

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	C-2019-3011675
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A conductor fell onto the property of Thomas Poynton, ultimately resulting in his death. The Bureau of Investigation and Enforcement filed a Formal Complaint against Metropolitan Edison Company seeking over \$4 million in civil penalties and corrective measures. This decision approves the settlement of the Complaint for alleged violations of electric safety. The settlement includes the payment of a \$1 million civil penalty, remediation measures valued at \$16 million and a \$150,000 contribution to the company’s hardship fund. The settlement, taken as a whole, is in the public interest and is supported by substantial evidence.

HISTORY OF THE PROCEEDINGS

On July 22, 2019, the Bureau of Investigation and Enforcement (BIE) of the Pennsylvania Public Utility Commission (Commission) filed a Formal Complaint against Metropolitan-Edison Company (Met-Ed), alleging that Met-Ed violated certain provisions of the

Public Utility Code, regulations, and National Electric Safety Code (NESC) related to the company's installation and/or maintenance of certain facilities. BIE alleged that Met-Ed's failure to properly maintain its facilities caused a conductor to fall to the ground resulting in a fatal electrocution of Thomas Poynton and property damage on July 26, 2016, in Easton, Pennsylvania. As relief, BIE sought civil penalties in the amount of \$4,533,000 and numerous corrective measures.

Met-Ed filed an Answer and New Matter along with Preliminary Objections on October 31, 2019.¹ Met-Ed denied the material allegations of the Complaint and raised affirmative defenses in its New Matter. BIE filed a response to the Preliminary Objections and a Reply to the New Matter on November 20, 2019.²

By notice dated January 9, 2020, this matter was assigned to me and scheduled for a prehearing conference on March 3, 2020. An Interim Order dismissing the Preliminary Objections was issued on January 16, 2020.

By letter dated February 26, 2020, Met-Ed requested a 60-day continuance of the March 3, 2020 prehearing conference. A further continuance was jointly requested by the parties on April 27, 2020. By notice dated April 27, 2020, the prehearing conference was rescheduled for June 10, 2020. Both parties timely filed prehearing memoranda.

A prehearing conference convened as scheduled on June 10, 2020. Attorneys Kourtney Myers and Kayla Rost appeared on behalf of BIE. Attorneys Tori Giesler and Garrett Lent appeared on behalf of Met-Ed. The parties reported that although settlement discussions were ongoing, they were unable to agree on a litigation schedule. The parties were directed to provide a Status Report and proposed litigation schedule on or before July 3, 2020.

¹ By Secretarial Letter dated August 16, 2019, Met-Ed was granted an extension of time to file its answer.

² By Secretarial Letter dated November 12, 2019, BIE was granted an extension of time to file its response.

The parties ultimately agreed to a litigation schedule which provided for the filing of written testimony and evidentiary hearings to be held December 15-17, 2020. The proposed schedule was approved by Interim Order dated July 7, 2020.

By email dated September 14, 2020, the parties notified me that they had reached an agreement in principle and requested the suspension of the litigation schedule and the cancellation of the December hearings. By Interim Order dated September 16, 2020, the litigation schedule was suspended.

On October 23, 2020, the parties filed a Joint Petition for Approval of Settlement. The Joint Petition included statements in support of the settlement,³ as well as a stipulation of facts⁴ and proposed ordering paragraphs.⁵

STIPULATED FACTS

The parties agreed to the following facts in support of the settlement:

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 Joint Petition, Appendices C and D.

⁴ Joint Petition Appendix A.

⁵ Joint Petition Appendix B.

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.

SETTLEMENT TERMS

The Joint Petitioners agreed to the following specific settlement terms:⁶

41. BIE 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

⁶ The paragraph numbering of the Joint Petition for Settlement has been retained.

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, BIE’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, BIE 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.

The settlement also includes conditions which permit either party to withdraw from the settlement if it is not approved without modification. If approved without modification, the Joint Petitioners agree to waive the exceptions period. 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. The Joint Petitioners also agree that this settlement is not intended to be used by any other person or entity as a concession or admission of fact or law.

LEGAL STANDARDS

BIE is authorized by the Public Utility Code to, among other things, prosecute complaints against public utilities within the Commission’s jurisdiction.⁷ Section 2804 of the Public Utility Code directs the Commission to “ensure continuation of safe and reliable electric service to all consumers in the Commonwealth”⁸ Regulations have been promulgated by the Commission to implement the requirement to provide safe and adequate service.⁹

⁷ 66 Pa.C.S. § 308.1(a)(11).

⁸ 66 Pa.C.S. § 2804.

⁹ *E.g.*, 52 Pa.Code §§ 57.193-.57.194.

