



June 16, 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 **Comments of Tenant Union Representative Network (TURN) to the Joint Petition for Approval of 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,

Robert W. Ballenger
Counsel for TURN

Cc: COS



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 Comments of TURN 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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June 16, 2021

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	M-2021-3014286
	:	
v.	:	
	:	
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COMMENTS OF TENANT UNION REPRESENTATIVE NETWORK (TURN)

I. Background

On February 12, 2021, the Commission's Bureau of Investigation and Enforcement (I&E) and PECO Energy Company ("PECO" or "Company") filed a Joint Petition for Approval of Settlement ("Joint Petition" or "Joint Petition for Settlement") with respect to an informal investigation conducted by I&E concerning PECO's improper electric service terminations of approximately 49,500 PECO customers. According to the Joint Petition, PECO's call center third-party vendor made a dialer platform change that resulted in two separate errors. Joint Petition at ¶ 12. First, the dialer platform change resulted in a pre-termination telephone call attempt being recorded as successful when in fact it was not. Joint Petition at ¶ 13. Second, the dialer platform change resulted in PECO providing customers with the wrong termination date during the pre-termination call. Joint Petition at ¶ 16. Although the dialer platform change occurred in June 2018, PECO did not discover the first error until August 2018. Joint Petition at ¶ 14. PECO did not discover the second error until September 2019, more than a year after the dialer platform change, when PECO was investigating an informal complaint filed by a customer. Joint Petition at ¶ 17. As a result of both errors, PECO improperly terminated service to approximately 49,500 PECO customers. Joint Petition at ¶ 18.

PECO reported that over 1500 of the 49,500 improperly terminated customers remained without service and have an "Off" meter status. Joint Petition at ¶ 23. Of the more than 1500 customers that remained without service following PECO's improper terminations, 70% of the premises, or approximately 1050 premises, remained occupied following the improper termination. Joint Petition at ¶ 24. The Joint Petition acknowledges that PECO took certain "corrective actions" after discovering the dialer platform issues. Joint Petition at ¶ 25.

I&E concluded from its investigation that PECO violated provisions of the Pennsylvania Public Utility Code concerning the termination of service to customers by an electric distribution

company, namely 66 Pa. C.S. 1503(b) and 52 Pa. Code 56.333(a)-(c). Joint Petition at ¶27. I&E was prepared to file a formal complaint contending that PECO had violated the above listed provisions of the Public Utility Code. Joint Petition at ¶29. The Joint Petition states that PECO “understands the nature of the allegations that I&E would have asserted in a formal complaint” and “acknowledges its errors accordingly.” Joint Petition at ¶30. Without directly informing the customers whose service was unlawfully terminated, PECO and I&E nonetheless profess their unsupported belief that there are no other potentially affected parties who should receive direct notice of the proposed settlement. Joint Petition at ¶ 35. The Joint Petition proposes that PECO will pay a civil penalty of \$50,000. Joint Petition at ¶36(a). The Joint Petition proposes that PECO will make a \$5,000 contribution to each of its five major Matching Energy Assistance Fund (“MEAF”) agencies, for a total contribution of \$25,000. Joint Petition at ¶ 36(b). The Joint Petition proposes that PECO will take corrective actions, which include a fix to the dialer system and additional reporting to the Commission’s Bureau of Consumer Services (“BCS”) Joint Petition at ¶36(c)-(d).

On May 6, 2021, the Commission entered an Order requesting comment from interested parties concerning the proposed settlement within twenty-five days after publication in the Pennsylvania Bulletin. On May 20, 2021, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene. On May 22, 2021, the Joint Petition was published in the Pennsylvania Bulletin. On June 9, 2021, PECO and I&E filed a Joint Petition for Leave to Withdraw the Settlement. Also on June 9, 2021, I&E filed an Answer in Opposition to CAUSE-PA’s Petition to Intervene, and on June 10, 2021, PECO filed an Answer to CAUSE-PA’s Petition to Intervene. On June 14, 2021, CAUSE-PA filed an Answer to the Joint Petition for Leave to Withdraw the Settlement.

While TURN notes the pending Joint Petition for Leave to Withdraw the Settlement, TURN nonetheless submits these comments in response to the PUC's May 6, 2021 Order to express concerns regarding the filed Joint Petition for Settlement. For the reasons set forth below, TURN submits that the settlement terms are woefully insufficient and that any future proposed settlement should reflect the significant harm PECO's unlawful termination practices engendered and provide affected households with a meaningful opportunity to be heard.

Through these comments, TURN raises significant concerns about the process and results of the I&E investigation into PECO's errors. Unless rectified, additional investigation by I&E could not improve the process or outcome of the ongoing investigation. As discussed, the Joint Petition for Settlement is not in the public interest and should not be approved. Specifically, the Joint Petition fails to include an adequate review of all relevant sections of the Pennsylvania Utility Code and Commission Regulations. Further, the Joint Petition proposes a resolution that is wholly inadequate to the disclosed scope of the harm. In addition, more information is needed to determine the actual scope of the harm caused by PECO's actions – including the geographic distribution of the improper shutoffs. Lastly, TURN asserts that PECO must be required to specifically notify impacted customers and households, to ensure that those customers have a meaningful opportunity to participate in any future potential settlement proposals and/or pursue individual relief.

II. The proposed settlement fails to account for the severity of PECO's conduct and inadequately addresses the harm PECO's unlawful termination practices caused.

The proposed settlement is not in the public interest because it fails to rectify the gravity of PECO's errors, which resulted in the loss of modern life-essential utility service for nearly 50,000 PECO customers. The proposed settlement does not provide a basis for concluding that the parties assessed the full magnitude of the harm that resulted from PECO's actions. The

proposed settlement does not quantify the real-world consequences of PECO's actions or otherwise seek to examine the range of customer experiences that resulted from PECO's conduct. The health impacts of utility terminations are well documented. Terminations create significant health impacts, including respiratory illness, pneumonia, increased fire risk, bronchitis, hunger, and stress.¹ Loss of utility service can result in housing instability and evictions.² Further, utility terminations can threaten family unity if there are minor children in the home because terminations can lead to intervention by child welfare agencies.³ These families can have family reunification delayed if they are unable to restore utility service.⁴

The Joint Petition is inadequate because it fails to address the following significant issues:

- PECO and I&E failure to accurately identify all of the impacted customers. The Joint Petition provides only approximations, glossing over the real-world harm experienced by each affected customer.
- PECO's failure to take reasonable and available efforts to restore all improperly terminated customers. PECO's outreach was neither aggressive nor effective and resulted in "approximately 1500" customers remaining without service.
- PECO's failure to protect vulnerable customers from improper termination, including medically ill customers and customers under a protection from abuse order.

¹ Energy Burden and the Need for Integrated Low-Income Housing and Energy Policy, Diana Hernandez and Stephen Bird. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4819257/#R16>.

² PA House Democratic Policy Committee, Public Hearing on Utility Terminations, Testimony of Tanya J. McCloskey Acting Consumer Advocate (October 26, 2020).

³ Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907 Comments of Cynthia Figueroa, Commissioner Philadelphia Department of Human Services (2017).

⁴ Id.

- PECO’s failure to take additional reasonable corrective actions, including notifying customers of the pendency of this investigation and providing impacted customers with an opportunity to make PECO aware of their individual experiences and account for the harm that they experienced as a result of the improper terminations.

Instead of addressing these significant concerns, the Joint Petition contains conclusory statements that PECO’s errors resulted in “approximately 49,500” improper terminations and that “approximately 1500” customers remained without service following the improper terminations. Joint Petition at ¶¶ 18; 23-24. The Joint Petition does not reflect any significant effort to determine the extent of harm PECO’s customers experienced and instead relies upon unverified and summary statements such as: “PECO noted that historically, 95% of restorations occur within three days of the termination.” Joint Petition at ¶ 23. Indeed, the proposed settlement reflects that no exact information about when impacted customers’ service was restored was sought or revealed. The proposed settlement treats the impacted customers as an aggregated mass not even worthy of precise calculation rather than households and families who require utility service to sustain their lives. The Joint Petition does not contain any information that would permit the Commission to determine how many of these customers experienced adverse health impacts, housing instability, family disunification or other adverse consequences as a result of the improper terminations. To the extent that the parties were unable to ascertain this information, the proposed settlement should, at the very least, endeavor to adequately penalize PECO for unnecessarily exposing customers to these serious harms. Instead, as discussed further below, the Joint Petition contemplates just a \$50,000 civil penalty, a meager \$1 for every customer whose electric service was terminated unlawfully by PECO.

The Joint Petition is not in the public interest given the dearth of information that it contains about the harm that resulted from PECO's errors. In order to fully account for the harm PECO has caused, additional information about affected customers, disaggregated by whether the customer's service was restored or remains off, should be obtained and reported. Such information includes, but is not limited to:

- the number of impacted customers who had previously submitted a medical certification to PECO;
- the number of impacted customers who had previously submitted to PECO a protection from abuse order or comparable order evidencing domestic violence;
- the number of impacted customers who remained without service in the winter following the improper termination;
- the number of impacted customers known to PECO to be tenants;
- the number of impacted customers known to PECO to have household members that are minor children;
- the number of customers who had service restored within 24 hours;
- the number of customers who had service restored within 72 hours;
- the number of customers whose service restoration occurred more than 72 hours after improper termination.

To the extent any future settlement may be proposed as a result of I&E's ongoing investigation, TURN submits that detailed information identifying impacted customers and evaluating the scope of the harm that these customers experienced is essential to assessing whether the agreements reached are in fact in the public interest.

III. The Joint Petition for Settlement fails to include a review of all relevant sections of the Public Utility Code and Commission Regulations.

According to the Joint Petition, I&E instituted an informal investigation based on information provided by the Bureau of Consumer Services. Specifically, PECO “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).” Joint Petition at ¶ 9.

Section 1503 (b) requires a utility to make personal contact with a customer at least three days prior to discontinuing service. 66 Pa. C.S. § 1503(b). Section 56.333(a) and (b) of the Commission’s regulations also require a utility to make personal contact, and define personal contact as follows:

(1) 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.

(2) If contact is attempted in person by a home visit, only one attempt is required. The public utility shall conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit.

(3) Contact by e-mail, text message or other electronic messaging format consistent with the Commission's privacy guidelines and approved by Commission order. The electronic notification option is voluntary and shall only be used if the customer has given prior consent approving the use of a specific electronic message format for the purpose of notification of a pending termination. Electronic contact shall be deemed complete if, after attempted transmittal, no message is received indicating that the transmittal was undeliverable or otherwise not received. If the utility receives notification that the

transmittal was undeliverable or otherwise not received, the utility shall attempt to contact the customer either in person or by telephone, consistent with the requirements of this section.

(4) Contacting another person whom the customer has designated to receive a copy of a notice of termination, other than a member or employee of the Commission.

(5) If the customer has not made the designation noted in paragraph (4), contacting a community interest group or other entity, including a local police department, which previously shall have agreed to receive a copy of the notice of termination and to attempt to contact the customer.

(6) If the public utility is not successful in establishing personal contact and the customer has not made the designation noted in paragraph (4) and if there is no community interest group or other entity which previously has agreed to receive a copy of the notice of termination, contacting the Commission in writing.

52 Pa. Code § 56.333 (b).

Notably, 52 Pa. Code § 56.333 is a provision of the Commission’s Regulations that applies to victims of domestic violence with a protection from abuse order or other court order.⁵ This raises a question of whether PECO’s improper terminations were limited to victims of domestic violence – or if the Joint Petition improperly cited § 56.333, and rather intended to cite 52 Pa. Code § 56.93, which contains the same language requiring and defining personal contact. In either case, the Joint Petition creates additional concerns as to whether PECO provided all available consumer protections under the Public Utility Code and Commission Regulations to victims of domestic violence who PECO improperly terminated. To the extent that all – or even a portion – of the impacted customers were victims of domestic violence, the Joint Petition calls into question whether impacted customers were provided the notice required by 52 Pa. Code § 56.335. Section 56.335 requires a utility, for customers who are victims of domestic violence, to “conspicuously post a termination notice at the residence of the customer and the affected

⁵ These customers are exempt from the requirements of Chapter 14 (66 Pa. C.S. §§ 1401 – 1419). 66 Pa. C.S. § 1417.

dwelling, advising that service will be disconnected not less than 48 hours from the time and date of posting[.]” if prior contact has not been accomplished. 52 Pa. Code § 56.335.

In addition, the Joint Petition is silent on a number of other provisions of the Public Utility Code and Commission Regulations that appear to have also been violated. Section 1406 of the Public Utility Code requires a utility to:

[C]ontact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

(C) by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

66 Pa. C.S. § 1406(b)(1)(ii).

In addition, section 1407 of the Public Utility Code requires a utility to reconnect service within 24 hours following an “erroneous” termination. However, the Joint Petition does not explore whether PECO promptly restored service upon its discovery of erroneous termination. The Joint Petition only states that “PECO noted that historically, 95% of restorations occur within three days of termination” – with no explanation as to how much time lapsed for the specifically impacted households. Joint Petition at ¶ 23. In addition, the Joint Petition specifically acknowledges that “over 1500 of these customers remained without service.” Id. Based on the facts contained in the Joint Petition, it seems likely that PECO violated these specific statutory provisions, yet the Joint Petition reflects no investigation or analysis into these violations.

In addition, Section 1501 of the Public Utility Code requires PECO to provide service that is reasonably continuous and without unreasonable interruptions or delays. 66 Pa. C.S. § 1501. A determination of whether PECO provided reasonable service to the close to 50,000

customers who were improperly terminated requires more information than is contained in the Joint Petition. For example, the Joint Petition does not permit the Commission to evaluate the following important considerations:

- whether PECO promptly restored service to customers following its discoveries;
- whether any of the impacted customers paid restoration fees;
- whether any restoration fees were subsequently refunded;
- whether it is reasonable that PECO has failed to restore service to those impacted customers whose service remains off;
- whether PECO has provided any notice to impacted customers;
- the geographic distribution of impacted customers;
- the number of impacted customers who were confirmed to be low-income or enrolled in PECO's Customer Assistance Program;
- the number of impacted customers who were tenants;
- the number of impacted customers who were landlords.

Further, although the Joint Petition provides an approximation of the number of customers who were terminated following PECO's errors, the Joint Petition does not contain any information about the total number of customers that PECO failed to properly notify.

The Public Utility Code and the Commission's Regulations lay out the requirements a utility must follow prior to terminating utility service to a customer. These requirements are important, given the hardship and suffering experienced by households living without utility service. The Regulations are complementary and work together to ensure that households receive adequate notice that they are at risk of losing service. Households are entitled to both written notice sent by mail and attempted personal contact. The Regulations provide a safeguard, such

that if a household is having difficulty receiving mail, there is still a way to ensure that household receives notice prior to disconnection of service. By failing to provide the attempted personal contact, and/or providing incorrect information via attempted personal contact, PECO failed to provide the full notice of termination the Public Utility Code and Commission Regulations guarantee to residential customers.

IV. PECO’s completed “corrective actions” and its proposed “corrective actions” are insufficient.

The Joint Petition alleges that PECO took the following “corrective actions” after the dialer platform errors were 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;
- 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. Joint Petition at ¶ 25.

The Joint Petition also alleges that PECO terminated its relationship with the third-party vendor in question that handled the 72-hour notification platform/calls. Joint Petition at ¶ 26.

PECO's corrective actions upon discovering the dialer platform errors were insufficient. To start, I&E and PECO have not provided the Commission with adequate information regarding the success of these various corrective efforts. In addition, PECO's policy of providing a DPA only if the balance was between \$350 and \$3000 was unreasonable. It was unreasonable for PECO to foreclose a payment arrangement option for customers with higher or lower balances when PECO improperly terminated service to those customers and when grant assistance or out of pocket contributions might have been available to assist those customers. In deciding whether the proposed settlement is in the public interest, the Commission should determine whether PECO's actions corrected PECO's errors, i.e., did PECO's actions result in restoration of service for improperly terminated customers. The Joint Petition is clear that PECO's actions did not result in restoration for approximately 1500 customers.

Similarly, PECO's proposed corrective actions are insufficient because they do not include any additional outreach or efforts to restore service to customers who remain without service following the improper terminations. The proposed settlement states that PECO has implemented a change to fix the dialer system glitch and that for the next two years PECO will summarize and report the results of its regulatory noticing audits as part of its quarterly meeting with BCS. Joint Petition at ¶ 36. The proposed settlement does not require PECO to take any additional actions with respect to customers who remain without service. This significant oversight weighs against any finding that the proposed settlement is in the public interest. While I&E and PECO have proposed to withdraw the settlement, any future settlement proposed for Commission approval should include additional corrective measures to adequately redress the

harm caused by PECO's conduct. That any customers affected by PECO's erroneous terminations remain without electric service is appalling.

V. The civil penalty and MEAF contribution required by the Joint Petition are inadequate and poorly targeted to address the harm caused by PECO's actions.

The Joint Petition requires PECO to pay a civil penalty amount to the Commission of \$50,000 and make a contribution of \$25,000 to its Matching Energy Assistance Fund (MEAF), to be split evenly between PECO's five major MEAF agencies. Joint Petition at ¶ 36. According to the Joint Petition, "approximately 49,500" customers had service improperly terminated between June 25, 2018 and September 10, 2019. Joint Petition at ¶ 18. Of those customers, 1500 remained without service as of the filing of the Joint Petition on February 12, 2021. Joint Petition at ¶ 23-24. The Joint Petition is silent on how many additional customers were impacted but avoided actual termination of service. For the reasons set forth below, these amounts are wholly inadequate in the context of PECO's violations.

- a. The proposed fine is inadequate to address the gravity of the harm.

The Public Utility Code and Commission Regulations allow for the imposition of civil penalties, not to exceed \$1000 per offense when utilities violate the Public Utility Code and/or Commission Regulations.⁶ The Commission has established standards and policies to be considered in evaluating such violations to determine whether a fine would be appropriate.⁷ Section 69.1201 of the Commission's Regulations sets forth ten factors that the Commission must consider in determining whether a fine is appropriate:

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

⁶ See 66 Pa.C.S. § 3301.

⁷ 52 Pa. Code § 69.1201.

- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa. Code §69.1201(c).

i. Whether PECO's conduct was of a serious nature.

The first factor is whether the conduct at issue was of a serious nature. 52 Pa. Code §69.1201(c)(1). Based solely on the facts as presented in the Joint Petition, PECO's conduct was the result of a computer error, and therefore not willful or malicious. However, in examining this factor, it would be important to know how quickly PECO acted once aware of the error – and to what extent PECO's lack of oversight of its third-party vendor was intentional or simply negligent. In addition, the length of time that impacted customers remained off – information not provided in the Joint Petition – could reveal how serious PECO's conduct was.

ii. The consequences of PECO's actions were of a serious nature.

The second factor is whether the consequences of PECO's conduct were of a serious nature. 52 Pa. Code §69.1201(c)(2). "When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* In this case, the consequences of PECO's violations were quite serious – loss of utility service for almost 50,000 households, including over 1500 households who remain without service. Without more information, it is not possible to determine how serious the consequences were for the affected households. We do not know based on the Joint Petition how long most of those households were without service nor do we know how those households were impacted by PECO's terminations. How many households with medical devices that are powered by electricity or with medication needing refrigeration lost service? How many households diverted funds from other necessities to restore service? Were any impacted households in danger of having children removed from the home? How many household members experienced negative health consequences due to the stress of losing electric or gas service? These are just some of the questions that, if answered, could reveal how serious the consequences of PECO's actions were.

iii. Whether efforts were made to modify internal practices to address the conduct, and the length of time it took the utility to correct the conduct once discovered. 52 Pa. Code §69.1201(c)(4).

Based on the statements presented in the Joint Petition, it appears that PECO began to take action once it was aware of the violations at issue. However, it is unclear whether PECO had reason to know of the violations at any earlier point in time. The Joint Petition reflects no investigation into whether PECO, through its mandatory internal dispute processes or through routine customer service call center operations undertook reasonable efforts to discover the errors and prevent additional harm. Furthermore, the Joint Petition reflects no consideration of

the level of oversight PECO was providing to its third-party vendor that purportedly made the programming errors at issue and whether PECO's oversight was deficient.

- iv. The number of customers affected and the duration of the violation. 52 Pa. Code §69.1201(c)(5).*

According to the facts presented, “approximately 49,500” customers were terminated without proper notice, with “over 1,500” customers remaining off. But it is unknown how long each of those customers remained without service – and it is unknown how many additional customers were impacted but not terminated.

- v. The compliance history of the regulated entity which committed the violation.*

An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty. 52 Pa. Code § 69.1201(c)(6). Just a few years ago, PECO and I&E entered into a Settlement regarding PECO's improper termination of residential customers in violation of the winter moratorium on shutoffs.⁸ Taken together, these incidents point to a potential pattern and practice of PECO failing to follow provisions of the Public Utility Code and Commission Regulations regarding notice and timing of termination.

- vi. Whether the regulated entity cooperated with the Commission's investigation.*

Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty. 52 Pa. Code § 69.1201(c)(7). Since filing the Joint Petition, “additional data” was apparently discovered, leading PECO and I&E to petition to withdraw the proposed settlement. At this time, it is not clear why PECO's data was incomplete or inadequate, but TURN submits that further investigation is warranted to

⁸ PUC v. PECO, Docket No. M-2018-2531404.

determine whether such “additional data” should have been provided in advance of the filing of the Joint Petition and why PECO failed to identify and/or disclose it.

vii. A substantial fine is necessary to deter future violations.

The next factor is “[t]he amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.” 52 Pa. Code §69.1201(c)(8). PECO is one of the largest utilities in Pennsylvania, with a large low-income population. In 2019, PECO had 1,488,812 electric customers and 484,678 natural gas customers.⁹ In addition, PECO’s estimated low-income customers made up 26.4% of its residential Electric customer base, and 15.5% of its residential Natural Gas customer base.¹⁰ Given PECO’s size, and the gravity of the violations, a substantial fine is necessary to ensure PECO – and all regulated entities in Pennsylvania – take appropriate steps to ensure that proper notice is provided prior to termination of residential customers. Indeed, PECO’s improper termination practices affected more than 3% of its entire electric customer base.

The Public Utility Code allows for up to \$1000 per violation. 66 Pa. C.S. §3301(a). In addition, each and every day that a violation continues could be a separate and distinct offense. 66 Pa. C.S. §3301(b). Each customer harmed could be considered a separate violation as well. As discussed above, there are important, unanswered questions that could influence the amount of the civil penalty that is appropriate in this situation. Absent answers to those questions, TURN is unable to suggest a specific amount at this time. However, the current civil penalty of \$50,000 – approximately \$1 per impacted customer – is clearly inadequate given the nature and scope of PECO’s violations.

⁹ See Pa. PUC Bureau of Consumer Services, Report on 2019 Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies at 4-5, https://www.puc.pa.gov/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2019.pdf.

¹⁰ *Id.* at 6-7.

b. The proposed MEAF contribution is inadequate.

The proposed Settlement would also require PECO to make a contribution of \$25,000 to its Matching Energy Assistance Fund (MEAF). This amounts to approximately 50 cents per identified impacted customer. For the same reasons that the proposed civil penalty is clearly inadequate, the proposed MEAF contribution is inadequate.

c. Any MEAF contribution must be appropriately distributed.

In addition, the Joint Petition allocates the proposed MEAF contribution equally between PECO's major MEAF agencies, which correspond to the five major counties within PECO's service territory. However, PECO's residential customer population and low-income population are not distributed equally among those five counties. Furthermore, the Joint Petition does not reveal the geographic distribution of customers impacted by PECO's unlawful terminations or the proportion of such customers who were known to be low-income at the time of termination. Rather than distribute the MEAF contribution equally, PECO must be required to distribute the MEAF contribution proportional to the geographic distribution of the customers impacted. If such impact is not ascertainable, PECO should be required to distribute the MEAF contribution proportional to either its residential customer population or its confirmed low-income customer population.

VI. Impacted customers must be provided specific and direct notice of PECO's violations in order to protect their rights to be heard and pursue individualized relief.

It is unclear from the information included in the Joint Petition and Statements in Support whether PECO has identified all of the impacted customers – and if so, what, if any, notice PECO provided to those customers. Although PECO and I&E express their shared belief that there are no other potentially affected parties who should receive direct notice of the proposed settlement, TURN is concerned that affected households may not be aware that their service was,

in fact, terminated in violation of their rights under the Public Utility Code and Commission Regulations. As with much of the information included in the Joint Petition, open questions remain.

- Did any of the impacted customers call in to complain to PECO?
- What was the result of those complaints?
- Did PECO address such complaints via the Commission-required internal dispute process to reveal its erroneous terminations in a timely fashion?
- Was service restored immediately and without payment to customers who contacted PECO or were they required to pay additional amounts? Has PECO refunded any restoration fees imposed on affected customers?
- How many customers submitted medical certificates for restoration, or used grant assistance? Are those customers provided additional medical certificates or opportunities to obtain grant assistance in light of PECO's violations?

There is a three-year statute of limitations on actions brought under the Public Utility Code. While investigation into PECO's unlawful termination practices continues, it is vital to ensure that affected households can inform the Commission and the parties regarding the impact of PECO's violations and pursue individualized relief if desired. In taking any action on the Joint Petition or Petition to Withdraw, the Commission should direct PECO to provide specific and direct notice to each affected household, informing them that PECO terminated their utility service in violation of the Public Utility Code and Commission Regulations. Without such notice, those households unaware that their service was terminated unlawfully may be foreclosed from submitting comments necessary to understand and evaluate a potential settlement. Moreover, without an understanding that PECO's actions were unlawful, such households may

be unfairly precluded from pursuing individualized relief solely due to the passage of time. The Commission should ensure that affected households, whose rights were already violated by PECO, are provided opportunities to be heard in the context of evaluating any potential settlement and preserve their rights to seek redress from PECO's unlawful conduct.

VII. Conclusion

TURN urges the Commission to act in accordance with the recommendations raised in these comments to adequately remedy the harm PECO's unlawful termination practices caused and to preserve the rights of consumers harmed by PECO's unlawful conduct.

Respectfully Submitted,



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