



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

IN REPLY PLEASE
REFER TO OUR FILE

March 20, 2017

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-2015-2514773

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
Senior Prosecutor
Attorney ID No. 93792

Enclosures

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2514773
	:	
PECO Energy Company,	:	
Respondent	:	

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:

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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 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.

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.

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 November 25, 2015, I&E filed a Formal Complaint ("Complaint") with the Commission against Respondent at Docket No. C-2015-2514773. The Complaint is related to a third-party excavator striking and igniting a natural gas main owned by PECO on August 7, 2013.

10. The Complaint requested the following relief:

- A. that PECO be ordered to pay a civil penalty in the amount of \$315,000.00 pursuant to 66 Pa.C.S. § 3301 (c);
- 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 modify its Gas Damage Prevention procedure, GO-PE-9003, Revision No. 4, to include the following:
 - A detailed procedure for the use of marker balls and the use of the marker ball locator technology;
 - A detailed reporting procedure to allow PECO employees, and their subcontractors, to report to management areas of increased risk of line hits;
 - Procedures to record the above reports to management, with a detailed list of management follow-up obligations;
 - A procedure to initiate communications at third-party excavation projects to determine the scope of such project(s);

- Removal of the option to provide an interim response in the KARL response to a mark-out; and
 - Make PECO's procedures consistent with the PA One Call Users Guide;
- D. that PECO be ordered to submit the above modifications to the Commission's Gas Safety Division within three (3) months of the date of the Commission's Order sustaining this complaint;
- E. that PECO be ordered to retrain all personnel who are qualified to perform gas infrastructure locates and their supervisors to follow these new procedures and to reinforce current procedures that were not followed in this case;
- F. that PECO be ordered to create a team, which should include a PECO executive, to review and revise its Gas Damage Prevention procedure and any and all related policies and standards to ensure accuracy and inclusion of all tools necessary to prevent a similar incident; and
- G. that PECO be ordered to include in the above review:
- An examination of the effectiveness of the use of a second party to conduct utility mark-outs;
 - An examination of the staffing numbers within its Damage Prevention Department to ensure that it has adequate personnel;
 - A study of its existing review processes to ensure that thorough procedural reviews are occurring; and
 - A review of the problems identified in this complaint and corrective actions.

11. On January 8, 2016,¹ 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 January 28, 2016, I&E filed a Reply to New Matter generally denying the material averments in PECO's New Matter.

¹ By Secretarial Letter dated December 14, 2015, PECO was granted an extension of time until January 8, 2016 to respond to I&E's Complaint.

13. I&E also filed a Motion to Strike on January 28, 2016, which PECO answered on February 17, 2016.

14. On October 20, 2016, Administrative Law Judge David A. Salapa issued an Order denying I&E's Motion to Strike.

III. ALLEGED VIOLATIONS

15. 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 carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 4.2.1.1, found in GO-PE-9003, Revision No. 2, which required conduction of pre-excavation meetings with excavators when large excavations and foundation work could impact facilities and their surroundings. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- B. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.6.3, found in GO-PE-9003, Revision No. 2, which requires PECO's damage prevention inspectors to determine the need for, and extent of, audits and inspections, particularly for damage that may not be easily recognized by the excavator. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- C. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.6.4.2, found in GO-PE-9003, Revision No. 2, which requires PECO to confirm that all excavators have valid PA One Call requests. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- D. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.6.4.3, found in GO-PE-9003, Revision No. 2, to ensure that the excavator and locator have the same understanding of the job, evidenced by PECO's lack of awareness that a concrete stair structure was constructed over the gas main. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).

- E. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.6.4.4, found in GO-PE-9003, Revision No. 2, to determine the schedule of when PECO facilities would be crossed. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- F. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.6.4.7, found in GO-PE-9003, Revision No. 2, which should have directed PECO to document all site meetings before or during excavation via an electronic inspection report. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- G. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.6.4.8, found in GO-PE-9003, Revision No. 2, which directs PECO to review locator marks for accuracy. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- H. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedures 5.9.1.3, found in GO-PE-9003, Revision No. 2, which directs PECO to document the results of a locate by completing all required documentation on the electronic close screen within the ticket management system, with a positive response to the PA One Call KARL system. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- I. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.10.4, found in GO-PE-9003, Revision No. 2, under which it is tasked with maintaining a copy of the responses to the designer and an electronic record of the disposition of the PA One Call requests. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- J. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.10.5, found in GO-PE-9003, Revision No. 2, under which PECO is required to document the results of completion of the design request by completing all required documentation on the electronic close screen within the ticket management system with positive response to the PA One Call KARL system. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- K. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure 5.9.1.4, found in GO-PE-9003, Revision No. 2, which directed PECO to

identify high profile jobs. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).

- L. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that it did not follow its Gas Damage Prevention procedure, found in GO-PE-9003, Revision No. 2, which required additional supervision by PECO and the mark-out contractor, including weekly reports to the dig-safe supervisor, when working a high profile job. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- M. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that PECO did not update its Gas Damage Prevention procedure GO-PE-9003, evidenced by its reference to STS Locators throughout the procedure, while the locator at the time of the incident and the time of the most recent review of the procedure was USIC. The effective date of the procedure was April 26, 2013. USIC was the locate contractor at that point, so PECO should have updated all references to USIC. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- N. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that its Gas Damage Prevention procedure GO-PE-9003, Revision No. 2 did not include the use of locator or marker ball line markers, which require specific operations parameters. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- O. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that PECO's procedures did not include communication with the third-party contractors during the scope of the project. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- P. PECO failed to carry out a written program to prevent damage to a buried pipeline from excavation activities in that PECO's procedures failed to address relocation of facilities when such facilities are compromised by excavation and construction activities. If proven, this is a violation of 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b).
- Q. PECO failed to have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning unusual operation and maintenance conditions in that PECO failed to relocate the main or communicate with the contractors or with PECO's own damage prevention team. If proven, this is a violation of 49 C.F.R. § 192.613(a) and 52 Pa. Code § 59.33(b).
- R. PECO's damage prevention program did not provide for inspection, which must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline, of pipelines that it had reason to believe could be damaged by excavation activities in that PECO did not inspect the main as frequently as

necessary to prevent a line hit. If proven, this is a violation of 49 C.F.R. § 192.614(c)(6)(i) and 52 Pa. Code § 59.33(b).

