

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	C-2015-2514773
	:	
PECO Energy Company	:	

**RECOMMENDED DECISION**  
**APPROVING JOINT PETITION FOR SETTLEMENT**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

This complaint against a utility concerns a natural gas explosion that occurred on August 7, 2013, at Rosemont College, resulting in two injuries. The parties to the proceeding have agreed to settle the matter. The terms of the settlement are set forth in a joint petition for settlement. This recommended decision approves the joint petition for settlement.

**HISTORY OF THE PROCEEDING**

On November 25, 2015, the Pennsylvania Public Utility Commission's (Commission's) Bureau of Investigation and Enforcement (I&E) filed a complaint with the Commission against PECO Energy Company (PECO). The complaint concerns an August 7, 2013 incident which occurred at approximately 3:51 p.m. where a subcontractor struck a four inch gas main owned and operated by the Respondent. The subcontractor struck the Respondent's gas main while using a drill rig and auger to install a light pole at the Rosemont College athletic fields located at 1400 Montgomery Avenue, Rosemont, Pennsylvania.

According to the complaint, after the subcontractor struck the gas main, the gas vented upward and was ignited by the drill rig, causing a fire at the drill rig. The fire damaged the drill rig and injured two workers.

The complaint alleges that at approximately 4:24 p.m. the Respondent's responders arrived on the site and shut off the gas flow from the main. No evacuation occurred because the buildings surrounding the site of the incident were empty. The Commission's gas safety inspectors arrived at the site of the incident at approximately 6:54 p.m.

The complaint alleges that PECO violated the Public Utility Code, Commission regulations and federal regulations. The complaint requests that the Commission impose a civil penalty of \$315,000.00 on PECO, and among other items, direct PECO to modify its gas damage prevention procedures and retrain personnel to follow the modified procedures.

PECO filed an answer with new matter on January 8, 2016. The answer generally admits that the incident occurred on August 7, 2013 at Rosemont College. The answer denies that PECO violated the Public Utility Code, Commission regulations and federal regulations.

The new matter asserts that the subcontractor failed to contact Pa One Call before commencing excavation work on August 7, 2013. The new matter alleges that PECO had, prior to the August 7, 2013 incident, responded to Pa One Call requests from contractors and subcontractors working at the Rosemont College athletic fields by dispatching its contractor, USIC, Inc. (USIC) to locate and mark its facilities. The new matter contends that USIC properly located and marked PECO's facilities in response to these requests. According to the new matter none of these Pa One Call requests related to the installation of light poles at the athletic fields.

The new matter argues that had the subcontractor contacted Pa One Call prior to commencing excavation, PECO would have dispatched USIC to locate and mark its facilities for the subcontractor. The new matter contends that PECO cannot be held responsible for the subcontractor's failure to contact Pa One Call. The answer with new matter requests that the Commission deny the complaint.

On January 28, 2016, I&E filed a reply to PECO's new matter. The reply denies the assertions in PECO's new matter and requests that the Commission find PECO in violation of the Public Utility Code, Commission regulations and federal regulations.

Also on January 28, 2016, I&E filed, pursuant to 52 Pa.Code § 5.103, a motion to strike portions of PECO's new matter. The motion to strike requests that the Commission strike paragraph 1 of the new matter which incorporates the introductory comments in PECO's answer and answering paragraphs in PECO's answer. According to I&E, the introductory comments and answers to the complaint's allegations fail to comply with the Commission's regulations governing new matter at 52 Pa.Code § 5.62.

In addition, the motion requested that the Commission strike paragraphs 73, 157 and 160 of PECO's new matter. The motion asserted that these paragraphs did not assert additional material facts as required by 52 Pa.Code § 5.62. According to the motion, paragraph 73 reiterates facts set forth in the I&E complaint, while paragraphs 157 and 160 consist of PECO's opinions and conclusions, rather than facts. The motion requested that the Commission strike the portions of PECO's new matter cited above.

