



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY  
PLEASE REFER  
TO OUR FILE  
C-2019-3011675

October 23, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
Metropolitan Edison Company  
Docket No. C-2019-3011675  
**Joint Petition for Approval of Settlement**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Joint Stipulation of Facts; (2) Appendix B – Joint Proposed Ordering Paragraphs; (3) Appendix C – the Bureau of Investigation and Enforcement’s Statement in Support; and (4) Appendix D – the Statement in Support of Metropolitan Edison Company.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494  
(717) 705-4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

KLM/ac  
Enclosures

cc: Honorable Mary D. Long  
Michael L. Swindler, Deputy Chief Prosecutor, I&E  
Kayla L. Rost, Prosecutor, I&E  
As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
v.	:	Docket No. C-2019-3011675
	:	
Metropolitan Edison Company,	:	
Respondent	:	

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**JOINT PETITION  
FOR APPROVAL OF SETTLEMENT**

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TO PRESIDING ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E” or “Complainant”) and Metropolitan Edison Company (“Met-Ed,” “Company” or “Respondent”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed I&E Formal Complaint (“Complaint”) proceeding. The Complaint alleges violations of the National Electric Safety Code (“NESC”), Pennsylvania Code, and Pennsylvania Public Utility Code (“Code”), which were raised in connection with a fatal electrocution that occurred on July 26, 2016, in Easton, Northampton County, Pennsylvania. As part of this Settlement Agreement, I&E and Met-Ed (hereinafter referred to collectively as the “Parties” or “Joint Petitioners”) respectfully request that Your Honor issue an initial decision or recommended decision approving the Settlement without modification. A Joint Stipulation of Facts in Support of Settlement is attached hereto as **Appendix A**. A Joint Proposed Ordering

Paragraphs is attached hereto as **Appendix B**. Statements in Support of the Settlement expressing the individual views of I&E and Met-Ed are attached hereto as **Appendix C** and **Appendix D**, respectively.

## **I. INTRODUCTION**

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120 and Metropolitan Edison Company with its principal place of business at 2800 Pottsville Pike, Reading, PA 19612.<sup>1</sup>

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

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

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<sup>1</sup> Met-Ed is a wholly-owned subsidiary of FirstEnergy Corp. ("FirstEnergy").

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

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

7. Met-Ed is a "public utility" as that term is defined at 66 Pa.C.S. § 102 as it is engaged in providing public utility service as an electric distribution company ("EDC") in the Commonwealth of Pennsylvania to the public for compensation.

8. Met-Ed, as an EDC, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Met-Ed in its capacity as an EDC.

## **II. BACKGROUND**

10. On July 26, 2016, a conductor ("Phase C"), owned and operated by Met-Ed, fell into the backyard of the residence of Thomas and Sarah Poynton at 250 Royal Manor Road, Easton, Pennsylvania 18042.

11. Outside his home, Thomas Poynton encountered energized ground from Phase C, was electrocuted, and died. The Poyntons' residence also caught fire.

12. Electric safety engineers from I&E's Safety Division responded to the scene and conducted an in-depth investigation.

13. By letter dated August 16, 2016, I&E notified Met-Ed that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. I&E advised Met-Ed that its investigation would focus on the downed conductor and the fatal electrocution.

14. I&E served Met-Ed with three (3) sets of data requests on August 16, 2016, September 13, 2017, and February 8, 2018, respectively.

15. Met-Ed responded to I&E's three (3) sets of data requests on September 6, 2016,<sup>2</sup> October 13, 2017, and March 15, 2018, respectively.

16. The results of I&E's investigation, which included a review of the Company's responses to I&E's data requests, formed the basis for I&E's Complaint that was filed with the Commission on July 22, 2019 at Docket No. C-2019-3011675. The Complaint included allegations that:

- a. Phase C was a 34,500-volt sub-transmission line and part of a three-phase circuit, Glendon Circuit 3032.
- b. The three-phase conductors ("Phase A," "Phase B," and "Phase C") on Glendon Circuit 3032 were aluminum conductors steel-reinforced ("ACSR").

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<sup>2</sup> Met-Ed provided revised responses to I&E Data Requests-Set I on April 3, 2017.

- c. Individually attached to each Phase A, B, and C was a bronze, hot line clamp marked, “BH4 6 SOL-400 STR.CU” (hereinafter referred to as “Clamp A,” “Clamp B,” and “Clamp C” or collectively as “clamps”).
- d. The clamps were manufactured by Hubbell Power Systems, Inc. (“Hubbell”).
- e. Phase C fell from its point of attachment with Clamp C to the ground.
- f. Met-Ed does not know the date that it installed Clamps A, B, and C on Phases A, B, and C or the locations of other BH4 6 SOL-400 STR.CU clamps that were installed on Met-Ed’s equipment and facilities.
- g. Hubbell’s General Catalog from 1996 and Hubbell’s Distribution Connectors Catalog from April 2004 direct that a BH4 6 SOL-400 STR.CU clamp is “for [a] copper conductor” and that “the use of an aluminum conductor in a standard copper base connector (plated or unplated), is not recommended.”
- h. FirstEnergy Material Specification No. 02-455 FE, dated March 5, 2004 and applicable to BH4 6 SOL-400 STR.CU clamps, directs that “the clamp is used on copper or copperweld conductors or with stirrups.”
- i. Clamps A, B, and C were not used on copper or copperweld conductors or with stirrups.
- j. At the time of the incident, Met-Ed did not have any installation procedures related to BH4 6 SOL-400 STR.CU clamps, like Clamps A, B, and C.

- k. Phases A, B, and C were suspended, in part, by Met-Ed Pole Nos. 70882-48106 and 70868-48110 (hereinafter collectively referred to as “poles”).
- l. In 2008, 2011, 2013, and 2014, Met-Ed performed visual inspections of its equipment and facilities located between the poles, including Phases A, B, and C, and did not identify any incorrectly installed equipment or any equipment in need of repair.
- m. Mounted to Glendon Circuit 3032 was a 34.5kV Vacuum Circuit Breaker (“Glendon Breaker 3032”) and associated Preconfigured Matching Unit (“PCMU”) Relay (collectively referred to as “ground fault protection system”).
- n. On the day of the incident, Phase C fell to the ground approximately 70 feet from the Poyntons’ residence.
- o. Met-Ed’s ground fault protection system ultimately failed to cut off the electricity to Glendon Circuit 3032, which allowed the continued flow of electricity to Phase C after it made contact with the ground.
- p. Thomas Poynton exited the rear of his home, stepped into the grass, encountered energized ground from Phase C, and was continuously electrocuted.
- q. Met-Ed received a “life and limb” call from 911 for the Poyntons’ residence at 250 Royal Manor Road, Easton, PA 18042.
- r. Thirty-six (36) minutes after the “life and limb” call to Met-Ed, Respondent confirmed that Glendon Circuit 3032 was de-energized and that

the area was safe for first responders to provide aid.

s. Thomas Poynton was pronounced dead at the scene due to electrocution.

17. In the Complaint, I&E made several requests for relief, including that the Commission: (1) find Respondent to be in violation of the NESC, Pennsylvania Code, and Pennsylvania Public Utility Code for each of the counts set forth in I&E's Complaint; (2) impose a cumulative civil penalty upon Respondent in the amount of Four Million Five Hundred Thirty-Three Thousand Dollars (\$4,533,000.00); (3) direct Respondent to perform each of the corrective actions detailed in the Complaint; and (4) order such other remedies as the Commission may deem appropriate.

18. By Secretarial Letter dated August 16, 2019, Met-Ed was granted an extension of time until October 31, 2019 to answer I&E's Complaint.

