



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 8, 2016

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission Bureau of Investigation and
Enforcement v. PECO Corporation; Docket No. C-2015-2479970

Dear Secretary Chiavetta:

Enclosed for filing is the Joint Petition for Settlement on behalf of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO Energy Company in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

Enclosures

cc: As per Certificate of Service
Paul Metro, Gas Safety Chief

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PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. :
PECO Energy Company, :
Respondent :

Docket No. C-2015-2479970

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JOINT PETITION FOR SETTLEMENT

The Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") and PECO Energy Company ("PECO," the "Company," or the "Respondent"), by their respective counsel, respectfully submit to the Pennsylvania Public Utility Commission (the "Commission" or the "PUC") this Joint Petition for Settlement, including the attached Statements in Support from I&E (Attachment A) and the Company (Attachment B) (together the "Joint Petition"). The Company and I&E are collectively referred to herein as the "Joint Petitioners."

As a result of negotiations between I&E and PECO, the Joint Petitioners have agreed to resolve their differences as encouraged by the Commission's policy to promote settlements (See 52 Pa. Code § 5.231). The terms and conditions of this Joint Petition represent a comprehensive settlement (the "Settlement") of all issues presently pending in the above-docketed proceeding. The Joint Petitioners represent that this comprehensive Settlement is in the public interest and, therefore, request that the Commission approve,

without modification, the proposed Settlement as set forth in the Joint Petition. In support of their request, the Joint Petitioners state as follows:

I. INTRODUCTION

1. The parties to this Settlement are I&E, by its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, and PECO, with a principal place of business at 2301 Market Street, Philadelphia, PA 19101.

2. PECO is a “public utility” as that term is defined at 66 Pa. C.S. § 102,¹ as it is engaged in providing public utility service as, *inter alia*, a natural gas distribution company to the public for compensation.

3. Section 501(a) of the Public Utility Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

4. Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

5. Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Commission’s jurisdiction for violation(s) of the Public Utility

¹At 66 Pa. C.S. § 102, “Public utility” is defined under that term at subsection (1)(i) as:

- (1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:
 - (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

Code and/or Commission regulations. Section 3301(c) further allows for the imposition of a separate fine for each day's continuance of such violation(s).

6. Respondent, in providing gas distribution service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission orders.

7. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Gas Safety Division, which is part of I&E, also has the authority to enforce the federal gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.* and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

8. Pursuant to the provisions of the applicable Commonwealth and federal statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

II. BACKGROUND

9. On April 30, 2015, I&E filed a Formal Complaint ("Complaint") with the Commission against PECO. The Complaint is an outgrowth of a house explosion that occurred on July 17, 2014, at 118 Penrose Lane, Coatesville, Pennsylvania, when the Company was performing an uprating project.

10. The Complaint requested the following relief:

- A. that the Commission impose a civil penalty of \$1.5 million against the Company pursuant to Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301;

- B. that PECO not be permitted to recover any portion of the civil penalty through rates regulated by the Commission;
- C. that PECO be ordered to provide evidence to the Commission's Gas Safety Division that PECO has the proper procedures and the ability to perform uprating projects safely;
- D. that PECO be ordered to meet with the Gas Safety Division regarding its uprating procedures within three months of the date of the Commission's order sustaining the Complaint; and
- E. that PECO be ordered to cease and desist from performing any uprating projects until it has met with the Gas Safety Division and the Gas Safety Division is satisfied with the evidence provided.

11. On May 26, 2015, PECO filed an Answer and New Matter to the Complaint, in which it admitted in part and denied in part the material allegations in the Complaint.

12. On June 15, 2015, I&E filed a Reply to New Matter generally denying the material averments in PECO's New Matter.

III. ALLEGED VIOLATIONS

13. *If this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, I&E would have contended that PECO violated certain provisions of the Public Utility Code, Commission's regulations, and Code of Federal Regulations in that:*

- A. PECO failed to install and test a service regulator when the pressure in the service line was to be higher than the pressure delivered to the customer in that it did not install a service regulator on the service to 118 Penrose Lane before increasing the operating pressure from 14" w.c., which was the MAOP, to 25 psi. If proven, this is a violation of 49 C.F.R § 192.557(b)(6) and 52 Pa. Code § 59.33(b).
- B. PECO failed to conduct a leak survey or prepare the service before increasing the operating pressure above the previously established MAOP in that it uprated the pressure on the service line to 118

Penrose Lane, which had a MAOP of 14" w.c., to 25 psi, without conducting a leak survey or otherwise preparing the service. If proven, this is a violation of 49 C.F.R. § 192.557(b)(2) and 52 Pa. Code § 59.33(b).

- C. PECO failed to review the design, operating, and maintenance history of the segment of pipeline before increasing the operating pressure above the previously established MAOP in that it did not include the service at 118 Penrose Lane in its design documents and procedures for the uprating project. If proven, this is a violation of 49 C.F.R. § 192.557(b)(1) and 52 Pa. Code § 59.33(b).
- D. PECO failed to follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities in that it did not follow its own written procedure GO-PE-1023 (Changing Gas Distribution Pressures) revision #3 from July 8, 2013, which covers the PECO requirements when conducting this uprating project. If proven, this is a violation of 49 C.F.R. § 192.605(a) and 52 Pa. Code § 59.33(b).
- E. PECO's GO-PE-1023 Procedure did not include procedures for starting up and shutting down any part of the pipeline in a manner designed to assure operation within the MAOP limits prescribed in that it did not show all houses and buildings in the affected area on the job sketch. *See* Section 4.1.3 of GO-PE-1023, in which 118 Penrose Lane was not listed. If proven, this is a violation of 49 C.F.R. § 192.605(b)(5) and 52 Pa. Code § 59.33(b).
- F. PECO failed to follow its written GO-PE-1023 Procedure for conducting operations and maintenance activities in that it did not visit every house and/or building along the mains affected by the pressure change to ensure correct information was shown on the job sketch. *See* Section 4.1.6 of GO-PE-1023 Procedure. If proven, this is a violation of 49 C.F.R. § 192.605(a) and 52 Pa. Code § 59.33(b).
- G. PECO failed to follow its manual of written procedures (GO-PE-1023) for conducting operations and maintenance activities in that it did not ensure that all affected buildings were on the job sketch by failing to include the service to 118 Penrose Lane on the job sketch given to the supervisor. *See* Section 5.1.2.1 of GO-PE-1023 Procedure. If proven, this is a violation of 49 C.F.R. § 192.605(a) and 52 Pa. Code § 59.33(b).

- H. PECO did not use reasonable effort to protect the public from danger in that its engineer missed the service to 118 Penrose Lane in the design phase of this uprating project in 2012. If proven, this is a violation of 52 Pa. Code § 59.33(a).
- I. PECO did not use reasonable effort to protect the public from danger in that its contractor did not mark out the service to 118 Penrose Lane in the days prior to the explosion. If proven, this is a violation of 52 Pa. Code § 59.33(a).
- J. PECO did not use reasonable effort to protect the public from danger in that on the day of the explosion, PECO did not discover the service at 118 Penrose Lane in its construction walk down. If proven, this is a violation of 52 Pa. Code § 59.33(a).
- K. PECO did not use reasonable effort to protect the public from danger in that it did not use an updated map in performing the project; the only map used by PECO in performing this project was generated on November 12, 2012. If proven, this is a violation of 52 Pa. Code § 59.33(a).
- L. PECO did not perform a leak survey of mains and services prior to increasing the pressure and following each incremental increase of pressure in that it failed to leak survey the main/service to 118 Penrose Lane prior to increasing the pressure initially or following each of four incremental increases in pressure. If proven, this is a violation of 52 Pa. Code § 59.35.

14. If this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, PECO would have contended that it did not violate the provisions of the Public Utility Code, Commission regulations and Code of Federal Regulations stated in the Formal Complaint in that:

- A. The contractor did not mark out the service to 118 Penrose Lane because it was not located within the designated work zone/affected area.
- B. PECO conducted a leak survey and prepared the services of all structures in the designed work zone/affected area before increasing the operating pressure above the previously established MAOP. PECO

conducted a leak survey of all structures located within the designed work zone/affected area. The service to 118 Penrose Lane was non-standard, located three blocks back from the intersection of Walnut Street. This non-standard service was outside of the designated work zone/affected area, which according to Procedure GO-PE-310 (Preparation of Job Sketch of Gas Work), includes all buildings/structures along the main (which was located on Walnut Street) and not a corner property. PECO did not conduct a leak survey for 118 Penrose Lane because it was outside of the designed work zone/affected area and did not appear on PECO records.

- C. PECO reviewed the design, operating and maintenance history of the segment of pipeline before increasing the operating pressure for all structures located within the designed work zone/affected area. PECO did not include 118 Penrose Lane in its design documents and its procedure for the uprating project because it was a non-standard service that was outside of the designed work zone/affected area and did not appear on PECO's records.
- D. PECO did not use Procedure GO-PE-1023 for the service to 118 Penrose Lane because it was a non-standard service that was outside the designed work zone/affected area and did not appear on PECO's records.
- E. PECO's procedure included steps for starting up and shutting down any part of the pipeline in a manner designed to assure operating within the MAOP limits for the structures located within the designed work zone/affected area and on the job sketch. Also, 118 Penrose Lane was not included in the job sketch because it was served by a non-standard service and did not appear on PECO's records.
- F. PECO followed its written GO-PE-1-23 Procedure for conducting operations and maintenance activities for every house and/or building along te mains withing the designed work zone/affected area. PECO did not visit 118 Penrose Lane because it was served by a non-standard service that did not appear on PECO's records and was outside of the designed work zone/affected area.
- G. PECO followed its written GO-PE-1023 Procedure for conducting operations and maintenance activities for every house and/or building along the mains within the designed work zone/affected area. Also, 118 Penrose Lane was not included in the job sketch because it was

served by a non-standard service that did not appear on PECO's records and was located outside of the work zone/affected area.

- H. PECO's engineer did not miss the service to 118 Penrose Lane in the design phase of this uprating project in 2012, because it was a non-standard service that did not appear on PECO's records.
- I. PECO's contractor, USIC, used reasonable efforts to protect the public from danger. USIC did not mark out the service to 118 Penrose Lane because it was not located within the designed work zone/affected area.
- J. PECO used reasonable efforts to protect the public from danger. The service to 118 Penrose Lane was not discovered on the construction walk down because it was a non-standard service that was outside of the work zone/affected area and did not appear on PECO's records.
- K. In addition to a map that was created in 2012, PECO used current maps in the field when it performed the project and check steps were taken to ensure that the design sketch accounted for all structures within the designed work zone/affected area.
- L. PECO performed a leak survey of each main and service in the designed work zone/affected area prior to increasing the pressure and following each of the four incremental increases in pressure. PECO performed leak surveys of each main and service in the designed work zone/affected area prior to increasing the pressure and following each of the four incremental increases in pressure. PECO did not leak survey the service to 118 Penrose Lane because it was a non-standard service that was outside of the designed work zone affected area.

IV. CORRECTIVE ACTIONS

15. PECO recognizes the seriousness of this matter and immediately took steps to prevent a similar recurrence. Since the July 17, 2014 event, and prior to the instant Complaint, PECO conducted a Root Cause Investigation ("RCI") to determine causes and corrective actions. As a result of the RCI, the Company is no longer performing low pressure to elevated pressure upratings. Instead, an air pressure test is used to convert low

pressure systems to medium pressure systems. In addition to the air pressure test, the Company also now verifies the number of services by using a camera that can be inserted into the main and all attached services.

16. PECO has either met or exceeded the Relief Requested in the Formal Complaint and has already taken the following corrective actions:

- A. Suspended every scheduled uprating/conversion project immediately after the incident (on July 18, 2014), pending the results of an internal *Root Cause Investigation*, which was initiated on July 24, 2014;
- B. Permanently eliminated the practice of uprating low pressure systems to medium pressure systems as of October 15, 2014;
- C. Provided evidence to the Gas Safety Division on October 30, 2014 that PECO has the proper procedures and the ability to perform pressure conversions in a safe manner.
- D. Met with the Gas Safety Division on October 30, 2014 regarding uprating projects. On that date, the Gas Safety Division was informed that PECO had eliminated this type of event from recurring because the Company is no longer performing low pressure to elevated pressure upratings. Instead, an air pressure test is used to convert low pressure systems to medium pressure systems. This method uses air instead of gas to elevate system pressures. In addition to the air pressure test, the Company now verifies the number of services by using a camera that can be inserted into the main and all attached services before the conversion begins.
- E. Revised and updated the process for pressure conversions to require camera inspections and to utilize an air pressure test when raising low pressure systems to elevated pressure systems,² as of November 14, 2014;

² This method uses air instead of gas to elevate system pressures and a camera to find unknown services.