On February 17, 2016, PECO filed a response to the motion to strike. Generally, the response asserted that the Commission's regulations should be construed liberally to secure the just, speedy and inexpensive resolution of Commission proceedings, pursuant to 52 Pa.Code § 1.2(a). In addition, PECO argued that the introductory comments consisted of four pages which provided context and background for the facts and defenses set forth in PECO's answer and new matter. PECO argued that there was no harm to I&E in incorporating the introductory comments and answering paragraphs.

Concerning paragraph 73, PECO acknowledged that it did repeat certain information set forth in I&E's complaint. However, PECO argued that it would be difficult to understand the assertions in paragraphs 74 through 78 without the assertions in paragraph 73. Concerning paragraph 157, PECO asserted that it is a factual allegation, not alleged in I&E's complaint. PECO acknowledged that paragraph 160 was a legal conclusion but that it could be

asserted in new matter to support PECO's affirmative defenses. The response requested that the Commission deny the motion to strike.

By notice dated October 12, 2016, the Commission scheduled a prehearing conference for this matter on November 29, 2016 at 10:00 a.m. in Hearing Room 3, Commonwealth Keystone Building in Harrisburg and assigned the matter to me.

By order dated October 20, 2016, I denied the motion to strike.

I conducted a prehearing conference in this case on November 29, 2016. Present were counsel for PECO and I&E. As a result of the prehearing conference, I issued Prehearing Order #2 which established a litigation and briefing schedule.

In its prehearing conference memorandum filed November 23, 2016, PECO requested that I issue a protective order in this proceeding, pursuant to 52 Pa.Code § 5.365(a) and enclosed a proposed order with its memorandum. At the prehearing conference held on November 29, 2016, I&E requested additional time to review PECO's proposed protective order. N.T. 8-9.

On December 8, 2016, I&E informed me that it had no objection to the proposed protective order. By order dated December 9, 2016, I granted PECO's request for a protective order and approved and adopted its proposed protective order.

On March 20, 2017, I&E filed a joint petition for settlement and attachments. The attachments to the joint petition are statements in support of the joint petition by I&E and PECO. The joint petition for settlement alleges that its terms are consistent with Commission policies promoting negotiated settlements. The joint petition for settlement requests that the Commission approve and adopt the joint petition for settlement without further hearing.

By order dated March 21, 2017, I cancelled the hearings scheduled in this proceeding and suspended the litigation schedule set forth in Prehearing Order #2. The record closed on March 20, 2017.

## DISCUSSION

The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa. C.S. §501(a). Pursuant to Act 129 of 2008, the Commission was reorganized and the Commission created I&E in the Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Final Procedural Order entered August 11, 2011) (I&E Implementation Order). In the I&E Implementation Order, the Commission moved responsibility for all prosecutory functions to I&E. The Commission stated that I&E would serve as the prosecutory bureau in matters brought before the Commission's Administrative Law Judges (ALJs). The I&E Implementation Order stated that the prohibition against comingling of functions set forth in 66 Pa.C.S. § 308.2(b) applied to all I&E employees who are engaged in prosecutory functions. In the I&E Implementation Order the Commission delegated its authority to enforce gas safety laws and regulations to I&E.

As set forth above, I&E initiated this complaint against PECO for allegedly violating the Public Utility Code, Commission regulations and federal regulations regarding the safety of PECO's natural gas distribution operations. PECO denies that it has violated the Public Utility Code, Commission regulations and federal regulations. After extensive discovery and prior to any evidentiary hearings, I&E and PECO have reached a settlement regarding the allegations set forth in I&E's complaint.

Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results 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 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 October 4, 2004); Pa. Pub. Util. Comm'n v. C S

Water and Sewer Assoc., 74 Pa. PUC 767 (1991). For the following reasons, I find that the joint petition for settlement, which is unopposed by any party, is in the public interest.

### BACKGROUND

This complaint concerns the natural gas explosion that occurred on August 7, 2013 at Rosemont College. The explosion occurred at approximately 3:51 p.m. and injured two people. A subcontractor caused the explosion when its employees using a drill rig and auger to install a light pole at the Rosemont College athletic fields struck a four inch gas line owned and operated by the Respondent.