19. On October 31, 2019, Respondent, through counsel, filed an Answer with New Matter and Preliminary Objections to I&E's Complaint. In its Answer, Met-Ed admitted that Phases A, B, and C were aluminum conductors steel-reinforced and that individually attached to each Phase A, B, and C were bronze, hot line clamps marked "BH4 6 SOL-400 STR.CU." Met-Ed admitted that it did not have installation records related to Clamps A, B, and C or installation procedures for BH4 6 SOL-400 STR.CU clamps. Met-Ed also raised in its Answer the locations of other BH4 6 SOL-400 STR.CU clamps on its facilities, which is information that I&E sought from Met-Ed during the course of I&E's investigation. In its New Matter and Preliminary Objections, Respondent asserted that some of the averments of I&E's Complaint are barred by the statute of limitations at 66 Pa.C.S. § 3314. Respondent disagreed with the civil penalty that I&E sought to impose.

20. By Secretarial Letter dated November 12, 2019, I&E was granted an extension of time until November 20, 2019 to answer Met-Ed's Preliminary Objections and New Matter.

21. On November 20, 2019, I&E filed a Reply to New Matter denying the material averments made therein, in addition to proprietary and non-proprietary versions of an Answer to Met-Ed's Preliminary Objections asserting that the relief sought in I&E's Complaint was not barred by the statute of limitations.

22. By notice dated January 9, 2020, this matter was scheduled for a Prehearing Conference on March 3, 2020 before Administrative Law Judge ("ALJ") Mary D. Long.

23. By Interim Order dated January 16, 2020, Met-Ed's Preliminary Objections were dismissed. A Prehearing Conference Order dated January 16, 2020 was also issued.

24. By letter dated February 26, 2020, Met-Ed requested a 60-day continuance of the March 3, 2020 Prehearing Conference.

25. By Interim Order dated February 27, 2020, Met-Ed's request for a continuance of the Prehearing Conference was granted and the Prehearing Conference was rescheduled for May 4, 2020.

26. On April 27, 2020, via electronic mail, Met-Ed and I&E requested that the Prehearing Conference be rescheduled for the week of June 8, 2020.

27. By notice dated April 27, 2020, the Prehearing Conference was rescheduled for June 10, 2020.

28. A Prehearing Conference was convened on June 10, 2020. The Parties reported that although settlement discussions were ongoing, the Parties were unable to agree on a litigation schedule.

29. The presiding ALJ issued an Interim Order on June 10, 2020 ordering that the hearings in this matter be scheduled for December 15-17, 2020 and instructing the Parties to submit a Status Report and proposed litigation schedule.

30. On July 2, 2020, the Parties submitted Status Reports, noting the Parties' continued settlement discussions and providing an agreed-upon litigation schedule.

31. On July 7, 2020, an Interim Order and Corrected Interim Order were issued, setting forth a litigation schedule and directing the Parties to submit a Joint Status Report.

32. On August 3, 2020, the Parties submitted a Joint Status Report, noting the Parties' continued efforts toward amicably resolving the instant matter.

33. On September 14, 2020, the Parties informed ALJ Long that a Settlement in Principle had been reached and requested a suspension of the litigation schedule and cancellation of the December 15-17 evidentiary hearings.

34. On September 16, 2020, a Cancellation Notice was issued, cancelling the December 15-17, 2020 evidentiary hearings.

35. An Interim Order was also issued on September 16, 2020, which suspended the litigation schedule and directed the Parties to file a joint petition for settlement with statements in support and a stipulation of facts in support of the agreed upon settlement terms.

### **III. ALLEGED VIOLATIONS**

36. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to support its allegations that Met-Ed committed the following violations:

- a. Met-Ed failed to identify and correct improperly installed and defective equipment during its visual inspections of its equipment and facilities, including

Phases A, B, and C, in 2008, 2011, 2013, and 2014, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated NESC § 121(A), 52 Pa. Code § 57.194(b),<sup>3</sup> and 66 Pa.C.S. § 1501.

b. Met-Ed failed to utilize Glendon Breaker 3032 with due regard to its assigned ratings of voltage and continuous momentary currents in that when Phase C made contact with the ground, Glendon Breaker 3032 tripped, but then auto-reclosed, ultimately failing to interrupt the electric current to Phase C, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated NESC § 171, 52 Pa. Code § 57.194(b),<sup>4</sup> and 66 Pa.C.S. § 1501.

c. Met-Ed failed to create and implement installation procedures related to BH4 6 SOL-400 STR.CU clamps, like Clamps A, B, and C, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 1501.

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<sup>3</sup> I&E's Complaint alleges that such action violates Section 57.193(a) of the Commission's regulations, 52 Pa. Code § 57.193(a), which applies to transmission facilities. Upon further review, I&E determined that Phase C, a 34.5kV sub-transmission line, does not meet the 35 kV threshold for a "transmission line" as specifically defined in 52 Pa. Code § 57.1. However, the substance of I&E's allegation regarding Respondent's failure to install and maintain the facilities at issue and ensure that such facilities are operated in conformity with the applicable requirements of the NESC is covered under a nearly identical regulation, Section 57.194(b), which applies to distribution facilities or facilities with a design voltage less than 35 kV, like Phase C. I&E was prepared to correct this legal technicality through the direct testimony of I&E's witness followed by a motion to conform I&E's Complaint to the evidence.

<sup>4</sup> See *supra* note 3.

d. Met-Ed failed to properly train, equip, monitor, and supervise its employees and contractors in the proper installation, inspection, and maintenance of BH4 6 SOL-400 STR.CU clamps, like Clamps A, B, and C, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated NESC § 420(B)(1), 52 Pa. Code § 57.194(b),<sup>5</sup> and 66 Pa.C.S. § 1501.

e. Met-Ed failed to maintain records regarding the installation of Clamps A, B, and C on Phases A, B, and C, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 1501.

f. Met-Ed failed to maintain records regarding the locations of other BH4 6 SOL-400 STR.CU clamps that were installed on its equipment and facilities, thereby placing the public safety in danger. If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 1501.

g. Met-Ed installed BH4 6 SOL-400 STR.CU clamps (Clamps A, B, and C) on three (3) aluminum conductors steel-reinforced (Phases A, B, and C) inconsistent with the recommendation provided in Hubbell's General Catalog and Distribution Connectors Catalog and inconsistent with the mandate provided in FirstEnergy Material Specification No. 02-455 FE, thereby creating an ongoing, unsafe, and hazardous condition, which placed the public safety in danger. If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 1501.

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<sup>5</sup> See *supra* note 3.

h. Met-Ed failed to timely de-energize Glendon Circuit 3032 on July 26, 2016, which enabled the continuation of an unsafe and hazardous condition and prevented first responders from providing aid and resuscitative measures to Thomas Poynton and fire suppression to the Poynton's residence. If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 1501.

37. Had this matter been fully litigated, Met-Ed would have denied each of the alleged violations of the NESC, the Commission's regulations, or the Code outlined above in Paragraph 36(a)-(h), raised defenses in support of its position that the Company committed no such violations, and vigorously defended itself against the same in this proceeding and any subsequent appeals.

#### **IV. SETTLEMENT TERMS**

38. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,<sup>6</sup> I&E and Met-Ed held a series of extensive and comprehensive technical discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's Complaint proceeding docketed at C-2019-3011675. The Parties have stipulated to relevant facts. *See* Appendix A attached hereto.

39. The Settlement is a compromise of the allegations in the Complaint, which I&E intended to prove, and that Met-Ed intended to disprove.

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<sup>6</sup> *See* 52 Pa. Code § 5.231(a).

40. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the Parties further recognize the significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

41. I&E and Met-Ed, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

**a. Civil Penalty:**

Met-Ed will pay a civil penalty in the amount of One Million Dollars (\$1,000,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2019-3011675, shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed-through as an additional charge to Met-Ed's customers in Pennsylvania.

**b. Hardship Fund:**

In addition to the civil penalty above, Met-Ed will contribute the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) into its hardship fund from which hardship grants are dispersed on behalf of qualifying customers. Said contribution shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Met-Ed shall file a verification with the Commission showing its compliance with this settlement term within sixty (60) days of the date of entry of the Final Order in this proceeding.

