



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

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August 8, 2018

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PA PUC
SECRETARY'S BUREAU
FRONT DESK

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. C-2015-2511928
(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 – Statement in Support of I&E; Appendix B – Statement in Support of PECO; Appendix C – Proposed Ordering Paragraphs.

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: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant	:	
	:	Docket No. C-2015-2511928
v.	:	
	:	
PECO Energy Company,	:	
	:	
Respondent	:	

JOINT PETITION FOR SETTLEMENT

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

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

interest and, therefore, request that the Commission approve, without modification, the proposed Settlement as set forth in the Joint Petition. In support of their request, the Joint Petitioners state as follows:

I. INTRODUCTION

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

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

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

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

5. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or

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

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

corporation subject to the Commission's jurisdiction for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate and distinct civil penalty for each day's continuance of such violation(s).

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

7. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Safety Division,² which is a part of I&E, also has the delegated authority to enforce the federal gas pipeline safety regulations codified at 49 C.F.R. Part 192 implementing the federal Pipeline Safety Act, 49 U.S.C. §§ 60101, *et seq.*

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

II. BACKGROUND

9. On November 4, 2015, I&E filed a Formal Complaint ("Complaint") with the Commission against PECO at Docket No. C-2015-2511928, alleging violations of the Pennsylvania Public Utility Code, Commission's regulations, and the Code of Federal

² At the time I&E's Complaint was filed, the Commission's Safety Division was known as the Gas Safety Division.

Regulations related to PECO's establishment of the maximum allowable operating pressures ("MAOP") for its medium pressure gas distribution systems.

10. The Complaint requested that:
 - A. PECO be ordered to establish the MAOPs of its medium pressure distribution systems based on operating pressure records from June 25, 2009 to June 25, 2014;
 - B. PECO be ordered to modify its procedures;
 - C. PECO be ordered to cease and desist from committing any further violations of Gas Safety regulations;
 - D. PECO be ordered to pay a civil penalty pursuant to 66 Pa.C.S. § 3301; and
 - E. PECO not be permitted to recover any portion of the civil penalty through rates regulated by the Commission.

11. On December 21, 2015,³ PECO filed an Answer and New Matter to the Complaint in which PECO denied the allegations in I&E's Complaint and averred that PECO's MAOPs were in compliance with federal requirements.

12. On August 4, 2017, PECO filed a Motion *in Limine* to preclude the testimony of I&E's previously-identified witness, Chris McLaren, an employee of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA").

13. I&E filed an Answer to PECO's Motion *in Limine* on August 23, 2017, with a modified witness list that removed Mr. McLaren as an I&E witness.

³ By Secretarial Letter dated November 24, 2015, PECO was granted an extension of time until December 21, 2015, to respond to I&E's Complaint.

14. On August 29, 2017, I&E served PECO with the Direct Testimony and exhibits of I&E's witnesses: I&E Safety Supervisor Michael Chilek and I&E Fixed Utility Valuation Engineers Terri C. Cooper Smith and Robert Horensky.

15. On November 29, 2017, PECO served I&E with copies of Rebuttal Testimony and exhibits of PECO's witnesses: PECO employees Brian Camfield and David Bonner, and expert witnesses Mark Hereth of Process Performance Improvement Consultants, LLC, and Glen Armstrong of EN Engineering.

16. I&E served PECO with Surrebuttal Testimony and exhibits of Mr. Chilek, Ms. Cooper Smith, Mr. Horensky, and expert witness Richard Sanders of RES Services, LLC, on January 19, 2018.

17. Throughout this proceeding, I&E and PECO actively engaged in numerous settlement discussions and extensive discovery.

III. ALLEGED VIOLATIONS

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

- A. PECO failed to ensure that the MAOP of its medium pressure systems did not exceed the MAOP plus 6 psi for its medium pressure regulator stations operating at 12 psi gage or more, but less than 60 psi gage in that PECO assumed an incorrect MAOP for its medium pressure regulator systems and did not have the understanding necessary to account for build-up and pipe losses while determining regulator set-points and capacity for seventy-two of its one hundred fifteen medium pressure regulator stations. If proven, this is a

violation of 49 C.F.R. §192.201(a)(2)(ii) and 52 Pa. Code § 59.33(b).

- B. PECO failed to maintain MAOP documentation for the life of its medium pressure distribution pipelines, including documentation showing the highest actual operating pressures for the five years prior to July 1, 1970. If proven, this is a violation of 49 C.F.R. §§ 192.603(b), 192.605, 192.619 and 192.621, and 52 Pa. Code § 59.33(b).
- C. PECO did not correctly apply 49 C.F.R. §192.621 with respect to cast iron pipe and PECO's stated reliance on 49 C.F.R. § 192.621 with respect to establishing MAOP was improper. If proven, this is a violation of 49 C.F.R. § 192.621 and 52 Pa. Code § 59.33(b).
- D. PECO should have included in its Distribution Integrity Management Program ("DIMP") a risk identification and subsequent risk mitigation strategy associated with not being able to provide or refer to data/records in assessing and establishing an MAOP. If proven, this is a violation of 49 C.F.R. § 192.1007 and 52 Pa. Code § 59.33(b).
- E. PECO failed to prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response in that PECO did not have proper procedures in place regarding its MAOP verification, regulator station maintenance, regulator station design, or relief capacity review. If proven, this is a violation of 49 C.F.R. §192.605(a) and 52 Pa. Code § 59.33(b).
- F. PECO failed to subject each of its pressure regulating stations at intervals not exceeding fifteen months, but at least once each calendar year, to inspections and tests to determine that it is adequate from the standpoint of capacity and reliability of operation for the service in which it is employed in that PECO could not show calculations for relief capacity or adequate reliability for all of its one hundred fifteen (115) medium pressure regulator stations. If proven, this is a violation of 49 C.F.R. §192.739(a) and 52 Pa. Code § 59.33(b).
- G. PECO failed to determine for its pressure regulating stations, at intervals not exceeding fifteen months but at least once each calendar year, sufficient capacity to protect the facilities to which

they are connected in that PECO's review did not take into account build-up and pipe losses, nor were its engineers familiar with the contents of the calculations for all of PECO's one hundred fifteen (115) medium pressure regulator stations. Furthermore, PECO did not track the annual review of the relief capacity at Station 17, and PECO's calculation of the relief capacity for the Station 17 regulator relief was incorrect. If proven, this is a violation of 49 C.F.R. §192.743(a) and 52 Pa. Code § 59.33(b).

- H. PECO failed to install blowdown valves where necessary in that it did not have blowdown valves on its regulator sets, which are necessary on all stations to safely relieve pressure from the regulator during maintenance. If proven, this is a violation of 49 C.F.R. 192.203(b)(2) and 52 Pa. Code § 59.33(b).
- I. PECO operated segments of steel and plastic pipelines at pressures that exceeded their maximum allowable operating pressures in that PECO did not have MAOPs for its medium pressure distribution systems that could be substantiated or verified. If proven, this is a violation of 49 C.F.R. §192.619 and 52 Pa. Code § 59.33(b).

