

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	C-2015-2511928
	:	
PECO Energy Company	:	

RECOMMENDED DECISION
APPROVING JOINT PETITION FOR SETTLEMENT

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

The Bureau of Investigation and Enforcement (I&E) initiated this formal Complaint against PECO Energy Company (PECO), alleging violations of the Pennsylvania Public Utility Code (Code), the Pennsylvania Public Utility Commission’s regulations, and the Code of Federal Regulations related to PECO’s establishment of the maximum allowable operating pressures (MAOP) for its medium pressure gas distribution systems. The parties to the proceeding have agreed to settle the matter. The terms of the settlement are set forth in a Joint Petition for Settlement. This decision recommends approval of the Joint Petition for Settlement in its entirety without modification.

HISTORY OF THE PROCEEDING

On November 4, 2015, I&E filed a formal Complaint (Complaint) against PECO with the Pennsylvania Public Utility Commission (Commission or PUC). In the Complaint, I&E indicated that PUC Gas Safety Inspectors conducted district regulator station inspections with

PECO on June 25, 2014 and July 30, 2014, and alleged that, during their investigation they discovered the following:

1. That PECO does not have adequate or standardized procedures and standards for regulator maintenance, relief capacity engineering design, annual capacity review, or documentation for MAOP verification;
2. That PECO does not have a record of the calculation showing the relief capacity at Station Number 17 at Trooper and Germantown Pikes in East Norriton, Montgomery County, Pennsylvania;
3. That PECO engineers were not familiar with the components of the calculation used for relief capacity and relief set-points;
4. That PECO Energy Chart GO-PE-Y001-R001 shows relief capacities at all PECO district regulator stations;
5. That based on GO-PE-Y001-R001, PECO assigned Station 17 a relief capacity of 387.8 thousand cubic feet per hour (MCFH) for the Anderson Greenwood 4x6 relief device (an over-pressure protection relief valve) at 17 pounds per square inch (psig);
6. That according to Gas Safety Inspectors, this relief capacity and the associated set-points did not account for station build-up or pipe loss;
7. That the Gas Safety Inspectors found that PECO does not have a record of the annual relief review;
8. That the Gas Safety Inspectors also discovered that PECO's business practice was to set the relief devices on Station 17, and other stations under 60 psig, at 6 psig over the MAOP; and
9. That during their inspections, the Gas Safety Inspectors found that Station 17 had no blowdown valves to safely relieve gas pressure from between the regulator isolation valves prior to the performance of routine maintenance on the regulators.

I&E maintained that PECO had violated the Public Utility Code, Commission regulations, and the Code of Federal Regulations related to PECO's establishment of the MAOP for its medium pressure gas distribution systems and requested the following relief from the Commission:

1. That 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;
2. That PECO be ordered to modify its procedures;
3. That PECO be ordered to cease and desist from committing any further violations of Gas Safety regulations;

4. That PECO be ordered to pay a civil penalty pursuant to 66 Pa.C.S. § 3301; and
5. That PECO not be permitted to recover any portion of the civil penalty through rates regulated by the Commission.

On December 21, 2015, PECO filed an Answer to the Complaint in which PECO denied I&E's allegations and averred that PECO's MAOPs were in compliance with Federal Regulations.

By Hearing Notice dated February 2, 2017, an Initial Hearing was scheduled for March 28, 2017 at 10:00 a.m. and the matter was assigned to me.

By Corrected Hearing Notice dated February 13, 2017, the Initial Hearing was changed to an Initial call-in Telephonic Prehearing Conference to be held on the same date and time, March 28, 2017 at 10:00 a.m.

In accordance with a Prehearing Conference Order dated February 14, 2017, PECO and I&E submitted prehearing memoranda to me.

The call-in Telephonic Prehearing Conference was held as scheduled on March 28, 2017. Counsel for PECO and I&E participated. A procedural schedule was established during the prehearing conference.

In my Prehearing Order dated April 11, 2017, I set forth the procedural schedule and the procedures applicable to this proceeding.