- S. PECO did not use every reasonable effort to protect the public from danger and did not exercise reasonable care to reduce hazards in that PECO failed to remove the line from service. If proven, this is a violation of 52 Pa. Code § 59.33(a).
- T. PECO did not use every reasonable effort to protect the public from danger and did not exercise reasonable care to reduce hazards in that PECO failed to communicate intended site activity with the excavation contractors. If proven, this is a violation of 52 Pa. Code § 59.33(a).
- U. PECO did not use every reasonable effort to protect the public from danger and did not exercise reasonable care to reduce hazards in that PECO failed to adequately monitor the activities around the gas main running through the construction site. If proven, this is a violation of 52 Pa. Code § 59.33(a).

IV. ALLEGED DEFENSES

16. 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 or the Code of Federal Regulations as alleged in the Formal Complaint in that the incident that is the subject of the Formal Complaint occurred because an excavator failed to meet its statutory duty under the PA One Call Law. Specifically, the excavator violated the PA One Call Law by failing to submit a PA One Call request, failing to exercise due care, and failing to employ prudent techniques to ascertain the precise position of PECO's main. As a result, the excavator dug and struck a gas main, causing it to ignite. Shortly after this incident, PECO met with PUC inspectors and determined that permanent marker posts that PECO installed on July 9, 2013 were still visible and that the marker posts accurately identified the location of PECO's gas main. PECO had no duty to anticipate the unforeseen negligence, carelessness and recklessness of the excavator, who failed to submit a PA One Call request, failed to exercise due care and failed to employ prudent techniques to ascertain the precise position of PECO's main.

If this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, PECO would have contended the following in response to each of the counts alleged in the Formal Complaint:

- A. PECO did comply with Section 4.2.1.1 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint. Section 4.2.1.1 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident. The PA One Call Law places the duty on the excavator, not the facility owner, to initiate a preconstruction meeting, so PECO had no duty to initiate a preconstruction meeting, and its Gas Damage Prevention Procedure does not require otherwise.
- B. PECO did comply with Section 5.6.3 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint by conducting inspections, as necessary, in connection with the PA One Call requests that were received for the project. Section 5.6.3 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident. In addition, PECO was not required to have a full-time inspector be ever-present at the site during all excavation activity, and placing this duty on PECO is contrary to the letter and spirit of the PA One Call Law. There was no need for an audit or inspection because a prudent excavator would have easily recognized the potential for damage under the circumstances.
- C. PECO did comply with Section 5.6.4.2 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint by carrying out its duty to confirm that all PA One Call requests submitted for the construction project were valid. Section 5.6.4.2 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident.
- D. PECO did comply with Section 5.6.4.3 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint. Section 5.6.4.3 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident.
- E. PECO did comply with Section 5.6.4.4 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint. Section 5.6.4.4 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident.
- F. PECO did comply with Section 5.6.4.7 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint because it documented via an electronic

inspection report all site meetings before or during all excavation activities covered by the PA One Call requests submitted for the project. Section 5.6.4.7 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident.

- G. PECO did comply with Section 5.6.4.8 of its Gas Damage Prevention Procedure at all times relevant to the Formal Complaint because it reviewed locator marks for accuracy during inspections conducted at the construction site after PA One Call requests were submitted. Section 5.6.4.8 is triggered only by the submission of a PA One Call request, and, because no PA One Call request was submitted for the work that caused PECO's gas main to be struck, that section is inapplicable to the incident.
- H. PECO did follow Section 5.9.1.3 of its Gas Damage Prevention Procedure because it provided a positive response, as contemplated by the KARL system, for each of the PA One Call requests submitted for the project.
- I. PECO did follow Section 5.10.4 of its Gas Damage Prevention Procedure because it maintained a copy of the responses to the designer and an electronic record of the disposition of the PA One Call requests submitted for the project.
- J. PECO did follow Section 5.10.5 of its Gas Damage Prevention Procedure because it documented the results of completion of the two design requests received for the project by completing all required documentation on the electronic close screen within the ticket management system with a positive response to the KARL system. Furthermore, the responses that PECO entered in the KARL system for the two design requests did not cause, contribute to, or relate to the incident.
- K. PECO did follow Section 5.9.1.4 of its Damage Prevention Procedure because it properly identified "High Profile" PA One Call requests. Section 5.9.1.4 applies only to PA One Call requests, and therefore Section 5.9.1.4 did not apply to the incident because no PA One Call request was submitted for that work prior to the incident.
- L. PECO did comply with its Gas Damage Prevention Procedure because it provided the proper supervision and any necessary reporting for "High Profile" PA One Call requests. No audit, inspection, summary, or weekly report was required for the work that caused the incident because no PA One Call request was submitted for that work. Therefore, PECO was not required to submit an audit and summary to PECO's Dig Safe Supervisor.
- M. PECO's locating contractor adequately responded to all PA One Call requests submitted for the project and, thus, did not violate 49 C.F.R. § 192.614(a) or 52 Pa. Code § 59.33(b) by referencing STS Locators instead of USIC in its Gas Damage Prevention Procedure. Moreover, the delay in updating PECO's Gas Damage Prevention Procedure that named STS Locators was neither required by 49 C.F.R. § 192.614 nor the cause of the incident.

