



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

April 16, 2018

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. PECO Energy Company
Docket No. M-2018-_____
(Settlement Agreement)

Dear Secretary Chiavetta:

Enclosed for filing is the Settlement Agreement between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") and PECO Energy Company ("PECO") in the above-captioned proceeding. The Settlement Agreement consists of the Agreement and Appendices A through C consisting of: Appendix A – Proposed Ordering Paragraphs; Appendix B – Statement in Support of I&E; Appendix C – Statement in Support of PECO.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Bradley R. Gorter, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
(717) 783-6150
bgorter@pa.gov

Enclosure

cc: RA-OSA@pa.gov
As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
v.	:	
PECO Energy Company	:	Docket No. M-2018-
	:	
	:	
	:	

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The parties to this Settlement Agreement (“Settlement Agreement” or “Agreement”) are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), by its prosecutors, P.O. Box 3265, Harrisburg, PA 17105-3265, and PECO Energy Company (“PECO”), by its counsel, with corporate offices located at 2301 Market Street, Philadelphia, Pennsylvania, 19103.

2. The Pennsylvania Public Utility Commission (“Commission”) is a duly constituted agency of the Commonwealth of Pennsylvania authorized to regulate utilities within this Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

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

4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities.

Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate enforcement actions to I&E).

5. PECO is a licensed electric distribution company (“EDC”) as defined by 66 Pa.C.S. § 2803. PECO is engaged in providing facilities for transmission and distribution of electricity to retail customers as authorized by its license within the Commonwealth of Pennsylvania.¹

6. PECO, as a licensed provider of electric distribution service, is subject to the power and authority of the Commission pursuant to Sections 501(c) and 2807 of the Public Utility Code.

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over PECO’s actions as an EDC that serves customers in Pennsylvania.

8. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day’s continuance of such violation(s). Specifically, with regard to termination

¹ Commission records indicate that PECO was granted Commission approval to operate as a public utility on May 28, 1937.

of low-income customers during the period of December 1 through March 31 (the “winter months”), the Commission is empowered to assess civil penalties under the aforementioned 66 Pa.C.S. Chapter 33, pursuant to 52 Pa. Code § 56.100(b). The Commission is further empowered to assess civil penalties for income verification procedures pursuant to 52 Pa. Code § 56.100(e).

9. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings to gather data and/or to substantiate allegations of potential violations of the Commission’s regulations.

10. This matter concerns an informal investigation initiated by I&E prosecutory staff based on information referred to I&E by the Commission’s Bureau of Consumer Services (“BCS”). BCS received informal complaints from several customers that PECO had terminated electric service to low-income customers during the winter months in 2015 and 2016 despite knowledge that these customers’ incomes met or fell below the 250% of the federal poverty level threshold provided by 52 Pa. Code § 56.100(b). I&E determined that these allegations warranted that a further investigation be conducted to examine whether the actions of PECO violated the Public Utility Code or Commission regulations and orders.

11. As a result of negotiations between PECO and I&E (hereinafter referred to collectively as “parties”), the parties have reached an agreement on an appropriate

resolution to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Agreement as submitted as being in the public interest. Proposed Ordering Paragraphs are attached as Appendix "A". Statements in Support of the Settlement expressing the individual views of I&E and PECO are attached hereto as Appendix "B" and Appendix "C", respectively.

II. BACKGROUND

12. In early 2016, BCS received several informal complaints from residential customers of PECO alleging that their electric service had been terminated during the winter months. In the informal complaints, the customers alleged that they qualified for low-income protection during the winter months and that PECO nonetheless terminated their service due to non-payment of bills.

13. BCS reviewed these informal complaints and identified nearly three dozen total informal complaints for which BCS concluded that PECO had impermissibly terminated low-income customers during the winter months.

14. BCS determined that PECO's termination of these customers was not proper and informally ordered service to be restored. No appeals were taken from any written informal decisions issued by BCS.

15. BCS referred the matter to I&E for further review. An informal investigation was initiated by I&E into whether PECO's policies, procedures, and actions

taken with regard to low-income customer terminations during the winter months were adequate to satisfy 52 Pa. Code § 56.100(b) (prohibiting termination during the winter months of customers at or below 250% of the Federal poverty level) and 52 Pa. Code § 56.100(e) (requiring utilities to determine eligibility for winter months protections by soliciting information from customers).