Section 1501 of the Public Utility Code,¹⁰ places a duty upon a public utility to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and directs the utility to make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe, or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.¹¹

When it is determined that the Public Utility Code, regulation, or order of the Commission occurs, Section 3301 of the Public Utility Code provides that the Commission may direct that utility to forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation.¹²

The Commission encourages parties in contested on-the-record proceedings to settle cases.¹³ Settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission

¹⁰ 66 Pa.C.S. §1501.

¹¹ 66 Pa.C.S. § 1505.

¹² 66 Pa.C.S. § 3301.

¹³ *See* 52 Pa.Code § 5.231.

consideration is whether the agreement reached suits the public interest.¹⁴ In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

As explained in more detail below, BIE and Met-Ed have agreed to settlement terms which, according to the Joint Petitioners, resolve many of the issues raised in its Complaint. The settlement will be approved without modification.

DISCUSSION

The foundational allegation of BIE's Complaint is 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. In addition to alleging violations of Section 1501 of the Code, BIE's Complaint alleged that Met-Ed failed to maintain its transmission facilities in conformance with Sections 121(A), 171, and 420(B)(1) of the NESC, in violation of Section 57.193(a) of the Commission's regulations.¹⁵

BIE'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,

¹⁴ *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa. PUC 1 (1985).

¹⁵ 52 Pa.Code § 57.193(a). Upon further review, BIE 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. BIE was prepared to move to conform its Complaint to the evidence, which BIE 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.

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.

BIE and Met-Ed 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. In settlement, the Joint Petitioners agreed to operational and training changes as well as a civil penalty in the amount of \$1 million and contribution to Met-Ed's Hardship Fund. Both parties assert that this settlement is reasonable and in the public interest.

The Commission has set forth a framework to determine whether a settlement in an enforcement matter is in the public interest at 52 Pa.Code § 69.1201. This framework includes a list of ten factors and standards that will be considered:

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

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

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

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors^[16]

When applied to settled cases, the policy directs a more liberal approach to applying these factors in order to afford the parties to a settlement flexibility in reaching an agreement. This approach supports the Commission's policy of encouraging settlements.¹⁷ This flexibility also offers an incentive to parties to fully participate in settlement discussions in order to reach an accord. In their statements in support of the settlement, both BIE and Met-Ed addressed each of these factors.

Whether the conduct at issue was of a serious nature

BIE and Met-Ed agree that the events which resulted in the fatal electrocution of one customer and fire damage to the customer's residence is serious. A conductor (Phase C), owned and operated by Met-Ed, which fell into the backyard of the residence of Thomas and Sarah Poynton was part of a three-phase circuit Glendon Circuit 3032 comprised of three-phase

¹⁶ 52 Pa.Code § 69.1201(c).

¹⁷ 52 Pa.Code § 69.1201(b).

aluminum conductors steel-reinforced (Phase A, Phase B, and Phase C). Individually attached to each Phase A, B, and C was a bronze, hot line clamp marked, BH4 6 SOL-400 STR.CU (Clamp A, Clamp B, and Clamp C). 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. These events resulted in the fatal electrocution of Thomas Poynton and fire damage to his residence.

BIE 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, BIE submits that a higher civil penalty is warranted in this case.

Both BIE and Met-Ed argue that the settlement is in the public interest because the agreement provides for costly and extensive corrective measures by Met-Ed as well as the payment of a substantial civil penalty and monetary contribution to Met-Ed's hardship fund.

Whether the resulting consequences of the conduct at issue were of a serious nature

As the July 2016 incident resulted in both a fatality and significant property damage, both BIE and Met-Ed agree that the consequences are serious. BIE asserts that 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.

According to BIE and Met-Ed, 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.

Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future

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. According to the Joint Petitioners, 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 avers 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 replaced each bronze hot line clamp with an aluminum clamp, except for one clamp which was reinstalled with a stirrup.

Additionally, the Joint Petitioners point to a comprehensive list of the remedial actions that Met-Ed has agreed to undertake is outlined in the Settlement Agreement at Paragraph 41. 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.

Also, 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.

According to the Joint Petitioners, 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 number of customers affected and the duration of the violation

In addressing the number of customers affected, Met-Ed observes in its statement in support of the settlement, that the July 2016 incident caused a system outage and fatal electrocution. The electrocution resulted in the death 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.

According to BIE, the duration of the violation includes more than just the period of the outage. BIE explains that Met-Ed does not have record of the installation date of the clamps that failed, but records of maintenance work related to the equipment and facilities involved in the incident that date back to 1998, BIE 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, BIE 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 terms and conditions of the Settlement adequately consider the serious nature of the incident and the number of customers affected.