- F. Developed and implemented an effective process for identifying unknown services prior to a pressure conversion, as of November 14, 2014;
- G. Revised the training manual for pressure conversions to reflect procedural requirements, roles, and responsibilities, and an approval process. Clearly defined: 1) responsibilities for field procedures; 2) requirements for gaining access into all buildings within the work zone/affected area; and 3) appropriate compliance, as of December 15, 2014;
- H. Trained personnel who have a role in developing field procedures on the revised training manual, as of December 15, 2014;
- I. Amended Standard G-5005 to clearly indicate when non-standard services³ must be added to the Quad Map, as of December 1, 2014; and
- J. Revised Procedures GO-PE-301-001 (related to Gas Facilities Records) to define a non-standard service and indicate when it must be added to the Quad Map, as of December 1, 2014.

17. Since the July 17, 2014 event, and prior to the instant Complaint, PECO estimates that it has spent approximately \$300,000 to implement these corrective actions. In addition, PECO expects to spend up to \$500,000 annually as a consequence of using cameras to confirm/verify the physical condition (including all attached services) of all mains and service lines during pressure conversions. Further, PECO estimates that it will spend an additional \$1.5 million annually as a result of performing air pressure tests instead of upratings. PECO will have to replace more low pressure mains and services as the number of air pressure tests increase.

³ Non-Standard Service is a PECO term, which it defines as being located outside of the designated work zone/affected project area. The work zone/affected area includes all buildings/structures along the main and corner properties.

18. Through its corrective actions, the Company has adopted what it believes to be an industry leading safety practice of combining camera inspections with air pressure tests. These corrective actions demonstrate that PECO has proactively taken steps to eliminate any risk that this type of event will ever recur.

19. Additionally, PECO met with members of the GSD on October 30, 2014 and notified them of the findings and corrective actions stemming from the RCI.

20. Furthermore, throughout the entire investigatory process, I&E and PECO remained active in informal discovery and continued to explore the possibility of resolving this matter, which ultimately culminated in this Settlement. During the discovery process, PECO complied with I&E staff requests for information and documentation. In addition, PECO promptly made available three witnesses for interviews with Gas Safety Inspectors (Mike chilek and Terr Cooper-Smith) at its West Conshohocken Gas Plant on August 7, 2014. I&E staff also has acknowledged that PECO has fully cooperated with its investigation.

V. TERMS AND CONDITIONS OF SETTLEMENT

21. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Joint Petitioners engaged in numerous settlement discussions. These discussions culminated in this Settlement. The terms and conditions of the Settlement, for which the Joint Petitioners seek Commission approval, are set forth below.

A. Specific Settlement Provisions

22. Although PECO may dispute or disagree with the allegations above, the Company fully acknowledges the seriousness of the allegations. PECO also recognizes the need to prevent such violations and the benefit of amicably resolving these issues. As such, 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 ("GIS");
- 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 co-ordinates 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 LocusView 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 10-20 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 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.

B. General Settlement Provisions

27. This Settlement shall be deemed to constitute full and complete satisfaction by PECO of all obligations relating to the issues raised in, within the scope of, or related to the Complaint. The Joint Petitioners acknowledge and agree that this Settlement shall have the same force and effect as if this proceeding were fully litigated.

28. This Settlement reflects compromises between the Joint Petitioners and: (i) is proposed solely for the purpose of settling the present proceeding; (ii) is made without any admission by any party hereto as to any matter of fact or law, other than as may be expressly stated in this Joint Petition; and (iii) is without prejudice to any position advanced by either Joint Petitioner in these proceedings or that might be adopted by any Joint Petitioner during subsequent litigation. Notwithstanding the foregoing, however, if this Settlement is approved and implemented, the Joint Petitioners shall not in any subsequent proceeding take any action or advocate any position which would disrupt the spirit or the letter of the Joint Petition or the Settlement.

29. The Parties acknowledge that their actions pursuant to this Joint Petition are undertaken to resolve a disputed claim and are on an entirely voluntary basis and, except as may be expressly stated herein, this Joint Petition and Settlement are made without admission against or prejudice to any factual or legal position which either Joint Petitioner has asserted previously in connection with the Complaint or otherwise. Neither Joint

Petitioner may cite, refer to, or rely on this Joint Petition as precedent, an admission, or by way of estoppel in any proceeding or future negotiation between them, other than a proceeding to enforce this Joint Petition or any final order from the Commission approving the Joint Petition.

30. This Joint Petition and the Settlement are conditioned upon the Commission's approval, without modification, of all of the terms outlined herein. If the Commission modifies or fails to approve any of the Settlement terms, then either Joint Petitioner may elect to withdraw from the Settlement and proceed to complete the litigation of these proceedings, in which event: (i) the Joint Petitioners reserve their respective rights to, among other things, request rulings on all preliminary motions that may have been filed previously, participate in a prehearing conference, conduct discovery, file testimony, confront opposing witnesses and generally participate in evidentiary hearings, submit briefs and reply briefs supporting their respective positions, etc.; (ii) the Joint Petitioners claim the privilege reserved in 52 Pa. Code § 5.231 that no part of the unaccepted Settlement shall be admissible in evidence at any time against any Joint Petitioner; and (iii) no adverse inference shall be drawn against either Joint Petitioner as a result of any matter set forth herein.

31. As of the date the Commission approves this Joint Petition and Settlement in a final order not subject to appeal or further challenge ("Effective Date"), I&E hereby holds harmless, releases, and forever forbears from further prosecuting any formal complaint relating to PECO's conduct that is the subject of this Complaint and as described in this Joint Petition up to the Effective Date. Under no circumstances shall I&E request or

the Commission impose any further civil or other penalties for any PECO conduct or actions that are the subject of the formal Complaint and this Joint Petition.