IV. ALLEGED DEFENSES

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

20. If this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, PECO would have contended the following in response to each of the counts alleged in the Complaint and the testimony of I&E's witnesses:

- A. PECO denied that it failed to ensure that its regulator stations would not exceed MAOP plus 6 p.s.i.g. in emergency situations. PECO averred that it sets its relief set points not to exceed the Normal Operating Pressure of the regulator plus 6 p.s.i.g. This practice exceeds the safety requirements set

forth in 49 C.F.R. § 192.201(a)(2)(ii), which indicates that pressure buildup cannot exceed MAOP plus 6 p.s.i.g. in emergency situations. PECO denied that its regulator stations do not account for pressure buildup and loss. PECO also denied that it does not have an understanding of how to account for pressure buildup and loss in its relief capacity settings. PECO further denied that it failed to properly establish the MAOPs for its medium pressure gas distribution systems and that its MAOP settings are based on assumptions. PECO contended that the systems' operations that the Safety Division claimed were in violation of federal requirements had not changed in the 45 years since the adoption of 49 C.F.R. Part 192. PECO contends that 49 C.F.R. Part 192 contains explicit record retention requirements and that PECO complied with each of these explicit requirements.

- B. PECO denied that 49 C.F.R. §§ 192.603(b), 192.605, 192.619 and 52 Pa. Code § 59.33(b) contain any record retention requirements related to MAOP, including but not limited to any requirement that PECO retain for the life of the pipeline documentation showing the highest actual operating pressures for the five years prior to July 1, 1970. PECO further denied that 49 C.F.R. Part 192 contains any requirement that PECO verify the MAOPs of its medium pressure gas distribution systems. PECO contended that I&E's allegations that PECO failed to retain documentation to substantiate or verify its MAOPs were raised for the first time in 2014 and that allegations that PECO violated 49 C.F.R. §§ 192.619, 192.603(b) and 192.605 are barred by the three-year statute of limitations in 66 Pa.C.S. §3314(a). PECO contended that decades had passed since the U.S. Department of Transportation promulgated the original federal pipeline safety regulations and allowing the Safety Division to initiate a proceeding based on events occurring before 1970 implicates substantial constitutional issues regarding fair notice and due process as well as concerns relating to non-retroactivity and preemption under the Federal Pipeline Safety Act.
- C. PECO denied that it had not correctly applied 49 C.F.R. §192.621 with respect to cast iron pipe and PECO contended that it properly relied on 49 C.F.R. § 192.621 with respect to establishing MAOP for its cast iron pipe.
- D. PECO denied that it was required to include in its DIMP a risk identification and subsequent risk mitigation strategy for risks alleged to arise from PECO's purported failure to comply with the alleged MAOP record retention requirements asserted by I&E. PECO denied that 49 C.F.R. Part 192 contains such MAOP record retention requirements, and PECO further contended that it had complied with all record retention requirements set forth in 49 C.F.R. Part 192.

- E. PECO denied that it did not prepare and follow a manual of written procedures for conducting operation and maintenance activities and for emergency response. PECO denied that any emergency situations occurred at any of its regulator stations. PECO denied that it violated any emergency response requirements.
- F. PECO denied that it did not inspect all its regulator stations in accordance with the federal gas pipeline safety regulations. Specifically, PECO stated that its Procedure GO-PE-3013 – *Gas Distribution Regulator Station Inspection* requires PECO to inspect all its regulator stations each calendar year, at intervals not to exceed fifteen (15) months. These inspections determine whether PECO’s regulator stations are: 1) in good mechanical working condition; 2) set at the correct control and relief pressure settings; and 3) unencumbered by dirt, liquids or other conditions that might prevent proper operation. PECO further stated that this procedure aligns with the requirements set forth in 49 C.F.R. § 192.739(a). Accordingly, PECO averred that it performed all regulator station inspections according to Procedure GO-PA-3013 each calendar year, at intervals not to exceed fifteen (15) months, and that these inspections have determined that PECO’s regulator stations are compliant. PECO further denied that its inspections and reviews did not account for pressure buildup and loss. Furthermore, PECO stated that its engineers adhere to Company standards, procedures, and other technical documents to determine the basis for regulator station calculations (failure capacity and relief capacity). PECO also denied that it could not show its calculations for relief capacity or adequate reliability. PECO contended that it complied with all requirements for determining whether relief capacities (for each regulator station) must be updated. PECO Procedure GO-PE-1021 (*Regulator Station Relief Capacity*) aligns with the requirements set forth in 49 C.F.R. 192.743(a).
- G. PECO denied that the federal gas pipeline safety regulations require it to install blowdown valves in its regulator stations. Pursuant to 49 C.F.R. § 192.203(b)(2), “blowdown valves must be installed where necessary.” According to PECO, the Company had safely performed regulator station maintenance for 47 years without incident by having field personnel manually loosen the bolts to vent the gas. Additionally, the amount of gas between the regulator isolation valves is 0.66 ft³ (equivalent to the amount of gas needed to fill one-and-a-half basketballs) and, therefore, does not present any danger that would require the protection of a blowdown valve.
- H. PECO denied that it ever operated segments of its steel and plastic lines at pressures that exceed their MAOPs. PECO stated that it properly established the MAOPs for all the pipeline segments in its medium pressure gas

distribution systems in accordance with the applicable regulations. PECO contended that its practices and procedures for establishing MAOPs meet or exceed the applicable requirements in the federal gas pipeline safety regulations.

- I. Finally, if this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, PECO would have alleged the following general defenses:
 1. The Complaint is inconsistent with federal and state law and constitutes regulatory overreach.
 2. Safety is fully addressed by PECO's practices, procedures and standards and there is no public safety enhancement to be gained from the relief requested by I&E.
 3. The Complaint creates a disincentive for PECO and other Pennsylvania utilities to exceed the federal safety requirements and implement best practices.

V. PECO'S COOPERATION WITH I&E'S INVESTIGATION

21. PECO and the Commission's Safety Inspectors met numerous times to exchange information and discuss at length PECO's practices in establishing the MAOPs of its medium pressure distribution systems.

22. In addition, PECO counsel and engineers met extensively with counsel for I&E and the Safety Inspectors to attempt to resolve this issue.

23. Since the July 30, 2014, inspection in which I&E first identified the MAOP issues that form the basis of the Complaint, PECO has installed new Series 20 Pilots for Grove Relief Valves at fifteen (15) medium pressure regulator stations. In emergency situations, the new pilots will reduce pressure build-up at regulator stations by 4.5 p.s.i.g. (compared to pre-existing pilots). PECO has also rebuilt three regulator stations to similarly

reduce pressure build-up and pipe losses where new pilots could not be installed on the existing relief valves.

24. Furthermore, throughout the entire investigatory process, I&E and PECO remained active in informal discovery and continued to explore the possibility of resolving this matter, which ultimately culminated in this Settlement. During the discovery process, PECO complied with I&E staff requests for information and documentation.

VI. TERMS AND CONDITIONS OF SETTLEMENT

25. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,⁴ the Joint Petitioners engaged in numerous settlement discussions, as discussed above. These discussions culminated in this Settlement. The terms and conditions of the Settlement, for which the Joint Petitioners seek Commission approval, are set forth below.

A. Specific Settlement Provisions

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

- A. PECO shall install *Series 20 Pilots for Grove Relief Valves* (or equivalent models) at 57 medium pressure regulator stations. PECO will submit a plan to the Safety Division within 30 days of a final Commission Order approving this Settlement. Within 15 months after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will complete the work described in this paragraph.

⁴ See 52 Pa. Code § 5.231(a).