- N. PECO did comply with 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b) at all times relevant to the Formal Complaint. PECO did in fact maintain and rely on written marker ball procedures provided by the manufacturer of the marker balls. PECO did not violate 49 C.F.R. § 192.614(a) or 52 Pa. Code § 59.33(b) because those sections do not require facility owners to maintain written procedures on their locating techniques. In addition, the marker balls installed at the site did not cause or contribute to the incident.
- O. PECO did comply with 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b) at all times relevant to the Formal Complaint. PECO's Gas Damage Prevention Procedure did include requirements for communicating with third-party contractors during the scope of excavations, but only after submission of a PA One Call request. PECO did not violate 49 C.F.R. § 192.614(a) or 52 Pa. Code § 59.33(b) because those provisions do not require that a damage prevention program contain a requirement for communication with the third-party contractors during the scope of the project.
- P. PECO did comply with 49 C.F.R. § 192.614(a) and 52 Pa. Code § 59.33(b) at all times relevant to the Formal Complaint. The replacement, repair and removal from service of pipelines is governed by 49 C.F.R. § 192.703. The excavator, not the facility owner, is required to coordinate work that requires temporary or permanent interruption of a facility owner/operator's service with the affected facility owner/operator in all cases. PECO did not violate 49 C.F.R. § 192.614(a) or 52 Pa. Code § 59.33(b) because those provisions do not require that a damage prevention program contain a requirement for addressing relocation of facilities when such facilities are compromised by excavation and construction activities.
- Q. Although PECO was not required to comply with 49 C.F.R. § 192.613(a) and 52 Pa. Code § 59.33(b) because transmission lines were not involved in the incident, at all times relevant to the Formal Complaint, PECO maintained and followed a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning unusual operating and maintenance conditions. Furthermore, excavating without submitting a PA One Call request did not constitute an unusual operating condition because PECO was not required to anticipate such unforeseeable circumstances.
- R. PECO did comply with 49 C.F.R. § 192.614(c)(6)(i) because it maintained and followed its Gas Damage Prevention Procedure which required inspections of pipelines as frequently as necessary during and after excavation activities to verify the integrity of the pipeline where PECO had reason to believe that the pipelines could be damaged by the excavation activities. No PA One Call request was submitted for the excavation activities that caused the incident, so PECO had no reason to believe its main could have been damaged by those excavation activities.
- S. PECO did comply with 52 Pa. Code § 59.33(a) because at all times relevant to the Formal Complaint PECO used every reasonable effort to protect the public from danger and exercised reasonable care to reduce hazards. PECO did not violate 52 Pa. Code § 59.33(a) because neither 52 Pa. Code § 59.33(a), nor any federal law or

regulation, required PECO to remove its line from service prior to the incident. Section 59.33(a) did not require PECO to anticipate the unforeseen negligence, carelessness and recklessness of the excavator's failure to submit a PA One Call request, failure to exercise due care and failure to employ prudent techniques to ascertain the precise position of PECO's main. PECO has a statutory duty under 66 Pa.C.S. § 1501 to provide service that is "reasonably continuous and without unreasonable interruptions or delay," and PECO was not required to interrupt service at Rosemont College in anticipation that the excavator would not submit a PA One Call request and would proceed to drill over a marked main.

- T. PECO did comply with 52 Pa. Code § 59.33(a) because at all times relevant to the Formal Complaint PECO used every reasonable effort to protect the public from danger and exercised reasonable care to reduce hazards. PECO did not violate 52 Pa. Code § 59.33(a) because neither 52 Pa. Code § 59.33(a), nor any federal law or regulation, required PECO to communicate intended site activity with the excavation contractors. Section 59.33(a) did not require PECO to anticipate the unforeseen negligence, carelessness and recklessness of the excavator.
- U. PECO did comply with 52 Pa. Code § 59.33(a) because at all times relevant to the Formal Complaint PECO used every reasonable effort to protect the public from danger and exercised reasonable care to reduce hazards. PECO did not violate 52 Pa. Code § 59.33(a) because neither 52 Pa. Code § 59.33(a), nor any federal law or regulation, required PECO to monitor the activities around the gas main. PECO adequately monitored the activities around the gas main to the extent required under 52 Pa. Code § 59.33(a). The federal damage prevention program requirements at 49 C.F.R. § 192.614(c)(6)(i) do not require full-time inspection of premises during excavation. Section 59.33(a) did not require PECO to anticipate the unforeseen negligence, carelessness and recklessness of the excavator.

Finally, if this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, PECO would have alleged the following general defenses:

- A. The Formal Complaint fails to state a claim upon which relief can be granted because PECO at all times maintained a damage prevention program as required by 49 C.F.R. § 192.614.
- B. The Formal Complaint fails to state a claim upon which relief can be granted because 52 Pa. Code § 59.33 does not impose any safety standards on natural gas public utilities beyond those issued under the federal pipeline safety laws found in 49 U.S.C. §§ 60101-60503 and as implemented at 49 C.F.R. Parts 191-193, 195 and 199, and PECO has complied with those federal pipeline safety laws and regulations.
- C. Under the PA One Call Law, the General Assembly has vested authority in the Department of Labor and Industry, not the Public Utility Commission, to enforce violations of the PA One Call Law. 73 P.S. §§ 182.2(c.1), (f). Inasmuch as the

subject matter of the Formal Complaint is compliance with the PA One Call Law, the Commission lacks jurisdiction over the subject matter of the Complaint.