32. *The Joint Petitioners shall not, in any subsequent proceeding before the Commission or any other forum, take any action, file any pleadings, or otherwise advocate any position inconsistent with or otherwise challenge or seek to overturn the terms and conditions of this Joint Petition and Settlement.*

33. *The terms and conditions of this Joint Petition shall be implemented at all times by PECO and I&E in good faith and fair dealing. Each Joint Petitioner shall execute such other documents as may be reasonably requested by the other Joint Petitioner to implement the intent and purpose of this Joint Petition and Settlement.*

34. *The Joint Petitioners may enforce this Joint Petition through any appropriate action before the Commission or through any other available remedy in law, equity, or otherwise.*

35. *This Joint Petition constitutes the entire agreement between PECO and I&E hereto with respect to the matters contained herein and all prior agreements with respect to the matters covered herein are superseded, and each Joint Petitioner confirms that it is not relying upon any representations or warranties of the other Joint Petitioner, except as specifically set forth herein or incorporated by reference hereto.*

36. *This Joint Petition shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, irrespective of the application of any conflict of laws provisions.*

37. The Joint Petitioners agree that this Settlement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same agreement that is binding upon the Joint Petitioners as if they executed a single petition.

38. It is expressly understood and agreed between the Joint Petitioners that this Joint Petition and Settlement constitutes a negotiated resolution solely of the above-referenced proceeding.

39. The Joint Petitioners shall utilize their best efforts to support this Joint Petition and Settlement and to secure its approval, without modification, by the Commission.

VI. THE SETTLEMENT IS IN THE PUBLIC INTEREST

40. The Commission's policy is to encourage settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and, at the same time, conserve valuable administrative resources. The Commission has also referenced that settlement results are often preferable to those reached at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). The Joint Petitioners assert that this Settlement is in the public interest because, with the conditions imposed herein, the proposed transaction will provide substantial affirmative public benefits.

41. Substantial litigation and associated costs will be avoided by this Settlement. This Settlement resolves a number of important issues fairly, by balancing the interests of the Company, I&E, and the public. If approved, the Settlement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs.

42. This Settlement is consistent with the Commission's policies promoting negotiated settlements. The Joint Petitioners arrived at this Settlement after a number of meetings, discussions, and negotiations. The Settlement terms and conditions constitute a carefully crafted package, representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements. *See* 52 Pa. Code §§ 5.231, 69.391, and 69.1201.

43. The reasons set forth in the Statements in Support filed by the Joint Petitioners at the above-referenced docket support approval of this Settlement.

VII. CONCLUSION

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request that the Commission:

44. Approve the Settlement as set forth herein in its entirety without modification;

45. Find the Joint Petition for Settlement is in the public interest; and

46. Terminate this proceeding and mark the matter closed.

VIII. PROPOSED ORDERING PARAGRAPHS

47. That the Joint Petition between the Commission's Bureau of Investigation and Enforcement and PECO Energy Company is approved in its entirety without modification.

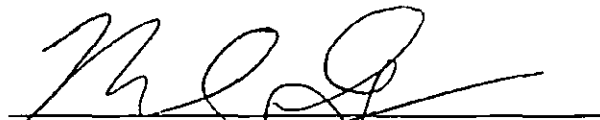
48. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days after the date this Order becomes final, PECO shall pay \$900,000. Said payment shall be made by check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

49. That the Secretary shall mark this docket at C-2015-2479970 closed.

IN WITNESS WHEREOF, the Joint Petitioners hereto have duly executed this Joint Petition for Settlement, as evidenced by the signature of their attorneys, each of whom has authority to execute this Joint Petition.

FOR PECO ENERGY COMPANY



Michael S. Swerling, Esq.
Assistant General Counsel
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
michael.swerling@exeloncorp.com
Phone: (215)841-4220

4/8/2016
Date

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



Heidi L. Wushinske, Esq.
Prosecutor
Michael L. Swindler, Esq.
Deputy Chief Prosecutor

4/8/2016
Date

PA Public Utility Commission
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED

APR 8 2016

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

v. :

Docket No. C-2015-2479970

PECO Energy Company, :
Respondent :

**STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT
OF PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement” or “Joint Petition”) entered into by I&E and PECO Energy Company (“PECO”, the “Company,” or the “Respondent”) (hereinafter collectively referred to as “Parties”) in the above docket. The Settlement, if approved, fully resolves all issues related to the I&E Complaint proceeding involving allegations that the Company committed various violations of the Commission’s regulations and the federal Pipeline Safety Regulations, as codified in the Code of Federal Regulations (Pipeline Safety Regulations, 49 C.F.R. Parts 190-199).

I&E respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

This matter involves PECO, a jurisdictional provider of natural gas service to the public for compensation consistent with the definition of public utility in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.

On July 17, 2014, a house explosion occurred at 118 Penrose Lane, Coatesville, Pennsylvania, when PECO was performing an uprating project. On April 30, 2015, I&E filed a Formal Complaint (“Complaint”) with the Commission against PECO alleging that PECO violated multiple sections of the federal Pipeline Safety Regulations and the Commission’s regulations.

Regarding relief, I&E requested in the Complaint that the Commission: (a) impose a civil penalty of \$1,500,000 against the Company pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301; (b) prevent the Company from recovering any of the civil penalty through rates; (c) order the Company to provide evidence to the Commission’s Gas Safety Division that PECO has the proper procedures and the ability to perform uprating projects safely; (d) order the Company to meet with the Gas Safety Division regarding its uprating procedures within three months of the date of the Commission’s order sustaining this complaint; and (e) order the Company to cease and desist from performing any uprating projects until it has met with the Gas Safety Division and the Gas Safety Division is satisfied with the evidence provided.

On May 26, 2015, PECO filed an Answer and New Matter to the Complaint, in which it admitted in part and denied in part the material allegations in the Complaint. Specifically, PECO contended that it did not violate the Public Utility Code, Commission regulations, or Code of Federal Regulations stated in the Complaint.

On June 15, 2015, I&E filed a Reply to New Matter generally denying the material averments in PECO's New Matter.

III. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement, which, once approved, will resolve all issues related to I&E's Complaint proceeding.

Notably, after the July 17, 2014 incident and prior to the filing of I&E's Complaint, PECO conducted a root cause investigation ("RCI") to determine causes and corrective actions. As a result, PECO stopped performing low pressure to elevated pressure upratings and instead began using an air pressure test to convert low pressure systems to medium pressure systems. In addition, PECO started inserting a camera into the main and all attached services to verify the number of services.

