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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
|  |  Public Meeting held October 27, 2016 |
| Commissioner’s Present: Gladys M. Brown, Chairman, StatementAndrew G. Place, Vice ChairmanJohn F. Coleman, Jr.Robert F. PowelsonDavid W. Sweet  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v. PECO Energy Company |  C-2015-2479970 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Settlement (Settlement) filed on April 8, 2016, by the Commission’s Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO or the Company) (collectively, the Parties). Each Party also filed a Statement in Support of the Settlement. For the reasons set forth herein, we will approve the Settlement as filed.

**History of the Proceeding**

On April 30, 2015, I&E filed a Formal Complaint (Complaint) against PECO. The Complaint concerned a natural gas explosion that occurred on July 17, 2014, at 118 Penrose Lane, Coatesville, Pennsylvania (Penrose Lane), when PECO was performing an uprating project. In the Complaint, I&E alleged that PECO committed various violations of the Commission’s Regulations at 52 Pa. Code §§ 59.33(b) and 59.35, and the federal gas pipeline safety regulations at 49 C.F.R. §§ 192.557(b)(1), (2) and (6) and 192.605(a) and (b)(5). I&E requested that the Commission, *inter alia*, impose a civil penalty of $1.5 million on the Company.

On May 26, 2015, PECO filed an Answer and New Matter. In the Answer, PECO admitted, in part, and denied, in part, the material allegations in the Complaint. In the New Matter, PECO averred that it has taken significant steps and implemented corrective actions to ensure that this type of event will not recur. PECO also averred that the civil penalty requested in the Complaint was inconsistent with Commission precedent. On June 15, 2015, I&E filed a Reply to New Matter generally denying the material averments in PECO’s New Matter.

The Parties entered into negotiations and agreed to resolve this matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. As previously indicated, the Parties filed the instant Settlement on April 8, 2016.

**Background**

 On July 17, 2014, the Commission’s Gas Safety Division (GSD) personnel received an emergency notification from the Pennsylvania Emergency Management Agency at 12:20 p.m. concerning a natural gas explosion. When Gas Safety Engineer Terri Cooper Smith arrived at the reported explosion site, she determined that the explosion occurred at Penrose Lane and was related to a nearby PECO uprating project. Complaint at 4. A PECO construction crew, with support from an outside contractor, was uprating a low pressure distribution system from a seven inch water column (w.c.) to a medium pressure distribution system to be operated at twenty-five pounds per square inch (psi). On July 18, 2014, Gas Safety Engineers Rob Horensky and Sunil Patel witnessed a pressure test of the service line to Penrose Lane, and no leaks were found during the pressure test. Accordingly, Gas Safety Engineer Smith concluded that gas did not leak from the service line before the meter and migrate into the home at Penrose Lane. Gas Safety Engineer Smith found that the gas entered the house after passing through the meter at a pressure higher than the meter and downstream appliances were designed to withstand. When the explosion occurred, the pressure in the system after uprating was 25 psi per the gauge located at Walnut and 5th Streets, 100 yards from Penrose Lane. Gas Safety Engineer Smith, therefore, concluded that the pressure at Penrose Lane at the time of the explosion was likely also near 25 psi. *Id*. at 5.

 On August 7, 2014, Gas Safety Supervisor Michael Chilek and Gas Safety Engineer Smith interviewed the following individuals: the PECO supervisor in charge of the crew performing the uprating work on July 17, 2014; the engineer who wrote the specific uprating procedure, GWP-059-14, on July 14, 2014, for the uprating project as required by PECO procedure GO-PE 1023, Changing Gas Distribution Pressures; the PECO employee conducting the leak survey prior to and in between each pressure increase; and a foreman for Utility Line Services who was working as a PECO contractor on the meters during the uprating project. As a result of the interviews, Gas Safety Engineer Smith found that, during the pre-job inspection, the PECO supervisor failed to discover that the service at Penrose Lane was connected to the low pressure distribution system PECO would be uprating. She also found that the service line to Penrose Lane had a maximum allowable operating pressure (MAOP) of 14” w.c. and, that when PECO uprated the pressure on the pipeline at 25 psi, this caused an over-pressurization that led to service line failure and the house explosion. *Id*. at 6. Further, Gas Safety Engineer Smith found that, before increasing operating pressure above the previously established MAOP of 14” w.c., PECO did not install a service regulator on each service line or test each regulator to determine that it was functioning. *Id*. at 6-7. Finally, Gas Safety Engineer Smith found that the contractor PECO uses for its mark outs did not mark out the service to Penrose Lane in the days leading up to the explosion. *Id*. at 7.