- D. The Formal Complaint fails to state a claim upon which relief can be granted because the Public Utility Commission may not impose duties on facility owners (public utilities) regarding the Pennsylvania One Call System that differ from those imposed by the General Assembly in Section 2 of the PA One Call Law.
- E. The proximate cause of the incident was the failure to submit a locate request for the light pole installation activities, and none of PECO's conduct was the proximate cause of the incident. If the excavator had made the PA One Call request, PECO's Gas Damage Prevention Procedure would have been triggered; PECO would have visited the site to review the accuracy of its markings; PECO would have determined whether it was a high profile request; and PECO would have communicated with the excavator.
- F. Even if any of PECO's actions was a proximate cause of the incident, the failure to submit a PA One Call request for the light pole installation activities was a superseding cause of the incident.
- G. PECO had neither actual nor constructive notice that the excavator would fail to comply with its duties and responsibilities under the PA One Call Law. The excavator's violation of the PA One Call Law was unforeseeable. As a matter of law, PECO has no duty to erect safeguards against risks that are unforeseeable or to prevent unforeseeable conduct. It is contrary to public policy for PECO to be held liable, by means of an enforcement proceeding, for third-party conduct that is unforeseeable.

V. PECO'S RESPONSE AND COOPERATION WITH PUC INVESTIGATION

17. PECO recognized the seriousness of the incident and immediately took steps to mitigate further harm caused by the excavator's striking of PECO's gas main.

18. PECO responders arrived on site approximately 33 minutes after PECO's main was struck, and they shut down the gas flow via a squeeze-off of the main within approximately one hour. The buildings surrounding the line hit were empty, so no evacuations were necessary. On August 8, 2013, the day after the incident, PECO met on-site with PUC inspectors and determined that permanent marker posts PECO installed on July 9, 2013 were still visible. On August 16, 2013, PECO met on-site with PUC inspectors and confirmed that marker posts PECO installed on July 9, 2013 accurately identified the location of the main. Further, PECO promptly and

voluntarily took steps to restore service to Rosemont College. PECO subsequently installed a new section of the main in a different location for the convenience of PECO and its customers. The new main was placed in operation on August 22, 2013.

19. Since the August 7, 2013 incident, PECO has updated its Gas Damage Prevention Procedure to reflect the results of a competitive selection of a new locating contractor and refer to USIC as the locating contractor.

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.

VI. TERMS AND CONDITIONS OF SETTLEMENT

21. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,² 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. I&E and PECO, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. PECO shall enhance its Gas Damage Prevention Procedure to address Complex Project situations. This procedure will be revised to incorporate the following steps, after PECO receives a notice of a Complex Project from an excavator through PA One Call Web Portal:

1. If a Preconstruction Meeting is requested by an excavator:

² See 52 Pa. Code § 5.231(a).

- i. PECO Damage Prevention will select an appropriate designee to attend the meeting scheduled by the excavator through the PA Once Call Web Portal;
 - ii. PECO's designee will participate in the Preconstruction Meeting and, as appropriate, work with the excavator to establish a working relationship, identify contacts for all parties, and establish an agreed upon mark-out plan;
 - iii. If PECO's designee cannot attend the Preconstruction Meeting, the designees will make other arrangements to meet with the excavator;
 - iv. If transmission facilities may be affected, PECO Damage Prevention will notify PECO Asset Management & Performance;
 - v. PECO's designee will respond to the PA One Call tickets created by the excavator in support of the plan.
2. If a Preconstruction Meeting is not requested by the excavator, PECO will follow its normal process in response to PA One Call notifications, as set forth in its Gas Damage Prevention Procedure.
 3. If the excavator uploads documents to PA One Call's Web Portal after the initial Preconstruction meeting, PECO's designee will review and determine what actions, if any, are needed.
 4. If the excavator submits a new notification through PA One Call's Web Portal for any project changes related to duration, date, phase or scope of the project, PECO's designee will respond to the PA One Call notification.
 5. If the excavator requests another preconstruction meeting, PECO's designee will follow the appropriate steps set forth in Section 4.5.1.1.1 of PECO's procedures manual.
- B. PECO shall implement a pilot program, for a term of twelve (12) months, to address "No One Call" Ticket³ situations. If PECO's locator receives notice of an Emergency Ticket through PA One Call's Web Portal for a potential "No One Call" situation:
1. PECO's locator will treat the situation as an emergency and dispatch representatives to the location as soon as practicable to make contact and investigate;

³ A "No One Call" Ticket situation arises when a third-party does not request a facility mark out through the PA One Call system.

2. Upon arrival, PECO's locator will determine if: 1) a valid excavation ticket exists; 2) the facilities have been marked; and 3) the Company's facilities could be susceptible to damage as a result of the excavation;
 3. If no excavation ticket exists and Company facilities are susceptible to damage, the excavator will be directed to:
 - i. Stop work;
 - ii. Make a PA One Call facility mark out request; and
 - iii. Allow all utilities to mark their facilities (pursuant to applicable response periods set forth in the PA One Call Law) prior to excavating;
 4. If the excavator refuses to stop work or becomes confrontational, PECO's locator will escalate promptly;
 5. If PECO's locator is unable to make contact with excavator and: 1) no excavation ticket exists; and 2) Company facilities could be susceptible to damage during excavation, PECO's locator will post a notice at the excavation site that:
 - i. Directs the excavator not to dig before a facility mark out occurs;
 - ii. Instructs how to make a facility mark out request by calling 811 prior to digging;
 - iii. Warns of the dangers associated with excavating in the absence of a PA One Call ticket;
 - iv. Provides contact information for PECO's locator and Damage Prevention Department; and
 - v. Recites the legal requirements for facility mark outs;
 6. PECO's Locator will document the results of its investigation to PECO's Damage Prevention Department; and
 7. PECO's Damage Prevention Department will determine if an incident report should be submitted to the Pennsylvania Department of Labor and Industry.
- C. PECO shall implement a proactive communication and educational process that directs third-parties to use the PA One Call process to prevent damages. This

process shall include the following proactive communication and educational process for the third-party Designer, Contractor and Excavator community:

1. When PECO receives a PA One Call request from a designer for the location of Company facilities, pursuant to an identified excavation or demolition site, PECO will send a letter that states:
 - i. Whether PECO has gas and/or electric underground facilities at the identified location;
 - ii. The excavator's duties under the PA One Call Law;
 - iii. PECO's Complex Project process; and
 - iv. The right to request a Preconstruction Meeting.
 2. PECO will issue letters explaining the PA One Call process and the need to request facility mark outs prior to digging. The letters will target individuals who may be unaware of the need to engage in the PA One Call process;
 3. If a third-party damages PECO's facilities in violation of the PA One Call Law, PECO will issue a letter to the responsible party explaining: 1) the dangers associated with excavating in the absence of a facility mark out; 2) the legal requirements to comply with the PA One Call Law; 3) the circumstances in which the Department of Labor and Industry may issue penalties; and 4) how to use the PA One Call System. Further, the letter will explain that Preconstruction Meetings may be requested; and
 4. PECO will hold annual Safety Day Conferences for Designers, Contractors and Excavators. These conferences will be held in areas that the Company determines have a disproportionate number of hit rates resulting from third-party non-compliance with the PA One Call Law. The Company will use these opportunities to educate third-parties about their PA One Call duties and how to engage in the PA One Call process. PECO will notify the Commission's Gas Safety Division at least thirty (30) days in advance of a scheduled Safety Day Conference.
- D. PECO further agrees to investigate prioritizing its existing gas mapping plan to focus on areas with the highest hit-rates first.⁴ PECO has estimated that it would

⁴ See Joint Petition for Settlement reached in *PAPUC, I&E v. PECO*, Docket No. C-2015-2479970 (Order entered October 27, 2016) (the "Coatesville Settlement"), wherein PECO agreed to various terms regarding development of a gas mapping plan to allow it to map and locate its facilities with sub-foot accuracy.

take 10-20 years to fully map out its entire gas system (12,900 miles of infrastructure) under the agreed-upon gas mapping plan. PECO shall investigate developing a plan to prioritize mapping its entire gas system with sub-foot accuracy (i.e., targeting facilities in suburban counties surrounding Philadelphia over the next 10 years).

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

24. The Company shall pay a civil penalty in the amount of fifteen thousand dollars (\$15,000), 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 substantial capital investments and incurring substantial operations and maintenance expenses. I&E reserves the right to challenge the reasonableness of these expenses included in any future base rate case.

B. General Settlement Provisions

25. 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.

26. 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; (iii) is made without any admission by any party hereto as to any liability of any party hereto; and (iv) 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. The Settlement, including all terms, representations and conditions therein, are the result of negotiations and compromises between the Joint Petitioners and therefore shall not be admissible in any civil proceeding in accordance with Pennsylvania Rule of Evidence 408 and Federal Rule of Evidence 408.

36. 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.

37. 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.

38. 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

39. 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.

40. 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.

41. 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.

42. 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:

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

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

45. Terminate this proceeding and mark the matter closed.

VIII. PROPOSED ORDERING PARAGRAPHS

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

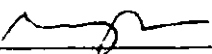
47. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days after the date this Order becomes final, PECO shall pay \$15,000. Said payment shall be made by check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

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

48. That the Secretary shall mark this docket at C-2015-2514773 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



Romulo L. Diaz, Jr., Esq.
Vice President & General Counsel
Michael S. Swerling, Esq.
Assistant General Counsel

3/20/17

Date

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FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

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

Date

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Phone: (717) 214-9594

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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.

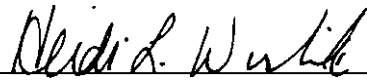
FOR PECO ENERGY COMPANY

Romulo L. Diaz, Jr., Esq.
Vice President & General Counsel
Michael S. Swerling, Esq.
Assistant General Counsel

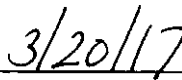
Date

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FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



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



Date

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Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. C-2015-251477

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**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 ("PUC" or "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 August 7, 2013, a third-party contractor excavating within a construction site at Rosemont College in Rosemont, Pennsylvania struck PECO's underground gas main. After the hit, the gas immediately vented upward and was ignited by the drill rig, causing a fire at the drill rig. On November 25, 2015, I&E filed a Formal Complaint ("Complaint") 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 \$315,000 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 modify its Gas Damage Prevention procedure, GO-PE-9003, Revision No. 4; (d) order the Company to submit the modifications to Gas Damage Prevention procedure GO-PE-9003, Revision No. 4 to the Commission's Gas Safety Division within three (3) months of the date of a Commission Order sustaining the Complaint; (e) order the Company to retrain all personnel who are qualified to perform gas infrastructure locates and their supervisors to follow these new procedures and to

reinforce current procedures that were not followed in this case; (f) order the Company to create a team, which should include a PECO executive, to review and revise its Gas Damage Prevention procedure and any and all related policies and standards to ensure accuracy and inclusion of all tools necessary to prevent a similar incident; and (g) order the Company to include in the above review: an examination of the effectiveness of the use of a second party to conduct utility mark-outs; an examination of the staffing numbers within its Damage Prevention Department to ensure that it has adequate personnel; a study of its existing review processes to ensure that thorough procedural reviews are occurring; and a review of the problems identified in the Complaint and corrective actions.