Moreover, subsequent to the filing of I&E's Complaint, PECO took a number of corrective actions that met or exceeded the relief requested in I&E's Complaint. These corrective actions, described in detail in Paragraph 16 of the Settlement Agreement, include PECO performing the following: immediately suspending every scheduled uprating/conversion project after the incident, permanently eliminating the practice of

uprating low pressure systems to medium pressure systems, providing evidence that PECO had the ability and proper procedures to perform pressure conversions in a safe manner, informing the Commission's Gas Safety Division of its new uprating procedures, *revising and updating the process for pressure conversions to require camera inspections and air pressure tests*, developing and implementing a process for identifying unknown services prior to a pressure conversion, revising PECO's training manual for pressure conversions, training personnel who have a role in developing field procedures on the revised training manual, amending Standard G-5005 to clearly indicate when non-standard services must be added to the Quad Map, and revising Procedures GO-PE-301-001 to define non-standard service and indicate when it must be added to the Quad Map.

I&E intended to prove the factual allegations set forth in its Complaint, which the Company has disputed, at hearing. The Settlement results from the compromises of the Parties. Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

IV. TERMS OF SETTLEMENT:

Under the terms of the Settlement, I&E and the Company have agreed that PECO will perform the following corrective actions, which are intended to enhance safety:

- A. Convert data maintained in PECO's legacy Gas Quad Maps into a Geographic Information System ("GIS");
- 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 co-ordinates for facility locations (and other asset data) through modern technology after completion of the LocusView 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.

PECO shall begin the above actions (contained in Paragraph 22 of the Settlement) 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. Because PECO estimates it will take 10-20 years to fully map out its entire gas system (12,900 miles of infrastructure), the Company shall hold quarterly discussions about progress related to the above terms 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 will begin with implementation of the measures described above 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 16 and 22 of the Settlement Agreement.

PECO will also 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. PECO will make this payment 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 the payment 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 \$5,300,000,¹ and which PECO believes will elevate it to an industry-leading gas safety company. I&E reserved the right to challenge the reasonableness of these expenses included in any future base rate case.

These terms are in addition to the corrective actions already undertaken by PECO, as described above.

V. ANALYSIS OF THE ROSI STANDARDS:

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions

¹ According to PECO, it expects to spend approximately \$2 million annually for ongoing initiatives related to pressure tests and camera inspections for the foreseeable future.

are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-referenced matter is consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

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 penalty. 52 Pa. Code § 69.1201(c)(1). I&E submits that the violations averred in the Complaint are serious in nature in that PECO's failure to identify the service at 118 Penrose Lane led to a house explosion. Clearly, significant public safety concerns are present when a utility's conduct results in significant property damage, as in this case. I&E submits that the Company's alleged conduct is of a serious nature and was considered in arriving at the civil penalty in the Settlement Agreement. Moreover, PECO has recognized the seriousness of this matter and immediately took steps to prevent a

similar occurrence (including permanently eliminating the practice of upratings), which justifies the proposed Settlement, including a reduced penalty amount.

The second factor considered is whether the resulting consequences of the Company'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). In this case, there was significant property damage as the single family home was completely destroyed. Moreover, PECO does not deny the seriousness of the incident. However, there were no reported injuries or fatalities to the residents of the home or PECO personnel. The seriousness of this incident and PECO's corrective actions have been taken into consideration in arriving at the civil penalty of \$900,000.

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 the Company'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 the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Immediately following the incident, PECO took steps to prevent a similar recurrence. These steps included replacing low pressure to elevated pressure upratings with air pressure tests to convert low pressure systems to medium pressure systems, and inserting a camera into the main and all attached services to verify the

number of services. In addition, subsequent to the filing of I&E's Complaint, PECO took a number of corrective actions that met or exceeded the relief requested in the Complaint. These corrective actions, described in detail in Paragraph 16 of the Settlement Agreement, include: immediately suspending every scheduled uprating/conversion project after the incident, permanently eliminating the practice of uprating low pressure systems to medium pressure systems, providing evidence that PECO had the ability and proper procedures to perform pressure conversions in a safe manner, informing the Commission's Gas Safety Division of its new uprating procedures, revising and updating the process for pressure conversions to require camera inspections and air pressure tests, developing and implementing a process for identifying unknown services prior to a pressure conversion, revising PECO's training manual for pressure conversions, training personnel who have a role in developing field procedures on the revised training manual, amending Standard G-5005 to clearly indicate when non-standard services must be added to the Quad Map, and revising Procedures GO-PE-301-001 to define non-standard service and indicate when it must be added to the Quad Map. Through its corrective actions, PECO has adopted what it asserts is an industry leading safety practice. The Joint Petitioners agree that these actions demonstrate that a reduced penalty amount is in the public interest.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). As a result of this incident, gas service to six customers, including 118 Penrose Lane, was

affected. Service to all customers, except 118 Penrose Lane, was restored the evening of the incident.

The sixth factor to be considered relates to the compliance history of the Company. 52 Pa. Code § 69.1201(c)(6). “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.” *Id.* As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to require constantly flawless service. The Public Utility Code requires public utilities to provide reasonable and adequate, not perfect, service. 66 Pa. C.S. § 1501. As such, the Public Utility Code does not require perfect service and it seems logical that it cannot require perfect compliance. Moreover, this Complaint stems from only the second reportable gas safety incident that PECO has had in the past five years.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). PECO has cooperated with I&E and the Gas Safety Division throughout the investigatory, complaint, and settlement processes. Shortly after the incident, PECO made available three witnesses for interviews with the Gas Safety Division. All three witnesses were cooperative. PECO also met with the Gas Safety Division after the completion of PECO’s RCI to provide the findings and corrective actions stemming from the RCI. In addition, PECO complied with I&E’s requests for information throughout the investigatory process. Finally, PECO made itself available for numerous settlement

discussions regarding the Coatesville incident. This factor supports the reduction of the civil penalty to \$900,000.