- B. PECO shall lower the set points of relief valves at 41 existing medium pressure regulator stations by 2 psig. PECO will submit a plan to the Safety Division within 30 days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment. Within 15 months of the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will complete the work described in this paragraph.
- C. PECO shall eliminate fifteen (15) regulator stations (operating between 12 and 18 psig) after all outmoded pipe in the systems is replaced and incorporate the downstream piping associated with those stations into systems operating at 17, 20 or 25 psig.⁵ PECO commits to removing these regulator stations as soon as practicable but no later than the completion of its Long Term Infrastructure Improvement Plan (“LTIIIP”). PECO will provide status updates on the work described in this paragraph to the Safety Division on a yearly basis, with the first update to be provided no later than twelve months after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.
- D. PECO will evaluate the acceleration of replacement of its existing small diameter bare steel (“SDBS”) mains.⁶ According to PECO’s current LTIIIP, PECO is scheduled to replace 175 miles of SDBS mains through 2030. PECO agrees to evaluate the acceleration of this schedule to replace an additional 63.4 miles of SDBS mains through 2030. This would result in all SDBS mains being replaced by 2030, which is five years earlier than the original LTIIIP completion date of 2035.
- E. PECO shall implement the following damage prevention measures to improve its damage rate:
- 1) PECO will use vacuum trucks and crews in high risk areas for certain situations where gas facilities need to be exposed to verify the depth and exact location;
 - 2) PECO will partner with municipalities to distribute Damage Prevention informational packages in high damage areas, including permit applications; and,

⁵ As stated in paragraph H of this section, PECO will not raise the operating pressures for its medium pressure regulators.

⁶ Small diameter bare steel mains include bare steel pipe with diameters between two (2) inches and eight (8) inches.

- 3) PECO will perform annual social media campaigns wherein PECO utilizes paid advertisements, targeted at high damage areas, to raise awareness about excavation risks and the requirement to call 811 before digging.

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

- F. PECO shall document the progress of its mapping initiative (using Locus View or other similar GPS technology) in a manner that the Safety Division may review and audit.⁷ Within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will make the first such documents available for Safety Division review and audit.
- G. PECO shall create a written procedure for newly installed pipe that specifies its practices for establishing MAOP of such pipe in compliance with applicable federal regulations on a going forward basis. The procedure shall also state PECO's commitment to compliance with the applicable federal pipeline safety recordkeeping requirements for its distribution systems. Within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will make the procedure available for Safety Division review.
- H. PECO will revise its procedure GO-PE-1023 (Changing Gas Distribution Pressures), to state that PECO will not raise pressures for its medium pressure regulators (operating between 12 and 25 psig) until all outmoded mains are removed from the associated systems. PECO will incorporate this change within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, and will make the procedure available for Safety Division review.
- I. PECO will perform an analytical and geological study with a goal of enhancing the Company's frost survey protocols. PECO will complete the study and implement appropriate revisions to its frost survey practices at PECO's earliest opportunity after the study is completed, and shall include in the study, but not be limited to, all bare steel and cast iron piping in or

⁷The mapping initiative is described in Paragraph 22 of the Joint Petition for Settlement in Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO, Docket No. C-2015-2514773, which Joint Petition was approved by the Commission on October 27, 2016.

served by the stations identified in Section C of paragraph 26 of this Joint Petition.

27. The Company shall make an abatement payment to fund training for master meter operators in PECO's territory in the amount of fifty thousand dollars (\$50,000) to resolve the violations alleged in the Complaint and the testimony of I&E's witnesses. Said payment shall be made within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment and shall not be claimed or included for recovery in future ratemaking proceedings. In addition, PECO will not seek any tax benefits from this payment. PECO will hire a qualified consultant or contractor not affiliated with PECO to conduct the training. PECO will have no ongoing obligation to provide additional training once the \$50,000 limit has been met.

B. General Settlement Provisions

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

29. This Settlement reflects compromises between the Joint Petitioners and: (i) is proposed solely for the purpose of settling the present proceeding; (ii) is made without any admission by any party hereto as to any matter of fact or law, other than as may be expressly stated in this Joint Petition; (iii) is made without any admission by any party

hereto as to any liability of any party hereto; and (iv) is without prejudice to any position advanced by either Joint Petitioner in these proceedings or that might be adopted by any Joint Petitioner during subsequent litigation. Notwithstanding the foregoing, however, if this Settlement is approved and implemented, the Joint Petitioners shall not in any subsequent proceeding take any action or advocate any position which would disrupt the spirit or the letter of the Joint Petition or the Settlement.

30. The Parties acknowledge that their actions pursuant to this Joint Petition are undertaken to resolve a disputed claim and are on an entirely voluntary basis and, except as may be expressly stated herein, this Joint Petition and Settlement are made without admission against or prejudice to any factual or legal position which either Joint Petitioner has asserted previously in connection with the Complaint or otherwise. Neither Joint Petitioner may cite, refer to, or rely on this Joint Petition as precedent, an admission, or by way of estoppel in any proceeding or future negotiation between them, other than a proceeding to enforce this Joint Petition or any final order from the Commission approving the Joint Petition.

31. This Joint Petition and the Settlement are conditioned upon the Commission's approval, without modification, of all of the terms outlined herein. If the Commission modifies or fails to approve any of the Settlement terms, then either Joint Petitioner may elect to withdraw from the Settlement and proceed to complete the litigation of these proceedings, in which event: (i) the Joint Petitioners reserve their respective rights to, among other things, request rulings on all preliminary motions that may have been filed previously, participate in a prehearing conference, conduct

discovery, file testimony, confront opposing witnesses and generally participate in evidentiary hearings, submit briefs and reply briefs supporting their respective positions, etc.; (ii) the Joint Petitioners claim the privilege reserved in 52 Pa. Code § 5.231 that no part of the unaccepted Settlement shall be admissible in evidence at any time against any Joint Petitioner; and (iii) no adverse inference shall be drawn against either Joint Petitioner as a result of any matter set forth herein.

32. As of the date the Commission approves this Joint Petition and Settlement in a final order not subject to appeal or further challenge (“Effective Date”), I&E hereby holds harmless, releases, and forever forbears from further prosecuting any formal complaint relating to PECO’s conduct that is the subject of this Complaint, the testimony of I&E’s witnesses, or the matters described in this Joint Petition. Under no circumstances shall I&E request or the Commission impose any further civil or other penalties for any PECO conduct or actions that are the subject of the Complaint, the testimony of I&E’s witnesses, or the disputes resolved by this Joint Petition. The approval of this Joint Petition and Settlement shall be res judicata as to all such claims.

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

34. The terms and conditions of this Joint Petition shall be implemented at all times by PECO and I&E in good faith and fair dealing. Each Joint Petitioner shall

execute such other documents as may be reasonably requested by the other Joint Petitioner to implement the intent and purpose of this Joint Petition and Settlement.

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

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

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

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

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

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

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

42. The Joint Petitioners acknowledge that nothing in this Settlement attempts to supersede or circumvent federal or state law, including any changes, amendments, or official interpretations that may be made to federal or state law subsequent to this Settlement.

VII. THE SETTLEMENT IS IN THE PUBLIC INTEREST

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

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

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

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

VIII. CONCLUSION

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

1. Approve the Settlement as set forth herein in its entirety without modification;
2. Find the Joint Petition is in the public interest; and,
3. Terminate this proceeding and mark the matter closed.

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

FOR PECO ENERGY COMPANY



Romulo L. Diaz, Jr., Esq.
Vice President & General Counsel
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August 7, 2018

Date

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FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:



Bradley R. Gorter, Esq.
Prosecutor
Michael L. Swindler, Esq.
Deputy Chief Prosecutor

8-8-18

Date

PA Public Utility Commission
Bureau of Investigation & Enforcement
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Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2511928
	:	
PECO Energy Company,	:	
Respondent	:	

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

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

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

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

II. BACKGROUND

This matter involves PECO, a jurisdictional provider of natural gas service to the public for compensation consistent with the definition of public utility in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102. On or about June 25, 2014, I&E staff inspectors conducted an inspection of PECO's Regulator Station Number 17 in Montgomery County. This inspection consisted of review of PECO's procedures and policies along with a site visit and records review. I&E continued the inspection on July 30, 2014, and held detailed discussions with PECO engineers and management. As a result of the inspection, on August 8, 2014, I&E issued a non-compliance ("NC") letter, referenced as NC-25-14, informing PECO of various alleged violations of the Pipeline Safety Regulations related to regulator relief capacity, system maximum allowable operating pressure ("MAOP"), blowdown valves, and record retention lapses.