On January 8, 2016,¹ 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 January 28, 2016, I&E filed a Reply to New Matter generally denying the material averments in PECO's New Matter.²

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.

¹ By Secretarial Letter dated December 14, 2015, PECO was granted an extension of time until January 8, 2016 to respond to I&E's Complaint.

² I&E also filed a Motion to Strike on January 28, 2016, which PECO answered on February 17, 2016. On October 20, 2016, Administrative Law Judge David A. Salapa issued an Order denying I&E's Motion to Strike on the basis that any procedural defects and impertinent allegations did not affect the substantive rights of the parties and would be ignored.

These discussions culminated in this Settlement, which, once approved, will resolve all issues related to I&E's Complaint proceeding.

PECO has agreed to revise its Gas Damage Prevention Procedures to address complex project situations, such as the Rosemont College project. PECO's revisions are extensive and encompass multiple scenarios. PECO has also agreed to implement a pilot program for a period of twelve months that will address situations in which third-parties do not request a facility mark out through the Pennsylvania One Call System ("PA One Call System"). Additionally, PECO has agreed to introduce a communication and education process that will direct the third-party designer, contractor, and excavator community to use the PA One Call process to prevent damages. This process will include design letters, PA One Call educational letters, damage letters, and safety day conferences. Finally, PECO agrees to investigate prioritizing its existing gas mapping plan to focus on areas with the highest hit-rates first.

I&E intended to prove at hearing the factual allegations set forth in its Complaint, which the Company has disputed. 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. Enhance PECO's Gas Damage Prevention Procedure to address Complex Project situations;
- B. Implement a pilot program, for a term of twelve (12) months, to address "No One Call" Ticket³ situations;
- C. Implement a proactive communication and educational process that directs third-parties to use the PA One Call process to prevent damages; and
- D. Investigate prioritizing PECO's existing gas mapping plan to focus on areas with the highest hit-rates first.⁴

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-appealable Commission Order approving the Settlement in its entirety without modification or amendment.

PECO will also pay a civil penalty in the amount of fifteen thousand dollars (\$15,000), 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-appealable 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

³ A "No One Call" Ticket situation arises when a third-party does not request a facility mark out through the PA One Call system.

⁴ A detailed description of PECO's gas mapping plan can be found in *Pa. Pub. Util. Comm'n, I&E v. PECO Energy Company*, Docket No. C-2015-2479970 (Order entered October 27, 2016).

maintenance expenses. I&E reserved the right to challenge the reasonableness of these expenses included in any future base rate case.

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 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 I&E alleged that PECO failed to carry out a written program to prevent damage to its buried pipeline from excavation activities. Clearly, significant public safety concerns are present when damage to a utility's underground facilities cause injury, as in this case where two construction workers on a drilling rig received minor burns. 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 recognized the seriousness of this matter and immediately took steps to mitigate further harm in this case, 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 were two minor injuries and property damage to the drilling rig. However, there were no serious injuries or fatalities. The seriousness of this incident and PECO's corrective actions have been taken into consideration in arriving at the civil penalty.

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). Following the incident, PECO took steps to prevent a similar recurrence. These steps included immediately meeting with PUC Gas Safety inspectors, installing a new section of the main in a different location, and updating PECO's Gas Damage Prevention Procedure. In addition, PECO has agreed to undertake additional corrective actions that will address the issues identified in the Complaint. These corrective actions, described in detail in Paragraph 22 of the Settlement Agreement, include: enhancing PECO's Gas Damage Prevention Procedure to address Complex Project situations, implementing a pilot program to address "No One Call" Ticket situations for a period of twelve (12) months, implementing a proactive communication and education process that directs third-parties to use the PA One Call process to prevent damages; and implementing a proactive communication and educational process that directs third-parties to use the PA One Call process to prevent damages. 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). No customers were affected by the incident because school was not in session at the time and the students were not on campus. Because PECO voluntarily moved the main for the safety and convenience of the customers and the Company, PECO's line was out of service for approximately two weeks. This factor supports a reduced civil penalty amount.

The sixth factor to be considered involves 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. I&E’s research reveals just two other gas safety incidents resulting in injury or property damage in the last ten years.⁵ Moreover, as the Commission noted in its Order approving settlement in the most recent Formal Complaint involving PECO, given the size of the Company, “its compliance history does not pose a barrier to approval of the instant Settlement.”⁶ This factor supports a reduced civil penalty.

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 its Gas Safety Division throughout the investigatory, complaint, and settlement processes. PECO responders arrived on site approximately 33 minutes after PECO’s main was hit. The day after the incident, PECO met on-site with PUC Gas Safety Inspectors. PECO met again with PUC Gas Safety Inspectors on August 16, 2013.

On August 22, 2013, PECO placed into operation a new section of main in a different location that it installed as a result of this incident. Finally, PECO was

⁵ See *Pa. Pub. Util. Comm’n, I&E v. PECO*, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016) (approving Settlement); *Pa. Pub. Util. Comm’n, I&E v. PECO*, Docket No. M-2012-2205782 (Opinion and Order entered June 12, 2012) (approving Settlement).

⁶ *Pa. Pub. Util. Comm’n, I&E v. PECO*, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016).

responsive to I&E's requests for information and met with I&E numerous times to explore settlement of this matter. This factor supports the reduction of the civil penalty.