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 \$900,000, which may not be claimed or included for recovery in future ratemaking proceedings, together with the costs of the terms of the settlement set forth above, is substantial and sufficient to deter PECO from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). This is the first gas safety case before the Commission involving an incident that occurred since the civil penalty maximum has been increased.² Nonetheless, I&E submits that past Commission decisions responsive to similar situations have reached similar conclusions. For example, in *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, C-2012-2295974 (Opinion and Order entered on February 19, 2013) (“*Millersville case*”), the Commission ordered UGI to pay a \$200,000 civil penalty for its conduct, which resulted in significant property damage, but no injuries or fatalities. The civil penalty proposed in this Settlement is slightly less than half of the maximum allowable civil penalty, which is similar to the civil penalty imposed in the *Millersville case*, under the civil penalty maximums applicable at that time. Therefore, the civil penalty agreed

² Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c), provided that any public utility that violates any gas safety provisions of the Code shall be subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation persists, and that the maximum civil penalty shall not exceed \$500,000 for any related series of violations. Act 11 of 2012 amended this Section to increase the maximum penalties to \$200,000 for each violation for each day and \$2,000,000 for any related series of violations. Act 11 became effective on April 16, 2012.

upon in this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

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 fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and 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 corrective actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement and respectfully requests that the Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,



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Dated: April 8, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
Complainant	:	
	:	Docket No. C-2015-2479970
v.	:	
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

RECEIVED

**PECO ENERGY COMPANY'S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR SETTLEMENT**

APR 8 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I. INTRODUCTION

PECO Energy Company ("PECO" or the "Company") submits this Statement in Support of the Joint Petition for Settlement ("Joint Petition" or "Settlement") with the Pennsylvania Public Utility Commission's (the "Commission's") Bureau of Investigation and Enforcement ("I&E") (hereinafter referred to collectively as the "Joint Petitioners") in the above-captioned proceeding. The Settlement resolves all issues raised in the Formal Complaint related to a natural gas event that occurred during an uprating procedure on July 17, 2014 at 118 Penrose Lane, Coatesville, Pennsylvania. For the reasons stated herein, PECO believes that the settlement embodied in the Joint Petition is fair, just, reasonable and in the public interest. Therefore, the Settlement should be approved in its entirety and without modification.

II. EXECUTIVE SUMMARY

In response to this event and on a proactive basis, PECO immediately initiated a Root Cause Investigation ("RCI") to address the causes, eliminate the risks and resolve the impacts of upratings. PECO adopted industry-leading safety practices through the

RCI, which ensure that this kind of event will not repeat. These enhancements include:

1) permanently eliminating the practice of uprating low pressure systems to elevated pressure; 2) replacing upratings with air pressure tests and camera inspections of all mains and services being converted; and 3) adopting an industry-leading gas mapping system to map and locate underground facilities with sub-foot accuracy. PECO currently estimates the initial cost of these enhancements to be \$5.3 million (as detailed below).¹

Type of Spend	Duration	Description	Amount
Capital	One-time	Corrective Actions	\$300,000
Capital	One-time	Mapping Plan	\$3,000,000
Capital	Ongoing (on an annual basis)	Pipeline Replacements (associated with air pressure tests)	\$1,500,000
Operations & Maintenance	Ongoing (on an annual basis)	Camera Use (during conversion projects)	\$500,000
TOTAL			\$5,300,000

PECO believes that its actions immediately following the event, to date, clearly demonstrate its recognition of the seriousness of this matter, its commitment to learn from this event and its desire to further improve the safety of its distribution system. The Joint Petitioners believe that the Settlement (which stemmed from multiple discussions between the Parties spanning eight months) reflects a carefully balanced compromise of the interests of the Joint Petitioners because it: 1) resolves all issues raised in the Formal Complaint; 2) meets or exceeds all of the relief requested in the Formal Complaint; and 3) requires investments that exceed what is required under the Federal Gas Safety Regulations or the Pennsylvania Code.

PECO has agreed to the proposed Settlement and requests that the Joint

¹ As set forth in the table, PECO expects to spend approximately \$2 million annually for ongoing initiatives related to pressure tests and camera inspections for the foreseeable future.

Petitioners be afforded flexibility in reaching this amicable resolution because it is in the public interest, aligns with the Commission's policy on settlements and therefore should be approved. Accordingly, PECO respectfully requests that the Commission approve the Joint Petition in its entirety, without modification, and make the findings, required by 52 Pa. Code § 5.232, that the Settlement is in the public interest.

III. BACKGROUND

The background for this proceeding is set forth in Paragraphs 9-12 of the Joint Settlement and is incorporated herein by reference.

IV. THE COMMISSION FAVORS SETTLEMENTS

According to 52 Pa. Code § 5.231, the Commission's policy is to promote settlements because they lessen the time and expense associated with litigation. Settlement results achieved in advance of litigation are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine if the proposed terms are in the public interest. Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at 6 (August 31, 2012).

Additionally, the ten factors set forth in the Commission's Policy Statement (the "Rosi Factors") at 52 Pa. Code § 69.1201 are to be considered in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. The Commission does not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may be considered, parties that have reached settlement "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). For the reasons set forth below, the Settlement (and its application of the Rosi Factors) is in the public interest, aligns with the Commission's policy on settlements and therefore should be approved.

V. TERMS OF SETTLEMENT

The Formal Complaint in this matter requested that PECO: 1) pay a \$1.5 million civil penalty (that cannot be recovered through rates); 2) provide evidence that it has adequate procedures to perform upratings safely; and 3) meet with the GSD within three months of a Commission order sustaining the Complaint to discuss its uprating procedure.

To ensure that this type of event does not recur, PECO adopted a number of corrective actions, which are detailed in Section VI below (Rosi Factors 4 and 8). Additionally, to reduce risks involved with unknown and non-standard services, PECO has adopted the following plan to implement a reliable and accurate mapping system with real world data to be utilized by design, field and locating crews with sub-foot accuracy:

- A. Develop a gas mapping plan, which will allow the Company to map and locate its facilities with sub-foot accuracy. This initiative will consist of the following steps:
 - 1) Convert data maintained in PECO's legacy Gas Quad Maps into a Geographic Information System ("GIS");
 - 2) Conflate the mapping/asset information using high-quality road-edge, digital aerial photography with impervious feature layers;
 - 3) Launch a pilot of the LocusView mapping program in 2016;
 - 4) Capture and store X,Y and Z co-ordinates for facility locations (and other asset data) through modern technology after completion of the LocusView pilot;
 - 5) 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;

- 6) 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
 - 7) Design a process to capture X, Y and Z coordinates on legacy pipe and validate service line information.
- B. PECO estimates that the mapping system enhancements described in Paragraph 22 of the Joint Settlement will cost approximately \$3 million to develop/implement (including, but not limited to, costs associated with the LocusView Pilot, Conflation and Visualization Tools). PECO shall invest in this plan to assist in eliminating risks associated with its maps and undocumented facilities.
 - C. 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.
 - D. Because PECO estimates it will take 10-20 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 of the Joint Settlement with the Commission's GSD (unless PECO and the GSD mutually agree that such meetings are no longer needed). Quarterly meetings should begin with implementation of the measures in Paragraph 22 of the Joint Settlement 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 and 22 of the Joint Settlement.
 - E. 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 \$5,300,000,² 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.