PECO is a public utility subject to the Commission's jurisdiction. PECO provides natural gas service to the Rosemont College area as well as other areas of the Commonwealth. I&E contends in its complaint that PECO violated the Public Utility Code, Commission regulations and federal regulations in failing to take steps to prevent the explosion from occurring. I&E also argues that PECO violated the Public Utility Code, Commission regulations and federal regulations in failing to adequately respond to the explosion.

PECO asserts that it complied with the Public Utility Code, Commission regulations and federal regulations and that in spite of its compliance, the explosion occurred. PECO asserts that once the explosion occurred, it complied with the Public Utility Code, Commission regulations and federal regulations in responding to the explosion.

I&E and PECO engaged in extensive discovery regarding the issues raised in the complaint. As a result of this discovery, and the efforts of I&E and PECO, those parties reached a settlement shortly after the November 29, 2016 prehearing conference. I&E and PECO are in full agreement that the settlement is in the best interests of I&E, PECO, PECO's customers and the general public.

## TERMS OF THE SETTLEMENT

Having stated the issues raised in the complaint, I will now address the terms of the proposed settlement. The joint petition for settlement sets forth the terms of the settlement as follows:

- 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:
    - 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" 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:
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;
  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. 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).

PECO agrees to initiate the above actions within sixty days after the entry of a final Commission Order approving the joint petition for settlement without modification.

PECO also agrees to pay a civil penalty in the amount of \$15,000.00, pursuant to 66 Pa.C.S. § 3301, to resolve the violations alleged in I&E's complaint. PECO agrees to pay this amount within thirty days after the entry of a final Commission Order approving the joint petition for settlement without modification. PECO has also committed to making substantial capital investments and incurring substantial operational and maintenance expenses. I&E reserves the right to challenge the reasonableness of these expenses in any future base rate case.

#### PUBLIC INTEREST

Having set forth the terms of the joint petition for settlement, I will now address why approving and adopting the joint petition for settlement is in the public interest. I&E points out in its statement of support that PECO has agreed to revise its Gas Damage Prevention Procedures to address complex projects, such as the Rosemont College project. In addition, PECO has agreed to implement a pilot program for a period of twelve months that will address situations in which third parties fail to use the Pa One Call System. Furthermore, PECO has agreed to introduce a communication and education process that will direct third parties to use the Pa One Call System to prevent damage. Finally, PECO agrees to investigate prioritizing its existing gas mapping plan to focus on areas with the highest hit rates first.

The above provisions of the joint petition for settlement will improve PECO's ability to provide safe and reliable service. PECO's customers will benefit from safer and more reliable service. The general public will benefit from safer service. These benefits serve the public interest.

PECO points out in its statement of support that it is implementing measures that exceed the requested relief in I&E's complaint. PECO also concurs with I&E that it is making substantial financial investments to improve safety and help educate third parties about Pa One Call.

Again, PECO's customers will benefit from safer and more reliable service. The general public will benefit from safer service. These benefits serve the public interest.

Finally, approving and adopting the joint petition for settlement is also in the public interest because accepting the settlement will avoid the substantial time and expense involved in litigating the proceeding. Accepting the settlement will negate the need to examine or cross-examine witnesses, prepare main briefs, reply briefs, exceptions and reply exceptions and possibly file appeals. Avoiding these expenses serves the interests of I&E, PECO and PECO's customers and therefore is in the public interest.

#### CIVIL PENALTY

Having explained why approving and adopting the joint settlement petition is in the public interest, I will now address whether the civil penalty that PECO has agreed to pay is appropriate, reasonable and in the public interest. I conclude that the civil penalty is appropriate, reasonable and in the public interest.

The joint settlement petition requires that PECO pay a civil penalty of \$15,000.00 which it has agreed not to recover through rates regulated by the Commission. The Commission, at 52 Pa. Code §69.1201, has adopted a policy statement setting forth the standards it will

consider in evaluating litigated and settled proceedings before the Commission. The policy statement is set forth below:

**69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy.**

(a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa. C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

(b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

(c) The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

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

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct

in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

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

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

The Commission uses the factors set forth in the policy statement to evaluate whether a settlement is reasonable and whether approval of the settlement is in the public interest. 52 Pa. Code §69.1201(a). In evaluating settlements, the Commission will not apply the factors in as strict a fashion as in a litigated proceeding. 52 Pa. Code §69.1201(b). In settled cases, the Commission will afford flexibility to parties so that the parties may reach an amicable resolution to a complaint or other matter as long as the settlement is in the public interest. 52 Pa. Code §69.1201(b).