Pursuant to NC-25-14, I&E directed PECO to take certain actions to remedy these alleged violations and to provide additional information to I&E. By letter dated September 8, 2014, and a follow-up letter dated October 9, 2014, PECO informed I&E that it had performed some of the corrective actions but disputed that certain actions were necessary and generally disputed I&E's interpretations of the Pipeline Safety Regulations. In response, I&E issued a follow-up NC letter, referenced as NC-25A-14,

further outlining I&E's position regarding the Pipeline Safety Regulations and requesting that PECO compile operating pressure history data for several designated operating systems. On November 4, 2015, after several additional meetings and records inspections with PECO, I&E filed a formal complaint initiating the present action.

III. THE PUBLIC INTEREST

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

As fully set forth in the settlement terms below, I&E submits that this Settlement is in the public interest and fully satisfies I&E's significant safety concerns in this matter. Immediately upon the initiation of this matter, PECO investigated I&E's concerns and met with I&E's inspectors on several occasions to discuss I&E's allegations. Moreover, subsequent to I&E's Complaint, PECO took several corrective actions that met or exceeded the relief requested in I&E's Complaint, as laid out in Paragraph 10 of the Settlement, and the preceding NC letters. Since I&E filed its Complaint, PECO has installed new pilots for relief valves at fifteen (15) medium-pressure regulator stations, has rebuilt three (3) regulator stations to reduce pressure build-up and pipe losses, and has addressed safety concerns and internal policy issues identified by I&E in its Complaint. Further, PECO has provided evidence of practices, policies, and procedures

that demonstrate PECO's actions to be compliant with applicable Pipeline Safety Regulations.

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

IV. TERMS OF SETTLEMENT

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

- A. PECO shall install Series 20 Pilots for Grove Relief Valves (or equivalent models) at 57 medium pressure regulator stations. PECO will submit a plan to the Safety Division within 30 days of a final Commission Order approving this Settlement. Within 15 months after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will complete the work described in this paragraph.
- B. PECO shall lower the set points of relief valves at 41 existing medium pressure regulator stations by 2 psig. PECO will submit a plan to the Safety Division within 30 days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment. Within 15 months of the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will complete the work described in this paragraph.

- C. PECO shall eliminate fifteen (15) regulator stations (operating between 12 and 18 psig) after all outmoded pipe in the systems is replaced and incorporate the downstream piping associated with those stations into systems operating at 17, 20 or 25 psig. PECO commits to removing these regulator stations as soon as practicable but no later than the completion of its Long Term Infrastructure Improvement Plan (“LTIIIP”). PECO will provide status updates on the work described in this paragraph to the Safety Division on a yearly basis, with the first update to be provided no later than twelve months after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.
- D. PECO will evaluate the acceleration of replacement of its existing small diameter bare steel (“SDBS”) mains. According to PECO’s current LTIIIP, PECO is scheduled to replace 175 miles of SDBS mains through 2030. PECO agrees to evaluate the acceleration of this schedule to replace an additional 63.4 miles of SDBS mains through 2030. This would result in all SDBS mains being replaced by 2030, which is five years earlier than the original LTIIIP completion date of 2035.
- E. PECO shall implement the following damage prevention measures to improve its damage rate:
- 1) PECO will use vacuum trucks and crews in high risk areas for certain situations where gas facilities need to be exposed to verify the depth and exact location;
 - 2) PECO will partner with municipalities to distribute Damage Prevention informational packages in high damage areas, including permit applications; and,
 - 3) PECO will perform annual social media campaigns wherein PECO utilizes paid advertisements, targeted at high damage areas, to raise awareness about excavation risks and the requirement to call 811 before digging.
- PECO shall begin the above actions within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.
- F. PECO shall document the progress of its mapping initiative (using Locus View or other similar GPS technology) in a manner that the Safety Division may review and audit. Within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without

modification or amendment, PECO will make the first such documents available for Safety Division review and audit.

- G. PECO shall create a written procedure for newly installed pipe that specifies its practices for establishing MAOP of such pipe in compliance with applicable federal regulations on a going forward basis. The procedure shall also state PECO's commitment to compliance with the applicable federal pipeline safety recordkeeping requirements for its distribution systems. Within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will make the procedure available for Safety Division review.
- H. PECO will revise its procedure GO-PE-1023 (Changing Gas Distribution Pressures), to state that PECO will not raise pressures for its medium pressure regulators (operating between 12 and 25 psig) until all outmoded mains are removed from the associated systems. PECO will incorporate this change within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, and will make the procedure available for Safety Division review.
- I. PECO will perform an analytical and geological study with a goal of enhancing the Company's frost survey protocols. PECO will complete the study and implement appropriate revisions to its frost survey practices at PECO's earliest opportunity after the study is completed, and shall include in the study, but not be limited to, all bare steel and cast-iron piping in or served by the stations identified in Section C of paragraph 26 of this Joint Petition.

PECO shall begin the above actions (contained in Paragraph 26 of the Settlement) within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.

PECO shall additionally make an abatement payment in the amount of fifty thousand dollars (\$50,000) to an escrow account, to resolve the alleged violations included in the Complaint. This payment shall fund training, conducted by a qualified consultant or contractor not affiliated with PECO, for master-meter operators in PECO's territory. PECO

will make this payment within thirty (30) days after the date of entry of a final and non-appealable Commission Order approving the Settlement in its entirety without modification or amendment and the payment shall not be claimed or included for recovery in future ratemaking proceedings. Additionally, PECO has committed or will commit to making significant capital investments and incurring substantial operations and maintenance expenses. I&E reserved the right to challenge the reasonableness of these expenses included in any future base rate case.

Importantly, PECO has agreed to take several additional actions as part of the terms of this Settlement. PECO has agreed to accelerate the removal and replacement of SDBS gas mains and has agreed to replace an additional 63.4 miles of these mains with pipe that meets current technological standards. Replacement of these SDBS mains with current technology will significantly increase the safety and reliability of PECO's medium-pressure systems and will provide for the public interest at a substantial cost to PECO. Further, PECO has agreed to install safer pilots at fifty-seven (57) medium-pressure regulator stations to address many of I&E's pipe-loss and buildup concerns regarding these stations. Finally, in addition to various damage-prevention actions that PECO has agreed to take to improve its damage rate, PECO has agreed to update its policies and procedures to better serve the public interest. As such, I&E submits that because of the significant capital investment made by PECO, along with the revisions it will make to its policies, procedures, and practices, the Settlement is reasonable and in the public interest, and the Commission should approve this Settlement without modification.

V. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

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

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). I&E submits that the violations averred in the Complaint are serious in nature in that I&E alleged that PECO failed to ensure that its

MAOP did not exceed the system's operating pressure plus 6 psig for its medium pressure distribution system regulators. Clearly, significant public safety concerns are present when a Company cannot verify that the pressure in its pipelines does not exceed federally established safety standards. I&E submits that the Company's alleged conduct is of a serious nature and was considered in arriving at the abatement payment in the Settlement Agreement. Moreover, PECO recognized the seriousness of this matter and took steps to attempt to perform the necessary calculations, including hiring a third-party engineering consultant, as well as directing PECO's own engineers to review its MAOP calculations. This justifies the proposed Settlement, including a reduced payment amount.

The second factor considered is whether the resulting consequences of the Company's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). In this case, there was no injury or property damage. While there is always the potential for injury or property damage in a potential overpressure situation, this did not occur in this case. The potential seriousness of an incident that could have occurred and PECO's corrective actions have been taken into consideration in arriving at the payment amount.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether the Company's alleged

conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Following the inspections and NC letters at the outset of this matter, PECO took significant steps to modify its procedures to I&E's satisfaction. These steps included meeting with Commission Safety inspectors, installing new *Series 20 Pilots for Grove Relief Valves* at 15 medium pressure regulator stations, and rebuilding three regulator stations to similarly reduce pressure buildup where new pilots could not be installed on the existing relief valves. In addition, PECO has agreed to undertake additional corrective actions that will address the issues identified in the Complaint. These corrective actions, described in detail in Paragraph 26 of the Settlement Agreement, include: installing *Series 20 Pilots for Grove Relief Valves* (or equivalent models) at 57 existing medium pressure regulator stations; lowering the relief set points of relief valves at 41 existing medium pressure regulator stations by 2 psig; eliminating 15 regulator stations (operating between 12 and 18 psig) and incorporating the downstream piping associated with those stations into systems operating at 17, 20, or 25 psig; accelerating replacement of small diameter bare steel mains through PECO's LTIIP by five years; using vacuum trucks to improve its damage rate and implementing additional damage prevention measures (such as informational packages and social media); documenting PECO's Locus View Mapping plan and making it available for Safety Division review and audit; creating a procedure that specifies PECO's practices

for establishing MAOP; agreeing not to raise operating pressure for medium pressure regulators above current set points until all outmoded pipe is removed from the systems; and performing a study aimed at enhancing frost survey protocols and implementing survey revisions prior to the 2019-2020 winter season. These extensive actions and their associated costs supplant the need to levy a significant monetary penalty. I&E submits the above actions will greatly enhance safety and reliability and thereby directly benefit the public and PECO's customers. PECO's efforts under this fourth factor represent a significant capital cost to PECO and support a reduced penalty amount.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). No customers were directly affected by the conduct alleged in the Complaint. While an overpressure situation has the potential to seriously affect customers, there is no evidence to suggest that any customers were affected in this case. Therefore, this factor supports a reduced payment amount.

The sixth factor to be considered involves the compliance history of the Company. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." *Id.* 66 Pa.C.S. § 1501. I&E's research reveals just three other gas safety incidents involving PECO resulting in injury or property damage in the last ten years.¹ Moreover, as the Commission noted in its Order approving settlement in

¹ See *Pa. Pub. Util. Comm'n, I&E v. PECO*, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016) (approving Settlement); *Pa. Pub. Util. Comm'n, I&E v. PECO*, Docket No. M-2012-2205782 (Opinion and

a recent Formal Complaint involving PECO, given the size of PECO, “its compliance history does not pose a barrier to approval of the instant Settlement.”² This factor supports a reduced payment amount.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). PECO has cooperated with I&E and its Safety Division throughout the settlement process. PECO and the Commission's Safety Inspectors met numerous times to exchange information and discuss at length PECO's practices in establishing its MAOP. These discussions included extensive exchanges of data and calculations. In addition, since the July 30, 2014, inspection in which the Safety Inspectors first identified the MAOP issues that form the basis of the formal complaint filed at this docket, PECO has installed new *Series 20 Pilots for Grove Relief Valves* at 15 medium pressure regulator stations. In emergency situations, the new pilots will reduce pressure build-up at regulator stations by 5 psig (compared to pre-existing pilots). PECO has also rebuilt three regulator stations to similarly reduce pressure build-up where new pilots could not be installed on the existing relief valves. Furthermore, throughout the entire investigatory process, I&E and PECO remained active in informal discovery and continued to explore the possibility of resolving this matter, which ultimately culminated in this Settlement. This factor supports a reduced payment amount.

Order entered Jun. 12, 2012) (approving Settlement); *Pa. Pub. Util. Comm'n, I&E v. PECO*, Docket No. C-2015-2514773 (Order entered Apr. 20, 2017) (approving Settlement).

² *Pa. Pub. Util. Comm'n, I&E v. PECO*, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016).

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that an abatement payment in the amount of \$50,000 to fund master-meter training for small operators in PECO's territory, which may not be claimed or included for recovery in future ratemaking proceedings, together with the substantial costs related to the terms of the settlement set forth above, including PECO's significant contributions to replace and improve its regulator stations and outmoded pipes, is sufficient to deter future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E submits that there are no past Commission decisions with similar fact patterns. Therefore, this is a case of first impression before this Commission.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon corrective actions.

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

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

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant	:	
	:	Docket No. C-2015-2511928
v.	:	
	:	
PECO Energy Company,	:	
	:	
Respondent	:	

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

I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) submits this Statement in Support of the Joint Petition for Settlement (“Joint Petition” or “Settlement”) with the Pennsylvania Public Utility Commission’s (the “Commission’s”) Bureau of Investigation and Enforcement (“I&E”) (hereinafter referred to collectively as the “Joint Petitioners”) in the above-captioned proceeding. The Settlement resolves all issues raised in the Formal Complaint (the “Complaint”),¹ including all violations asserted by I&E’s witnesses in their prepared testimony and all issues related to PECO’s establishment of the maximum allowable operating pressures (“MAOP”) for its medium-pressure gas distribution systems.²

¹ The Complaint was filed on November 4, 2015.

² The term “medium pressure distribution system” is PECO’s internal nomenclature referring to its gas distribution systems that operate at pressures between 5 and 25 psig.

For the reasons stated herein, the settlement embodied in the Joint Petition is fair, just, reasonable and in the public interest. Therefore, the Settlement should be approved in its entirety and without modification.

II. SUMMARY OF THE PROCEEDING

The Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued the first federal gas pipeline safety regulations in 1970. These regulations are found at 49 C.F.R. Part 192 and have been incorporated by reference into the Commission’s regulations at 52. Pa. Code § 59.33(b).

This proceeding concerns various provisions of these regulations, including Sections 192.619(a) and 192.621 which prohibit operators from operating pipelines at pressures that exceed their MAOPs and prescribe how MAOP must be established. 49 C.F.R. §§ 192.619(a) and 192.621.

Since the adoption of the federal gas pipeline safety regulations in 1970, PECO has consistently designed and operated its medium pressure gas distribution systems at normal operating pressures (“NOPs”) that are substantially below MAOP, reflecting the minimum pressures needed to supply customer loads and a conservative approach to gas safety. On its medium pressure facilities with MAOPs of 25 psig, PECO’s NOPs are between 5 and 20 psig. PECO uses these low “supply the burn” operating pressures to establish the set points on pressure relief devices at its medium pressure regulator stations. As a result, these relief valve set points are always lower than MAOP plus allowable pressure buildup (i.e., 6 psig), consistent with 49 C.F.R. §§ 192.201(a)(2)(ii) and 192.743(a). Accordingly, these set points are designed

such that the regulator will not exceed MAOP plus 6 psig in emergency situations.³ PECO's consistent, conservative approach has resulted in a system that has operated safely, reliably and without an MAOP-related incident during the 47 years the federal regulations have been in effect.

This proceeding arises from a routine regulator station inspection performed by the Gas Safety Division in 2014. After an initial inspection of Regulator Station No. 17 on June 25, 2014, I&E's investigators focused on how PECO determined the set points of the regulator and relief device, how PECO accounted for pressure build-up and pipe losses and how PECO annually reviewed these calculations. The investigators further asserted that under the federal pipeline safety regulations, PECO's regulator stations should have blowdown valves to permit field engineers to vent residual gas during routine maintenance.

