



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 12, 2021

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.
PECO Energy Company
Docket No. M-2021-3014286
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 – Proposed Ordering Paragraphs; (2) Appendix B - the Bureau of Investigation and Enforcement’s Statement in Support; and (3) Appendix C - the Statement in Support of PECO Energy 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,

Christopher M. Andreoli
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 85676
chandreoli@pa.gov

CMA/jfm
Enclosures

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email only*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3014286
	:	
PECO Energy Company,	:	
Respondent	:	

SETTLEMENT AGREEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and PECO Energy Company (“PECO” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based on information provided by the Commission’s Bureau of Consumer Services (“BCS”).

As part of this Settlement Agreement, I&E and PECO (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and PECO are attached hereto as Appendix B and Appendix C, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement (“Settlement” or “Settlement Agreement”) are the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120 and PECO Energy Company (“PECO” or “Company”), with a principal place of business at 2301 Market Street, Philadelphia, PA 19103.

2. The 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 the Public Utility Code (the “Code”), 66 Pa.C.S. §§ 101, *et seq.*

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

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

Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11). *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 5 (transferring authority to prosecute assessment cases to I&E).

5. PECO is a certificated electric distribution company as defined by 66 Pa.C.S. § 2803. PECO is engaged in the transmission and distribution of electricity in territories as authorized by its authority within the Commonwealth of Pennsylvania.¹

¹ PECO was certificated by the Commission as an electric distribution company on May 28, 1937.

6. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over PECO's actions as an electric distribution company that serves customers in Pennsylvania.

7. 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).

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

9. I&E instituted an informal investigation of PECO based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS"). BCS notified I&E that due to a change to the dialer platform used by PECO's third-party vendor, the Company terminated service for a large number of customers 1) without completing the second 72-hour phone call to the customer or adult occupant at least three days prior to the scheduled termination, or 2) on a day different from the one listed in the 72-hour call, which are violations of the Pennsylvania Public Utility Code pursuant to 66 Pa.C.S.A. § 1503(b) and 52 Pa. Code § 56.333(a) and (b). I&E determined that these allegations warranted that a further investigation be conducted to examine whether the actions of PECO violated Commission regulations.

10. As a result of negotiations between I&E and PECO, the Parties have agreed to resolve their differences as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and PECO are attached hereto as Appendix B and Appendix C, respectively.

II. BACKGROUND

11. On August 16, 2018, PECO's Manager of Regulatory Performance contacted the Commission's Bureau of Consumer Services ("BCS") about an issue PECO discovered with its call center third-party vendor.

12. On June 25, 2018, PECO's call center third-party vendor made a dialer platform change. This dialer platform change resulted in two separate errors.

13. First, according to PECO, the change incorrectly recorded the second three-day notice telephone attempt as successful when it was not. Therefore, PECO did not complete the second three-day telephone attempt to contact the customer.

14. The first issue was discovered on August 9, 2018, at which time PECO suspended terminations. This first issue was fully resolved by August 20, 2018.

15. PECO alleges that its third-party vendor completed extensive testing on the new dialer software in May 2018. However, there was an unidentified coding requirement that was missed during testing specific to calls categorized as "not made." A subsequent change in the call-pacing was made in an attempt to address service level concerns. As a

result, the second call attempts were “not made” within the calling window. Since there was no code assigned in the new dialer platform for calls that were “not made,” the calls were deemed “successful” by default. Consequently, certain residential customer accounts were passed over, yet still reported as “successful” calls. In sum, these changes caused PECO to incorrectly record the 72-hour calls as “successful” when PECO did not complete the second three-day telephone attempt.

16. Second, according to PECO, the dialer platform change also caused the 72-hour call to incorrectly list the customer’s current bill due date as the termination date. Therefore, PECO did not provide the correct termination date during the 72-hour call.

17. The second error was not detected until September 10, 2019, when the Company was investigating an informal complaint filed by a customer on September 5, 2019. On September 10, 2019, PECO suspended service terminations. This second issue was resolved by September 12, 2019.