**c. Revisions to Construction Standards:**

Within six (6) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will revise its construction standards for electric facilities below 69 kV to provide for the installation of connectors in accordance with the manufacturer's recommendations and standards.

**d. Training:**

Within eighteen (18) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will create and implement a curriculum to train its employees in all connection installations and inspections in accordance with its revised, construction standards, as referenced above, and the manufacturer's instructions, to include the importance of removing oxidizing agents that could cause excess corrosion and overheating. Mandatory refresher training will be performed on an annual

basis. Met-Ed will include training on proper connection installations (including the importance of removing oxidizing agents that could cause excess corrosion and overheating) to its contractors during the onboarding process.

e. **Structured Review of Field Manuals:**

Within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, Met-Ed will undertake a structured review to ensure its field manuals are in current compliance with the NESC, Occupational Safety and Health Administration (“OSHA”), and manufacturer guidance for any proposed changes to the construction manuals prior to issuing updates. Updates are tracked and communicated monthly. With each update, a review of compliance with the NESC, OSHA, and manufacturing guidance will be conducted. Changes to construction standards will be reviewed with applicable employees and contractors as standards are revised and/or issued.

f. **Acceptance Inspection Process:**

Met-Ed will implement an acceptance inspection process for non-storm contractor work related to conductor and connector installations within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement.

**g. Electrical Service and Safety Standards Inspection Process:**

Met-Ed will implement an electrical service and safety standards inspection process, to include but not be limited to inspection of hotline clamp installations within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement.

**h. Inspection and Replacement Program:**

Met-Ed will implement a program for the inspection and replacement of hotline clamps across its entire primary system within three (3) years of the entry date of the Commission's Final Order approving the Settlement Agreement.

As part of this program, Met-Ed will:

- i. Remove and replace any and all hotline clamps that have been installed contrary to the manufacturer's instructions; and
- ii. Remove and replace any and all hotline clamps that are directly applied to conductors under tension without the use of a stirrup, that show signs of damage, defect, deterioration, wear and/ or an unsafe or hazardous condition, even where installed consistent with the manufacturer's instructions.

**i. Review of Emergency Response Procedures**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will conduct a review of its existing procedures to ensure effective and efficient response to 911 dispatches and requests to de-energize.

**j. Contractor Safety Pre-Qualification Program**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will create and implement a contractor safety pre-qualification program incorporating review by safety professionals, which shall include, *inter alia*, the following:

- i. Data/Document Review:
  1. Evaluation of safety-related data from applicable contractors through a pre-qualification form/questionnaire
  2. Three (3) trailing years of safety statistics that include a review of the following:
    - a. Experience Modification Rate;
    - b. Total Recordable Incident Rate (also as it relates to industry average);
    - c. Fatalities; and
    - d. Serious/willful OSHA citations
  3. Contractor safety manual submission and review
  4. Contractor's own safety program submission
  5. Indication of a Contractor Drug & Alcohol Program
- ii. Insurance document(s) submittal and review
- iii. Ongoing annual update and review for continued qualification and/or corrective follow up, as appropriate

42. Following the performance of each non-monetary, remedial measure, referenced above, Met-Ed shall file with the Commission a verification acknowledging that each non-monetary, remedial measure has been met or complied with, pursuant to 52 Pa. Code § 5.591. In addition, I&E's Safety Division shall have the opportunity to review Met-Ed's performance of each remedial measure to confirm compliance.

43. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released Met-Ed from all past claims that were made or could have been made for monetary and/or other relief based on allegations associated with the July 26, 2016 incident.

44. I&E and Met-Ed jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, promotes public safety, and avoids the time and expense of litigation, which entails hearings, travel for Met-Ed's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix C** and **Appendix D** are Statements in Support submitted by I&E and Met-Ed, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

## **V. CONDITIONS OF SETTLEMENT**

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

expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

46. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the other party within twenty (20) days after entry of an Order modifying the Settlement.

47. In the event that the presiding ALJ issues an initial decision or recommended decision approving this Joint Petition for Approval of Settlement without modification, the Parties agree to waive the exception period, thereby allowing the Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e).

48. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Met-Ed has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in this Joint Settlement Petition. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law.

49. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

50. This Settlement Agreement 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. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

51. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

**WHEREFORE**, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Metropolitan Edison Company respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement without modification and in their entirety as being in the public interest.

Respectfully submitted and filed by:

**Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement**

**Metropolitan Edison Company**

By:

By:



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Kayla L. Rost, Prosecutor  
PA Attorney ID No. 322768  
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Date: October 23, 2020

Date: October 23, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
v.	:	Docket No. C-2019-3011675
	:	
Metropolitan Edison Company,	:	
Respondent	:	

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**JOINT STIPULATION OF FACTS  
IN SUPPORT OF SETTLEMENT**

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Pursuant to 52 Pa. Code § 5.232(a) and the Interim Order dated September 16, 2020 of presiding Administrative Law Judge (“ALJ”) Mary D. Long, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Metropolitan Edison Company (“Met-Ed” or “Company”), by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) in the above-captioned matter.

I&E and Met-Ed have entered into the Settlement, which they recognize is a compromise of disputed claims. I&E also recognizes that the Settlement is entered into without admission of wrongdoing or liability by Met-Ed.

**STIPULATION OF FACTS**

**A. Conductor**

1. On July 26, 2016, a conductor (“Phase C”), owned and operated by Met-Ed, fell into the backyard of the residence of Thomas and Sarah Poynton at 250 Royal Manor Road, Easton, Pennsylvania 18042.

2. Phase C was a 34,500-volt sub-transmission line and part of a three-phase circuit, Glendon Circuit 3032.

3. The three-phase conductors (“Phase A,” “Phase B,” and “Phase C”) on Glendon Circuit 3032 were aluminum conductors steel-reinforced (“ACSR”).

4. Met-Ed has records demonstrating that Phase C was installed in 1926.

**B. Clamps**

5. Individually attached to each Phase A, B, and C was a bronze, hot line clamp marked, “BH4 6 SOL-400 STR.CU” (hereinafter referred to as “Clamp A,” “Clamp B,” and “Clamp C” or collectively as “clamps”).

6. The clamps were manufactured by Hubbell Power Systems, Inc. (“Hubbell”).

7. Phase C fell from its point of attachment with Clamp C to the ground.

8. Met-Ed does not know the date that it installed Clamps A, B, and C on Phases A, B, and C.

9. Hubbell’s General Catalog from 1996 and Hubbell’s Distribution Connectors Catalog from April 2004 direct that a BH4 6 SOL-400 STR.CU clamp is “for

[a] copper conductor” and that “the use of an aluminum conductor in a standard copper base connector (plated or unplated) is not recommended.”

10. FirstEnergy Material Specification No. 02-455 FE, dated March 5, 2004 and applicable to BH4 6 SOL-400 STR.CU clamps, directs that “the clamp is used on copper or copperweld conductors or with stirrups.”

11. Clamps A, B, and C were not used on copper or copperweld conductors or with stirrups.

12. At the time of the incident, Met-Ed did not have any installation procedures related to BH4 6 SOL-400 STR.CU clamps, like Clamps A, B, and C.

**C. Poles**

13. Phases A, B, and C were suspended, in part, by Met-Ed Pole Nos. 70882-48106 and 70868-48110 (hereinafter collectively referred to as “poles”).

14. Met-Ed has records demonstrating that Pole No. 70882-48106 was installed in 1926 and later replaced in 1952 and that Pole No. 70868-48110 was installed in 1952.

15. From 2004 to 2016, Met-Ed conducted annual, infrared inspections on certain equipment and facilities, including Pole No. 70882-48106, and did not identify any incorrectly installed equipment or any equipment in need of repair on Pole No. 70882-48106. The 2016 infrared inspection was conducted on July 25, 2016.