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 \$15,000, 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, including PECO's efforts to influence third-party contractors to comply with their duties under the PA One Call Law, is sufficient to deter future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). Past Commission decisions responsive to similar situations have reached similar conclusions. For example, in *Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. Peoples Natural Gas Company LLC, f/k/a The Peoples Natural Gas Company, d/b/a Dominion Peoples*, M-2011-2157955, (Opinion and Order entered on August 2, 2012), the Commission ordered Peoples Natural Gas Company LLC to pay a \$5,000 civil penalty for its conduct, which also involved a line hit and resulting fire caused by alleged failed communication with a third-party excavator. The higher civil penalty proposed in the instant Settlement reflects the minor injuries involved in this case and increased penalty maximum.⁷ Therefore, the civil

⁷ 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.

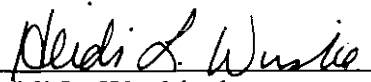
penalty agreed upon in this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

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: March 20, 2017

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
Complainant	:	
	:	Docket No. C-2015-2514773
v.	:	
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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

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 third-party excavator striking and igniting PECO's natural gas main on August 7, 2013. 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

This proceeding arises from an incident that occurred during a third-party construction project at Rosemont College in Lower Merion Township, Pennsylvania. Throughout the project, a number of contractors submitted Pennsylvania One Call ("PA One Call") requests, and

PECO responded to each of the locate requests by marking its gas main in accordance with the PA One Call Law and its Gas Damage Prevention Procedure.

On August 7, 2013, without first submitting a PA One Call request, without alerting PECO that it would be drilling in the particular area, and without employing precautionary techniques to locate the underground facilities,¹ an excavator nevertheless commenced drilling, striking PECO's gas main and causing an ignition.

PECO immediately took steps to mitigate further harm. PECO responders arrived on site approximately 33 minutes after PECO's main was struck, and they shut down the gas flow by squeezing off the main within approximately one hour. The buildings surrounding the line hit were empty, so no evacuations were necessary. On August 8, 2013, the day after the incident, PECO met on-site with PUC Gas Safety Inspectors and determined that the two permanent marker posts (which designated the presence of PECO's natural gas main), installed on July 9, 2013, were still visible. On August 16, 2013, PECO met on-site with PUC inspectors and confirmed that marker posts PECO installed on July 9, 2013 indeed accurately identified the location of the main.

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 all I&E staff requests for information and documentation.

The Joint Petitioners believe that the Settlement (which stemmed from multiple discussions between the Parties spanning more than a year) reflects a carefully balanced

¹ Under the PA One Call Law, prudent techniques "may include hand-dug test holes, vacuum excavation, or other similar devices, to ascertain the precise position of the facilities. 73 P.S. §§ 180(4), (15).

compromise of the interests of the Joint Petitioners because it resolves all issues raised in the Formal Complaint and meets or exceeds all of the relief requested in the Formal Complaint.

PECO has agreed to the proposed Settlement and requests that the Joint 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 9-14 of the Joint Petition 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 reduce 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. Pa. PUC v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at 6 (Aug. 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 without modification.

V. TERMS OF SETTLEMENT

The Formal Complaint in this matter requested that PECO: 1) pay a \$315,000 civil penalty (that cannot be recovered through rates); 2) modify its Gas Damage Prevention Procedure; 3) retrain all relevant personnel to follow the new, modified Gas Damage Prevention Procedure; and 4) create a team to review and revise PECO’s Gas Damage Prevention Procedure and any and all related policies and standards.

To conclude this litigation, PECO has agreed to the following settlement terms, as described more fully in Paragraph 22 of the Joint Petition:

- A. PECO shall enhance its Gas Damage Prevention Procedure to address Complex Project situations, as explained in Paragraph 22.A. of the Joint Petition.
- B. PECO shall implement a pilot program, for a term of twelve (12) months, to address “No One Call” Ticket situations. If PECO’s locator receives notice of an Emergency Ticket through PA One Call’s Web Portal for a potential “No One Call” situation, PECO will act in accordance with the procedure outlined in Paragraph 22.B. of the Joint Petition.
- C. PECO shall implement a proactive communication and educational process that directs third-parties to use the PA One Call process to prevent damages, as explained in Paragraph 22.C. of the Joint Petition.
- D. PECO further agrees to investigate prioritizing its existing gas mapping plan to focus on areas with the highest hit-rates first. PECO has estimated that it would take 10-20 years to fully map out its entire gas system (12,900 miles of infrastructure) under the agreed-upon gas mapping plan. PECO shall investigate developing a plan to prioritize mapping its entire

gas system with sub-foot accuracy (i.e., targeting facilities in suburban counties surrounding Philadelphia over the next 10 years).

- E. PECO shall pay a civil penalty in the amount of fifteen thousand dollars (\$15,000), 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 substantial capital investments and incurring substantial operations and maintenance expenses. I&E reserves the right to challenge the reasonableness of these expenses included in any future base rate case.

Additionally, Paragraph 26 of the Joint Settlement explains that the Joint Petitioners have entered this Settlement without making any admissions as to any matter of fact or law or any admission of liability (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.*

The incident that is the subject of the Formal Complaint occurred because an excavator failed to meet its statutory duties under the PA One Call Law. Specifically, the excavator violated the PA One Call Law by failing to submit a PA One Call request, failing to exercise due care, and failing to employ prudent techniques to ascertain the precise position of PECO's main. 73 P.S. §§ 180(2.1), (4), (5), (15). As a result, the excavator dug and struck the Company's gas

main, causing it to ignite. Shortly after this incident, PECO met with PUC inspectors and determined that permanent marker posts that PECO installed on July 9, 2013 were still visible and that the marker posts accurately identified the location of PECO's gas main. PECO had no duty to anticipate the unforeseen negligence, carelessness and recklessness of the excavator, who failed to submit a PA One Call request, failed to exercise due care and failed to employ prudent techniques to ascertain the precise position of PECO's main.