I&E and PECO have addressed the factors set forth in 52 Pa. Code §69.1201 in their respective statements in support of the joint petition for settlement. I will address each of the factors in turn.

The first factor addresses whether the conduct at issue was of a serious nature.

There is no indication that willful fraud or misrepresentation was involved in the August 7, 2013 incident. It is also apparent that more was involved than simply an administrative filing or technical error. Gas safety is a significant issue that PECO should take seriously. However, PECO notes that its conduct did not cause the incident. Rather, it was the failure of a third party to use the Pa One Call System that caused the incident. Given the significance of gas safety, I conclude that PECO's conduct warrants a higher penalty.

The second factor addresses the consequences of the conduct at issue. In this case, the natural gas explosion injured two individuals and damaged a drilling rig. However, both I&E and PECO indicate that the injuries suffered were minor burns. I conclude that the relatively minor injuries and minor property damage resulting from the August 7, 2013 incident warrant a lower penalty.

The third factor addresses whether the conduct was negligent or intentional. Both PECO and I&E contend that this factor does not apply to this proceeding since it is the subject of a joint settlement proceeding. I agree and will not consider this factor.

The fourth factor addresses whether remedial actions were taken by the utility to modify internal practices and procedures in order to prevent similar conduct in the future. Both I&E and PECO indicate that as a result of the August 7, 2013 incident, PECO initiated a review of its Gas Damage Prevention Procedure. As a result of this review, PECO determined that its Gas Damage Prevention Procedure complied with all legal requirements and that PECO complied with these procedures at the times relevant to August 7, 2013 incident. In addition, I&E notes that PECO has agreed to undertake additional actions to prevent similar incidents from occurring in the future. I conclude that the actions undertaken by PECO should result in a lesser penalty.

The fifth factor addresses the number of customers affected and the duration of the violation. As set forth above, the buildings near the location of the incident were not occupied at the time of the August 7, 2017 incident. Rosemont College was minimally affected by the incident, since the incident occurred during summer break. I conclude that the number of customers affected by the August 7, 2013, incident warrants a lesser penalty.

The sixth factor looks at the compliance history of the regulated entity. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. §1501 requires public utilities to provide reasonable and adequate, not perfect service. Since the Public Utility Code does not require perfect service, it seems logical that it cannot require perfect compliance.

Both parties acknowledge that there have been two past incidents resulting in informal investigations involving PECO where there was property damage or personal injury. Both parties point out that the Commission has recently acknowledged that given its size, PECO has had a relatively small number of compliance issues. Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO Energy Company, Docket No. C-2015-2479970 (Opinion and Order entered October 27, 2016). I conclude that PECO's compliance history should result in a lesser penalty.

The seventh factor asks whether the regulated entity cooperated with the Commission. According to I&E, PECO has cooperated with the Commission's staff throughout its investigation as well as the complaint and settlement process. In addition, PECO placed a new section of main into service at a different location from the site of the August 7, 2013 incident. I conclude that PECO's cooperation with the Commission in this matter should result in a lesser penalty.

The eighth factor requires that the amount of the civil penalty be enough to deter future violations. I&E states that the civil penalty in the amount of \$15,000.00 together with the costs of implementing the terms of the settlement is sufficient to deter PECO from committing any violations in the future. PECO points out that the actions it has agreed to in the joint petition for settlement far exceed the relief requested in I&E's complaint. PECO also asserts that the cost of implementing these actions is significant. Given the circumstances of this proceeding, I conclude that a civil penalty larger than that requested by I&E is not necessary to deter future violations.

The ninth factor looks at past Commission decisions in similar situations. I&E states that in Pennsylvania Public Utility Commission v. Peoples Natural Gas Company, LLC, f/k/a The Peoples Natural Gas Company, d/b/a/ Dominion Peoples, Docket No. M-2011-2157955 (Opinion and Order entered August 2, 2012), the Commission ordered the utility to pay a \$5,000.00 civil penalty as a result of an incident which involved a line hit by a third party contractor and resulted in a fire. According to I&E, the higher civil penalty proposed in the joint petition for settlement in this proceeding reflects the minor personal injuries resulting from the August 7, 2013 incident as well as the amendment in 2012 of 66 Pa.C.S. § 3301(c) increasing the amount of civil penalty that the Commission can assess.