16. In 2008, 2011, 2013, 2014, and 2016, Met-Ed performed visual inspections of its equipment and facilities located between the poles, including Phases A, B, and C, and did not identify any incorrectly installed equipment or any equipment in need of repair. The 2016 visual inspection was conducted on July 25, 2016.

17. Prior to the incident, the only maintenance work recorded by Met-Ed related to the poles was the addition of a 4.8kV underbuild on Pole No. 70868-48110 on March 4, 1998 and the installation of fault indicators on Pole No. 70882-48106 on May 11, 2011.

**D. Ground Fault Protection System**

18. Mounted to Glendon Circuit 3032 was a 34.5kV Vacuum Circuit Breaker (“Glendon Breaker 3032”) and associated Preconfigured Matching Unit (“PCMU”) Relay (collectively referred to as “ground fault protection system”).

19. Met-Ed has records demonstrating that Glendon Breaker 3032 was installed in May 1989 and that the PCMU Relay was installed on July 22, 2014.

20. Met-Ed does not have any material specifications related to Glendon Breaker 3032 or the PCMU Relay.

21. On the day of the incident, Met-Ed’s ground fault protection system ultimately did not cut off the electricity to Glendon Circuit 3032 after Phase C fell to the ground.

**E. Chronology of Events on the Day of the Incident**

22. At 9:55 AM on July 26, 2016, Phase C fell to the ground approximately 70 feet from the Poyntons’ residence.

23. At this time, Glendon Breaker 3032 detected a fault and tripped, breaking the electric current to Phase C, but then auto-reclosed, restoring the flow of electricity to Phase C.

24. Thomas Poynton exited the rear of his home, stepped into the grass,

encountered energized ground from Phase C, and was electrocuted.

25. The Poyntons' residence caught fire.

26. At approximately 10:08 AM, Met-Ed received a "life and limb" call from 911 for the Poyntons' residence at 250 Royal Manor Road, Easton, PA 18042.

27. At approximately 10:12 AM, Met-Ed's Distribution System Operator opened Glendon Breaker 3032 in an attempt to interrupt current flow to Phase C.

28. At approximately 10:20 AM, the 911 Dispatcher again reported to Met-Ed that Phase C was still on the ground and energized.

29. Thirty-six (36) minutes after the "life and limb" call to Met-Ed, at approximately 10:44 AM, Met-Ed confirmed that Glendon Circuit 3032 was de-energized and that the area was safe for first responders to provide aid.

30. At approximately 11:00 AM, Thomas Poynton was pronounced dead at the scene due to electrocution.

#### **F. Post Incident**

31. While Phases A, B, and C were still de-energized, Met-Ed replaced Clamps A, B, and C with aluminum connectors.

32. FirstEnergy Material Specification No. 02-700 FE, dated May 1, 2007 and applicable to the aluminum connectors, provides that "[t]hese devices can be used for conductor combinations including AAC, AAAC, ACAR, ACSR, ACSR/AW, AW and copper."

33. From April to July of 2018, Met-Ed inspected every three-phase and single-

phase conductor along approximately 870 circuits miles of its facilities and identified 40 sites that contained bronze hot line clamps that were connected directly to an aluminum conductor. Met-Ed replaced all of the bronze hot line clamps with aluminum clamps, except for one (1) clamp, which was reinstalled with a stirrup.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
v.	:	Docket No. C-2019-3011675
	:	
Metropolitan Edison Company,	:	
Respondent	:	

**JOINT PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Settlement Petition filed on October 23, 2020 between the Commission’s Bureau of Investigation and Enforcement and Metropolitan Edison Company is approved in its entirety without modification.

2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, Metropolitan Edison Company shall pay a civil penalty of One Million Dollars (\$1,000,000.00). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

3. That the civil penalty shall not be tax deductible or passed through as an additional charge to Metropolitan Edison Company’s customers in Pennsylvania.

4. That, within thirty (30) days of the date this Order becomes final,

Metropolitan Edison Company shall pay One Hundred and Fifty Thousand Dollars (\$150,000.00) to Metropolitan Edison Company's Hardship Fund. Metropolitan Edison Company shall file a verification with the Commission showing its compliance with this settlement term within sixty (60) days of the date of entry of the Final Order in this proceeding.

5. That upon fulfillment of each non-monetary, remedial measure set forth in Paragraph 41 of the Joint Petition for Settlement, Metropolitan Edison Company shall file with the Commission a verification acknowledging compliance with each non-monetary remedial measure, pursuant to 52 Pa. Code § 5.591.

6. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

7. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and the verifications acknowledging that payment has been made to the hardship fund and that the non-monetary remedial measures set forth in Paragraph 41 of the Joint Petition for Settlement have been fulfilled.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Investigation and Enforcement :  
 :  
v. : Docket No. C-2019-3011675  
 :  
Metropolitan Edison Company :  
 :

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S  
STATEMENT IN SUPPORT OF THE  
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Metropolitan Edison Company (“Met-Ed,” “Respondent,” or “Company”).<sup>1</sup> I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

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<sup>1</sup> I&E and Met-Ed are collectively referred to herein as the “Parties.”

**I. Background**

I&E's Safety Division conducted an in-depth investigation of a conductor ("Phase C"), owned and operated by Met-Ed, that fell to the ground at 9:55 AM on July 26, 2016 at 250 Royal Manor Road, Easton, PA 18042 and resulted in a fatal electrocution and property damage. The results of the investigation formed the basis for the allegations set forth in I&E's Formal Complaint ("Complaint"), which was filed on July 22, 2019.

The crux of I&E's Complaint alleged that Met-Ed installed BH4 6 SOL-400 STR.CU bronze hot line clamps, Clamps A, B, and C, on aluminum conductors steel-reinforced ("ACSR"), Phases A, B, and C, inconsistent with the recommendation of the manufacturer of the clamps and FirstEnergy Material Specification No. 02-455 FE, which created an ongoing, unsafe, and hazardous condition in violation of Section 1501 of the Public Utility Code ("Code"), 66 Pa.C.S. § 1501 (requiring a public utility to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" and to "make all such repairs, changes, . . . and improvements in or to such service and facilities" for the "safety of its patrons, employees, and the public" and requiring that such service and facilities "be in conformity with the regulations and orders of the Commission").

In addition to alleging violations of Section 1501 of the Code, I&E's Complaint alleged that Respondent failed to maintain its transmission facilities in conformance with Sections 121(A), 171, and 420(B)(1) of the National Electric Safety Code ("NESC"), in violation of Section 57.193(a) of the Commission's regulations, 52 Pa. Code § 57.193(a). Upon further review, I&E determined that Phase C, a 34.5kV sub-transmission line, does not meet the 35 kV threshold for a "transmission line" as specifically defined in 52 Pa.

Code § 57.1. I&E was prepared to move to conform its Complaint to the evidence, which I&E avers would have shown that Met-Ed's failure to maintain the facilities at issue and ensure that such facilities are operated in conformity with the applicable requirements of the NESC violated Section 57.194(b) of the Commission's regulations— a nearly identical regulation that applies to distribution facilities or facilities with a design voltage less than 35 kV, like Phase C.

I&E's Complaint sought relief in the form of a civil penalty of \$4,533,000.00, as well as a number of corrective measures designed to address emergency response, training, revisions of Met-Ed's procedures, and the remediation or replacement of equipment installed contrary to the manufacturer's recommendations and FirstEnergy's material specifications.

On October 31, 2019, Met-Ed filed an Answer with New Matter and Preliminary Objections. On November 20, 2019, I&E replied to Met-Ed's Preliminary Objections and New Matter.

By notice dated January 9, 2020, this matter was scheduled for a Prehearing Conference on March 3, 2020 before Administrative Law Judge Mary D. Long. By Interim Order dated January 16, 2020, Met-Ed's Preliminary Objections were dismissed. A Prehearing Conference Order was also issued on January 16, 2020.