By Prehearing Order #2 dated April 19, 2017, I granted PECO's request for issuance of a protective order.

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).

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

On August 29, 2017, I&E submitted the Direct Testimony and Exhibits of I&E Safety Supervisor Michael Chilek and I&E Fixed Utility Valuation Engineers Terri C. Cooper Smith and Robert Horensky.

By Prehearing Order #3 dated September 21, 2017, I dismissed PECO's Motion in Limine as moot.

By Prehearing Order #4 dated October 23, 2017, I granted PECO's Application for Depositions by Oral Examination of Robert Horensky, Michael Chilek, and Terri C. Cooper Smith.

By Hearing Notice dated November 13, 2017, the evidentiary hearings were scheduled for February 27-28, 2018 in Philadelphia.

On November 29, 2017, PECO submitted the Rebuttal Testimonies and Exhibits of Brian Camfield, David Bonner, and Mark Hereth.

By Prehearing Order #5 dated December 20, 2017, I granted I&E's Application for Depositions by Oral Examination of David Bonner, Brian Camfield, and Mark Hereth.

By Prehearing Order #6 dated January 2, 2018, I granted PECO's Motion for Admission *Pro Hac Vice* of Susan Alice Olenchuck, Esq., in this matter.

On January 19, 2018, I&E submitted the Surrebuttal Testimony and Exhibits of Mr. Chilek, Ms. Cooper Smith, Mr. Horensky, and Richard Sanders.

By email dated January 26, 2018, the parties informed me that they wanted to continue to pursue settlement discussions and requested a continuance of the February 27-28, 2018, evidentiary hearings. The parties further informed me that, provided I granted their request, they would submit a modified procedural schedule for my approval.

By email dated January 29, 2018, I informed the parties that their request for a continuance was granted.

By email dated January 31, 2018, the parties submitted a modified procedural schedule for my approval.

By Hearing Cancellation/Reschedule Notice dated February 14, 2018, the February 27-28, 2018 evidentiary hearings were cancelled and rescheduled for April 24-25, 2018 at 10:00 a.m. in Philadelphia.

By Prehearing Order #7 dated March 2, 2018, I granted the parties Joint Motion for Continuance and also adopted the new procedural schedule proposed by the parties for the remainder of the proceeding.

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

By email dated April 6, 2018, the parties informed me that they were able to reach settlement in principle in this matter and requested cancellation of the April 24-25, 2018 hearings. The parties further requested an additional 60 days to prepare a formal settlement agreement, making the settlement due on or before June 7, 2018. I granted the request and cancelled the April 24-25, 2018 hearings.

By email dated May 30, 2018, the parties requested an additional 30 days to finalize the Settlement Agreement and supporting documents in this matter, making the settlement due on or before July 7, 2018. I granted the parties' joint request.

By email dated July 5, 2018, the parties jointly requested an additional 30 days to file the settlement. The parties indicated that the additional time was necessary to allow management from both parties to review the materials, and to allow for sophisticated statements in support to be filed concurrently with the settlement agreement. I informed the parties that their request was granted, and that their settlement and statements in support were due on or before August 8, 2018.

On August 8, 2018, the parties filed a Joint Petition for Settlement (Joint Petition or Settlement) and attachments. The attachments to the Joint Petition are I&E's and PECO's respective Statements in Support of the Settlement. The parties were able to reach a Settlement representing a comprehensive resolution of all issues pending in this proceeding.

DISCUSSION

The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa. C.S. § 501(a). Pursuant to Act 129 of 2008, the Commission was reorganized, and the Commission created I&E.¹ In the *I&E Implementation Order*, the Commission moved responsibility for all prosecutory functions to I&E. The Commission stated that I&E would serve as the prosecutory bureau in matters brought before the Commission's Administrative Law Judges (ALJs). The *I&E Implementation Order* stated that the prohibition against comingling of functions set forth in 66 Pa.C.S. § 308.2(b) applied to all I&E employees who are engaged in prosecutory functions. In the *I&E Implementation Order*, the Commission delegated its authority to enforce gas safety laws and regulations to I&E.