PECO states that in Pennsylvania Public Utility Commission v. PPL Electric Utilities Corp., Docket No. M-2009-2059414 (Opinion and Order entered November 23, 2009), the Commission ordered the utility to pay a civil penalty of \$1,000.00 as a result of an incident where property damage was not the result of the utility's conduct. PECO argues that, similarly in this case, the August 7, 2013 incident was not the result of its conduct and the civil penalty here should be of a similar magnitude.

In contrast, PECO also cites Pennsylvania Public Utility Commission v UGI Utilities Inc., Docket No. M-2009-2031571 (Opinion and Order entered January 14, 2010) where the Commission ordered the utility to pay a civil penalty of \$80,000.00 as a result of an incident where property damage was the result of a utility contractor attempting to remove a gas meter. PECO argues that in this case the August 7, 2013 incident was not the result of the conduct of its contractor and the civil penalty here should be of a lesser magnitude. Since past Commission decisions order lesser civil penalties where the conduct of utility did not cause the property damage or personal injury, I conclude that that this incident should result in a lesser penalty.

The tenth factor looks at other relevant factors. Both I&E and UGI state that the fact that the parties have agreed to a settlement should be considered. A settlement of this matter allows the parties to move forward to focus on the agreed upon remedial actions rather than continuing to litigate the matter. I conclude that this additional factor should result in a lesser penalty.



Based on a review of the factors set forth above, I conclude that a civil penalty in the amount of \$15,000.00 is appropriate in this matter.

### CONDITIONS OF THE SETTLEMENT

Having reviewed the terms of the settlement, the public interest in approving and adopting the joint petition for settlement and the reasonableness of the civil penalty, I will summarize the conditions of the settlement set forth in the joint petition for settlement. The settlement is conditioned upon the Commission's approval of the terms and conditions contained in the joint petition for settlement without modification. If the Commission modifies the joint petition for settlement, any party may elect to withdraw from the settlement and may proceed with litigation and, in such event, the joint petition for settlement shall be void and of no effect.

I&E and PECO acknowledge that the joint petition for settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. The joint petition for settlement may not be cited as precedent in any future proceeding, except to the extent required to implement its provisions.

The joint petition for settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The joint petition for settlement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of the joint petition for settlement. The joint petition for settlement does not preclude the parties from taking other positions in any other proceeding.

The parties arrived at the settlement after conducting discovery and engaging in discussions over several months. The terms and conditions of the joint petition for settlement constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed therein. The settlement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa.Code §§ 5.231, 69.391, 69.1201.

## CONCLUSION

For the reasons set forth above, I find that the proposed settlement is in the public interest and consistent with the Public Utility Code and Commission regulations. Accordingly, I recommend that the Commission approve the joint petition for settlement.

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

2. The Commission has the power and the duty to enforce the requirements of the Public Utility Code. 66 Pa.C.S. § 501(a).

3. The Commission delegated its authority with regard to enforcement of gas safety laws and regulations to I&E. Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Final Procedural Order entered August 11, 2011).

4. Commission policy promotes settlements. 52 Pa.Code § 5.231.

5. The joint petition for settlement submitted by I&E and PECO is reasonable and in the public interest and should be approved by the Commission.

## ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the joint petition for settlement filed on March 20, 2017 between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO

Energy Company at C-2015-2514773 is hereby approved and adopted in its entirety without modification.

2. That PECO Energy Company shall pay a civil penalty of \$15,000.00 as provided for in the Public Utility Code, 66 Pa. Code §3301, by certified check or money order, made payable to “Commonwealth of Pennsylvania” within thirty (30) days after the service of the Pennsylvania Public Utility Commission’s order to:

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

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

Date: March 23, 2017

\_\_\_\_\_/s/  
David A. Salapa  
Administrative Law Judge