After two (2) requests by the Parties for an extension, the Prehearing Conference was rescheduled for June 10, 2020. The Parties reported that settlement discussions were ongoing, but that they were unable to agree on a litigation schedule. ALJ Long instructed the Parties to provide a Status Report and proposed litigation schedule by July 3, 2020.

On July 2, 2020, the Parties submitted Status Reports, noting the Parties continued settlement discussions and providing a litigation schedule. On July 7, 2020, an Interim Order Setting Litigation Schedule and Corrected Interim Order Setting Litigation Schedule were issued, scheduling an evidentiary hearing for December 15, 2020 through December 17, 2020.

On August 3, 2020, the Parties submitted a Joint Status Report, noting the Parties continued effort towards amicably resolving the instant matter.

On September 14, 2020, the Parties informed ALJ Long that a settlement-in-principle had been reached and requested a suspension of the litigation schedule and cancellation of the December 15-17, 2020 evidentiary hearings.

On September 16, 2020, a Notice of Hearing Cancellation was issued, cancelling the December 15-17, 2020 evidentiary hearings. An Interim Order was also issued on September 16, 2020, which suspended the litigation schedule and directed the Parties to file a joint petition for settlement with statements in support and a stipulation of facts in support of the agreed upon settlement terms.

On October 23, 2020, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Met-Ed in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

## **II. The Public Interest**

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will

resolve all issues related to I&E's Formal Complaint proceeding. Met-Ed has been cooperative with I&E related to identifying policies and procedures, facilities, and training that can be further improved to assist Met-Ed in enhancing the safety and reliability of service and to satisfy the commitments that I&E has required in the settlement process.

The Settlement, if approved, will provide substantial public benefits including a program for the inspection and replacement of hotline clamps across Met-Ed's entire primary system, enhanced training of Met-Ed employees, improvements to Met-Ed's construction standards, field manuals, and emergency response procedures, as well as a contractor safety pre-qualification program.

I&E intended to prove the factual allegations set forth in its Formal Complaint at hearing to which Met-Ed would have disputed. This Settlement Agreement results from the compromises of the Parties. 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 litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it provides for a number of relevant corrective measures as well as a civil penalty and contribution to Met-Ed's hardship fund. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

**III. Terms of Settlement**

Under the terms of the Settlement Agreement, I&E and Met-Ed have agreed to the following:

**a. Civil Penalty:**

Met-Ed will pay a civil penalty in the amount of One Million Dollars (\$1,000,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed-through as an additional charge to Met-Ed's customers in Pennsylvania.

**b. Hardship Fund:**

In addition to the civil penalty above, Met-Ed will contribute the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) to its hardship fund from which hardship grants are dispersed on behalf of qualifying customers. Said contribution shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Met-Ed shall file a verification with the Commission showing its compliance with this settlement term within sixty (60) days of the date of entry of the Final Order in this proceeding.

**c. Revisions to Construction Standards:**

Within six (6) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will revise its construction standards for electric facilities below 69 kV to provide for the installation of connectors in accordance with the manufacturer's recommendations and standards.

**d. Training:**

Within eighteen (18) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will create and implement a curriculum to train its employees in all connection installations and inspections in accordance with its revised, construction standards, as referenced above, and the manufacturer's instructions, to include the importance of removing oxidizing agents that could cause excess corrosion and overheating. Mandatory refresher training will be performed on an annual basis. Met-Ed will include training on proper connection installations (including the importance of removing oxidizing agents that could cause excess corrosion and overheating) to its contractors during the onboarding process.

**e. Structured Review of Field Manuals:**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will undertake a

structured review to ensure its field manuals are in current compliance with the NESC, Occupational Safety and Health Administration (“OSHA”), and manufacturer guidance for any proposed changes to the construction manuals prior to issuing updates. Updates are tracked and communicated monthly. With each update, a review of compliance with the NESC, OSHA, and manufacturing guidance will be conducted. Changes to construction standards will be reviewed with applicable employees and contractors as standards are revised and/or issued.

**f. Acceptance Inspection Process:**

Met-Ed will implement an acceptance inspection process for non-storm contractor work related to conductor and connector installations within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement.

**g. Electrical Service and Safety Standards Inspection Process:**

Met-Ed will implement an electrical service and safety standards inspection process, to include but not be limited to inspection of hotline clamp installations within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement.

**h. Inspection and Replacement Program:**

Met-Ed will implement a program for the inspection and replacement of hotline clamps across its entire primary system within three

(3) years of the entry date of the Commission's Final Order approving the Settlement Agreement.

As part of this program, Met-Ed will:

- i. Remove and replace any and all hotline clamps that have been installed contrary to the manufacturer's instructions; and
- ii. Remove and replace any and all hotline clamps that are directly applied to conductors under tension without the use of a stirrup, that show signs of damage, defect, deterioration, wear and/or an unsafe or hazardous condition, even where installed consistent with the manufacturer's instructions.

**i. Review of Emergency Response Procedures**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will conduct a review of its existing procedures to ensure effective and efficient response to 911 dispatches and requests to de-energize.

**j. Contractor Safety Pre-Qualification Program**

Within twelve (12) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will create and implement a contractor safety pre-qualification program incorporating review by safety professionals, which shall include, *inter alia*, the following:

- i. Data/Document Review:
  1. Evaluation of safety-related data from applicable contractors through a pre-qualification form/questionnaire
  2. Three (3) trailing years of safety statistics that include a review of the following:
    - a. Experience Modification Rate;
    - b. Total Recordable Incident Rate (also as it relates to industry average);
    - c. Fatalities; and
    - d. Serious/willful OSHA citations
  3. Contractor safety manual submission and review
  4. Contractor's own safety program submission
  5. Indication of a Contractor Drug & Alcohol Program
- ii. Insurance document(s) submittal and review
- iii. Ongoing annual update and review for continued qualification and/or corrective follow up, as appropriate

In consideration of Met-Ed's payment of a civil penalty and contribution to the hardship fund and various remedial measures, I&E agrees that it has released Met-Ed from all past claims that were or could have been made for monetary and/or other relief based on allegations associated with the July 26, 2016 incident.

#### IV. Legal Standard for Settlement Agreements

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. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *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-captioned matter is consistent with the Commission’s Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility 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 (10) 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 Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

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 civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E submits that the conduct alleged in the Complaint is of a very serious nature. I&E alleges that Met-Ed’s conduct includes the following: (1) Met-Ed failed to identify and correct improperly installed and defective equipment during its visual inspections of its equipment and facilities, including Phases A, B, and C, in 2008, 2011, 2013, and 2014; (2) Met-Ed failed to utilize Glendon Breaker 3032 with due regard to its assigned ratings of voltage and continuous momentary currents in that when Phase C made contact with the ground, Glendon Breaker 3032 tripped, but then auto-reclosed, ultimately failing to interrupt the electric current to Phase C; (3) Met-Ed failed to create and implement installation procedures related to BH4 6 SOL-400 STR.CU clamps, like Clamps A, B, and C; (4) Met-Ed failed to properly train, equip, monitor, and supervise its employees and contractors in the proper installation, inspection, and maintenance of BH4 6 SOL-400 STR.CU clamps, like Clamps A, B, and C; (5) Met-Ed failed to maintain records regarding the installation of Clamps A, B, and C on Phases A, B, and C; (6) Met-

Ed failed to maintain records regarding the locations of other BH4 6 SOL-400 STR.CU clamps that were installed on its equipment and facilities; (7) Met-Ed installed BH4 6 SOL-400 STR.CU clamps, Clamps A, B, and C, on three aluminum conductors steel-reinforced, Phases A, B, and C, inconsistent with the recommendation provided in Hubbell's General Catalog and Distribution Connectors Catalog and inconsistent with the mandate provided in FirstEnergy Material Specification No. 02-455 FE; and (8) Met-Ed failed to timely de-energize Glendon Circuit 3032 on July 26, 2016.