The compliance history of the regulated entity

BIE and Met-Ed agree that Met-Ed is a compliant utility. BIE states that it 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. Met-Ed contends that customer safety is a paramount concern and that the enhancements to Met-Ed's existing standards, policies, practices and programs will benefit its customers in the future. Met-Ed states that the inclusion of these enhancements in 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.

Whether the regulated entity cooperated with the Commission's investigation

The Joint Petitioners characterize Met-Ed's cooperation with the Commission's investigation differently. According to BIE, Met-Ed was not initially 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.

According to BIE, BIE made repeated requests for information regarding the installation date of the clamps, but Met-Ed did not provide BIE 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" which 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 BIE sought during the course of its investigation and that Met-Ed claimed not to possess. Although BIE would not characterize Met-Ed's conduct during BIE's investigation and the complaint process as cooperative, according to BIE, Met-Ed has cooperated throughout the settlement process.

In contrast, Met-Ed takes the position that it 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. Met-Ed also argues that it 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 amount of the civil penalty or fine necessary to deter future violations

BIE 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 along with a \$150,000.00 contribution to Met-Ed's hardship fund is an appropriate penalty payment in this case.

BIE 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. According to BIE, the remedial and corrective measures that Met-Ed has agreed to are collectively estimated to cost in excess of \$16 million.

Met-Ed agrees that the \$1,000,000.00 civil penalty is substantial by itself. Like BIE, Met-Ed also points out that the other terms of the settlement, which include substantial remediation and a hardship fund contribution, carry further deterrent weight.

Past Commission decisions in similar situations

In its statement in support, BIE compared the present proceeding with the matter of *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. West Penn Power Company (West Penn)*.¹⁸ In *West Penn*, similar to the July 2016 incident here, a live conductor

¹⁸ Docket No. C-2012-2307244 (Order entered January 9, 2014).

fell into the yard of a homeowner, who came into contact with the live conductor, was electrocuted, and ultimately died. The Commission approved a settlement agreement that imposed a civil penalty of \$86,000.00 upon West Penn Power Company, a sister company of Met-Ed, in connection with an overhead conductor that came down at its point of connection with an automatic splice. As part of the settlement, West Penn agreed to the performance of remedial measures equating to approximately \$2.5 million.

BIE distinguishes *West Penn* from the complaint filed here. In the *West Penn* case, BIE 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, BIE 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 BIE sought a civil penalty of \$80,000 for such violation. According to BIE, 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, BIE submits that the instant Settlement Agreement should be viewed on its own merits and is fair and reasonable.

While not addressing *West Penn* in its statement in support, Met-Ed submits, 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.

Other relevant factors

BIE and Met-Ed agree that the complexity of this matter is of pivotal importance and should be considered as a relevant factor in evaluating the public interest. The Joint Petitioners point out that a settlement avoids the necessity for the governmental agency to prove the 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 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.

Conclusion

The Joint Petition for Settlement includes settlement terms sufficient to meet the public interest. Although Met-Ed does not admit that any specific violation occurred, the settlement, taken as a whole, appreciates the serious nature of the equipment failure which resulted in the death of Thomas Poynton in his own backyard. The settlement provides for a substantial civil penalty that will neither be borne by ratepayers nor used as a tax benefit by Met-Ed. This penalty is not merely “a cost of doing business” but represents a serious consequence to Met-Ed’s investors for failing to ensure that equipment is installed as required by industry standards and Commission regulation. The settlement further provides for substantial remediation of materials, programs and policies which will go toward preventing any future material malfunctions. These important commitments to service improvement benefit Met-Ed’s customers in an even more direct way than the civil penalty. Further, the settlement provides for Commission oversight of Met-Ed’s practice and policy improvements, which will ensure that Met-Ed continues to follow through with the commitments made in the settlement.

There is also no doubt that litigation of the violations alleged by BIE would have encumbered significant Commission and utility resources – resources that are better devoted to the fulfillment of the settlement terms agreed to by the Joint Petitioners. Accordingly, I find the settlement is in the public interest and is approved without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this dispute. 66 Pa.C.S. §§ 502, 701.

2. The Commission encourages parties in contested on-the-record proceedings to settle cases. 52 Pa.Code § 5.231.

3. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa. PUC 1 (1985); 52 Pa.Code § 69.1201.

4. The settlement reached by the Joint Petitioners is in the public interest. 52 Pa.Code § 69.1201.

ORDER

THEREFORE,

IT IS ORDERED:

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). This 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 decision 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.

Date: November 24, 2020

_____/s/
Mary D. Long
Administrative Law Judge