18. As a result of the two errors caused by the dialer platform change, between June 25, 2018 and September 10, 2019, approximately 49,500 customers had service improperly terminated.

19. As a result of the actions above, PECO may have violated provisions of Chapter 56 of Title 52 of the Commission's regulations regarding termination of service.

20. Section 56.333 prohibits electric distribution utilities from terminating electric service for customers without first attempting to contact the customer or responsible adult occupant, either in person or by telephone, at least three days prior to the scheduled termination. *See* 52 Pa. Code § 56.333. If contact is attempted by telephone, the utility must attempt to call the residence on at least two (2) separate days. *See* 52 Pa. Code § 56.333.

21. With respect to the content of the 72-hour calls, Section 56.333 also provides that the three-day personal contact must include the earliest date at which the termination may occur. *See* 52 Pa. Code § 56.333.

22. Due to a software/platform error, the customers in question had their service terminated 1) without receiving all required 72-hour phone calls or 2) on a day different from the one listed in the 72-hour call , both in violation of 52 Pa Code § 56.333.

23. PECO reported that a vast majority of the impacted customers have since been reconnected. PECO noted that historically, 95% of restorations occur within three days of the termination. However, over 1,500 of these customers remained without service and have an “Off” meter status.

24. PECO advised that the approximately 1,500 remaining customers/premises were surveyed at least 3 times as part of the Winter Survey process. According to PECO, the Winter Survey reason codes for these customers/premises are as follows:

- Vacant – 30%
- Unauthorized Usage – 32%
- Appears Occupied – 34% (“Appears occupied” typically denotes that there may have been personal items visible through a window or that there was no buildup of mail/trash; however, there were no individuals present at the property at the time of the survey)
- Confirmed Occupied – 4%

25. I&E acknowledges that PECO took corrective actions after the 72-hour issues were discovered and that both issues were self-reported by PECO. Specifically, PECO took the following additional steps to reach impacted customers:

- Manual calls were made to the phone number listed for the premises;
- A restoration hotline was established to respond to inbound requests for restoration;

- Two field visits were made to each premises;
- Outbound Dialer calls: two telephone calls were made on two different days (one in the AM and one in the PM);
- A one-time letter was mailed offering an additional Deferred Payment Agreement (“DPA”), if needed;
- Field visits for visual inspection of the premises during which a customer financial assistance packet (that included information about Universal Services Programs) was left;
- An additional DPA was offered to customers whose service was terminated on or before September 10, 2019, the last day the incorrect information was provided, and whose past due balance was between \$350.00 and \$3,000.00; and
- Additionally, PECO extensively promoted its “no payment required” COVID reconnect. All premises with an “off” meter status thus received an additional, well-publicized opportunity to reconnect service without payment.

26. Additionally, PECO terminated its relationship with the third-party vendor in question that handled the 72-hour notification platform/calls. PECO notified I&E that it transitioned its 72-hour notification platform/calls from its third-party vendor to Agent511 on December 10, 2020. PECO notes that it has worked with Agent511 since 2016 to support a large portion of customer outreach programs, such as paperless billing, severe weather alerts, payment reminders, commercial energy usage, outage notifications/updates, TCPA compliance, and customer appointment reminder/updates. PECO adds that Agent511’s 72-hour notification call work will have oversight from several departments within PECO, including Revenue Management and eChannels.

III. ALLEGED VIOLATIONS

27. I&E concluded from its investigation that PECO through its third-party vendor acting on behalf of PECO, violated provisions of the Pennsylvania Public Utility Code concerning the termination of service to customers by an electric distribution company,

pursuant to 66 Pa.C.S.A. § 1503(b) and 52 Pa. Code § 56.333(a) – (c), with regard to terminating service without first attempting personal contact with the customer or adult occupant at least three days prior to the scheduled termination date or on a day different from the one listed in the 72-hour call.

28. The term “personal contact” means, “Contacting the customer or responsible adult occupant in person or by telephone. Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.” *See*, 52 Pa. Code § 56.333(b)(1).