I&E submits that any conduct involving overhead conductors should be taken seriously due to the inherent danger involved if such lines should overheat, fall, or otherwise fail. Further, the actions and inactions of Met-Ed described above constitute conduct that placed the public safety at great risk, and therefore, I&E submits that a higher civil penalty is warranted in this case.

The seriousness of the conduct at issue is addressed in the costly and extensive, corrective measures that the Company has agreed to undertake, as well as the payment of the agreed-upon civil penalty and monetary contribution to Met-Ed's hardship fund.

The second factor considers whether the resulting consequences of Met-Ed'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, the resulting consequences are tragic and of a very serious nature, warranting a higher civil penalty. Due to the misconduct described above, Phase C fell to the ground. Additionally, Met-Ed's failure

to ensure the correct operation of its ground fault protection system (which ultimately failed to cut off the electricity to Glendon Circuit 3032 and allowed the continued flow of electricity to Phase C after it made contact with the ground) and Met-Ed's untimely reaction to the ongoing, unsafe, and hazardous condition at hand (by taking thirty-six minutes after the "life and limb" call from 911 to de-energize Glendon Circuit 3032) resulted in a fatal electrocution and property damage.

The agreed-upon civil penalty, monetary hardship contribution, and the terms and conditions of the Settlement acknowledge that serious consequences occurred and are designed to further enhance the safety of Met-Ed's service and facilities.

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 Met-Ed'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 Met-Ed has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In response to the July 26, 2016 incident, Met-Ed replaced Clamps A, B, and C with aluminum connectors, consistent with FirstEnergy Material Specification No. 02-700 FE, which provides that aluminum connectors can be used on ACSR.

Met-Ed has also engaged in appropriate measures to correct the conduct at issue and prevent similar future conduct. For example, from April to July of 2018, Met-Ed

advised that it inspected every three-phase and single-phase conductor along approximately 870 circuits miles of its facilities and identified 40 sites that contained bronze hot line clamps that were connected directly to an aluminum conductor. Met-Ed advised that it replaced each bronze hot line clamp with an aluminum clamp, except for one (1) clamp which was reinstalled with a stirrup.

Additionally, a comprehensive list of the remedial actions that Met-Ed has agreed to undertake is outlined in the Settlement Agreement at Paragraph 41. Some of the more significant, remedial actions can be found in the following settlement terms. First, Met-Ed will undertake a structured review to ensure its field manuals are in current compliance with the NESC, OSHA, and manufacturer guidance for any proposed changes to the construction manuals prior to issuing updates. Updates to Met-Ed's field manuals will be tracked and communicated monthly. With each update, a review of compliance with the NESC, OSHA, and manufacturing guidance will be conducted. Changes to construction standards will be reviewed with applicable employees and contractors as standards are revised and/or issued.

Second, Met-Ed will implement a program for the inspection and replacement of hotline clamps across its entire primary system. As part of this program, Met-Ed will:

- (1) remove and replace any and all hotline clamps that have been installed contrary to the manufacturer's instructions and
- (2) remove and replace any and all hotline clamps that are directly applied to conductors under tension without the use of a stirrup, that show signs of damage, defect, deterioration, wear and/ or an unsafe or hazardous condition, even where installed consistent with the manufacturer's instructions.

Met-Ed's most significant program is to inspect and replace hotline clamps across its entire primary system, which is estimated to cost Met-Ed approximately \$15 million.

Each of these remedial actions and commitments address the alleged conduct at issue and are designed to prevent a similar incident from occurring again. The remedial actions demonstrate that Met-Ed is taking appropriate actions to enhance the safety of its distribution system, improve the reliability of its operations, and prevent similar occurrences in the future. These improvements will provide a significant benefit to public safety.

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). In this case, one fatal electrocution and property damage to the Poynton's home occurred. On the day of the incident, approximately 1,925 customers experienced an outage that lasted for less than four hours.

Additionally, the crux of I&E's Complaint alleges that Met-Ed's conduct of installing the clamps on ASCR, which was inconsistent with the recommendation of the manufacturer of the clamps and FirstEnergy Material Specification No. 02-455 FE, created an ongoing, unsafe, and hazardous condition in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. Since Met-Ed does not have record of the installation date of the clamps, but has records of maintenance work related to the equipment and facilities involved in the incident that date back to 1998, I&E proposed that the date of FirstEnergy Material Specification No. 02-455 FE, March 5, 2004, be used as the installation date of the clamps. Therefore, I&E asserts that the violation continued from

March 5, 2004 to July 26, 2016 (when the clamps were replaced with aluminum connectors) or 4,526 days.

The sixth factor to be considered relates to the compliance history of Met-Ed. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Aside from the instant Complaint, I&E is not aware of any other complaint against Met-Ed involving a serious, ongoing violation of 66 Pa.C.S. § 1501 that resulted in serious consequences, including death and property damage.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* As referenced in I&E's Answer to Met-Ed's Preliminary Objections, I&E submits that Met-Ed was not forthcoming with information regarding the installation date of Clamps A, B, and C and the locations of other bronze hot line clamps on Met-Ed's facilities.

During I&E's investigation, I&E made repeated requests for information regarding the installation date of the clamps, but Met-Ed did not provide I&E with such information. During the complaint process, Met-Ed's request for an extension to answer the Complaint hung on the preparation of a "total causal report" that would allegedly contain the installation date of the clamps. However, Met-Ed ultimately claimed the installation date of the clamps to be unknown. Additionally, Met-Ed raised, for the first

time in its Answer to the Complaint, the locations of other bronze hot line clamps connected to aluminum conductors, which was information that I&E sought during the course of its investigation and that Met-Ed claimed to not have.

Although I&E would not characterize Met-Ed's conduct during I&E's investigation and the complaint process as cooperative, Met-Ed has cooperated throughout the settlement process.

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 given the serious nature of Met-Ed's conduct and the serious nature of the resulting consequences, a civil penalty amount of \$1,000,000.00, which is not tax deductible and a \$150,000.00 contribution to Met-Ed's hardship fund is an appropriate penalty payment in this case.

I&E further submits that the monetary cost of Met-Ed's performance of all of the remedial measures, especially considering the cost of the program to inspect and replace hotline clamps across Met-Ed's entire primary system, is sufficient to deter Met-Ed from committing future violations. The remedial measures that Met-Ed has agreed to are collectively estimated to cost in excess of \$16 million.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. West Penn Power Company*, Docket No. C-2012-2307244 (Order entered January 9, 2014), the Commission approved a settlement agreement that imposed a civil penalty of \$86,000.00 upon West Penn Power Company

(“West Penn”) in connection with an overhead conductor that came down at its point of connection with an automatic splice. The live conductor fell into the yard of a homeowner, who came into contact with the live conductor, was electrocuted, and ultimately died. As part of the settlement, West Penn agreed to the performance of remedial measures equating to approximately \$2.5 million.

In the *West Penn* case, I&E alleged that West Penn’s conduct constituted six, separate violations of 66 Pa.C.S. § 1501 and sought a \$1,000 civil penalty for each violation. Additionally, I&E alleged that West Penn committed an ongoing violation of Sections 504-506 of the Code, 66 Pa.C.S. §§ 504-506, by failing to furnish information requested by Commission staff in aid of its investigation and I&E sought a civil penalty of \$80,000 for such violation.