As set forth above, I&E initiated this complaint against PECO for allegedly violating the Public Utility Code, Commission regulations and Federal regulations regarding PECO's establishment of MAOPs for its medium pressure gas distribution systems. PECO denied the allegations in I&E's Complaint and averred that PECO's MAOPs were in compliance with Federal regulations.

¹ *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Procedural Order entered August 11, 2011) (*I&E Implementation Order*).

After extensive discovery and prior to any evidentiary hearings, I&E and PECO reached a settlement regarding the allegations set forth in I&E's complaint.

Commission policy promotes settlements.² Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.³

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.⁴ As discussed below, I find that the Joint Petition for Settlement, which is unopposed by any party, is in the public interest.

Terms Of The Settlement

I&E filed a Joint Petition for Settlement on August 8, 2018. The Joint Petition includes the terms of the Settlement, and also includes the parties' Statements in Support of the Joint Petition for Settlement. The principal terms and conditions of the Settlement, contained in Section VI(A) of the Joint Petition beginning at Paragraph 26 (the original numbering is maintained here for ease of reference), provide that:

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

² 52 Pa.Code § 5.231.

³ 52 Pa.Code § 69.401.

⁴ *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C S 6 Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991).

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.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;

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.

- 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.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

⁷ 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*, Docket No. C-2015-2514773, which Joint Petition was approved by the Commission on October 27, 2016.

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.

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.

Conditions Of The Settlement

The Parties note that the Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Joint Petition without modification. If the Commission modifies the Joint Petition, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Joint Petition shall be void and of no effect.

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

The Joint Petition is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Joint Petition is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and

conditions of the Joint Petition. The Joint Petition does not preclude the parties from taking other positions in any other proceeding.

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 therein. The Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231, 69.391, and 69.1201.

Public Interest

Having set forth the terms of the Joint Petition for Settlement, I will now address why approving and adopting the Joint Petition is in the public interest.

I&E points out that 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. I&E notes that, subsequent to its Complaint, PECO took several corrective actions that met or exceeded the relief requested in I&E's Complaint. 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, I&E maintains that PECO has provided evidence of practices, policies, and procedures that demonstrate PECO's actions to be compliant with applicable Pipeline Safety Regulations. I&E Statement in Support at 3-4.

I&E notes that the corrective actions PECO will take under the terms of the Settlement are intended to enhance safety. Regarding the \$50,000 abatement payment, I&E notes that the payment will 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 sixty (60)⁸ days after the date of entry of a final 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. I&E Statement in Support at 4, 6-7.

I&E further notes that 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 small diameter bare steel (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. I&E Statement in Support at 7.

For its part, PECO notes that the Settlement reflects a carefully balanced compromise of the parties' interests. PECO further notes that the Settlement resolves all issues raised in the Complaint and meets or exceeds all of the relief requested in the Complaint. Moreover, PECO maintains that it is making substantial financial investments to enhance gas safety, and that it is raising public awareness regarding damage prevention. Additionally, PECO notes that the Settlement protects the parties from the expense, burden, and uncertainty of further

⁸ Although I&E indicated in its Statement in Support that PECO will make this payment within thirty (30) days after the date of entry of a final Commission Order, the specific terms of the Settlement at Paragraph 27 indicate that PECO will make this payment within sixty (60) days of a final Commission Order.

litigation of the issues. Accordingly, PECO requests that the Commission approve the Joint Petition in its entirety without modification. PECO Statement in Support at 7, 19.

The provisions of the Settlement will improve PECO's ability to provide safe and reliable service. PECO's customers and the public in general will benefit from safer and more reliable service. Moreover, approving and adopting the Joint Petition for Settlement is in the public interest because accepting the Settlement will avoid the substantial time and expense involved in litigating the proceeding. Accepting the Settlement will negate the need to examine or cross-examine witnesses, prepare main briefs, reply briefs, exceptions and reply exceptions and possibly file appeals. Avoiding these expenses serves the interests of I&E, PECO's customers, and the general public. Accordingly, I find that accepting the Joint Petition for Settlement is in the public interest.