29. Based on information obtained through its investigation, as described above, and a review of the Commission’s regulations and relevant statutes, I&E was prepared to contend by the filing of a formal complaint that PECO violated certain provisions of the Pennsylvania Public Utility Code in that:

- A. PECO through its third-party vendor failed to comply with 66 Pa.C.S.A. § 1503(b) and 52 Pa. Code § 56.333(a) – (c), in that PECO through its third-party vendor illegally terminated service to the accounts due to the vendor’s dialer platform error. Specifically:
 - i. The 72-hour call attempts were incorrectly recorded as “successful” when PECO did not complete the second three-day telephone attempt. Consequently, these accounts were terminated without the company complying with provision that

it must attempt personal contact with the customer or adult occupant at least three days prior to the scheduled termination date. 52 Pa. Code § 56.333(a) – (b); and

- ii. The 72-hour call attempts incorrectly listed the customer's current bill due date as the termination date. Therefore, PECO did not provide the correct termination date during the 72-hour call. 52 Pa. Code § 56.333(c).

- B. If proven, these would be violations of 66 Pa.C.S.A. § 1503(b) and 52 Pa. Code § 56.333(a) – (c).

30. PECO understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges its errors accordingly, and has put into effect appropriate measures that have been approved by I&E to ensure that such oversight is not likely to reoccur.

31. As a mitigating factor to the above allegations, I&E acknowledges that PECO fully cooperated with I&E's investigation. During the investigatory process, PECO complied with I&E's requests for information and documentation and provided I&E with records, correspondences, and other documents as requested by I&E.

32. Throughout the entire investigatory process, I&E and PECO remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in this Settlement Agreement.

IV. SETTLEMENT TERMS

33. The purpose of this Settlement Agreement is to terminate I&E's informal investigation and settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident.

34. PECO does not dispute I&E's allegations above and fully acknowledges the seriousness of those allegations.

35. The Parties do not believe that there are any other potentially affected parties with respect to the subject of this Settlement Agreement who should directly receive notice hereof.

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

- A. PECO will pay a civil penalty amount of Fifty Thousand Dollars (\$50,000.00) to resolve all allegations of illegal termination of electrical service to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations arising from, or related to, the termination of the accounts at issue. No portion of this civil penalty payment shall be recovered from Pennsylvania consumers by any future proceeding, device, or manner whatsoever. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and

shall be made by certified check or money order made payable to the
“Commonwealth of Pennsylvania” and sent to:

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

- B. PECO will also make a contribution of Twenty-Five Thousand Dollars (\$25,000) to its Matching Energy Assistance Fund (“MEAF”) in 2021. Specifically, in 2021 PECO will donate \$5,000 to each of its five major MEAF agencies to fund additional MEAF grants: Bucks County – Bucks County Opportunity Council, Inc.; Chester County – Human Services, Inc.; Delaware County – Community Action Agency of Delaware County, Inc.; Montgomery County – Community Action Development Commission; and Philadelphia County – Utility Emergency Services Fund. PECO’s MEAF assists approximately 750 to 1,000 customers annually who have been terminated or are in danger of termination. While not precedent setting, due to the unique circumstances presented in 2020, the contribution to PECO’s MEAF will provide much needed assistance given the impact of 2020 on its customers.
- C. PECO will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future termination issues as outlined above. The pertinent portions of PECO’s corrective actions are briefly described as follows:

PECO implemented a change to fix the dialer system glitch, which has been validated through testing and confirmation in the results file. The primary change implemented was to add a new dialer code for calls not made. If this code is returned in the results file, the attempt is coded as “unsuccessful.” PECO also corrected the error resulting in an incorrect termination date being listed in the 72-hour calls.

D. For the next two years (from January 1, 2021 through December 31, 2022), PECO will summarize and report the results of its regulatory noticing audits as part of its quarterly meeting with BCS:²

- The noticing audits track transactions between CIMS, vendors, and customers to ensure notices are being processed and delivered correctly;
- The notices that will be audited are: Disconnect Notice; 72-hour (first call); 72-hour (second call)/48 Hour (field notice); and Cut Out for Non-Pay (post termination notice);
- The data points reviewed for accuracy will be as follows: account balances; termination dates; and dates and times of each contact;
- With respect to frequency of audits: detailed transactions will be audited on a monthly basis at the notice level and daily monitoring will include recording transactions through each hand off to ensure the process is working as designed; and
- PECO will confirm with both I&E and BCS when the change to its new third-party vendor (Agent511) has been completed.³

37. In exchange for the actions taken by PECO, as described above, I&E agrees not to institute any formal complaint relating to the illegal electric service terminations that are the subject of this Settlement Agreement.

² PECO will begin this reporting at the BCS quarterly meeting following the filing of this Settlement Petition.

³ The changeover to Agent511 was completed on December 10, 2020.

38. In consideration of the Company's payment of a monetary civil penalty, its contribution to MEAF agencies, and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees to forgo the institution of any formal complaint that relates to the Company's conduct as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.

39. I&E and PECO jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 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 of the termination procedure violations that are the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and PECO, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

40. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law, without regard to its conflicts of laws provisions.

41. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Settlement Petition without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement 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 all parties within twenty (20) business days after entry of an Order modifying the Settlement.

42. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure 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, PECO 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 that may arise as a result of the circumstances described in this Settlement Agreement.

43. 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.

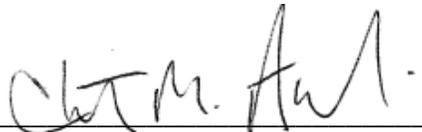
44. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable.

This Settlement Agreement 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 future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement Agreement does not preclude the parties from taking other positions in any other proceeding.

45. 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 PECO Energy Company respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

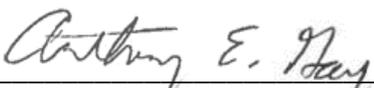
By: 

Christopher M. Andreoli
Prosecutor
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Date: February 12, 2021

Respectfully Submitted,

PECO Energy Company

By: 

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Date: February 12, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 : Docket No. M-2021-3014286
 v. :
 :
 PECO Energy Company :

PROPOSED ORDERING PARAGRAPHS

1. That the Settlement Agreement filed on February 12, 2021, between the Commission’s Bureau of Investigation and Enforcement and PECO Energy Company (“PECO”) is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of the date this Order becomes final, PECO shall pay fifty thousand dollars (\$50,000.00), which consists of the entirety of the civil penalty settlement amount. 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
400 North Street
Harrisburg, PA 17120

3. Additionally, PECO will make a contribution of twenty-five thousand dollars (\$25,000.00) to its Matching Energy Assistance Fund (“MEAF”) in 2021. Specifically, PECO will donate \$5,000 to each of its five major MEAF agencies to fund

additional MEAF grants: Bucks County – Bucks County Opportunity Council, Inc.; Chester County – Human Services, Inc.; Delaware County – Community Action Agency of Delaware County, Inc.; Montgomery County – Community Action Development Commission; and Philadelphia County – Utility Emergency Services Fund. PECO will provide I&E with proof of payment of this contribution to its MEAF within thirty (30) days of the date of the Commission’s final order approving the Settlement Agreement.

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

5. Following compliance with above Ordering Paragraphs 2 and 3, this matter shall be marked closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 : Docket No. M-2021-3014286
 v. :
 :
 PECO Energy Company :

**STATEMENT IN SUPPORT OF
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Statement in Support of the Settlement Agreement (“Settlement”) entered into by I&E and PECO Energy Company (“PECO” or “Company”) (collectively, the “Parties”) in the above-captioned proceeding. The Settlement, if approved, fully resolves all issues related to I&E’s informal investigation into PECO’s issue pertaining to service terminations.

I&E submits that the Settlement, which was amicably reached by the Parties after extensive negotiations and careful consideration, balances the duty of the Commission to protect the public interest, including the Company’s customers and all electric consumers in Pennsylvania, with the interests of the Company. Accordingly, I&E respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

This matter involves PECO, an electric distribution company licensed by the Commission. PECO is engaged in the transmission and distribution of electricity in territories within the Commonwealth of Pennsylvania, as authorized by its license.

I&E instituted an informal investigation of PECO based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS"). BCS notified I&E that PECO terminated service for a large number of customers without first attempting to contact the customer or adult occupant at least three days prior to the scheduled termination, which is a violation of the Pennsylvania Public Utility Code pursuant to 66 Pa.C.S.A. § 1503(b) and 52 Pa. Code § 56.333(a) and (b). I&E determined that these allegations warranted that a further investigation be conducted to examine whether the actions of PECO violated Commission regulations.

Upon investigation, I&E determined that PECO's failure to follow proper protocol under the Pennsylvania Public Utility Code prior to terminating service for nearly 50,000 customers constitutes conduct of a serious nature and the consequences of this conduct is of a fairly serious nature. These service terminations can prove both traumatic and problematic for the affected customers. It should be noted that there is no evidence or documentation indicating that these violations were intentional; rather, these violations were caused by software issues, as PECO's call center third-party vendor made a dialer platform change.

In making the determination that the instant Settlement was appropriate, I&E weighed this violation against various mitigating circumstances that are present here. Importantly, I&E acknowledges that PECO fully cooperated with I&E's investigation. PECO timely responded to I&E's requests for information. Moreover, throughout the entire investigatory

process, I&E and PECO remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

III. THE PUBLIC INTEREST

The Commission has consistently determined that a civil penalty is warranted where the public utility company failed to provide reasonable and adequate customer service.

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 investigation into PECO's violation, the civil penalty component of the Settlement serves to address I&E's allegations of billing violations.

I&E intended to prove the factual allegations set forth in its investigation at hearing. This Settlement Agreement results from the compromises of the Parties. PECO recognizes the concerns related to this violation and commits to fully complying with the Commission's regulations in the future.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

IV. TERMS OF SETTLEMENT

I&E alleges that in connection with this incident, PECO committed a violation of the Commission's regulations. While the alleged violation was not intentional, I&E submits that PECO remains legally responsible for the alleged violation in this matter.

Based on I&E's allegations, I&E requests that the Commission approve the terms of the Settlement, which include directing PECO to pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00) and make a contribution of twenty-five thousand dollars (\$25,000.00) to its Matching Energy Assistance Fund ("MEAF").

Under the specific terms of the Settlement, I&E and PECO have agreed as follows:

- (a) PECO will pay a civil penalty amount of fifty thousand dollars (\$50,000.00) to resolve all allegations regarding the illegal service terminations and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations arising from, or related to, the alleged violations investigated herein. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to:

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

- (b) PECO will make a contribution of twenty-five thousand dollars (\$25,000.00) to its Matching Energy Assistance Fund ("MEAF"). PECO will provide I&E will proof of payment of this contribution to its MEAF within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement. Specifically, PECO will donate \$5,000 to each of its five major MEAF agencies: Bucks County – Bucks County Opportunity Council, Inc.; Chester County – Human Services, Inc.; Delaware County – Community Action Agency of Delaware County, Inc.; Montgomery County – Community Action Development Commission; and Philadelphia County – Utility Emergency Services Fund. PECO's MEAF assists approximately 750 to 1,000 customers

annually who have been terminated or are in danger of termination. While not precedent setting, due to the unique circumstances presented in 2020, the contribution to PECO's MEAF will provide much needed assistance given the impact of 2020 on its customers.

- (c) PECO has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future issues involving service terminations. Specifically, PECO took the following additional steps to reach impacted customers after the issue was discovered:
- Manual calls were made to the phone number listed for the premises;
 - A restoration hotline was established to respond to inbound requests for restoration;
 - Two field visits were made to each premises;
 - Outbound Dialer calls: two telephone calls were made on two different days (one in the AM and one in the PM);
 - A one-time letter was mailed offering an additional Deferred Payment Agreement ("DPA"), if needed; and
 - Field visits for visual inspection of the premises during which a customer financial assistance packet (that included information about Universal Services Programs) was left.
 - An additional DPA was offered to customers whose service was terminated on or before September 10, 2019, the last day the incorrect information was provided, and whose past due balance was between \$350.00 and \$3,000.00.
 - PECO extensively promoted its "no payment required" COVID reconnect. All premises with an "off" meter status thus received an additional, well-publicized opportunity to reconnect service without payment.
 - PECO terminated its relationship with the third-party vendor in question that handled the 72-hour notification platform/calls. PECO is transitioning its 72-Hour notification platform/calls from Alorica to Agent511.

In consideration of PECO's payment of a civil penalty and contribution to its MEAF, in combination with the corrective actions undertaken by the Company, I&E agrees that its informal investigation relating to PECO's conduct as described in the Settlement Agreement shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement in its entirety.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any further complaints or initiate other action against PECO at the Commission with respect to the billing issues in question during the time period examined by I&E's investigation.

V. 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).

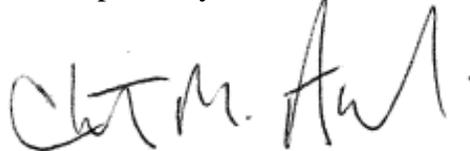
I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission’s Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (“Policy 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 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).

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,



Christopher M. Andreoli
Prosecutor
PA Attorney ID No. 85676

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
chandreoli@pa.gov

Dated: February 12, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3014286
	:	
PECO Energy Company,	:	
Respondent	:	

STATEMENT IN SUPPORT OF PECO ENERGY COMPANY

PECO Energy Company (“PECO”) hereby submits this Statement in Support of the Settlement Agreement (“Settlement”) that was entered into by the Commission’s Bureau of Investigation & Enforcement (“I&E”) and PECO Energy Company (“PECO”) in the above-captioned matter. The Settlement fully resolves all issues related to I&E’s investigation into the alleged unlawful termination of various customers resulting from a change to the dialer platform used by PECO’s third-party vendor. PECO respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

I. BACKGROUND

PECO adopts the Background discussion set forth in I&E’s Statement in Support.

II. TERMS OF SETTLEMENT

PECO has reviewed the Terms of Settlement as set forth in the Settlement Agreement and agrees that it accurately sets forth the Terms of Settlement.

III. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements decrease the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

PECO submits that approval of the Settlement in this matter is consistent with the Commission’s Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations (“Policy Statement”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a

Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

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

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The first factor considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty. PECO alleges that the conduct in this case was as follows: due a change to dialer platform used by PECO's third-party vendor, the Company terminated service to a number of customers 1) without completing

the second 72-hour phone call to the customer or adult occupant at least three days prior to the scheduled termination, or 2) on a day different from the one listed in the 72-hour call. PECO recognizes that the alleged improper terminations were serious.

The second factor considered is whether the resulting consequences of the conduct in question were of a serious nature. PECO took immediate steps to correct the issues, contact affected customers through a variety of methodologies, and restored service where possible. Specifically, PECO took the following steps to reach impacted customers:

- Manual calls were made to the phone number listed for the premises;
- A restoration hotline was established to respond to inbound requests for restoration;
- Two field visits were made to each premises;
- Outbound Dialer calls: two telephone calls were made on two different days (one in the AM and one in the PM);
- A one-time letter was mailed offering an additional Deferred Payment Agreement (“DPA”), if needed;
- Field visits for visual inspection of the premises during which a customer financial assistance packet (that included information about Universal Services Programs) was left;
- An additional DPA was offered to customers whose service was terminated on or before September 10, 2019, the last day the incorrect information was provided, and whose past due balance was between \$350.00 and \$3,000.00; and
- Additionally, PECO extensively promoted its “no payment required” COVID reconnect. All premises with an “off” meter status thus received an additional, well-publicized opportunity to reconnect service without payment.

PECO also terminated its contract with the third-party vendor and put into place additional checks and auditing to prevent similar issues in the future. PECO self-reported these issues to the BCS and provided updates on its outreach to impacted customers during the subsequent BCS quarterly meetings.

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

The fourth factor to be considered is whether PECO made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. As a result of the issues caused by its third-party vendor, PECO promptly terminated its contract with them. Although it already had some auditing and change management procedures, the Company put into place additional checks and auditing to prevent similar issues in the future. PECO also has agreed to summarize and report the results of its regulatory noticing audits to BCS for the next two years. The details of such are as follows:

- The noticing audits track transactions between PECO's Customer Information Management System ("CIMS"), vendors, and customers to ensure notices are being processed and delivered correctly;
- The notices that will be audited are: Disconnect Notice; 72-hour (first call); 72-hour (second call)/48 Hour (field notice); and Cut Out for Non-Pay (post termination notice);
- The data points reviewed for accuracy will be as follows: account balances; termination dates; and dates and times of each contact; and

- With respect to frequency of audits: detailed transactions will be audited on a monthly basis at the notice level and daily monitoring will include recording transactions through each hand off to ensure the process is working as designed.

The fifth factor considers the number of customers affected and the duration of the violation. As a result of the two errors caused by the dialer platform change, between June 25, 2018 and September 10, 2019, approximately 49,500 had service improperly terminated. Upon discovery of the two issues, PECO immediately restored service to all customers, where possible, and took a number of additional steps (described above) to contact and restore the remaining customers.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to require constantly flawless service. The Public Utility Code requires public utilities to provide reasonable and adequate, not perfect, service. 66 Pa.C.S. § 1501. PECO submits that it has a strong compliance history with regard to customer service terminations.

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

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. PECO submits that no civil penalty would have been necessary to deter

it from committing future violations, but nonetheless has agreed to payment of a \$50,000 civil penalty. Further, in addition to paying the civil penalty, PECO has agreed to increase the amount of funds available for its Matching Energy Assistance Fund (“MEAF”) by \$25,000 for 2021, with \$5,000 being assigned to each of its five major MEAF agencies to provide additional hardship grants. PECO notes that it will match the \$25,000 in grant money, as per the terms of its MEAF program, bringing the total potential financial commitment to \$100,000.

The ninth factor examines past Commission decisions in similar situations. The agreement between I&E and PECO provides a civil penalty of \$50,000 for multiple alleged violations for the customer accounts that were impermissibly terminated. PECO submits that this penalty, coupled with its commitments to increase the amount of MEAF funding by \$25,000 for 2021, as well as its additional more comprehensive and robust regulatory notice auditing, is an appropriate resolution.

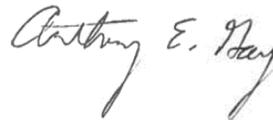
Finally, the tenth factor considers any other relevant factor. PECO agrees with I&E that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent

economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

I&E and PECO fully support the terms and conditions of this Settlement Agreement. The foregoing terms of this Agreement reflect a carefully balanced compromise of the interests of the parties in this proceeding. The parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties. For all of these reasons, PECO submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

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

Respectfully submitted,

A handwritten signature in black ink that reads "Anthony E. Gay". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail on the 'y'.

Anthony E. Gay (Pa. No. 74624)
Jack R. Garfinkle (Pa. No. 81892)
Jennedy S. Johnson (Pa. No. 203098)
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jack.garfinkle@exeloncorp.com
jennedy.johnson@exeloncorp.com

Dated: February 12, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

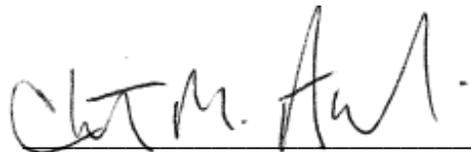
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. M-2021-3014286
	:	
PECO Energy Company,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Joint Petition for Approval of Settlement, in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via Electronic Mail:

Jennedy S. Johnson
Assistant General Counsel
PECO Energy
2301 Market Street
Philadelphia, PA 19103
Email: jennedy.johnson@exeloncorp.com



Christopher M. Andreoli
Prosecutor
PA Attorney ID No. 85676

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chandreoli@pa.gov

Dated: February 12, 2021