16. By letter dated July 15, 2016, I&E requested that PECO provide responses to data requests related to the above-mentioned allegations. PECO, after a granted time extension request, complied with I&E's requests.

17. In its responses to I&E's data requests, PECO provided comprehensive details outlining its winter termination policies and procedures, lists of terminated customers, and copies of income verification documents, policies, and procedures.

18. In response to one of I&E's data requests, PECO identified approximately eight (8) customers who were improperly terminated during the winter months allegedly due to a faulty computer program that failed to identify the customers as qualifying for the winter months protections.

19. PECO's winter termination procedure is governed by PECO's Tariff Electric Pa.P.U.C. No. 4, Supplement No. 34, which provides in Section 18.1 that "the customer is subject to collection action, including termination of service (in accordance with the Pennsylvania Public Utility Code or the Commission's regulations[])". See PECO Supplement No. 34 to Tariff Electric Pa.P.U.C. No. 4, at 25, § 18.1.

20. PECO has implemented internal policies and procedures regarding income verification and winter termination that govern how PECO proceeds with income verification and termination of customers during the winter months.

21. I&E's review of this matter determined that PECO's tariff and its policies and procedures regarding winter termination of low-income customers and income verification are not sufficient to fully inform customers of PECO's policies and procedures for winter months terminations and income verification.

22. PECO has fully cooperated with I&E's investigation into this matter.

III. ALLEGED VIOLATIONS

23. Based on the information obtained through its investigation as described above and a review of the Code and Commission regulations, I&E was prepared to allege in a formal complaint that:

- a. PECO, pursuant to its policy regarding winter termination of customers without verified income information, wrongfully terminated customers who qualified for protection from termination during the statutory winter months period.

If proven, this would have violated 52 Pa. Code § 56.100(d) and 66 Pa.C.S. § 1406(e).

- b. PECO terminated service to approximately eight (8) customers due to a computer logic error that failed to properly identify customers who qualified for protection from termination during the winter months.

If proven, this would have violated 52 Pa. Code §§ 56.100(b) and 56.100(e) and 66 Pa.C.S. § 1406(e).

- c. PECO's policies and procedures for winter termination and income verification are inadequate to ensure the proper implementation of the

requirements of the Public Utility Code and the Commission's regulations and orders.

If proven, this would have violated 52 Pa. Code §§ 56.100(d), 52 Pa. Code §§ 56.100(b) and 56.100(e) and 66 Pa.C.S. § 1406(e)

24. If the matter had been litigated, PECO would have contended that its actions and policies did not violate either the Code or Commission regulations, and that it should not be fined or penalized for any offense. To the contrary, PECO would have contended that PECO's policies and procedures were adequate to prevent qualifying customers from having their service terminated during the winter months and that PECO took reasonable steps to verify the customers' incomes prior to termination. Further, PECO would have contended that the customers bore a duty to respond to PECO's income verification inquiries in order to prevent their service from being terminated. PECO would also have contended that the computer error that caused any improper terminations has been resolved and PECO restored service to all improperly terminated customers.

25. Throughout the entire investigatory process, I&E and PECO remained active in communications and informal discovery, and continued to explore the possibility of resolving this investigation, which ultimately culminated in this Settlement Agreement. During the investigatory process, PECO complied with I&E's requests for information, documentation and other records.

IV. SETTLEMENT TERMS

26. PECO and I&E desire to: (i) terminate I&E's informal investigation; and (ii) settle this matter completely without litigation. Although PECO disputes or disagrees with the allegations above, it fully acknowledges the seriousness of winter terminations and recognizes the need to prevent the reoccurrence of a similar situation. Moreover, the parties recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, the parties further recognize the benefits of amicably resolving the disputed issues.

