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July 2, 2012

VIA OVERNIGHT DELIVERY

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

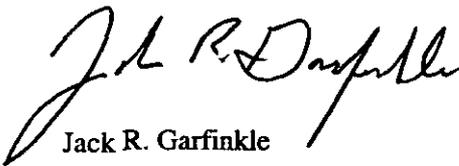
**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v.
PECO Energy Company
Docket No. M-2012-2205782**

Dear Secretary Chiavetta:

Pursuant to the June 12, 2012 Order and Opinion in the above-referenced docket, enclosed please find an original and three (3) copies of the **Comments of PECO Energy Company**.

Kindly return a time-stamped copy of this letter in the self-addressed envelope that is enclosed. Please do not hesitate to contact me should you have any questions regarding this filing.

Very truly yours,



Jack R. Garfinkle

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission : Docket No. M-2012-2205782
Bureau of Investigation and Enforcement :
v. :
PECO Energy Company :

**PECO ENERGY COMPANY'S COMMENTS
ON THE COMMISSION'S JUNE 12, 2012 ORDER AND OPINION**

Pursuant to the June 12, 2012 Order and Opinion (the "June Order") entered by the Pennsylvania Public Utility Commission (the "Commission") in the above-referenced docket, PECO Energy Company ("PECO" or the "Company") hereby submits its comments to the Commission's June Order regarding a proposed settlement agreement (the "Settlement") filed on December 2, 2011 by the Commission's Bureau of Investigation and Enforcement ("BI&E") and PECO.

I. INTRODUCTION

The Settlement was reached between BI&E and PECO following BI&E's informal investigation into PECO's conduct prior to, during and following a "low level explosion and house fire" at a residence in Swedeland, Montgomery County, Pennsylvania on December 26, 2009.¹ Throughout the entire investigation, BI&E and PECO were involved in informal discovery and settlement discussions to explore the possibility of resolving the investigation through a settlement agreement. BI&E acknowledged that PECO complied with their requests for information and that PECO fully cooperated with this investigation.²

¹ Settlement at 3.

² Settlement at 9-10.

A settlement was eventually agreed upon by BI&E and PECO, and on December 2, 2011, BI&E and PECO filed the Settlement and a Joint Statement in Support of Settlement Agreement with the Commission. Under the terms of the Settlement, PECO agreed to retrain its emergency response crews in certain procedures and pay a civil settlement amount of \$35,000 to the Commonwealth of Pennsylvania.³

On May 24, 2012, the Commission considered the Settlement for approval. Commissioner Gardner issued a motion, which was adopted unanimously, recommending that a civil penalty, rather than a civil settlement amount, of \$75,000 be included in the Settlement.

On June 12, 2012, the Commission entered the June Order and provided a twenty day period for comments by any interested party.

II. COMMENTS ON THE JUNE ORDER

A. **PECO respectfully requests that the Commission consider a \$75,000 civil settlement amount in lieu of a \$75,000 civil penalty**

PECO acknowledges that the BI&E allegations contained in the Settlement are serious, and PECO recognizes the need to prevent such alleged violations and the benefits of amicably resolving those issues. The Settlement was the result of a collaborative investigative process between PECO and BI&E. While PECO believes that the Settlement as submitted to the Commission is fair and in the public interest, it is willing to accept the increase in the amount required to be paid to the Commonwealth to settle this matter and move forward with its business. PECO respectfully requests, however, that the Commission reconsider the characterization of that payment as a “penalty” as opposed to a “civil settlement amount.”

³ Settlement at 10-11.

The Settlement reached by BI&E and PECO is a result of a compromise of positions and an agreement to resolve alleged violations without any admission by PECO of any culpability.⁴ Without an admission of a violation, PECO does not believe that a penalty should be imposed.⁵ Consequently, PECO believes that a “settlement payment” is a more appropriate characterization of the payment which BI&E and PECO included in the settlement agreement.

The June Order cites the Commission’s *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*. 52 Pa. Code §69.1201 (“Policy Statement”), as providing the factors that are considered by the Commission in reviewing the Settlement in order to determine if it is in the public interest.⁶ PECO agrees that these factors are important to consider in evaluating the Settlement, and notes that the Commission, in its Order adopting the Policy Statement, believed that there should be flexibility for parties in determining the specific resolution of a settled matter:

Though many of the same factors may be applied in both litigated and settled proceedings, parties in settled cases should be afforded more flexibility in determining the amount of a fine, penalty, *or other resolution*. We encourage settlements and intend to allow the parties flexibility in reaching amicable resolutions to complaints and other matters before us so long as the settlement is in the public interest.⁷ (emphasis added)

Clearly, the Commission did not contemplate that conditions or obligations included within a settlement agreement must be done so as a “penalty,” and PECO respectfully requests that it not done so here. Indeed, within the context of the settlement negotiations,

⁴ Id.

⁵ Section 3301(c) of the Public Utility Code, 66 Pa. C.S. §3301(c), provides that if a public utility *violates* any gas safety provisions of the Code it shall be subject to a civil penalty (emphasis added).

⁶ June Order at 8.

⁷ *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, page 5, Docket No. M-00051875 (Order entered November 30, 2007).

the issue of how to characterize the “civil settlement amount” was a material component of the settlement agreement. Reduced flexibility to address PECO’s concern about this characterization would have made a settlement more difficult, if not impossible.

B. Other Changes to Settlement

Other than the proposed change of the \$35,000 civil settlement amount to a \$75,000 civil penalty, PECO is not aware of any other proposed changes to the Settlement. Accordingly, PECO respectfully requests confirmation that the Settlement, as modified by the proposed \$75,000 civil penalty, is otherwise unchanged.

III. CONCLUSION

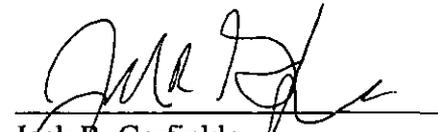
PECO appreciates the opportunity to comment on the June Order and requests that the Commission consider the foregoing comments in developing its final Order.

Respectfully submitted,

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SECRETARY'S BUREAU

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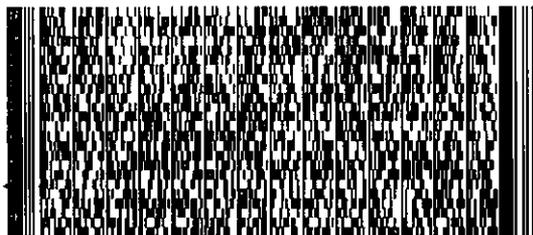
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