



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 8, 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
I&E's Answer in Opposition to the Petition to Intervene of CAUSE-PA

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Answer in Opposition to the **Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA")** in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris M. Andreoli', is written over a light blue horizontal line.

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CMA/jfm
Enclosure

cc: Elizabeth R. Marx, Esquire, Counsel for CAUSE-PA (*via email only*)
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	:	

**ANSWER
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO THE PETITION TO INTERVENE
OF CAUSE-PA**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.66, files this Answer opposing the Petition to Intervene in this Settlement.

As explained in greater detail below, the request of the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”) should be denied because it would delay the orderly progress of this matter and unreasonably waste time by interjecting issues that are completely outside the scope of this Settlement. Furthermore, CAUSE-PA has not demonstrated that the granting of their Petition to Intervene would protect an interest that is not already sufficiently represented by I&E, making their duplicative participation nothing but a burden on the orderly course of this Settlement.

I. BACKGROUND

1. 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

2. 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.

3. 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).

4. 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.

5. 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

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

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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. I&E and PECO actively engaged in extensive settlement negotiations during the last quarter of 2020 and the first quarter of 2021.

16. 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.

17. 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%

18. I&E acknowledges that PECO took corrective actions after the 72-hour issues were discovered and that both issues were self-reported by PECO.

19. 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.

20. Agent511’s 72- hour notification call work will have oversight from several departments within PECO, including Revenue Management and eChannels.

21. On February 12, 2021, I&E and PECO filed a Joint Petition for Approval of Settlement resolving all issues between I&E and PECO in the instant matter.

22. On May 6, 2021, the Commission entered a Tentative Order requesting interested parties to file comments on the Settlement consistent with the PUC’s regulations at 52 Pa. Code § 3.113(b)(3) within 25 days of publication of the Order in the *Pennsylvania Bulletin*.

23. On May 20, 2021, CAUSE-PA filed its Petition to Intervene.

24. On May 22, 2021, the Commission's Tentative Order, along with the Settlement Agreement and Statements in Support, were published in the *Pennsylvania Bulletin*. Accordingly, comments on the proposed Settlement are due on or before June 16, 2021.

25. On June 8, 2021, PECO and I&E filed a Joint Petition to Withdraw the Settlement (filed under Docket No. M-2021-3014286) due to newly discovered data.²

II. ARGUMENT

26. The agreed-upon terms that are set forth in the Settlement that was filed with the Commission are unquestionably in the public interest as close scrutiny of the settlement terms and conditions reveals PECO enacted measures to avoid such terminations in the future, including replacing its third-party software vendor.

27. It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231(a). The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Continental Communities, LLC and Hickory Hills, MHC, LLC*, Docket No. C-2015-2468131 (Initial Decision issued June 7, 2017 at 8; Final Order adopting Initial Decision entered August 11, 2016). *See also* 52 Pa. Code § 69.401 (providing that negotiated settlements or stipulations are often preferable to those achieved at the conclusion of a fully litigated rate proceeding). It is difficult for I&E to contemplate a better example than the instant Settlement to demonstrate an occasion where a settled

² Should the Joint Petition to Withdraw the Settlement be granted, then the Petition to Intervene should be deemed moot, as the Settlement created the proceeding and without the Settlement, there is no underlying proceeding in which to intervene.

outcome would result in preferable terms than a litigated proceeding. Therefore, the Settlement Agreement should be approved without modification.

28. Intervention as a litigant with party status in an informal investigation resolved without the initiation of formal proceedings is not necessary because “potentially affected persons” have the opportunity to submit comments on the proposed settlement between I&E and the affected utility. *See, e.g., Pa. P.U.C., Law Bureau Prosecutory Staff v. PPL Elec. Utils. Corp.*, Docket No. M-2008-2057562, 2009 WL 1103771, at *4 (Opinion and Order entered Mar. 31, 2009).

29. Persons and/or entities can be heard through a comment process that does not require intervenor status. Comments are not required by law or due process for entities who are not the complainant and respondent. Rather, it is something that the PUC has done to allow input for its consideration. Therefore, denial of intervention does not affect Petitioner’s substantive rights.

30. Allowing Intervention under the present circumstances will create a chilling effect on settlement contrary to the Commission’s longstanding policy and practice of encouraging settlements. 52 Pa. Code § 5.231(a) (“It is the policy of the Commission to encourage settlements.”). In other words, why would a utility settle and make concessions only to be subjected potentially to discovery, additional process and even hearings, briefing, exceptions and reply exceptions. It also invites an invasion of the confidentiality of the settlement process, which by the Commission’s own regulation is confidential and without admission. *See*, 52 Pa. Code §§ 5.231, 5.232. As such, the grant of intervention (particularly

if discovery is allowed and/or hearings are held) delays implementation of the provisions of the Settlement and leaves PECO with no incentive to remain in the Settlement.

31. Additionally, Petitioner has no standing, as its interests are already adequately represented by I&E, and the Settlement, which is clearly in the public interest, has been reached.

32. Allowing intervention is not in the public interest because it delays implementation of Settlement terms, may cause PECO to withdraw from the Settlement, and is a waste of time and resources of the Commission and its bureaus, the parties, and would be interveners.

33. I&E has the expertise and more than adequately represents the only interest Petitioner has in this proceeding, which is a general interest in having others comply with the law. Pursuant to 66 Pa. C.S. §§ 308, 701, and 52 Pa. Code § 1.8, I&E is vested with the statutory enforcement and prosecutorial authority to bring Complaints to protect the public interest for violations of the Public Utility Code and the Commission's regulations.

34. Allowing intervention in this matter is contrary to the public interest. If intervention is granted, discovery allowed, and/or hearings held (ie. if any process is ordered other than comments), PECO is left with no incentive to remain a party to the Settlement and has the ability to withdraw. Allowing litigation where a settlement has been reached chills the incentive to settle and is contrary to the Commission's policy to encourage settlements. 52 Pa. Code § 5.231(a) ("It is the policy of the Commission to encourage settlements."). Allowing intervention is unnecessary and a waste of time and resources where persons/entities may file comments without the need for intervener status.

35. CAUSE-PA has failed to demonstrate that the granting of the Petition would protect an interest that is not sufficiently represented by I&E in this case. Pursuant to Section 5.72 of the Commission's regulations, a petition to intervene may be filed by a person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. 52 Pa. Code § 5.72. Section 5.72 further provides that the interest may be one in which the person is directly affected by the proceeding and "which is not adequately represented by the existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding." 52 Pa. Code § 5.72(a)(2).

36. In order to confer standing in a proceeding, the interest must be substantial, immediate and direct. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (1975). A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. *George v. Pa. Pub. Util. Comm'n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. Ct. 1999), citing *Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267, 1270 (1996). A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. *Id.* An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question. *Id.*

37. CAUSE-PA is unable to demonstrate that they have a substantial, immediate and direct interest in the outcome of this matter that surpasses the common interest of all citizens in having safe utility service. CAUSE-PA has no greater interest than any other Pennsylvania citizen in PECO's operations throughout the Commonwealth and that overall interest is charged to I&E and already adequately represented as witnessed by the terms achieved in the Settlement.

38. Neither the Public Utility Code nor the Commission's regulations provide for a class action process at the Commission. CAUSE-PA has not demonstrated that they sustained direct, immediate and substantial harm by the allegations at issue here to qualify as an interested party who is aggrieved sufficiently to have standing in this matter.

39. I&E, on the other hand, is the entity tasked with protecting the interests of the public by taking appropriate enforcement actions to ensure compliance with the Public Utility Code, Commission regulations and orders. 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, M-2008-2071852 (Order entered August 11, 2011).

40. The public interest is not protected or better served in any way by allowing CAUSE-PA to intervene in this matter. Rather, the appropriate avenue for CAUSE-PA to participate in this matter would be through the filing of comments regarding the Settlement, with the opportunity for I&E and PECO to reply.

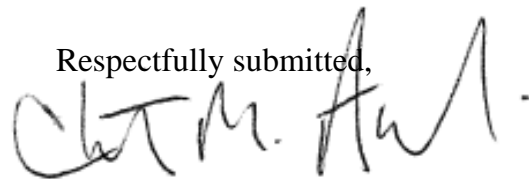
41. Alternatively, if the Petition to Intervene is granted, it is well established that the intervenor must accept the status of the proceeding as it currently stands. *Final Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code*

Pertaining to Practice and Procedure Before the Commission, Docket No. L-00020156 (Order entered January 4, 2006) at 55; *See, e.g., Com., et al v. Energy Services Providers, Inc. d/b/a PaG&E, Order Granting Petition to Intervene*, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.). Here, this matter was settled well before CAUSE-PA filed its Petition to Intervene. As such, the Petitioners should not be granted the right to discovery, an evidentiary hearing or the opportunity to introduce new evidence.

III. CONCLUSION

For all of the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Petition to Intervene of CAUSE-PA be denied, and that the Settlement Agreement be ruled upon and approved as being in the public interest without further delay.

Respectfully submitted,



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Dated: June 8, 2021

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Complainant,	:	
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PECO Energy Company,	:	
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CERTIFICATE OF SERVICE

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

Notification by Electronic Mail (only):

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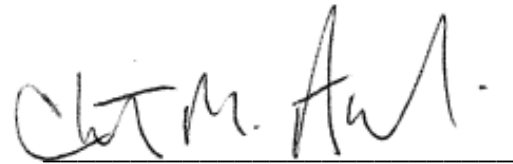
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