27. PECO and I&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- a. PECO will pay a civil penalty in the amount of ten thousand dollars (\$10,000) and will increase the amount available for matching contributions in its Matching Energy Assistance Fund ("MEAF") in the amount of twenty thousand dollars (\$20,000) to resolve all allegations of improper termination and to fully and finally settle all possible liability and claims of alleged violations of the Code and Commission regulations arising from, or related to, the conduct investigated herein. The civil penalty represents the multiple alleged unlawful terminations due to the computer error that resulted in approximately eight (8) customers being wrongfully terminated and all other alleged improper terminations where PECO knew or reasonably should have known that the customer qualified for protection from termination during the winter months. Said payment shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and forwarded to the Commission through the prosecuting attorney within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement. The civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f). PECO's increase of the amount available for matching contributions in its MEAF program shall be completed within sixty (60) days after the Commission has entered a Final Order approving the

Settlement Agreement. Notice of compliance shall thereafter be filed with the Commission pursuant to 52 Pa.Code § 5.591.

- b. PECO has drafted a tariff supplement that shall be submitted to the Commission for approval within sixty (60) days after the Commission has entered a final order approving the Settlement Agreement. This tariff supplement enhances PECO's current procedure and succeeds the current tariff language at Electric Pa.P.U.C. No. 4, Supplement No. 34.
- c. PECO shall continue to ensure that its employees are reminded of the Commission's regulations regarding winter termination procedures, with an emphasis on income verification and protections for low-income customers.
- d. PECO shall provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS.
- e. PECO will continue to respond to all consumer inquiries and complaints relating to winter termination for low-income customers and shall continue to cooperate with BCS to resolve any such matters.
- f. In exchange for the actions taken by PECO described above, I&E agrees not to institute any formal complaint relating to the customer terminations that are the subject of this Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to any alleged incidents, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.
- g. The terms and conditions in this Settlement Agreement cannot be used and will not be admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by PECO.

V. CONDITIONS OF SETTLEMENT

- 28. The parties submit that a settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement

agrees to pay a lesser sum to avoid the possibility of a larger fine or penalty resulting from litigation. This settlement represents a compromise by both PECO and I&E of their respective litigation positions. Any fines and penalties resulting from a litigated proceeding typically are different from payments resulting from a settlement.

29. The Settlement Agreement meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201, which are more fully addressed in the parties respective Statements in Support. The parties submit that the Settlement Agreement is in the public interest because it effectively addresses the winter months termination allegations that were the subject of I&E's investigation, avoids the time and expense of litigation, which entails hearings, travel for witnesses and parties, and the preparation and filing of briefs, exceptions, reply exceptions and possible appeals.

30. With the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest, PECO agrees to, along with the non-monetary terms set forth above, pay a civil penalty in the amount of \$10,000 within thirty (30) days of the date of the order approving this Settlement Agreement.

31. With the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest, PECO further agrees to, along with the non-monetary terms and civil penalty set forth above, contribute to its low-income customer assistance fund the amount of \$20,000 within thirty (30) days of the date of the

order approving this Settlement Agreement, to completely resolve the allegations raised by I&E's investigation.

32. Pending Commission approval of the terms and condition of this Settlement Agreement, PECO shall file a supplement to its electric tariff that more comprehensively outlines its revised winter termination procedures.

33. This Settlement Agreement is a complete and final resolution of the Commission's investigation related to the issues as described above.

34. PECO and I&E have agreed to this settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

35. PECO and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is subject to all applicable administrative and common law treatments of settlements, settlement offers and/or negotiations. The validity of this Settlement Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. This Settlement Agreement is made without any admission against or prejudice to any position which any party might adopt during litigation of this case if this settlement is rejected by the Commission or withdrawn by any of the parties as provided below.

36. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are

expressly accepted by the parties involved. This Agreement shall be construed and interpreted under Pennsylvania law.

37. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or of any culpability. I&E acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Code and the Commission's regulations.

38. If either party should file exceptions to the tentative or final order of the Commission, the other party shall have the right to file a reply to the exceptions.

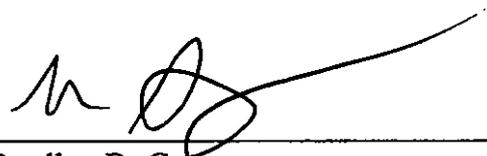
39. If the Commission fails to approve by tentative and final order this Settlement Agreement, including any of the terms or conditions set forth herein, without modification, addition, or deletion, then either party may elect to withdraw from this Settlement Agreement by filing a withdrawal in response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Settlement Agreement shall be considered an admission of fact or law or be binding upon the parties if one of them files a withdrawal.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and PECO Energy Company respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

Respectfully submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

PECO Energy Company

By: 
Bradley R. Gorter
Prosecutor
PA Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105
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By: _____
Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street
Philadelphia, PA 19101
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ward.smith@exeloncorp.com

Date: April 16, 2018

Date: _____

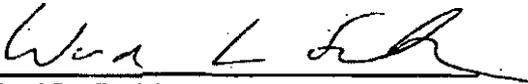
WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and PECO Energy Company respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

Respectfully submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

PECO Energy Company

By: _____
Bradley R. Gorter
Prosecutor
PA Public Utility Commission
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By: 
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Date: _____

Date: Apr 16, 2018

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<p>Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement</p> <p style="text-align: center;">v.</p> <p>PECO Energy Company</p>	<p>: : : : : : :</p>	<p>Docket No. M-2018-</p>
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PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on April 16, 2018, between the Commission’s Bureau of Investigation and Enforcement and PECO Energy Company is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of the date this Order becomes final, PECO Energy Company shall pay Ten Thousand Dollars (\$10,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

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

3. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within sixty (60) days of the date this Order becomes final, PECO Energy Company shall increase the amount available in its Matching Energy Assistance Fund by Twenty Thousand Dollars (\$20,000), which increase, along with the civil penalty above, consists of the entire financial settlement terms. Upon completion of the increase, PECO shall, pursuant to the

Commission's regulations, 52 Pa. Code § 5.591, file notice of compliance with the commission's Secretary's Bureau.

4. That, within sixty (60) days of the date this Order becomes final, PECO Energy Company shall file with the Commission a tariff supplement outlining its enhanced winter termination procedures.

5. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

APPENDIX B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<p>Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement</p> <p style="text-align: center;">v.</p> <p>PECO Energy Company</p>	<p>: : : : : : :</p>	<p>Docket No. M-2018-</p>
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**STATEMENT IN SUPPORT OF THE PENNSYLVANIA PUBLIC UTILITY
COMMISSION’S BUREAU OF INVESTIGATION AND ENFORCEMENT**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) hereby submits this Statement in Support of the Settlement Agreement (“Settlement”) that was entered into by I&E and PECO Energy Company (“PECO”) in the above-captioned matter. The Settlement fully resolves all issues related to I&E’s investigation into the alleged unlawful termination of service for various low income customers during the moratorium on service terminations during the winter months. 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.

I. BACKGROUND

This matter involves PECO, an electric distribution company, licensed by the Commission to provide facilities for transmission and distribution of electricity to retail

customers as authorized by its license within the Commonwealth of Pennsylvania.

Commission records indicate that PECO was granted Commission approval to operate as a public utility on May 28, 1937.

In early 2016, the Commission's Bureau of Consumer Services ("BCS") received several informal complaints from customers complaining that PECO had terminated their electric service during the winter moratorium months, as prohibited by 52 Pa. Code § 56.100(b) (prohibiting termination during the winter months of customers at or below 250% of the Federal poverty level), despite PECO having information indicating that the customers qualified for winter months protection. BCS determined that PECO's termination of these customers was not proper and identified nearly three dozen informal complaints for which BCS issued informal decisions ordering service to be restored. BCS subsequently referred the matter to I&E for review, and I&E initiated an informal investigation into PECO's policies, procedures, and actions with regard to low-income customer service termination during the winter months as required pursuant to 52 Pa. Code § 56.100(b) and 52 Pa. Code § 56.100(e) (requiring utilities to determine eligibility for winter months protections by soliciting information from customers).

I&E's informal investigation concluded that sufficient data had been gathered to substantiate alleged violations of the Public Utility Code and Commission regulations in connection with the complaints that BCS received. Upon investigation, I&E determined that there were two subsets of customers whose service had been terminated by PECO:

- 1) a group of eight (8) customers who were terminate due to a faulty computer program

that failed to identify the customers as low-income; and, 2) various other customers whose income verification information had expired and PECO terminated service to these customers due to lack of income information. I&E's investigation further revealed that, upon learning about the customers whose service was terminated due to the computer program error, PECO restored service in a timely manner.

In determining that the instant settlement was appropriate, I&E weighed the Commission's interest in maintaining low-income customers protection from service termination during the winter months against various mitigating circumstances that are present here. Importantly, I&E acknowledges that PECO fully cooperated with I&E's investigation. PECO responded to I&E's requests for information about the customer complaints and provided I&E with records, correspondence and other documents, as well as tariff and policy documents, associated with the customer complaints. Moreover, throughout the entire investigatory process, PECO and I&E remained in communication and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

II. TERMS OF SETTLEMENT

I&E alleges that in connection with the termination of service to various low-income customers during the winter months, PECO committed several violations of the Commission's regulations. Based on I&E's allegations, I&E requests that the Commission approve the terms of the Settlement, which include directing PECO to pay a

civil penalty in the amount of ten thousand dollars (\$10,000) and implement measures that PECO has agreed to perform in order to prevent wrongful termination of service to low-income customers during the winter months in the future. Under the terms of the Settlement, PECO and I&E have agreed as follows:

- A. PECO will pay a civil penalty in the amount of ten thousand dollars (\$10,000) and will increase the amount available for matching contributions in its Matching Energy Assistance Fund (“MEAF”) by twenty thousand dollars (\$20,000) to resolve all allegations of wrongful and to fully and finally settle all possible liability and claims of alleged violations of the Code and Commission regulations arising from, or related to, the conduct investigated herein. The civil penalty and MEAF increase represent the multiple alleged violations of the Commissions protections during the winter months for low-income customers. The civil penalty payment shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and forwarded to the Commission through the prosecuting attorney within thirty (30) days after the Commission has entered a final order approving the Settlement Agreement. The civil penalty shall not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f). PECO’s increase of the amount available for matching contributions in its MEAF program shall be completed within sixty (60) days after the Commission has entered a Final Order approving the Settlement Agreement. Notice of compliance shall thereafter be filed with the Commission pursuant to 52 Pa.Code § 5.591.
- B. PECO has drafted a tariff supplement that shall be submitted to the Commission for approval within sixty (60) days after the Commission has entered a final order approving the Settlement Agreement. This tariff supplement enhances PECO’s current procedure and succeeds the current tariff language at Electric Pa.P.U.C. No. 4, Supplement No. 34.
- C. PECO shall continue to ensure that its employees are reminded of the Commission’s regulations regarding winter termination procedures, with an emphasis on income verification and protections for low-income customers.
- D. PECO shall provide or confirm a single point of contact to Commission staff for resolution of consumer inquiries and/or complaints received by BCS.

- E. PECO will continue to respond to all consumer inquiries and complaints relating to winter termination for low-income customers and shall continue to cooperate with BCS to resolve any such matters.
- F. In exchange for the action taken by PECO described above, I&E agrees not to institute any formal complaint relating to the unauthorized customer enrollments that are the subject of this Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.
- G. The terms and conditions in this Settlement Agreement cannot be used and will not be admissible in any future proceeding, including, but not limited to, the Commission, the Pennsylvania court system or the federal court system, relating to this or any other matter as proof of unlawful and/or improper behavior, or as an admission of unlawful and/or improper behavior by PECO.

The terms of the Settlement are designed to act as additional safeguards, beyond PECO's existing internal controls, to prevent future improper termination of service to low-income customers. Consequently, the terms of the Settlement will benefit the Pennsylvania electric markets.

III. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements decrease 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. "The focus of inquiry for determining whether a proposed settlement should be recommended for

approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement in this matter is consistent with the Commission’s Policy 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 Pa., 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.

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the

Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "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).

The first factor considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty. I&E alleges that the conduct in this case is the following: due to a computer program error, PECO unlawfully terminated eight (8) customers who would otherwise have qualified for the winter months protections provided by 52 Pa. Code § 56.100(b) and 52 Pa. Code § 56.100(e). Further, due to inadequate procedures and income verification policies, PECO may have terminated service to several more customers who would, had income verification and customer communication processes been adequate, have qualified for low-income protection during the winter months. Because PECO's actions led to customers losing electric service during the winter months, I&E submits that the alleged improper terminations were of a very serious nature and were considered in arriving at the civil penalty in this Settlement.

The second factor considered is whether the resulting consequences of the conduct in question were of a serious nature. I&E's investigation has determined that the customers who had their service terminated due to the computer program error have had their service restored. Further, due to BCS's informal decisions ordering service restored, many, if not all, of the additional customers whose service may have been *improperly terminated have had their service restored*. However, because some customers had delays in service restoration, or may not have had their service restored because BCS was unaware of the service termination, the consequences of PECO's actions could be potentially very serious. Accordingly, I&E asserts that the resulting consequences of PECO's actions were of a serious nature.

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor is only to be considered when evaluating litigated cases. 52 Pa. Code § 69.1201(c)(3). Therefore, this factor does not apply to the present case because this proceeding is a settled matter.

The fourth factor to be considered is whether PECO made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. PECO had internal controls in place and required all employees to abide by them, including maintaining income records and seeking income verification when income is unknown. PECO maintains policies and procedures that govern its employees when seeking to verify income and when pursuing service termination. PECO has committed to filing a more robust and comprehensive tariff

supplement that more clearly lays out PECO's winter service termination procedures and more fully and comprehensively explains the potential consequences of failure to cooperate with PECO's winter service termination and income verification efforts.

The fifth factor considers the number of customers affected and the duration of the violation. In this matter, eight (8) customers suffered service termination due to the computer program error, and approximately thirty (30) more customers may have suffered service terminations due to PECO's inadequate income verification and winter service termination procedures.

The sixth factor considers 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.* The Public Utility Code requires public utilities to provide reasonable and adequate, not perfect, service. 66 Pa.C.S. § 1501. I&E's investigation reveals that PECO has a generally clean compliance history with regard to customer service terminations, especially when given the size of the company.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. PECO has cooperated with I&E throughout all phases of this investigation and settlement process.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. I&E submits that a civil penalty in the amount of \$10,000 is sufficient to deter PECO from committing future violations. Further, in addition to paying the civil

penalty, PECO has agreed to increase the amount of funds available for its MEAF by \$20,000, bringing the total potential financial commitment to \$30,000.¹ I&E submits that this total potential commitment is sufficient to deter future violations.

The ninth factor examines past Commission decisions in similar situations. I&E reviewed previous matters with EGDs and customer terminations and attempted to resolve the instant case in a similar matter. The agreement between I&E and PECO provides a civil penalty for multiple alleged violations for the customer accounts that were impermissibly terminated during the protected winter months, for a total of \$10,000. I&E identified multiple separate and distinct violations related to these accounts and the actions taken by PECO and submits that a \$10,000 civil penalty, and the additional available amount in PECO's MEAF, is an appropriate total amount given the seriousness of PECO's actions. Further, PECO has agreed to file a more comprehensive and robust tariff that will provide more complete information to customers regarding PECO's policies and procedures for winter termination of service and income verification practices.

Finally, the tenth factor considers any other relevant factor. 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

¹ I&E notes that, based on representations from PECO, it is highly likely that the entire MEAF fund will be expended during the fiscal years affected by the MEAF fund increase.

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 remedial actions.

I&E and PECO fully support the terms and conditions of this Settlement Agreement. The foregoing terms of this 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. For all of these reasons, I&E submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement fully supports the Settlement Agreement and respectfully requests that the Commission adopt an order approving the terms and conditions of this Settlement Agreement in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. R. Gorter', written over a horizontal line.

Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: April 16, 2018

APPENDIX C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<p>Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement</p> <p style="text-align: center;">v.</p> <p>PECO Energy Company</p>	<p>: : : : : : :</p>	<p>Docket No. M-2018-</p>
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STATEMENT IN SUPPORT OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby submits this Statement in Support of the Settlement Agreement (“Settlement”) that was entered into by the Commission’s Bureau of Investigation & Enforcement (“I&E”) and PECO Energy Company (“PECO”) in the above-captioned matter. The Settlement fully resolves all issues related to I&E’s investigation into the alleged unlawful termination of various customers during the moratorium on terminations during the winter months for low income customers. PECO 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.