 If this matter had been litigated, I&E would have alleged that PECO violated provisions in Part 192 of Title 49 of the Code of Federal Regulations, including 49 C.F.R. §§ 192.557(b)(1), (2), and (6) and 192.605(a) and (b)(5), and provisions of the Commission’s Regulations, including 52 Pa. Code §§ 59.33(a) and (b) and 59.35. Had this matter been fully litigated, PECO would have contended that it did not violate the Code of Federal Regulations or the Commission’s Regulations. *See* Settlement at 4-8.

**Terms of the Settlement Agreement**

The Settlement is a comprehensive resolution of all issues in this proceeding. The Settlement includes the following terms and conditions:

 22. PECO agrees to develop a gas mapping plan, which will allow it to map and locate its facilities with sub-foot accuracy. This initiative will consist of the following steps:

 A. Convert data maintained in PECO’s legacy Gas Quad Maps into a Geographic Information System;

 B. Conflate the mapping/asset information using high quality road-edge, digital aerial photography with impervious feature layers;

 C. Launch a pilot of the Locus View mapping program in 2016;

 D. Capture and store X, Y, and Z coordinates for facility locations (and other asset data) through modern technology after completion of the Locus View pilot;

 E. Complete a “Visualization Tool,” which will visualize what is connected to mains via service points and will be linked to service record information and drawings;

 F. Retire legacy maps (only to be used for reference thereafter). This information will be accessible through PECO’s visualization tool and other mobile viewing devices; and

 G. Design a process to capture X, Y, and Z coordinates on legacy pipe and validate service line information.

 23. PECO estimates that the mapping system enhancements described in Paragraph 22 will cost approximately $3 million to develop/implement (including, but not limited to, costs associated with the Locus View Pilot, Conflation and Visualization Tools). PECO shall invest in this plan to assist in eliminating risks associated with its maps and undocumented facilities.

 24. PECO shall begin the above actions within sixty (60) days after the date of entry of a final and non-appealed Commission Order approving the Settlement in its entirety without modification or amendment.

 25. Because PECO estimates it will take ten to twenty years to fully map out its entire gas system (12,900 miles of infrastructure), the Company shall hold quarterly discussions about progress related to Paragraph 22 with the Commission’s Gas Safety Division (unless PECO and the Gas Safety Division mutually agree that such meetings are no longer needed). Quarterly meetings should begin with implementation of the measures in Paragraph 22 and continue until the mapping program is complete. During these meetings, PECO also will report on expenditures to implement the measures as set forth in Paragraphs 17[[1]](#footnote-1) and 22.

 26. The Company shall pay a civil penalty in the amount of nine hundred thousand dollars ($900,000), pursuant to 66 Pa. C.S. § 3301 to resolve the alleged violations included in the Complaint. Said payment shall be made within thirty (30) days after the date of entry of a final and non-appealed Commission Order approving the Settlement in its entirety without modification or amendment and shall not be claimed or included for recovery in future ratemaking proceedings. Additionally, PECO has committed or will commit to making significant capital investments and incurring substantial operations and maintenance expenses, which PECO estimates to total $5,300,000, and which PECO believes will elevate it to an industry-leading gas safety company. I&E reserves the right to challenge the reasonableness of these expenses included in any future base rate case.

Settlement at 12-14.

 Additionally, the Settlement is made without any admission by any Party as to any matter of fact or law, other than as expressly stated in the Settlement, and is without prejudice to any position advanced by either Party in this proceeding or that may be adopted during subsequent litigation. If the Settlement is approved and implemented, the Parties shall not in any subsequent proceeding take any action or advocate any position that would disrupt the Settlement. Settlement at 14. The Settlement provides that neither Party may cite to, refer to, or rely on the Settlement as precedent or as an admission, other than in a proceeding to enforce the Settlement. *Id*. at 15.

 The Settlement is conditioned upon the Commission’s approval, without modification, of all of the Settlement terms. The Parties state that, if the Commission modifies or fails to approve any of the Settlement terms, then either Party may elect to withdraw from the Settlement and proceed to complete the litigation of this proceeding. Upon Commission approval of the Settlement in a final order not subject to appeal or further challenge, I&E agrees to forbear from further prosecution of any formal complaint relating to PECO’s conduct that is the subject of this Complaint proceeding. *Id*.

**Discussion**

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).

The Code sets forth the maximum civil penalty amounts that we may levy on public utilities for violations of a Commission Order, Regulation, or a statute. For cases involving gas pipeline safety violations, $2 million is the maximum civil penalty amount that we are authorized to impose under Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c), for any related series of violations.[[2]](#footnote-2)

After a review of the terms of the Settlement, we find that the Settlement is in the public interest. The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 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 the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement as filed.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id*. In this case, we find that PECO’s actions constitute conduct of a serious nature. I&E alleged various violations of the Code of Federal Regulations and the Commission’s Regulations due to PECO’s failure to identify that the service at Penrose Lane was connected to the low pressure distribution system PECO would be uprating. When PECO uprated the pressure on the pipeline at 25 psi, this caused an over-pressurization which led to the Penrose Lane service line failure and the house explosion. *Id*. at 6. Because this conduct placed the public safety at risk, we find that a higher civil penalty is warranted here.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* In this case, consequences of a serious nature were involved. PECO’s actions resulted in a gas explosion that completely destroyed a single family home. We acknowledge, as the Parties point out, that there are some mitigating factors in this case, including that there were no reported injuries or fatalities to the residents of the home or to PECO personnel and that PECO was able to immediately shut off the flow of gas and the electricity before emergency first responders arrived. I&E Statement in Support at 8; PECO Statement in Support at 7.

The third factor pertains to litigated cases only. 52 Pa. Code
§ 69.1201(c)(3). Because this proceeding was settled prior to an evidentiary hearing, this factor is not applicable to this Settlement.

The fourth factor we may consider is 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. 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. 52 Pa. Code § 69.1201(c)(4). In this case, PECO engaged in appropriate measures to correct the conduct at issue and to prevent similar future conduct. As described in detail in the Settlement, PECO has taken or will take corrective action that will safeguard against a similar incident occurring in the future.

After the July 17, 2014 event, PECO immediately suspended every scheduled uprating/conversion project pending the results of an internal Root Cause Investigation initiated on July 24, 2014. As a result of the Root Cause Investigation, PECO is no longer performing low pressure to elevated pressure upratings but, instead, uses an air pressure test to convert low pressure systems to medium pressure systems. The Company also now verifies the number of services by using a camera that is inserted into the main and all attached services. Settlement at 9. PECO has also developed a process for identifying unknown services before a pressure conversion; revised its training manual for pressure conversions to reflect procedural requirements, roles, and responsibilities, and an approval process; trained personnel who have a role in developing field procedures on the revised training manual; amended Standard G-5005 to clearly indicate when non-standard services[[3]](#footnote-3) must be added to the Quad Map; and revised Procedures GO-PE-301-001 (related to Gas Facilities Records) to define a non-standard service and show when it must be added to the Quad Map. PECO estimates that it has spent approximately $300,000 to implement these corrective actions, that it expects to spend up to $500,000 annually by using cameras to confirm the location of mains and service lines during pressure conversions, and that it will spend an additional $1.5 million annually as a result of performing air pressure tests instead of upratings. *Id*. at 10. Additionally, as set forth in Paragraph No. 22 of the Settlement and described in detail above, PECO has agreed to develop a gas mapping plan that will allow the Company to map and locate its facilities with sub-foot accuracy, which it estimates will cost $3 million to develop and implement. *Id*. at 12. As a whole, we find that these actions support a lower civil penalty.