PECO pointed out to the investigators that Section 192.203(b)(2) of the federal gas safety regulations only require blowdown valves "where necessary," 49 C.F.R. § 192.203(b)(2), and that PECO had determined the valves were not necessary because manually loosening bolts on the flanges of the regulator station to vent residual gas had proven to be a safe method of vacating the small volume of gas from regulator station piping. Indeed, to PECO's knowledge, there had never been a safety incident involving the venting of gas during regulator station maintenance since the federal regulations became effective in 1970.

With regard to the set points of the regulators and the relief devices at the medium pressure regulator stations, one of PECO's field engineers had incorrectly advised the

³ 49 C.F.R. § 192.201(a)(2)(ii).

investigators that the MAOP at the outlet of the station was 17 psig. This information was incorrect: the NOP for Station No. 17 and the downstream piping was 17 psig, while the MAOP was 25 psig. PECO quickly acknowledged the erroneous statement and provided the correct information to the Safety Inspector. Nevertheless, because of the error, I&E's investigators questioned whether PECO had properly established the set points of the regulators and relief devices, whether PECO's calculations and reviews of relief capacity were correct, and whether the regulator stations were being operated at pressures above their MAOPs.

In response to I&E's concerns, PECO undertook extensive efforts to substantiate the basis for its regulator station set point calculations, including how they accounted for pressure build-up and losses. PECO comprehensively reviewed its internal standards/procedures, internal inspection records, databases and other technical documents to re-confirm that the failure capacity and relief capacity calculations were performed correctly and had not changed over time. PECO also conducted a comprehensive review of the processes used to calculate the relief capacity and associated set points for all of the regulator stations in the medium pressure systems and sought external information and guidance from manufacturers and outside consultants.

Specifically, PECO reviewed its regulator station database and determined the failure capacity for its regulators and the relief capacity of over-pressure protection devices, which protect downstream pipelines from excess pressures. PECO reviewed the manufacturer's data for the over-pressure protection devices and contacted the manufacturer for guidance and clarification. PECO also evaluated the amount of pressure loss based on the pipe material by contacting third-party experts and employing computer programs to calculate potential pressure losses.

After completing its analysis, PECO confirmed that its standards and procedures complied with the federal gas pipeline safety regulations, that its calculations were proper, that they accounted for manufacturer specifications for the inlet and outlet piping and other regulator station components, and that circumstances since installation had not changed to warrant adjustments.

Although PECO confirmed that all of the relief valve settings were adequate because of PECO's low NOPs and relief device settings, PECO voluntarily adopted a more conservative approach to calculating relief pressures and, based on discussions with I&E, PECO installed new Series 20 Pilots for Grove Relief Valves at fifteen (15) medium pressure regulator stations. In emergency situations, the new pilots will reduce pressure build-up at regulator stations by 4.5 psig (compared to pre-existing pilots). For three regulator stations that had a different type of relief valve where new pilots could not be installed to similarly reduce pressure build-up and pipe losses, PECO rebuilt the regulator stations. I&E expressed satisfaction with this approach and PECO completed these actions during 2015, before I&E issued its Complaint. PECO also proposed a 5-year plan to install regulator station blowdown valves, which was approved by I&E in June 2016. PECO is currently implementing these plans and keeping the Safety Division apprised of its progress toward completion.

With respect to the MAOPs, I&E claimed that PECO had a continuing regulatory obligation under the federal gas pipeline safety regulations to "substantiate" and "verify" the MAOPs of its medium pressure distribution systems.

In an effort to accommodate I&E, PECO undertook an extensive and comprehensive search for all records relating to the establishment of its MAOPs. Many of these records are dated before 1970 when the first federal gas pipeline regulations were adopted. PECO contacted

its offsite records management service to search for MAOP records. PECO also performed an extensive internal records review at all of its business and office locations and interviewed current and past PECO employees regarding potential locations of these documents.

As a result of its search, PECO located historical standards, procedures, instructions and gas mechanic qualification tests, all of which validated the established MAOPs of 25 psig or 33 psig on PECO's medium pressure systems.

In the absence of records of the highest operating pressure of the medium pressure systems for the five years preceding 1970 (i.e., for 1965-1970), however, I&E claimed that PECO's MAOPs were not properly established under § 192.619(a) and that PECO should reduce the NOPs of its medium pressure gas distribution systems.

Had this dispute been fully litigated, PECO would have asserted defenses warranting judgment in its favor. First, the prepared testimony and discovery showed that the claims challenging the MAOPs of PECO's medium pressure distribution systems are barred by the three-year statute of limitations in Section 3314(a) of the Public Utility Code, 66 Pa C.S. § 3314(a); indeed the claims pertain to PECO's establishment of its MAOPs over 47 years ago in 1970. Second, the burden of proving a violation of 49 C.F.R. §§ 192.619 and 192.621 rests on I&E, and I&E came forward with no evidence in its prepared testimony to show that PECO did not properly establish its MAOPs in 1970, or that PECO operated its systems at pressures higher than those MAOPs. Third, as PECO would show through the testimony of its expert witness and as confirmed through the depositions of I&E's witnesses, I&E's interpretation of the federal gas pipeline safety regulations to impose a recordkeeping requirement related to MAOP is inconsistent with the text, structure, and history of the regulations. Sections 192.619 and 192.621 contain no such requirement. I&E's interpretation of the federal regulations to impose a

life-of-the-pipe record retention requirement is inconsistent with other sections of the regulations containing express recordkeeping provisions. I&E's attempt to create this new recordkeeping requirement via an enforcement proceeding after 45 years of inaction—despite numerous inspections of PECO's regulator stations and facilities since 1970—implicates substantial constitutional issues regarding fair notice and due process.

Throughout the entire proceeding, I&E and PECO remained active in discussions to explore the possibility of resolving this matter, which ultimately culminated in this Settlement. The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners. It resolves all issues raised in the Complaint and meets or exceeds all of the relief requested in the Complaint. In addition, it protects the Joint Petitioners from the expense, burden, and uncertainty of further litigation of the issues.

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

III. BACKGROUND

The background for this proceeding is set forth in Paragraphs 9-17 of the Joint Petition and is incorporated herein by reference.

IV. THE COMMISSION FAVORS SETTLEMENTS

According to 52 Pa. Code § 5.231, the Commission's policy is to promote settlements because they reduce the time and expense associated with litigation. Settlement results achieved

in advance of litigation are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine if the proposed terms are in the public interest. Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at 6 (Aug. 31, 2012).

Additionally, the ten factors set forth in the Commission’s Policy Statement (the “Rosi Factors”) at 52 Pa. Code § 69.1201 are to be considered in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest.

V. TERMS OF SETTLEMENT

On November 4, 2015, I&E filed the Complaint in this proceeding. The Complaint requested that:

- A. PECO be ordered to establish the MAOPs of its medium pressure distribution systems based on operating pressure records from June 25, 2009 to June 25, 2014;
- B. PECO be ordered to modify its procedures;
- C. PECO be ordered to cease and desist from committing any further violations of Gas Safety regulations;
- D. PECO be ordered to pay a civil penalty pursuant to 66 Pa.C.S. § 3301; and
- E. PECO not be permitted to recover any portion of the civil penalty through rates regulated by the Commission.

To conclude this litigation, PECO has agreed to the following settlement terms, as described more fully in Paragraphs 26 and 27 of the Joint Petition:

- A. PECO will install *Series 20 Pilots for Grove Relief Valves* (or equivalent models) at 57 medium pressure regulator stations. PECO will submit a plan for installation to the Safety Division within 30 days of a final Commission Order approving this Settlement. Within 15 months after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will complete the work described in this paragraph.
- B. PECO will lower the set points of relief valves at 41 existing medium pressure regulator stations by 2 psig. PECO will submit a plan to the Safety Division within 30 days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment. Within 15 months of the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will complete the work described in this paragraph.
- C. Through this Settlement and during the course of its Long-Term Infrastructure Improvement Plan (“LTIIP”), PECO will eliminate 15 regulator stations (operating between 12 and 18 psig) after all outmoded pipe in these systems is replaced and incorporate the downstream piping associated with those stations into systems operating at 17, 20 or 25 psig.⁴ PECO will provide status updates on the work described in this paragraph to the Safety Division on an annual basis, with the first update to be provided no later than twelve months after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.
- D. PECO will evaluate the acceleration of replacement of its existing small diameter bare steel (“SDBS”) mains.⁵ According to PECO’s current LTIIP, PECO is scheduled to replace 175 miles of SDBS mains through 2030. PECO agrees to evaluate the acceleration of this schedule to replace an additional 63.4 miles of SDBS mains through 2030. This would result in all SDBS mains being replaced by 2030, which is five years earlier than the original LTIIP completion date of 2035.
- E. PECO will implement the following damage prevention measures to improve its damage rate:
 - 1) PECO will use vacuum trucks and crews in high risk areas for certain situations where gas facilities need to be exposed to verify the depth and exact location;

⁴ As stated in paragraph H of this section, PECO will not raise the operating pressures for its medium pressure regulators.

⁵ Small diameter bare steel mains include bare steel pipe with diameters between two (2) inches and eight (8) inches.

- 2) PECO will partner with municipalities to distribute Damage Prevention informational packages in high damage areas, including permit applications; and
- 3) PECO will perform annual social media campaigns wherein PECO utilizes paid advertisements, targeted at high damage areas, to raise awareness about excavation risks and the requirement to call 811 before digging.

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

- F. PECO will document the progress of its mapping initiative (using Locus View or other similar GPS technology) in a manner that the Safety Division may review and audit.⁶ Within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will make the first such documents available for Safety Division review and audit.
- G. PECO will create a written procedure that specifies its practices for establishing MAOP in compliance with applicable federal regulations. The procedure will state PECO's continuing commitment to compliance with the applicable recordkeeping requirements for its distribution systems. Within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO will make the procedure available for Safety Division review.
- H. PECO will revise its procedure GO-PE-1023 (Changing Gas Distribution Pressures), to state that PECO will not raise pressures for its medium pressure regulators (operating between 12 and 25 psig) until all outmoded mains are removed from the associated systems. PECO will incorporate this change within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, and will make the procedure available for Safety Division review.
- I. PECO will perform an analytical and geological study with a goal of enhancing the Company's frost survey protocols. PECO will complete the study and implement appropriate revisions to its frost survey practices at PECO's earliest

⁶ The mapping initiative is described in Paragraph 22 of the Joint Petition for Settlement in Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO Corporation, Docket No. C-2015-2514773, which Joint Petition was subsequently approved.

opportunity after the study is completed, and will include in the study all cast iron piping in or served by these systems and stations.

- J. The Company shall make an abatement payment to fund training for master meter operators in PECO's territory in the amount of fifty thousand dollars (\$50,000) to resolve the violations alleged in the Complaint and the testimony of I&E's witnesses. Said payment shall be made within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment and shall not be claimed or included for recovery in future ratemaking proceedings. In addition, PECO will not seek any tax benefits from this payment. PECO will hire a qualified consultant or contractor not affiliated with PECO to conduct the training. The training curriculum will include the following topics, or topics substantially similar to them: (1) O&M for small operators; (2) emergency procedures; (3) DIMP; and (4) operator qualification. PECO will send letters to its master meter operators to inform them of the availability of the training and, based on the response, schedule an appropriate number of trainings subject to the \$50,000 limit. PECO will monitor the spending and provide the training schedules to I&E so that I&E staff can monitor and possibly attend the trainings. PECO will have no ongoing obligation to provide additional training once the \$50,000 limit has been met.

Additionally, Paragraph 29 of the Joint Settlement explains that the Joint Petitioners have entered this Settlement without making any admissions as to any matter of fact or law or any admission of liability (other than as stated in the Joint Settlement).

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

In accordance with its Policy Statement set forth in 52 Pa. Code § 69.1201, the Commission considers ten factors in determining whether a settlement is reasonable and whether approval thereof is in the public interest. When applied in a settled case, such as this proceeding, the factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa.Code § 69.1201(b). The Policy Statement allows parties in settled cases to be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. *Id.* The factors in the Policy Statement are applied to both the settlement in general and the civil penalty, if any. A review of the factors articulated in the Policy Statement, as applied to both the Settlement and

the abatement, as well as the various positions of the parties with regard to each of the factors, supports finding that the Joint Petition should be granted.

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

The Complaint arose out of a routine regulator station inspection and did not involve any personal injury or property damage. The violations alleged in the Complaint, as explained by the prepared testimony of I&E's witnesses, centered mainly on PECO's recordkeeping obligations relating to the MAOPs of its medium pressure gas distribution systems, its procedures for regulator station maintenance and relief capacity review and design, and the absence of blowdown valves in the regulator stations to relieve pressure during maintenance.

PECO disputed I&E's interpretation of the federal gas pipeline safety regulations and pointed out that while gas safety is always a serious matter, PECO had safely operated the systems and regulator stations for more than 45 years before the filing of the Complaint in 2015 without any safety incident. Moreover, in the 45 years that elapsed between the effective date of the federal regulations in 1970 and the filing of the Complaint, I&E performed countless inspections of PECO's medium pressure distribution systems and not once suggested that PECO had any such record retention duty or that PECO had improperly established its MAOPs.

PECO submits that the conduct alleged by I&E does not rise to the level of serious misconduct that endangered the general public, and the various measures agreed to by PECO in the Settlement promote the public interest by further enhancing the safety and reliability of PECO's medium pressure gas distribution systems and corresponding MAOPs.

- (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.*

As noted above, there were no resulting consequences of the conduct at issue, so this factor is not relevant to this proceeding.⁷

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

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

- (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.*

While PECO believes that its conduct was appropriate, it initiated a proactive review of its procedures during the course of I&E's investigation of its regulator stations. As a result of this review, even before the Complaint was filed in 2015, PECO voluntarily adopted an even more conservative approach to calculating relief pressures and, based on discussions with the

⁷ In its prepared testimony, I&E raised a July 17, 2014 incident in Coatesville (the "Coatesville Incident") as an indicator that PECO's MAOP was set at an incorrect level. Coatesville, however, was not an MAOP-related incident. As explained in the prepared testimony of PECO witness David Bonner, the Coatesville Incident involved uprating a low pressure system to a medium pressure system. In the Coatesville incident, a service line was unknown to PECO because it did not appear on Company maps. During the uprate, PECO increased the pressure on the pipeline to 25 psig, which caused an unintended over pressurization of the service line that led to a failure on the customer's fuel line. Because the service line was unknown, a service regulator had not been installed prior to the uprating, which would have prevented the over pressurization of the customer's fuel line. All residential services on PECO's medium pressure systems include service regulators. Therefore, Coatesville did not involve an MAOP incident.

I&E, made adjustments at 18 regulator stations. PECO also proposed a 5-year plan to install regulator station blowdown valves, which was approved by I&E in June 2016.

In the Settlement, PECO has agreed to further modifications of its practices and procedures, as detailed above. These modifications include:

- A. Installing new pilots at 57 medium pressure regulator stations;
- B. Lowering the set points of relief valves at 41 existing medium pressure regulator stations by 2 psig;
- C. Eliminating 15 regulator stations after all outmoded pipe in these pipelines is replaced;
- D. Evaluating the acceleration of replacement of its existing small diameter bare steel mains, with the result that all of these mains will be replaced five years earlier than the original LTIP completion date of 2035;
- E. Implementing damage prevention measures to improve its damage rate;
- F. Documenting the progress of its mapping initiative;
- G. Creating a written procedure that specifies its practice for establishing MAOP in compliance with applicable federal regulations;
- H. Revising its procedures to state that PECO will not raise pressures for its medium pressure regulators (operating between 12 and 25 psig) until all outmoded mains are removed from the associated systems; and
- I. Studying and implementing appropriate revisions to its frost survey protocols.

In addition to these changes, PECO is making an abatement payment of \$50,000 to fund one-time training for master meter operators in PECO's territory.

These modifications of PECO's internal practices and procedures address the concerns raised by I&E in the Complaint with respect to the MAOPs and regulator stations in PECO's medium pressure gas distribution systems and include additional safety enhancements which promote the public interest.

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

There were no customers affected by the alleged violations.⁸

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

PECO is committed to maintaining the highest standards of safety and reliability for the customers, employees, contractors and the communities it serves. Accordingly, PECO complies with Commission authority by achieving comprehensive safety and reliability objectives that are managed through various programs that assess risks, track trends and develop corrective and preventative action plans.

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

⁸ PECO served prepared testimony noting that had PECO reduced its MAOPs to levels equal to its NOPs, as I&E sought in the Complaint, the reduction would have threatened PECO's ability to provide safe and reliable natural gas service to its customers during design day conditions, which are the coldest days experienced on the system and when our customers require reliable gas service. PECO had already set its regulators at the lowest pressure needed to meet the demand of the downstream customers. Any further reduction would cause capacity issues, negatively impact the downstream equipment based on lower pressures and cause the system to be unstable when considering the capacity and the upstream pressure at the regulator stations. Accordingly, this Settlement avoids such negative impacts to system reliability during design day conditions.

Achievement Award, which recognizes worker safety for having the lowest injury rate for similar companies.

In the past nine years, PECO has had only three incidents that were the subject of Formal Complaints, each of which was settled in full through a Commission Order. In the event that occurred in 2009 at 604 Summit Street, Swedeland, the Commission acknowledged PECO's satisfactory compliance history and stated:

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). We have reviewed our records regarding complaints against and investigations of PECO. Given the size of PECO, we find that its compliance history is satisfactory and poses no barrier to approval of a Settlement between the Parties.⁹

In the event that occurred in 2014 at 118 Penrose Lane, Coatesville, Pennsylvania, the Commission acknowledged the relatively low number of compliance issues given PECO's size.¹⁰

In an event that occurred in 2013 at Rosemont College,¹¹ an excavator commenced drilling without first submitting a PA One Call request, without alerting PECO that it would be drilling in the particular area, and without employing precautionary techniques to locate the underground facilities. In the Recommended Decision entered on March 23, 2017 and subsequently adopted by the Commission, ALJ Salapa concluded that PECO's compliance history should result in a lesser penalty. ALJ Salapa further observed that:

⁹ Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO Energy Company, Docket No. M-2012-2205782, at 11 (Opinion and Order entered June 12, 2012).

¹⁰ Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO Energy Company, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016).

¹¹ Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO Energy Company, Docket No. C-2015-2514773 (Order entered April 20, 2017 adopting the Recommended Decision of ALJ Salapa entered March 23, 2017).

...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.

Given the low number of compliance issues PECO has encountered, its compliance history warrants approval of the Settlement.

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

PECO fully cooperated with I&E's inspection of the regulator stations and follow-up investigation, demonstrating the Company's commitment to the Commission's public safety goals and objectives.

PECO and the Commission's Safety Inspectors met numerous times to exchange information and discuss at length PECO's practices in establishing the MAOPs of its medium pressure distribution systems. In addition, PECO counsel and engineers met extensively with counsel for I&E and the Safety Inspectors to attempt to resolve the issues raised in the Complaint.

As noted above, even before the Complaint was filed in 2015, PECO voluntarily adopted a more conservative approach to calculating relief pressures and, based on discussions with the I&E, made adjustments at 18 regulator stations. PECO also proposed a 5-year plan to install regulator station blowdown valves, which was approved by I&E in June 2016.

Furthermore, even after the filing of the Complaint, PECO cooperated with I&E in an open and transparent fashion, including engaging in extensive settlement discussions to explore the possibility of resolving this matter. These facts warrant approval of the Settlement.

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

The Joint Petitioners have agreed that, in lieu of a civil penalty, PECO will make an abatement payment to fund training for master meter operators in PECO's territory in the amount of \$50,000. This payment will not be claimed or included for recovery in future ratemaking proceedings.

In addition, as part of the settlement, PECO has agreed to modify its medium pressure regulator stations, implement enhanced damage prevention measures to improve its damage rate, study and implement appropriate revisions to its frost survey practices, and evaluate the acceleration of replacement of its existing small diameter bare steel mains. These actions far exceed the requested relief set forth in I&E's Complaint and will necessarily entail substantial cost to implement.

The abatement penalty and the cost of implementing the numerous safety enhancements agreed to by PECO are sufficient to deter future violations without imposition of any further penalty.

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

PECO's research disclosed no prior Commission decisions regarding record retention relating to MAOPs or the configuration of regulator stations. Similarly, PECO's research found only one instance in which a formal complaint was filed where, as here, there was no personal injury, property damage, or impact on service. In Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc., Docket No. C-2009-2120601 (Order entered November 19, 2010), a complaint was filed charging UGI with violations of the federal gas pipeline safety regulations due to a failure to use shoring at an excavation site. In that case, the

Commission approved a settlement which required UGI to pay a civil penalty of \$10,000 and to spend \$20,000 to utilize the services of an outside contractor to retrain UGI's work crews regarding excavation shoring safety.

The abatement of \$50,000 for training in the Settlement proposed by the Joint Petitioners, combined with the substantial cost of implementing the various safety enhancements contained in the Settlement, is therefore consistent with past Commission action.¹²

(10) *Other relevant factors.*

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

VII. THE SETTLEMENT IS IN THE PUBLIC INTEREST

As previously stated, approval of this Settlement will resolve all issues related to the Complaint. The Settlement provides substantial opportunities to enhance the safety and reliability of service to customers by: 1) implementing measures that far exceed the requested relief in the Complaint; 2) making substantial financial investments to enhance gas safety; and 3) raising public awareness regarding damage prevention. Finally, the Settlement terms are consistent with the ten factors to be considered under the Commission's Policy Statement. Accordingly, the Settlement should be approved in its entirety and without modification.

¹² The Commission has approved abatements in lieu of a civil penalty where the abatement is a more appropriate remedy. Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. Equitable Gas Company, Docket No. C-20065790, at 4 (Opinion and Order entered September 2, 2009 Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc., Docket No. M-2008-2036549, (Opinion and Order entered October 23, 2008).

VIII. CONCLUSION

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

Dated: August 7, 2018

Respectfully submitted,



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Appendix C

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PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition between the Commission's Bureau of Investigation and Enforcement and PECO Energy Company is approved in its entirety without modification.
2. That, within sixty (60) days of the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment, PECO shall pay \$50,000 into a separate escrow account. PECO shall make said payment to be used solely to engage a non-affiliated consultant or contractor to conduct master meter training for small operators within PECO's jurisdiction.
3. That the Secretary shall mark this docket at C-2015-2511928 closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
 : Docket No. C-2015-2511928
v. :
 :
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:

Christopher A. Lewis, Esq.
Blank Rome
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103

The Honorable Christopher P. Pell
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 17107

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Dated: August 8, 2018