I. BACKGROUND

PECO adopts the Background discussion set forth in I&E's Statement in Support. In addition, PECO wishes to state that it appreciates the professional demeanor exhibited by I&E throughout its investigation.

II. TERMS OF SETTLEMENT

PECO has reviewed the Terms of Settlement as set forth in the Settlement Agreement and I&E's Statement in Support, and agrees that those documents accurately set forth the Terms of Settlement.

III. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements decrease 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. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and

conditions are in the public interest. *See Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

PECO submits that approval of the Settlement in this matter is consistent with the Commission's Policy 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 Pa., 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.

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “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).

The first factor considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty. PECO alleges that the conduct in this case is the following: due to a computer program error, PECO terminated eight (8) customers who would otherwise have qualified for the winter months protections provided by 52 Pa. Code § 56.100(b) and 52 Pa. Code § 56.100(e). PECO recognizes that the alleged improper terminations were serious. In addition, PECO recognizes that its procedures for determining income status prior to winter termination were not fully described in its tariff.

The second factor considered is whether the resulting consequences of the conduct in question were of a serious nature. Upon discovering the computer error, PECO restored service to the customers whose service had been terminated due to the computer program error. Further, PECO restored service to the other customers who filed informal BCS complaints claiming that they were low-income.

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor is only to be considered when evaluating litigated cases. 52 Pa.

Code § 69.1201(c)(3). Therefore, this factor does not apply to the present case because this proceeding is a settled matter.

The fourth factor to be considered is whether PECO made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. PECO had internal controls in place and required all employees to abide by them, including maintaining income records and seeking income verification when income is unknown. PECO maintains policies and procedures that govern its employees when seeking to verify income and when pursuing service termination. PECO has committed to filing a more robust and comprehensive tariff supplement that more clearly lays out PECO's winter service termination procedures and more fully and comprehensively explains the potential consequences of failure to cooperate with PECO's winter service termination and income verification efforts.

The fifth factor considers the number of customers affected and the duration of the violation. In this matter, eight (8) customers suffered service termination due to the computer program error, and approximately thirty (30) more customers filed complaints claiming that they were low income and that their service was inappropriately terminated.

The sixth factor considers 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. PECO submits that it has a strong compliance history with regard to customer service terminations.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. PECO has cooperated with I&E throughout all phases of this investigation and settlement process.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. PECO submits that no civil penalty would have been necessary to deter it from committing future violations, but nonetheless has agreed to payment of a \$10,000 civil penalty. Further, in addition to paying the civil penalty, PECO has agreed to increase the amount of funds available for its MEAF by \$20,000, bringing the total potential financial commitment to \$30,000.

The ninth factor examines past Commission decisions in similar situations. The agreement between I&E and PECO provides a civil penalty of \$1,000 for multiple alleged violations for the customer accounts that were impermissibly terminated during the protected winter months, for a total of \$10,000. PECO submits that this penalty, coupled with its commitments to match an additional \$20,000 of MEAF contributions and to file a more comprehensive and robust tariff that will provide complete information to customers regarding PECO's policies and procedures for winter termination of service and income verification practices, is an appropriate resolution.

Finally, the tenth factor considers any other relevant factor. PECO agrees with I&E 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 remedial actions.

I&E and PECO fully support the terms and conditions of this Settlement Agreement. The foregoing terms of this 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. For all of these reasons, PECO submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

WHEREFORE, PECO Energy Company fully supports the Settlement Agreement and respectfully requests that the Commission adopt an order approving the terms and conditions of this Settlement Agreement in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ward L. Smith", is written over a horizontal line.

Ward L. Smith
Assistant General Counsel
PA Attorney ID No. 047670

PECO Energy Company
2301 Market Street
S23-1
Philadelphia, PA 19103

Dated: April 16, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
: :
Complainant :
v. : Docket No. M-2018-
: :
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:

Ward L. Smith, Esq.
PECO Energy Company
2301 Market Street
Philadelphia, PA 19101



Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6150
bgorter@pa.gov

Dated: April 16, 2018

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