliance with the Code and Commission regulations, I&E noted that WPP has engaged in conduct that violated the Code and Commission's regulations in the past, citing to two cases in its Statement in Support. However, while those two cases might show that WPP does not have a perfect compliance history, those two cases do not evidence a poor compliance history on behalf of WPP.³⁶ As a general proposition, neither the Code nor the Commission's regulations require public utilities to provide constantly flawless service.³⁷ Since the Code does not require perfect service, it is a logical conclusion that it cannot require perfect compliance.³⁸ Given that the record does not contain evidence that WPP has a poor compliance history, consideration of this factor weighs in favor of a lower civil penalty. The terms and conditions of the Settlement, including the level of the agreed upon civil penalty, adequately reflect consideration of this factor.

Seventh Factor

The seventh factor considers 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.³⁹

³⁵ WPP St. in Support at 9.

³⁶ To note, in the matter of *Pennsylvania Public Utility Commission v. West Penn Power Co.*, C-2021-3024913 (Order entered Mar. 10, 2022), the Complaint was resolved by way of settlement. Therefore, WPP was not found in that matter to have violated any statute, regulation, or Order.

³⁷ See 66 Pa.C.S. § 1501; 52 Pa. Code § 57.194.

³⁸ *Pa. Pub. Util. Comm'n v. John Pierce*, C-2012-2318094 (Final Order entered Mar. 26, 2023).

³⁹ 52 Pa. Code § 69.1201(c)(7).

I&E submitted that WPP has been cooperative in I&E's investigation surrounding the incident, and notes that WPP's line supervisor and crew were responsive to the suggestion to remove slack in overhead lines in other locations after the incident occurred.⁴⁰

WPP also submitted that it supported and cooperated with I&E during its investigation and that it demonstrated a commitment consistent with the Commission's public safety goals and objectives by implementing or beginning to implement many of the changes set forth in the settlement prior to the filing of the Settlement.⁴¹

The parties both contend that WPP fully cooperated with the Commission's investigation. Given WPP's cooperation with the Commission's investigation, consideration of this factor weighs in favor of a lower civil penalty. The terms and conditions of the Settlement, including the level of the agreed upon civil penalty, adequately reflect consideration of this factor.

Eighth Factor

The eighth factor considers the civil penalty amount or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.⁴²

I&E submitted that the agreed upon civil penalty is sufficient to deter future violations and represents an amount that is reflective of a compromise between the parties.⁴³

⁴⁰ I&E St. in Support at 8.

⁴¹ WPP St. in Support at 9, 10.

⁴² 52 Pa. Code § 69.1201(c)(8).

⁴³ I&E St. in Support at 8

WPP submitted that the agreed upon civil penalty appropriately recognizes the seriousness of the matter but also reflects a negotiated compromise by the parties that considered the efforts of the Company since the incident occurred.⁴⁴

I agree with the parties that the civil penalty agreed upon in the Settlement will deter future violations. The parties agreed that WPP would pay a civil penalty amount of \$17,500. This penalty is not tax deductible. This civil penalty is the result of negotiations between the parties and serves as a compromise between the positions of the two parties. Further, WPP has agreed to undertake corrective measures to limit the occurrence of an incident like the incident at issue in the future. The civil penalty, as well as the costs associated with instituting corrective measures, is sufficient to deter WPP from future violations and presents a fair and reasonable outcome. Therefore, the terms and conditions of the Settlement, including the level of the agreed upon civil penalty, adequately reflect consideration of this factor.

Ninth Factor

The ninth factor considers past Commission decisions in similar situations.⁴⁵

Neither I&E nor WPP cited past Commission decisions in similar situations, however, WPP did submit that, when all of the relevant factors are evaluated, the Settlement is not inconsistent with the past Commission actions. WPP further submitted that, since this is a settled matter, it should be considered on its own merits.⁴⁶

The parties did not cite to past Commission decisions in similar situations, and I am not aware of similar Commission decisions. Therefore, I agree with WPP's position that this proceeding should be considered on its own merits. Analysis of the terms and conditions of the Settlement, which include the proposed civil penalty and WPP's commitment to instituting

⁴⁴ WPP St. in Support at 10.