Additionally, Paragraph 28 of the Joint Settlement explains that the Joint

² See Footnote 1 *supra* for detail regarding ongoing settlement commitments.

Petitioners have entered this Settlement without making any admissions as to any matter of fact or law (other than as stated in the Joint Settlement).

VI. FACTORS TO CONSIDER IN ASSESSING PENALTIES UNDER THE COMMISSION'S POLICY STATEMENT

The Commission considers ten factors (set forth in 52 Pa. Code § 69.1201) in determining the amount of a penalty, whether a settlement is reasonable and whether approval thereof is in the public interest. Given the corrective actions taken, the operational investments proposed and the resulting safety enhancements to be achieved, the Commission's Rosi Factors warrant a reduced penalty amount as specified below.

- (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.***

This incident did not involve willful fraud or misrepresentation, but involved more than an administrative filing or technical error. And while the end result of the July 17, 2014 incident was of a serious nature, PECO's conduct was closer to the administrative discrepancy end of the spectrum as opposed to willful fraud or misrepresentation. Specifically, the event resulted from a technical error related to Company maps. PECO's conduct before, during and after the incident does not warrant a higher penalty because:

- A. PECO reviewed the design, operating and maintenance history of the pipeline before increasing the operating pressure for all structures located in the designed work zone/affected area.
- B. PECO safely performed the conversion for all structures in the designed work zone/affected area before increasing the operating pressure. The service to 118 Penrose Lane was non-standard, located three lots back from the intersection of Walnut Street. It was outside of the affected area which, according to Procedure GO-PE-319 (Preparation of Job Sketch of Gas Work), includes all buildings/structures along the main and corner properties. Because it was located three lots back, it was not along the

main (which was located on Walnut Street) and not a corner property. Accordingly, 118 Penrose Lane was outside of the affected area and did not appear on PECO's records.

- C. Immediately after the explosion, a PECO employee shut off the flow of gas at the bypass. A nearby PECO electric employee immediately responded and shut off the electric to make the area safe for first responders. PECO's emergency response activities and procedures were proper.

The Settlement terms adequately address the mapping discrepancy involved in this incident. As such, PECO's conduct should not warrant a higher 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.***

A review of recent Commission-approved settlements supports the conclusion that a maximum penalty should not be imposed for gas events when there are no personal injuries or losses of life and only property damages occur. PECO understands the seriousness of an incident involving the destruction of a home. However, no injuries or deaths occurred. Furthermore, as a result of performing the uprating procedure correctly (as to the designed work zone/affected area), PECO took immediate action to prevent further damage or loss. Because a PECO employee was in an excavation site at the bypass, he was able to immediately shut off the flow of gas. Additionally, with an electric employee in the area, PECO was able to shut off electricity even before emergency first responders arrived on scene. Therefore, PECO was able to make the area safe for emergency response within minutes. These actions most likely prevented further loss.

Regarding consequences, the Commission should consider the amount of property damage in determining an appropriate penalty amount. PECO estimates the property loss of the home involved in the July 17, 2014 incident to be approximately \$122,000.

Accordingly, PECO believes that the consequences do not warrant a higher penalty amount.

(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.

This case has not been litigated and as such this factor should not be considered.

However, to the extent that this factor could be considered, PECO's conduct was neither intentional nor negligent.

(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.

Immediately after the event, PECO, pursuant to the direction of its senior-level management, undertook extensive efforts to modify its internal practices and procedures to prevent a recurrence of the July 17, 2014 incident. More specifically, PECO's leadership gave its full attention to this event and immediately required the Company to take the following actions:

- A. Suspend every scheduled uprating/conversion project immediately after the incident (on July 18, 2014), pending the results of an internal Root Cause Investigation, which was initiated on July 24, 2014;
- B. Permanently eliminate the practice of uprating low pressure systems to medium pressure systems, as of October 15, 2014;
- C. Provide evidence to the GSD that PECO has the proper procedures and the ability to perform pressure conversions in a safe manner, as of October 30, 2014.
- D. Develop and implement an effective process for identifying unknown services prior to a pressure conversion, as of November 14, 2014;

- E. *Revise and update the process for pressure conversions to require camera inspections and to utilize an air pressure test when raising low pressure systems to elevated pressure systems,² as of November 14, 2014;*
- F. *Revise the training manual for pressure conversions to reflect procedural requirements, roles, and responsibilities, and an approval process. Clearly define: 1) responsibilities for field procedures; 2) requirements for gaining access into all buildings within the work zone/affected area; and 3) appropriate compliance, as of December 15, 2014;*
- G. *Train personnel who have a role in developing field procedures on the revised training manual, as of December 15, 2014;*
- H. *Amend Standard G-5005 to clearly indicate when non-standard services³ must be added to the Quad Map, as of December 1, 2014; and*
- I. *Revise Procedure GO-PE-301-001 (related to Gas Facilities Records) to define a non-standard service and indicate when it must be added to the Quad Map, as of December 1, 2014.*

These corrective actions were completed by December 2014 (well before the Formal Complaint issued in this proceeding). Therefore, PECO proactively took significant steps to completely eliminate any risk that this type of incident would recur. Furthermore, PECO has undertaken to implement a gas mapping plan, which will allow the Company to map and locate its facilities with sub-foot accuracy. It will take PECO 10-20 years to fully map its facilities under the new system. However, PECO believes the end result will be an industry-leading and accurate mapping system, which exceeds what is required under the Federal Gas Safety Regulations or the Pennsylvania Code. Accordingly, PECO believes that its commitments to eliminating system risks (associated with mapping discrepancies) warrant a lower penalty amount.

² This method uses air instead of gas to elevate system pressures. In addition, PECO now verifies the number of services by using a camera that can be inserted into the main and all attached services. This is done before the air pressure test begins.

³ Non-Standard Service is a PECO term, which it defines as being located outside of the designated work zone/affected project area. The work zone/affected area includes all buildings/structures along the main and corner properties.