PECO breached no duty in connection with the incident, and PECO's conduct did not cause the incident. PECO's conduct as related to the incident was not egregious and warrants a lower penalty.

- (2) *Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.*

When the excavator struck the gas main, gas vented upward, and the ignition caused damage to PECO's gas main and to the excavator's drill rig. Three contractor employees were working near the ignition site. Two received minor burns and were taken to the hospital as a precaution and released the next day, and the third refused medical treatment.

While these consequences are serious, they all stemmed from the excavator's failure to comply with the PA One Call Law. A lower penalty against PECO is warranted because PECO breached no duty in connection with the incident and PECO's conduct did not cause the incident.

- (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.*

Following the incident, PECO commenced a review of its Gas Damage Prevention Procedure, even though neither the procedure nor PECO's adherence to the procedure caused the incident. As a result of its review, PECO determined that its Gas Damage Prevention Procedure complied with all legal requirements and that PECO complied with the Procedure at all times relevant to the Formal Complaint. PECO's proactive effort to initiate a review of its procedures and conduct in the wake of the incident warrants a lower penalty amount.

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

The incident occurred during a construction project at an athletic field on Rosemont College's campus. Nearby buildings on the campus were out of service and were not occupied. Consequently, the college was not affected. In addition, because the event occurred during the summer, natural gas was not needed for heating. 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.

Over the past 25 years, PECO's research reveals only one gas incident that was the subject of a Formal Complaint.² Additionally, during that period, PECO is aware of only two gas incidents that were the subject of informal investigations, both of which resulted in Commission Orders approving full settlement.³ Moreover, in the recent Formal Complaint involving an event that occurred at 118 Penrose Lane, Coatesville, Pennsylvania, the Commission acknowledged the relatively low number of compliance issues given PECO's size.⁴ 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:

² PAPUC, BI&E v. PECO, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016) (Formal Complaint and Full Settlement).

³ PAPUC, v. PECO, Docket No. M-00960820 (Opinion and Order entered July 19, 1996) (Informal Investigation and Full Settlement); PAPUC, BI&E v. PECO, Docket No. M-2012-2205782 (Opinion and Order entered June 12, 2012) (Informal Investigation and Full Settlement).

⁴ PAPUC, BI&E v. PECO, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016).

- A. On August 8, 2013, the day after the incident, PECO met on-site with PUC inspectors and determined that permanent marker posts PECO installed on July 9, 2013 were still visible.
- B. On August 16, 2013, PECO met on-site with PUC inspectors and confirmed that marker posts PECO installed on July 9, 2013 accurately identified the location of the main.
- C. 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.
- D. During the discovery process, PECO complied with I&E staff requests for information and documentation.

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.

(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 a proposed civil penalty of \$15,000 is appropriate for the reasons set forth herein and in the Joint Petition. Because PECO is committed to safety, it has agreed to significant safety enhancements to its procedures to further enhance safety and to help educate the excavator community about their obligations under the PA One Call Law. These actions include: (1) enhancing its Gas Damage Prevention Procedure to address Complex Project situations, as explained in Paragraph 22.A. of the Joint Petition; (2) implementing a pilot program to address "No One Call" Ticket situations, as outlined in Paragraph 22.B. of the Joint Petition; (3) implementing a proactive communication and educational process that directs third-parties to use the PA One Call process to prevent damages, as explained in Paragraph 22.C. of the Joint Petition; and (4) investigating prioritizing its existing gas mapping plan to focus on areas with the highest hit-rates first.

These actions far exceed the requested relief set forth in I&E's Formal Complaint. These enhancements have been or are being implemented at significant costs and satisfy the reasonableness of the agreed-upon penalty amount of \$15,000 (especially in light of the fact that a third-party excavator failed to comply with the PA One Call Law and caused this incident).

(9) *Past Commission decisions in similar situations.*

In Pa. PUC v. PPL Electric Utilities Corp., Docket No. M-2009-2059414 (Order entered Nov. 23, 2009), a fire occurred at a residence less than a month after the termination of electrical service at the residence. The Commission upheld a civil penalty of \$1,000, finding that the record did not support a conclusion that the property damage directly resulted from PPL's alleged conduct. Here, as in the PPL Electric Utilities Corp. settlement, the damage to PECO's gas main and the drill rig did not result from PECO's conduct. In Pa. PUC v. UGI Utilities, Inc., Docket No. M-2009-2031571 (Order entered Jan. 14, 2010), the settlement arose from a natural gas explosion in Allentown that occurred on December 9, 2006, and resulted in a minor injury and destroyed one residence and three adjacent row homes. The explosion occurred when a contractor attempted to remove a gas meter, which I&E alleged was a result of inadequate training and improper documentation of procedures regarding removal of inactive gas meters. The Commission approved a civil penalty of \$80,000. Unlike the UGI Utilities, Inc. settlement, this matter involves an incident where the General Assembly has placed the duty on the contractor (to make the PA One Call) as a matter of law. While PECO has agreed in the settlement to implement further safety enhancements, a lower penalty is appropriate in this case because PECO had no duty to foresee and anticipate the contractor's violation of law.

PECO's settlement commitments bring significant enhancements to public safety. Together, these factors demonstrate that the agreed-upon penalty of \$15,000 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 safe operations; and 3) helping to educate the excavator community about their obligations under the PA One Call Law. 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 promote safety 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: 3/20, 2017

Respectfully submitted,



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PECO Energy Company :
Respondent :

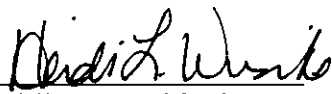
CERTIFICATE OF SERVICE

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).

Service by First Class Mail:

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Dated: March 20, 2017

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