Although factually similar at first blush, the *West Penn* case is quite distinguishable from the instant matter. A significant difference is that the crux of this proceeding is based on a serious, ongoing violation of 66 Pa.C.S. § 1501, which resulted in serious consequences involving death and property damage, whereas the crux of the *West Penn* proceeding and much of the \$86,000 civil penalty in that case was based on an ongoing violation of 66 Pa.C.S. §§ 504-506, relating to a failure to furnish information to the Commission. Therefore, I&E submits that the instant Settlement Agreement should be viewed on its own merits and is fair and reasonable.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated

– is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

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

**WHEREFORE**, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Myers', written in a cursive style.

Kourtney L. Myers  
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Bureau of Investigation & Enforcement  
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Dated: October 23, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant,	:	
	:	Docket No. C-2019-3011675
v.	:	
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

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**MET-ED STATEMENT IN SUPPORT OF  
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:**

Metropolitan Edison Company (“Met-Ed” or the “Company”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement”) entered into by the Company and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), hereinafter, collectively the “Joint Petitioners,” in the above-captioned proceeding. The Settlement, if approved, will fully resolve all issues related to I&E’s Formal Complaint regarding the events surrounding a 34.5 kilovolt (“kV”) sub-transmission line owned and operated by Met-Ed contacting the ground behind the house located at 250 Royal Manor Road, Easton, Pennsylvania 18042 on July 26, 2016, resulting in a fatal electrocution and property investigation (“July 26 Incident”). Met-Ed respectfully requests that the Honorable Administrative Law Judge Mary D. Long (the “ALJ”) and the Commission approve the Settlement, including the terms and conditions thereof, without modification.

Met-Ed undertook an extensive investigation of the events related to the July 26 Incident and cooperated with and assisted I&E with its investigation of the events surrounding the

incident. As discussed in the Settlement, Met-Ed and I&E held extensive and comprehensive technical discussions that culminated in the Settlement. The Settlement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, promotes public safety, and avoids the time and expense of litigation, which entails hearings, travel for Met-Ed's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. For these reasons and the reasons set forth below, the Settlement is fair, just and reasonable and, therefore, the Settlement should be approved without modification.

**I. INTRODUCTION**

**A. PARTIES**

I&E is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308(b). The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852* (Aug. 11, 2011).

Met-Ed is a "public utility" and a "electric distribution company" ("EDC") as those terms are defined in Sections 102 and 2202 of the Code, 66 Pa.C.S. §§ 102, 2803. Met-Ed provides electric distribution, and supplier of last resort services to approximately 578,000 customers throughout its certificated service territory subject to the regulatory jurisdiction of the Commission.

**B. BACKGROUND**

The background and factual circumstances underlying this matter have been stipulated to by the Joint Petitioners and the Joint Stipulation of Facts is included as Appendix A to the Settlement. Met-Ed incorporates the Joint Stipulation of Facts herein by reference.

## II. COMMISSION POLICY FAVORS SETTLEMENT

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 determine that the proposed terms and conditions 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 (August 31, 2012).

The Commission has promulgated a Policy Statement that sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c). The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases the parties "will be afforded flexibility in

reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

The substantial public benefits of the Settlement, as well as the ten factors that the Commission considers in reviewing a settlement of an alleged violation, are addressed in the section that follows. For the reasons explained below, the Settlement is in the public interest and should be approved.

### **III. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

#### **A. SUMMARY**

The Settlement, once approved, will resolve all issues related to the Formal Complaint of I&E related to the July 26 Incident. *See* Settlement ¶ 43. The Formal Complaint alleges that Met-Ed violated the Public Utility Code, the Commission’s regulations and National Electric Safety Code (“NESC”) standards, with respect to the July 26 Incident and the events leading up to the Incident. Based on these allegations, the Formal Complaint requested the Commission order Met-Ed to pay a civil penalty, and to implement a number of changes, including modifications to its Construction Standards, employee training policies, practices and procedures and field manuals. Had this matter been fully litigated, Met-Ed would have denied each of the alleged violations of the NESC, the Commission’s regulations, or the Code, raised defenses to each of these allegations, and defended against the same at hearing.

Throughout the investigative and Formal Complaint process, Met-Ed cooperated with I&E and the Joint Petitioners engaged in an extensive and comprehensive series of technical discussions surrounding the connection installations and inspections, construction standards and manufacturer’s instructions applicable to hot line clamps used throughout Met-Ed’s service territory. Many of the agreed upon changes have already been initiated by Met-Ed and, as a result of the investigation and ongoing discussions with I&E, Met-Ed located and replaced all

bronze hot line clamps connected directly to aluminum conductors throughout its service territory. *See* Appendix A ¶¶ 31-33.<sup>1</sup> These actions have been taken in the interest of continuous improvement to Met-Ed's safety performance.

Furthermore, Met-Ed has made a considerable economic concession to I&E in the form of a substantial civil penalty. Finally, the terms and conditions of the Settlement align with the ten factors that may be considered under the Commission's Policy Statement. Accordingly, the Settlement should be approved.

## **B. DESCRIPTION OF THE SETTLEMENT**

Among the terms and conditions of the Settlement, Met-Ed has agreed to the following measures to be implemented upon approval of the Settlement:

1. Civil Penalty. Met-Ed will pay a civil penalty in the amount of One Million Dollars (\$1,000,000.00) pursuant to 66 Pa.C.S. § 3301(c). Settlement ¶ 41(a).
2. Hardship Fund. In addition to the civil penalty above, Met-Ed will contribute the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) into its hardship fund from which hardship grants are dispersed on behalf of qualifying customers. Settlement ¶ 41(b).
3. Revisions to Construction Standards. Within six (6) months of the entry date of the Commission's Final Order approving the Settlement, Met-Ed will revise its construction standards for electric facilities below 69 kV to provide for the installation of connectors in accordance with the manufacturer's recommendations and standards. Settlement ¶ 41(c).
4. Training. Within eighteen (18) months of the entry date of the Commission's Final Order approving the Settlement Agreement, Met-Ed will create and implement a curriculum to train its employees in all connection installations and inspections in accordance with its revised, construction standards, as referenced above, and the manufacturer's instructions, to include the importance of removing oxidizing agents that could cause excess corrosion and overheating. Mandatory refresher training will be performed on an annual basis. Met-Ed will include training on proper connection installations (including the importance of removing oxidizing agents that could cause excess corrosion and overheating) to its contractors during the onboarding process. Settlement ¶ 41(d).

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<sup>1</sup> Met-Ed notes that of the 40 sites identified, all bronze hot line clamps were replaced with aluminum clamps, except one clamp was reinstalled with a stirrup. *See* Appendix A ¶ 33.

5. Structured Review of Field Manuals. Within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, Met-Ed will undertake a structured review to ensure its field manuals are in current compliance with the NESC, Occupational Safety and Health Administration (“OSHA”), and manufacturer guidance and for any proposed changes to the construction manuals prior to issuing updates. Updates are tracked and communicated monthly. With each update, a review of compliance with the NESC, OSHA, and manufacturing guidance will be conducted. Changes to construction standards will be reviewed with applicable employees and contractors as standards are revised and/or issued. Settlement ¶ 41(e).
6. Acceptance Inspection Process. Met-Ed will implement an acceptance inspection process for non-storm contractor work related to conductor and connector installations within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement. Settlement ¶ 41(f).
7. Electrical Service and Safety Standards Inspection Process. Met-Ed will implement an electrical service and safety standards inspection process, to include but not be limited to inspection of hot line clamp installations within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement. Settlement ¶ 41(g).
8. Inspection and Replacement Program. Met-Ed will implement a program for the inspection and replacement of hot line clamps across its entire primary system within three (3) years of the entry date of the Commission’s Final Order approving the Settlement Agreement. The program will involve the removal and replacement of any and all hot line clamps installed contrary to manufacturer instructions and all hot line clamps applied directly to conductors under tension without the use of a stirrup that show signs of unsafe or hazardous conditions even where installed consistent with manufacturer instructions. *See* Settlement ¶ 41(h).
9. Review of Emergency Response Procedures. Within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, Met-Ed will conduct a review of its existing procedures to ensure effective and efficient response to 911 dispatches and requests to de-energize. Settlement ¶ 41(i).
10. Contractor Safety Pre-Qualification Program. Within twelve (12) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, Met-Ed will create and implement a contractor safety pre-qualification program incorporating review by safety professionals, which shall include, among other things, the criteria set forth in the Settlement. Settlement ¶ 41(j).

Notably, Met-Ed has already initiated several of the terms included in the Settlement as a part of its continuous improvement efforts.

Importantly, as discussed in Paragraph 48 to the Settlement, the Parties agree that it is their intent that the Settlement not be admitted as evidence in any potential civil proceeding involving this or any other matter. It is further understood that, by entering into the Settlement, Met-Ed has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in the Settlement.

The terms of the Settlement fully resolve all of the issues raised in and relief requested by I&E's Formal Complaint, including the payment of civil penalties. As explained below, Met-Ed believes that approval of the Settlement is in the public interest. Further, acceptance of the Settlement will avoid the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

**C. PUBLIC BENEFITS OF THE SETTLEMENT**

If approved, the Settlement will provide substantial and important benefits to the customers and communities served by Met-Ed, including significant enhancements to Met-Ed's standards, policies, practices and procedures related to the installation, inspection and maintenance of connections. As noted below, these enhancements are designed to decrease the likelihood of incidents similar to the July 26 Incident from occurring in the future.

Furthermore, as outlined in its Answer in this proceeding and the parties' Joint Stipulation of Facts, Met-Ed has already made substantial efforts to locate and replace bronze hot line clamps installed directly upon aluminum connectors throughout its service territory. These efforts began in April 2018, concluded in July 2018, and resulted in the inspection every three-phase and single-phase conductor along approximately 870 circuits miles of its facilities and replacement of all bronze hot line clamps with aluminum clamps. *See* Appendix A ¶ 33.

**D. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT**

## APPENDIX D

Under the Policy Statement, the Commission may consider ten specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty. The alleged conduct in this case involves a conductor ("Phase C"), owned and operated by Met-Ed, which fell into the backyard of the residence of Thomas and Sarah Poynton at 250 Royal Manor Road, Easton, Pennsylvania 18042, which was part of a three-phase circuit Glendon Circuit 3032 comprised of three-phase aluminum conductors steel-reinforced ("Phase A," "Phase B," and "Phase C"). Appendix A ¶¶ 1-3. Individually attached to each Phase A, B, and C was a bronze, hot line clamp marked, "BH4 6 SOL-400 STR.CU" (hereinafter referred to as "Clamp A," "Clamp B," and "Clamp C" or collectively as "clamps"). Appendix ¶ 5. After Phase C fell from its point of attachment with Clamp C to the ground, Glendon Breaker 3032 detected a fault and tripped, breaking the electric current to Phase C, but then auto-reclosed, restoring the flow of electricity to Phase C. Appendix A ¶¶ 22-23. These events resulted in the fatal electrocution of one customer and fire damage to the customer's residence. *See* Appendix A ¶¶ 22-25. Electric safety is a paramount concern of the Company, and Met-Ed continually strives to provide safe electric service to its customers. The terms and conditions of the Settlement adequately take the alleged conduct into account, as well as Met-Ed's response under the circumstances.

The second factor considers the seriousness of the consequences of the incident at issue. Met-Ed believes that it promptly responded to the incident and, thereafter, took actions to locate and replace bronze hot line clamps connected directly to an aluminum conductor in an effort to decrease the likelihood of similar events in the future. Unfortunately, those actions did not avoid

the serious consequences of the incident. The terms and conditions of the Settlement recognize the seriousness of the incident and are designed to enhance Met-Ed's system safety and service reliability and to minimize the likelihood that a similar incident occur in the future.

The third factor to be considered in this case, namely, whether Met-Ed's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, there has been no finding that Met-Ed's conduct was either intentional or negligent in nature as is typical in a matter that is being fully resolved through a negotiated settlement.

The fourth factor to be considered is whether Met-Ed made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. Met-Ed undertook an extensive investigation of the events related to the July 26 Incident and cooperated with and assisted I&E in its investigation of the incident. In addition, after the incident, Met-Ed immediately replaced Clamps A, B and C with aluminum connectors while Phases A, B, and C were still de-energized and Met-Ed inspected every three-phase and single-phase conductor along approximately 870 circuits miles of its facilities and identified 40 sites that contained bronze hot line clamps that were connected directly to an aluminum conductor. Met-Ed replaced all of the bronze hot line clamps with aluminum clamps, except for one (1) clamp, which was reinstalled with a stirrup. *See* Appendix A ¶¶ 31-33. Finally, as outlined above, Met-Ed will adopt numerous changes to its policies and practices to further enhance the safety and reliability of its service. The terms and conditions of the Settlement properly acknowledge Met-Ed's efforts to modify and adopt internal policies and procedures to address the alleged issues.

## APPENDIX D

The fifth factor to be considered deals with the number of customers affected and the duration of the violation. In this case, a system outage and electrocution occurred. The electrocution resulted in the fatal electrocution of one customer and fire damage to the customer's residence. Others in the community experienced a service interruption as a result of the incident. As explained above, Met-Ed believes that it promptly responded to the incident and took actions to interrupt the flow of electricity to the downed line. The terms and conditions of the Settlement adequately consider the serious nature of the incident, the number of customers affected, as well as Met-Ed's response under the circumstances.

The sixth factor considered is the compliance history of Met-Ed. After the incident, Met-Ed investigated, located and replaced bronze hot line clamps connected directly to an aluminum conductor in an effort to decrease the likelihood of similar events in the future. The Settlement also contains further commitments to revise and enhance a number of the Company's standards, policies, practices and programs related to the installation, inspection and maintenance of hot line clamps. *See* Settlement ¶¶ 41(a)-(j). These enhancements to Met-Ed's existing standards, policies, practices and programs will benefit its customers in the future. As such, the Settlement further evidences Met-Ed's good faith efforts to enhance the safety and reliability of its electrical system, consistent with the purposes of the Code and the Commission's regulations.

The seventh factor considered is whether the regulated entity cooperated with the Commission's investigation. Met-Ed supported and cooperated with the Commission and its staff throughout its investigation, as well as the Commission complaint and settlement process. In addition, Met-Ed took several steps to locate and replace all bronze hot line clamps with aluminum clamps on every three-phase and single-phase conductor along approximately 870 circuits miles of its facilities. *See* Appendix A ¶¶ 31-33. Met-Ed also demonstrated a

commitment consistent with the Commission's public safety goals and objectives by initiating many of the changes set forth in the settlement prior to the filing of the Settlement.

The eighth factor is whether the amount of the civil penalty or fine will deter future violations. Met-Ed submit that a civil penalty in the amount of \$1.0 million, even apart from the additional amount offered as a contribution to its hardship fund, is quite substantial and has significant deterrent weight. The civil penalty set forth in the Settlement appropriately recognizes the seriousness of the matter but also reflects a negotiated compromise by the parties that considers the efforts of the Company since the July 26 Incident occurred.

The ninth factor examines past Commission decisions in similar situations. When all relevant factors are evaluated, the Settlement is not inconsistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

Relative to the tenth factor, Met-Ed submits that additional relevant factors are critically important to the Settlement. First, a settlement avoids the necessity for the prosecuting 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 negotiated from their initial litigation positions. The fines, penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions. Met-Ed has demonstrated a commitment consistent with the Commission's public safety goals and objectives and broadly expanded the scope of the general public that will benefit from the commitments made in this Settlement.

Based on the foregoing, the Settlement should be considered fair, equitable and reasonable under the Commission's Policy Statement.

#### IV. CONCLUSION

WHEREFORE, Metropolitan Edison Company submits that this Settlement is the result of the parties' cooperative efforts, and constitutes a fair, equitable, and reasonable resolution of this proceeding. The Settlement resolves all issues related to the I&E complaint and satisfies the ten factors set forth in the Pennsylvania Public Utility Commission's Policy Statement, 52 Pa. Code § 69.1201(c). Metropolitan Edison Company supports the Settlement and respectfully requests that the Honorable Administrative Law Judge Mary D. Long and the Pennsylvania Public Utility Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,



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Date: October 23, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3011675
	:	
Metropolitan Edison 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 Electronic Mail:**

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Dated: October 23, 2020