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

Six customers were out of service between 1120 and 2000 hours on July 17, 2014. In addition, because the event occurred during the summer, natural gas was not needed for heating. Gas service was restored to all customers except 118 Penrose Lane on the evening of July 17, 2014 (the date of the event). PECO believes that these facts justify a lesser penalty amount.

(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.

PECO is committed to maintaining the highest standards of safety and reliability for its customers, employees, contractors and the communities it serves. Accordingly, PECO complies with Commission authority by achieving comprehensive safety and reliability objectives that are managed through various programs that assess risks, track trends and develop corrective and preventative action plans based on OSHA's hazard prevention and control component of the Safety and Health Management System.

For example, PECO ranks in the first decile for Percent First Responder Calls Under One Hour, which reflects PECO's ability to respond to natural gas odor calls within one hour of receiving customer notice. Additionally, PECO recently has received a number of safety awards, including: 1) the Energy Association of Pennsylvania's Safety Achievement Award, which recognizes member companies, each with 100,000 or more hours worked, with an exceptionally low incidence rate for the calendar year; and 2) the American Gas Association's Safety Achievement Award, which recognizes worker safety for having the lowest injury rate for similar companies.

The Coatesville event was an isolated incident, which can no longer be repeated

as a consequence of the mitigation efforts described herein. Indeed, the only other incident in PECO's recent history (that was the subject of a Formal Complaint and a Commission Order approving a full settlement) was the 2009 event that occurred at 604 Summit Street, Swedeland. In that case, the Commission acknowledged PECO's satisfactory compliance history and stated:

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa.Code § 69.1201(c)(6). We have reviewed our records regarding complaints against and investigations of, PECO. Given the size of PECO, we find that its compliance history is satisfactory and poses no barrier to approval of a Settlement between the Parties. (Opinion and Order at 11).³

Accordingly, PECO's compliance history supports a lower penalty amount.

(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.

PECO has fully cooperated with I&E's instant investigation, demonstrating its commitment to the Commission's public safety goals and objectives. PECO's cooperation is evidenced by the following actions:

- 1) Met with the GSD on July 22, 2014 and had a productive discussion of the event, discovery responses, general practices and plans to enhance safety.
- 2) Provided written discovery responses and documents to all GSD requests.
- 3) Made field employees available for witness interviews with Gas Safety Inspectors (Mike Chilek and Terri Cooper-Smith).
- 4) Proactively updated the GSD on October 30, 2014 as to the Company's investigative findings, corrective actions and improvements.
- 5) Implemented corrective actions that ensure this type of event will not recur.

PECO cooperated with the GSD and I&E in an open and transparent fashion throughout the investigation and as such a lower penalty amount is warranted.

³ PAPUC, BI&E v. PECO, Docket No. M-2012-2205782 (Opinion and Order entered June 12, 2012).

(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.

The Joint Petitioners agree that it is appropriate to reduce the \$1.5 million proposed civil penalty to \$900,000 for the reasons set forth herein and in the Joint Petition. Because PECO is committed to safety, it proactively implemented significant enhancements to prevent a repeat event. As stated in the response to Rosi Factor 4 above, PECO quickly implemented a number of initial corrective actions, at an approximate cost of \$300,000.

In addition, PECO's gas mapping plan, which began in November 2015, will cost approximately \$3 million to develop and implement. Furthermore, PECO will annually incur operations and maintenance expenses of approximately \$2 million to perform its ongoing pressure test and camera inspection initiatives. These actions far exceed the safety requirements set forth in I&E's Formal Complaint and demonstrate a good faith effort to eliminate future violations of this type. These enhancements have been or are being implemented at significant costs (\$5.3 million in total)⁴ and satisfy the reasonableness of the agreed-upon penalty amount in the Joint Petition (\$900,000) to deter future events.

(9) Past Commission decisions in similar situations.

PECO reviewed prior Commission decisions involving property damages (without injuries or fatalities) resulting from alleged gas safety violations. The Commission's Opinion and Order in PAPUC v. UGI, Docket No. C-2012-2295974 (Opinion and Order entered on February 19, 2013) is on-point. In that case, the Commission issued a \$200,000 civil penalty under the then-existing maximum penalty

⁴ See Footnote 1 *supra* for detail regarding ongoing settlement commitments.

amount of \$500,000. PECO believes the UGI precedent is most applicable to the instant facts and circumstances. Therefore, a similar penalty structure should apply to the instant case where there was property damage, but no injuries or fatalities. Moreover, PECO's settlement commitments bring significant enhancements to public safety. Together, these factors demonstrate that the agreed-upon penalty of \$900,000 is reasonable, is supported by *Commission precedent* and serves the public interest.

(10) Other relevant factors.

It is in the public interest to settle and avoid the time, uncertainty and expense of litigation. Settling this matter will avoid the necessity of administrative hearings and potential appellate proceedings at a substantial cost to the parties. A settlement in this case will ensure that any agreed-upon remedial measures will be timely implemented to support and promote the safety of the public and Company personnel.

VII. THE SETTLEMENT IS IN THE PUBLIC INTEREST

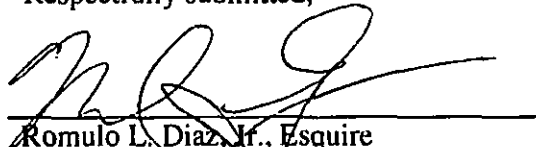
As previously stated, approval of this Settlement will resolve all issues related to the Formal Complaint. The settlement provides substantial opportunities to enhance the safety and reliability of service to customers by: 1) implementing measures that far exceed the requested relief in the Formal Complaint; 2) making substantial financial investments to drive operational improvements; and 3) eliminating the risk of similar events in the future. Finally, the Settlement terms are consistent with the ten factors to be considered under the Commission's Policy Statement. Accordingly, the Settlement should be approved in its entirety and without modification.

VIII. CONCLUSION

This Settlement achieves significant positive results, as summarized above. PECO believes that the agreed-upon terms of settlement will prevent this incident from recurring and significantly enhance the Company's ability to provide safe, adequate and reliable natural gas distribution service to its customers. All of the positive results of this Settlement are achieved without requiring hearings, briefing and time consuming and expensive litigation. For all of the foregoing reasons, PECO Energy Company supports the Joint Petition and respectfully requests that the Commission approve it in its entirety and without modification.

Dated: April 8, 2016

Respectfully submitted,



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Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
v. : Docket No. C-2015-2479970
PECO Energy Company :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: April 8, 2016

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