Civil Penalty

The Joint Petition for Settlement requires PECO to make a \$50,000 abatement payment to fund training for master meter operators in PECO's territory to resolve the violations alleged in the Complaint and the testimony of I&E's witnesses.

The Commission, at 52 Pa. Code § 69.1201, has adopted a policy statement setting forth the standards it will consider in evaluating litigated and settled proceedings involving violations of the Code and/or Commission regulations. The policy statement is set forth below:

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

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

reasonable and approval of the settlement agreement is in the public interest.

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

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

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201.

The Commission uses the factors set forth in the policy statement to evaluate whether a settlement is reasonable and whether approval of the settlement is in the public interest, particularly with respect to violations of the Code and/or Commission regulations.⁹ In evaluating settlements, the Commission will not apply the factors in as strict a fashion as in a litigated proceeding.¹⁰ In settled cases, the Commission will afford flexibility to parties so that the parties may reach an amicable resolution to a complaint or other matter as long as the settlement is in the public interest.¹¹

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

⁹ 52 Pa. Code § 69.1201(a).

¹⁰ 52 Pa. Code § 69.1201(b).

¹¹ *Id.*

The first factor addresses whether the conduct at issue was of a serious nature. The Complaint arose out of a routine regulator station inspection and did not involve any personal injury or property damage. That routine inspection led I&E to allege 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. PECO disputed I&E's allegations and interpretations of the federal gas pipeline safety regulations and noted that it had safely operated the systems and regulator stations without incident for more than 45 years before I&E filed its Complaint. PECO further noted that in the 45-year period since the effective date of the Federal regulations in 1970, I&E performed numerous inspections of PECO's medium pressure distribution systems and never suggested that PECO had any record retention duty or that PECO had improperly established its MAOPs.

I concur with I&E that a significant public safety concern is present when a company cannot verify that the pressure in its pipelines does not exceed Federally established safety standards. Clearly, gas safety is a significant issue that PECO must take seriously. I will note that PECO took steps to attempt to perform the necessary pressure calculations, including hiring a third-party engineering consultant, as well as directing PECO's own engineers to review its MAOP calculations. I conclude that this justifies the proposed Settlement, including the \$50,000 abatement payment.

The second factor addresses the consequences of the conduct at issue. In the present case, there was no injury or property damage. As there was no incident, this factor will not impact my recommendation.

The third factor addresses whether the conduct was negligent or intentional. Both PECO and I&E contend that this factor does not apply to this proceeding since the matter was not litigated and is instead being resolved by Settlement of the parties. I agree and will not consider this factor.

The fourth factor addresses whether remedial actions were taken by the utility to modify internal practices and procedures in order to prevent similar conduct in the future. Both

I&E and PECO indicate that, following the inspections that prompted this Complaint, PECO took significant steps to modify its procedures for calculating relief pressures and 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. Additionally, PECO agreed to further modifications of its practices and procedures, including:

- Installing new pilots at 57 medium pressure regulator stations;
- Lowering the 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) after all outmoded pipe in these pipelines is replaced and incorporating the downstream piping associated with those stations into systems operating at 17, 20 or 25 psig;
- 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 Long Term Infrastructure Improvement Plan (LTIIIP) completion date of 2035;
- Implementing damage prevention measures, such as informational packages and social media, to improve its damage rate;
- Documenting the progress of its mapping initiative and making it available for Safety Division review and audit;
- Creating a written procedure that specifies its practice for establishing MAOP in compliance with applicable Federal regulations;
- 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
- Studying and implementing appropriate revisions to its frost survey protocols prior to the 2019-2020 winter season.

Clearly, PECO's actions will greatly enhance safety and reliability, which will directly benefit the public and PECO's customers. I agree with I&E that these extensive actions and their associated costs supplant the need to levy a significant monetary penalty in this matter.

The fifth factor addresses the number of customers affected and the duration of the violation. As no customers were affected by the conduct alleged in the Complaint, this factor supports a reduced payment amount.