 The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). In addition to the residence that was destroyed as a result of this incident, gas service to six customers, including Penrose Lane, was affected. PECO restored service to all customers, except Penrose Lane, on the evening of the incident. I&E Statement in Support at 9-10; PECO Statement in Support at 10. This factor does not weigh in favor of a higher or lower civil penalty.

 We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). Based on our research and the Parties’ Statements in Support, this incident is the second reportable gas safety incident PECO has had within recent years. I&E Statement in Support at 10; PECO Statement in Support at 11. In *Pa. PUC v. PECO Energy Company*, Docket No. M-2012-2205782 (Order entered June 12, 2012), the Commission approved a settlement between I&E and PECO with one modification; an increase in the civil penalty from $35,000 to $75,000. This case involved an explosion at a residence in Montgomery County, caused by a complete circumferential crack of a four-inch cast iron main. There were no injuries, but property damage resulted in excess of $150,000. The alleged violations included PECO’s failure to prepare and follow written procedures for responding to an incident and procedures for identifying and classifying leak migration, to monitor external corrosion, and to document actions taken during the incident. Given the relative size of the Company, we find that its compliance history does not pose a barrier to approval of the instant Settlement.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). I&E represents that PECO has fully cooperated throughout the investigatory, discovery, and settlement process. I&E Statement in Support at 11. Additionally, PECO met with the Commission’s GSD on July 22, 2014 to discuss discovery responses, general practices, and plans to enhance safety; provided written discovery responses and documents to the GSD’s requests; had field employees available for interviews with the GSD; and updated the GSD on October 30, 2014, regarding the Company’s investigative findings, corrective actions, and improvements. PECO Statement in Support at 11; Settlement at 11. In this case, this factor weighs in favor of a lower civil penalty.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). We find that, along with the remedial measures the Company has been engaging in and will continue to engage in pursuant to the Settlement, the $900,000 civil penalty amount, which shall not be recovered in future ratemaking proceedings, will be a sufficient deterrent to prevent similar future occurrences. Based on the nature of the alleged violations, the resulting consequences of the alleged violations, and the remedial measures the Company has taken in this case, we conclude that our determination regarding this Settlement and the civil penalty amount is consistent with our prior decisions in similar situations.

The tenth factor we may consider is other relevant factors. 52 Pa. Code

§ 69.1201(c)(10). We believe that it is in the public interest to approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals. In addition, we believe that the Settlement is in the public interest because it promotes safety through the implementation of the Company’s mapping system enhancements which will assist in eliminating risks associated with the Company’s maps and undocumented facilities.

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

**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, including the Settlement Agreement and the Statements in Support thereof, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Petition for Settlement, filed on April 8, 2016, by the Commission’s Bureau of Investigation and Enforcement and PECO Energy Company is approved.

2.  That, within thirty days of the entry date of this Opinion and Order, PECO Energy Company shall remit $900,000, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

400 North Street

Harrisburg, PA  17120

  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 payment of the civil penalty as set forth in Ordering Paragraph No. 2.

 **BY THE COMMISSION,**

Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: October 27, 2016

ORDER ENTERED: October 27, 2016

1. Paragraph No. 17 of the Settlement explains the costs and estimated future costs PECO indicates it has spent and will spend to implement various corrective measures it began after the July 17, 2014 event. Settlement at 10. [↑](#footnote-ref-1)
2. Section 3301(c) provides the following:

**(c) Gas pipeline safety violations.—**Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater. [↑](#footnote-ref-2)
3. Non-standard service is a PECO term, which the Company defines as being located outside of the designated work zone/affected project area. The work zone/affected project area includes all buildings/structures along the main and corner properties. Settlement at 10 n.3. [↑](#footnote-ref-3)