⁴⁵ 52 Pa. Code § 69.1201(c)(9).

⁴⁶ WPP St. in Support at 10.

corrective measures, support approval of the Settlement as being fair, reasonable, and in the public interest.

Tenth Civil Penalty Factor

The tenth factor considers other relevant factors.⁴⁷

I&E submitted that the Settlement, which includes the agreed upon civil penalty, reflects a compromise between the parties and saves the parties time and resources that would be spent further litigating the case. I&E further submits that the Settlement will encourage WPP's compliance with the Code and Commission regulations.⁴⁸

WPP submitted that the fact that the parties were able to resolve this case through settlement is an additional relevant factor that should be considered. WPP argues that a settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiated from their initial litigation positions. The fines, 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 but allow the parties to move forward and to focus on implementing the agreed upon remedial actions. West Penn further submits that it has demonstrated a commitment consistent with the Commission's public safety goals and objectives and broadly expanded the scope of the general public that will benefit from the commitments made in this Settlement.⁴⁹

The parties point to the importance of the parties reaching a settlement of this matter. This matter being resolved through a settlement conserves the resources of the parties and the Commission, as the parties do not have to further litigate the proceeding. I agree with

⁴⁷ 52 Pa. Code § 69.1201(c)(10).

⁴⁸ I&E St. in Support at 8

⁴⁹ WPP St. in Support at 10.

WPP that approval of the Settlement will allow WPP to move forward and focus on implementing the remedial actions detailed in the Settlement. Consideration of this factor supports approval of the Settlement.

CONCLUSION

In conclusion, the Joint Petition for Settlement includes settlement terms and conditions sufficient to meet the public interest. Although WPP does not admit that any specific violation occurred, the Settlement adequately considers the impact of the incident at issue in this case. In that regard, the Settlement provides for a civil penalty that will not be tax deductible or passed through as an additional charge to WPP's customers in Pennsylvania. The Settlement additionally provides for corrective measures and modifications to be made to WPP's internal practices and procedures designed to enhance the safety and reliability of WPP's distribution system and to prevent similar occurrences in the future. Further, as pointed out by the parties, it is in the public interest to settle this matter to avoid the expense of litigation and to conserve resources.

Based on review of the Settlement, I find that the Settlement is in the public interest, is consistent with the terms of the Commission's policy statement, and merits approval. Accordingly, the Settlement will be approved, without modification, in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 502; 701.

2. The Commission encourages parties in contested on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231.

3. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa.*

Pub. Util. Comm'n., v. City of Lancaster - Bureau of Water, Docket No. R-2010-2179103, (Opinion and Order entered July 14, 2011) (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996); *Pa. Pub. Util. Comm'n. v. C.S. Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991)).

4. The Commission has adopted a policy statement setting forth ten factors that the Commission will 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 a proposed settlement agreement is in the public interest. 52 Pa. Code § 69.1201.

5. The settlement reached by the parties is in the public interest. 52 Pa. Code § 69.1201.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed on December 18, 2023, between the Commission's Bureau of Investigation and Enforcement and West Penn Power Company is approved in its entirety without modifications.

2. That within 30 days of the date of the Commission's Final Order in this matter, West Penn Power Company shall pay Seventeen Thousand Five Hundred dollars (\$17,500), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" 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 under Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f).

4. That completed documentation of successful training verification consistent with and as set forth within the terms of the approved Settlement and this Opinion and Order shall be kept on file by West Penn for future reference.

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

6. That, if West Penn Power Company fails to make the civil penalty payment required by Ordering Paragraph No. 2 above, within 30 days of the entry date of the Commission's Final Order in this matter, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

7. That the above-captioned matter shall be marked closed upon receipt of West Penn Power Company's payment of the administrative penalty.

Date: June 24, 2024

/s/
Alphonso Arnold III
Administrative Law Judge