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

As noted by both PECO and I&E, there have been only three other gas safety incidents involving PECO resulting in injury or property damage in the last ten years.¹² Both parties noted that the Commission recently acknowledged that, given its size, PECO has had a relatively small number of compliance issues.¹³ Accordingly, I conclude that this factor supports a reduced payment amount.

The seventh factor asks whether the regulated entity cooperated with the Commission. According to I&E, PECO has cooperated with I&E and its Safety Division throughout this proceeding. PECO met with the Commission's Safety Inspectors on numerous occasions to exchange information, and discussed, 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 that prompted this Complaint, PECO has installed new series 20 Pilots for Grove Relief Valves at fifteen (15) medium pressure regulator stations. PECO has also rebuilt three (3) regulator stations to similarly reduce pressure build-up where new pilots could not be installed on the existing relief valves. I conclude that PECO's cooperation in this matter supports a reduced payment amount.

The eighth factor requires that the amount of the civil penalty be enough to deter future violations. I&E maintains that the \$50,000 abatement payment to fund master-meter training for small operators in PECO's territory, which may not be claimed or included for

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

¹³ *Pa. Pub. Util. Comm'n, I&E v. PECO*, Docket No. C-2015-2479970 (Opinion and Order entered Oct. 27, 2016).

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. I agree. Imposition of a penalty beyond the \$50,000 abatement payment is not necessary to deter future violations.

The ninth factor looks at past Commission decisions in similar situations. Both I&E note that there are no past Commission decisions regarding record retention relating to MAOPs or the configuration of regulator stations.

PECO notes that it found one instance where a formal Complaint was filed where, as here, there were no personal injuries, property damage, or impact on service. In *Pa. Pub. Util. Comm'n 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.

PECO further notes that the Commission has approved abatements in lieu of a civil penalty where the abatement is a more appropriate remedy.¹⁴ PECO submits that the Settlement provision requiring an abatement payment of \$50,000 for training, combined with the substantial costs of implementing the various safety enhancements contained in the Settlement, is consistent with past Commission action. I agree that the \$50,000 abatement payment is appropriate in this situation.

The tenth factor looks at other relevant factors. Both I&E and PECO state that the fact that the parties have agreed to a Settlement should be considered. Settling the matter will avoid the necessity of administrative hearings and potential appellate proceedings at a substantial

¹⁴ *Pa. Pub. Util. Comm'n Law Bureau Prosecutory Staff v. Equitable Gas Company*, Docket No. C-20065790, at 4 (Opinion and Order entered September 2, 2009); *Pa. Pub. Util. Comm'n Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2008-2036549, (Opinion and Order entered October 23, 2008).

cost to the parties. A Settlement of this matter also allows the parties to move forward to focus on the agreed upon remedial actions rather than continuing to litigate the matter. I conclude that these additional factors should result in a lesser payment.

Based on a review of the above factors, I conclude that the \$50,000 abatement payment, which PECO will make to fund training for master meter operators in PECO's service territory, is appropriate in this matter.

For the reasons set forth above, I find that the proposed Settlement is in the public interest and consistent with the Public Utility Code and Commission regulations. Accordingly, I recommend that the Commission approve the Joint Petition for Settlement in its entirety without modification.

CONCLUSIONS OF LAW

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

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

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

4. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C S 6 Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991).

5. The Joint Petition for Settlement submitted by I&E and PECO is reasonable and in the public interest and should be approved by the Commission.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement filed on August 8, 2018, between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO Energy Company at C-2015-2511928, be approved in its entirety without modification;

2. That within sixty (60) days of the date of entry of a final Commission Order approving the Joint Petition for Settlement, PECO Energy Company shall pay \$50,000 into a separate escrow account;

3. That PECO Energy Company shall make this \$50,000 payment to be used solely to engage a non-affiliated consultant or contractor to conduct master meter training for small operators within PECO Energy Company's jurisdiction; and

4. That the Secretary shall mark this docket at C-2015-2511928 closed.

Date: October 17, 2018

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge