



June 14, 2021

*Via Electronic Filing*

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

**Re: Pa. PUC, Bureau of Investigation and Enforcement v. PECO Energy Company,  
Docket No. M-2021-3014286**

Dear Secretary Chiavetta,

Enclosed, please find the **Answer of CAUSE-PA to the Joint Petition for Leave to Withdraw Settlement of the Bureau of Investigation and Enforcement and PECO Energy Company** in the above-referenced matter.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully Submitted,

Elizabeth R. Marx, Esq.  
*Counsel for CAUSE-PA*

*CC: Per Certificate of Service*

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
:  
v. : **Docket No. M-2021-3014286**  
:  
**PECO Energy Company** :

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, served copies of the **Answer of CAUSE-PA** in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54, and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

**SERVICE VIA EMAIL ONLY**

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Respectfully submitted,

Elizabeth R. Marx, Esq., PA ID: 309014  
*Counsel for Cause-PA*

Dated: June 14, 2021

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
v. : **Docket No. M-2021-3014286**  
**PECO Energy Company** :

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**ANSWER OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) TO THE JOINT PETITION FOR LEAVE TO WITHDRAW SETTLEMENT OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT AND PECO ENERGY COMPANY**

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**PENNSYLVANIA UTILITY LAW PROJECT**

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**June 14, 2021**

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code § 5.61(a) and (e), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby files this Answer to the Joint Petition for Leave to Withdraw Settlement of the Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO) (herein, Joint Petition to Withdraw).

CAUSE-PA does not oppose the request of I&E and PECO to withdraw from the proposed Settlement, as the proposal is legally deficient and lacks critical facts necessary for the Commission to determine whether the proposed Settlement is in the public interest. However, given the serious legal and factual deficiencies in the current proposal, we recommend that the Commission place conditions on approval of the proposed withdrawal, including the issuance of directed questions and the imposition of a 60-day deadline for submission of a revised Settlement. If a revised settlement is not proposed within 60 days, the matter should be referred to the Office of Administrative Law Judge for further investigation.

In support thereof, and in response to the Joint Petition to Withdraw, CAUSE-PA states as follows:

1. On February, 12, 2021, I&E and PECO jointly petitioned the Pennsylvania Public Utility Commission (Commission) for approval of a proposed Settlement (herein, Joint Petition for Settlement) with respect to an informal investigation conducted by I&E concerning the alleged unlawful termination of electric service terminations by PECO of approximately 49,500 customers. (Order at 3). Each filed a Statement in Support of the proposed Settlement, which were appended to the proposed Settlement.
2. The allegations outlined in the Joint Petition for Settlement are serious, with far-ranging

consequences to the health, safety, and financial stability of tens of thousands of residential consumers in PECO's service territory. (Joint Petition for Settlement at para. 15-17). Not only did PECO fail to provide proper 3-day/72 hour notice of termination, it also provided an incorrect date of termination to residential consumers who did receive a 72-hour notice of termination – leading consumers to believe that the due date for their next bill was the date of termination. (Id.). These errors were not short-lived, and impacted approximately 49,500 of PECO's residential customers. (Id. at para. 18).

3. On May 6, 2021, the Public Utility Commission issued an Order requiring the Joint Petition for Settlement to be filed in the Pennsylvania Bulletin, and seeking public comment from interested parties within 25 days following publication. (Order at ordering para. 2).
4. On May 20, 2021, CAUSE-PA filed a Petition to Intervene, which it incorporates by reference herein, to demonstrate that it has standing to participate in this proceeding as required by Section 5.61(e) of the Commission's regulations.
5. On May 22, 2021, the Joint Petition for Settlement was published in the Pennsylvania Bulletin. 51 Pa.B. 2902.
6. On June 8, 2021, I&E and PECO filed the instant Joint Petition to Withdraw, alleging that PECO advised I&E of additional data following the Commission's May 2021 Order, and that certain unspecified provisions of the Settlement "require revision" based on this newly disclosed information. (Joint Petition to Withdraw at para 4).
7. Also on June 8, 2021, I&E filed an Answer opposing CAUSE-PA's Petition to Intervene, and requesting that the proposed Settlement "be ruled upon and approved as being in the public interest without further delay." (I&E Answer to CAUSE-PA's Petition to Intervene at 11).
8. On June 9, 2021, PECO also filed an Answer opposing CAUSE-PA's Petition to Intervene,

and asserting that the Commission should dismiss CAUSE-PA's Petition as moot. (PECO Answer to CAUSE-PA's Petition to Intervene at 2).

9. The terms of the proposed Settlement, if approved, would require PECO to pay a \$50,000 civil penalty and make a \$25,000 contribution to its Matching Energy Assistance Fund (MEAF). (Order at 6). This amounts to a financial penalty of roughly \$1.52 for each unlawful termination. (See id.)
10. The \$25,000 contribution to MEAF was proposed to be divided equally (\$5,000 each) to PECO's MEAF agencies in Bucks, Chester, Delaware, Montgomery, and Philadelphia County. (Id.) There is no indication of whether the impacted customers were evenly distributed across each of these 5 counties.
11. The Joint Petition alleges that "a vast majority of the impacted customers have since been reconnected" – and that PECO "*historically*" restores service "within three days of termination." (Joint Petition for Settlement at 6 (emphasis added)). However, there is no indication of how long impacted consumers were *actually* without service. *In fact, more than 1,500 impacted consumers remained without service on February 12, 2021 – 521 days after the unlawful terminations were identified.* (Id.) At least 570 impacted households either appeared to be occupied or were in fact occupied during PECO's annual Winter Survey – yet remain without service following PECO's unlawful termination of service to the property. (Joint Petition for Settlement at 6).
12. The legal violations alleged in the Joint Petition are pursuant only to Section 1503(b) of the Pennsylvania Public Utility Code and Section 56.333 (a) and (b) of the Commission's regulations. (Joint Petition for Settlement at 7-9). Notably, Section 56.333 applies only to residential consumers when the consumer is a victim of domestic violence with a Protection

from Abuse Order or some other court order indicating the consumer is a victim of domestic violence pursuant to Section 1417 of the Public Utility Code. 66 Pa. C.S. § 1417; 52 Pa. Code § 56.251. Thus, by its terms, the Joint Petition for Settlement implies that all impacted consumers are victims of domestic violence with a qualifying PFA or other court order which contains clear evidence of domestic violence.

13. The Joint Petition for Settlement and accompanying Statements in Support thereof are rife with factual deficiencies, which make it impossible for the Commission to reasonably conclude whether the proposed Settlement is in the public interest:
- a. There is no information regarding the geographic location of impacted customers within PECO's service territory.
  - b. There is no information regarding whether and to what extent impacted customers are low income and/or are or were enrolled in or subsequently removed from PECO's Customer Assistance Program.
  - c. There is no information regarding whether and to what extent impacted consumers were foreclosed from accessing assistance through LIHEAP or other utility assistance programs as a result of the timing of the termination.
  - d. There is no information regarding the *actual* duration of the unlawful terminations, as opposed to PECO's "historical" timeframe for reconnection following a termination.
  - e. There is no information to indicate whether any of the 49,500 terminated customers were medically vulnerable or submitted a medical certificate to restore service after the unlawful termination.
  - f. There is no information about the actual or projected financial losses, property damage, or direct health impacts experienced by consumers as a result of PECO's

- failure to provide legally required notices.
- g. There is no information indicating whether any impacted consumers were evicted as a result of the service termination.
  - h. There is no information indicating whether the harm to residential consumers as a result of the unlawful terminations were exacerbated as a result of the pandemic.
  - i. There is no information indicating whether there were children in the home at the time of termination, or whether the termination resulted in the loss of child custody – either to the state or to a non-custodial parent.
  - j. There is no information indicating whether any of the terminations occurred in the winter months or during a heat wave, when termination of service can be deadly.
  - k. There is no information regarding whether PECO charged a reconnection fee for consumers who were terminated without proper notice and/or who were provided the incorrect date for termination and/or whether such a fee was refunded when the unlawful terminations were uncovered.
  - l. There is nothing in the Joint Petition for Settlement or the Statements in Support to indicate whether the civil penalty and proposed MEAF contribution bears any relation to the actual harm caused to consumers as a result of PECO's alleged unlawful termination of service to 49,500 customers.

Without a full account of the facts, and the scope of the likely harm to consumers caused by PECO's failure to comply with critical notice provisions in the Pennsylvania Code and Commission regulations, it is impossible to determine whether the Joint Petition for Settlement is in the public interest.

14. The Joint Petition for Settlement and accompanying Statements in Support thereof are also



rife with legal deficiencies, which must be addressed to properly assess whether the proposed Settlement fully resolves PECO's violations of the Public Utility Code:

- a. There is no indication of whether PECO's restoration of service to impacted households was compliant with the requisite statutory and regulatory timeframe for restoration following an "erroneous" termination. 66 Pa. C.S. § 1407(b); 52 Pa. Code § 56.191(b)(1)(i). On this point, it is important to note again that more than 1,500 households *remain* without service following PECO's unlawful and erroneous termination, which indicates that PECO's violations of the Commission's regulations are ongoing – and have not been fully resolved.
- b. There is no mention of whether PECO's actions were also in violation of Section 1406(b)(1)(ii) of the Public Utility Code and/or Section 56.93 of the Commission's regulations (regarding three-day notice requirements prior to termination), despite the fact that the alleged facts contained in the proposed Settlement plainly and undeniably indicate that PECO violated these provisions of the law.
- c. There is also no discussion of whether PECO was then and/or is now in compliance with other interrelated provisions of the Public Utility Code and the Commission's regulations that require PECO to (1) attempt to make personal contact with an adult at the property immediately prior to termination, (2) immediately cease termination or restore service in certain emergency circumstances, such as a medical emergency, (3) require PECO to restore service within a prescribed timeframe when a termination was erroneous, and (4) require additional notice and procedure prior to termination of a tenant-occupied property. See 66 Pa. C.S. §§ 1406, 1407; 66 Pa. C.S. Ch. 15, Subch. B; 52 Pa. Code §§ 56.94, 56.95, 56.111-.112. However, the facts alleged in

the Joint Petition for Settlement and Statements in Support suggest that PECO's termination procedures may have been and in fact may still be in violation of these interrelated provisions.

Without a full account of the legal provisions PECO violated in its failure to provide proper notice of termination to approximately 49,500 consumers, it is impossible to determine whether the Joint Petition for Settlement is in the public interest.

15. Termination of electric service to a home can cause serious short-term economic and health risks. Over the long term, involuntary termination of electric service can exacerbate negative health outcomes, interrupt family unity, hinder child learning and development, and has a detrimental impact on consumer credit – making it difficult to connect to utility service in the future. Indeed, the loss of electric service can have an immediate destabilizing impact on housing, and is often the catalyst for eviction and homelessness. A prior utility termination and/or utility debt from a prior address can serve as a disqualifying factor for public and private housing options alike. Proper notice of a utility termination, in full accordance with the law, is critically important to ensure that consumers have the opportunities afforded to them to prevent termination.
16. PECO's alleged failure to comply with critically important provisions of the Public Utility Code and Commission regulations likely caused substantial harm to PECO customers – yet the proposed Settlement limits any accountability for that harm to just \$1.52 for each unlawful termination. PECO is not made to account for the reconnection fees it collected from households subject to unlawful termination, for the loss of electricity to their home, or for the housing instability and other short and long-term economic, health, and safety impacts created by PECO's unlawful actions. If provided with proper notice, as required by statute,

many of the 49,500 impacted homes may have avoided termination to their home. It is critical that any revised proposed Settlement more appropriately remediate the harm caused by PECO's failure to comply with multiple provisions of the Public Utility Code and associated provisions of the Commission's regulations, and better ensure that such violations are not ongoing and will not happen again.

17. CAUSE-PA supports the Joint Petition to Withdraw, given the numerous factual and legal deficiencies in the current proposed Settlement, but recommends that the Commission (1) require I&E and PECO to respond to directed questions to ensure proper factual support for any revised Settlement proposal; (2) limit the timeframe for submission of a revised proposed Settlement to 60 days; and (3) refer the matter to the Office of Administrative Law Judge if I&E and PECO fail to propose a revised Settlement within 60 days.

18. At a minimum, CAUSE-PA recommends inclusion of the following directed questions:

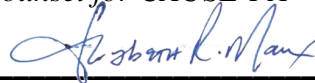
- a. For each alleged violation, how many of the impacted customers are/were:
  - i. Confirmed low income customers at the time of the termination?
  - ii. Enrolled in PECO's Customer Assistance Program (CAP) at the time of the termination?
  - iii. Were removed from CAP following the unlawful termination of service?
  - iv. Remain without service following the unlawful termination?
  - v. Required to pay a reconnection fee to restore service following the unlawful termination?
  - vi. A victim of domestic violence with a Protection from Abuse Order or other court order which contains clear evidence of domestic violence?
  - vii. Received a payment arrangement?

- viii. Tenants, subject to additional notice requirements pursuant to the Discontinuance of Service to Leased Premises Act, 66 Pa. C.S. Ch. 15, Subch. B?
- b. Whether any of the impacted customers were medically vulnerable and/or obtained a medical certificate following the termination or otherwise indicate to PECO that the unlawful termination of service resulted in medical consequences to the household.
- c. How much PECO collected, in total, in reconnection fees to restore service to consumers following an unlawful terminated.
- d. Why PECO did not restore service to all impacted customers immediately upon discovery of the identified erroneous terminations, consistent with Section 1407(b) of the Public Utility Code and Section 56.191(b)(1)(i) of the Commission's regulations.
- e. Whether and how PECO notified impacted consumers of the unlawful termination(s) and their associated rights? Provide copies of call center scripts or written correspondence associated with providing any such notice(s).
- f. Whether PECO is/was compliant with Section 56.94 of the Commission's regulations, and if so, how it complies/complied with that provision.

**WHEREFORE**, for the foregoing reasons, CAUSE-PA respectfully asserts that there is inadequate information contained in the Joint Petition to support a finding that the Proposed Settlement is in the public interest. As such, CAUSE-PA is not opposed to I&E and PECO's joint request to withdraw the proposed Settlement to allow for further negotiations and submission of a revised Settlement proposal. However, we urge the Commission to impose conditions on the withdrawal, including the issuance of directed questions and imposition of a 60-day timeframe for submission of a revised Settlement proposal. If a revised Settlement is not reached in that time, the matter should be referred to the Office of Administrative Law Judge for an on-the-record hearing on the matter.

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*



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Dated: June 14, 2021

**Verification**

I, **Elizabeth R. Marx**, legal counsel for CAUSE-PA, on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Elizabeth R. Marx, Esq.  
*On behalf of CAUSE-PA*

June 14, 2021