**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held August 5, 2021

Commissioners Present:

 Gladys Brown Dutrieuille, Chairman

 David W. Sweet, Vice Chairman

 John F. Coleman, Jr.

 Ralph V. Yanora

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| Pennsylvania Public Utility Commission,Bureau of Investigation and Enforcement v.PECO Energy Company |  |  M-2021-3014286 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Comments, filed on June 16, 2021, by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN), in response to our Opinion and Order entered May 6, 2021 (May 2021 Order); (2) the Petition to Intervene filed by CAUSE-PA on May 20, 2021 (CAUSE-PA’s Petition to Intervene); (3) the Joint Petition For Leave to Withdraw Settlement (Joint Petition to Withdraw) filed on June 8, 2021, by the Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO, PECO Energy or Company) (collectively, Joint Petitioners) relative to the Joint Petition for Approval of Settlement that was filed on February 12, 2021 (Joint Settlement Petition), in the above-captioned proceeding; and (4) PECO’s Motion to Strike, filed on June 21, 2021 (PECO’s Motion to Strike), in regards to CAUSE-PA’s Answer, filed on June 14, 2021, to the Joint Petition to Withdraw. Answers opposing CAUSE-PA’s Petition to Intervene were filed individually by I&E and PECO on June 8 and 9, 2021, respectively. No objections were filed in response to the Joint Petition to Withdraw or PECO Energy’s Motion to Strike. For the reasons discussed below, we shall: (1) grant the Joint Petitioners’ Joint Petition to Withdraw, which shall render CAUSE-PA’s Petition to Intervene moot; and (2) grant PECO’s Motion to Strike CAUSE-PA’s Answer to the Joint Petition to Withdraw.

1. **History of the Proceeding**

 On June 25, 2018, PECO’s third-party call center vendor made a dialer platform change resulting in two separate computer errors that ultimately caused improper service termination for approximately 49,500 electric customers between June 25, 2018, and September 10, 2019.

 PECO discovered the first error on August 9, 2018, and suspended all service terminations. This error led to the termination of a large number of electric customers without those customers first receiving the required second seventy-two-hour telephone call to either the customer or an adult occupant of the household at least three days, or seventy-two hours, prior to the scheduled termination. PECO reported the incident to the Commission’s Bureau of Consumer Services (BCS) on August 16, 2018, and BCS referred the matter for investigation to I&E. PECO resolved the first issue on August 20, 2018.

 The second error was not detected by PECO until September 10, 2019, when the Company was investigating an informal complaint filed by a customer on September 5, 2019. This error led to the Company’s termination of service for a large number of customers on a day different than that on which the previous service termination occurred due to the first error. PECO again suspended all service terminations until September 12, 2019, which was the date the second error was resolved.

 Upon completion of its informal investigation, I&E was prepared to file a Formal Complaint against PECO that it had violated Section 1503(b) of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. ¶ 1503(b), regarding personal contact before service is discontinued,[[1]](#footnote-1) and Section 56.333 (a) and (b) of the Commission’s Regulations, 52 Pa. Code § 56.333, regarding termination of service.[[2]](#footnote-2) However, I&E and PECO engaged in voluntary negotiations and achieved an agreement to resolve the matter through the Joint Settlement.

 On February 12, 2021, the Joint Petitioners filed the aforementioned Joint Settlement for the Commission’s consideration.

 As noted, the Commission’s May 2021 Order directed that notice of that Order and the proposed Settlement be published in the *Pennsylvania Bulletin* to provide an opportunity for interested parties to file comments with the Commission on the proposed Settlement within twenty-five days after the date of publication.

 On May 20, 2021, CAUSE-PA filed its Petition to Intervene in the Settlement.

 On May 22, 2021, the Commission’s May 2021 Order, along with the Settlement and Statements in Support, were published in the *Pennsylvania Bulletin*, 51 *Pa.B.* 2902 (May 22, 2021). In accordance with the May 2021 Order, comments on the proposed Joint Settlement were due on or before June 16, 2021.

 On June 8, 2021, I&E filed its Answer opposing CAUSE-PA’s Petition to Intervene. On the same date, the Joint Petitioners filed their Joint Petition to Withdraw.

 On June 9, 2021, PECO filed its Answer opposing CAUSA-PA’s Petition to Intervene.

 On June 14, 2021, CAUSE-PA filed an Answer to the Joint Petition to Withdraw (CAUSE-PA Answer to Joint Petition to Withdraw) but does not oppose I&E’s and PECO’s request to withdraw the Joint Settlement Petition.

 On June 16, 2021, Comments in response to our May 2021 Orderwere filed by CAUSE-PA and TURN.

 On June 21, 2021, PECO Energy filed a Motion to Strike CAUSE-PA’s Answer to Joint Petition to Withdraw.

 No objections were filed in response to I&E’s and PECO’s Petition to Withdraw. Nor has any objections been filed in response to PECO’s Motion to Strike.

1. **Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC*,625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**A. Comments in Response to May 2021 Order**

 As noted, CAUSE-PA and TURN filed Comments in response to our May 2021 Order. Both Parties acknowledged the filing of I&E and PECO’S Petition to Withdraw, but nevertheless submitted Comments to express their concerns regarding the Joint Petition for Settlement.

 In its Comments, CAUSE-PA submits that it is opposed to the proposed Joint Settlement because it believes it is both legally and factually deficient and does not adequately address and remediate the harm to impacted consumers. CAUSE-PA Comments at 3. CAUSE-PA argues that PECO’s failure to provide legally required notice prior to the involuntary termination of service to residential consumers deprived tens of thousands of residential consumers of the opportunity to prevent termination of service to their home; yet the Joint Settlement imposes a financial penalty of just $1.52 for each impacted consumer. CAUSE-PA Comments at 2. According to CAUSE-PA, this is not just or reasonable, and does not appropriately account for the serious nature of harm likely caused by PECO’s violations. See 52 Pa. Code. § 69.1201(c)(2). While PECO’s actions may have been unintentional, CAUSE-PA opines that the resulting harm to tens of thousands of PECO customers was serious, substantial, and remains ongoing nearly two years later for hundreds of customers who were never able to reconnect service. *Id.* Thus, CAUSE-PA considers that the $75,000 penalty under the Joint Settlement is unlikely to prevent similar errors in the future for a public utility the size of PECO, which CAUSE-PA contends could have been avoided, or at least reduced in terms of scope and severity, with additional oversight and more careful monitoring. *Id.*

 CAUSE-PA cites to and incorporates, by reference, its arguments in its Answer to the Joint Petition to Withdraw regarding other deficiencies of the Joint Settlement in support of its position to deny the Joint Settlement and grant the Joint Petition to Withdraw with its suggested conditions. CAUSE-PA Comments at 3. As noted, those conditions include the issuance of directed questions and the imposition of a sixty-day timeframe for such revisions to ensure the matter is timely resolved. *Id.*

 In its Comments, TURN contends that the Joint Settlement Petition is not in the public interest and should be denied. TURN Comments at 4. TURN submits that the terms of the Joint Settlement 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.” *Id.* TURN argues that the Joint Settlement does not include an adequate review of the relevant provisions of the Code or the Commission’s Regulations, TURN Comments at 8-12, and that 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. TURN Comments at 12-13. Furthermore, 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. TURN Comments at 4, 7.

 More specifically, TURN submits that the Joint Settlement Petition is deficient because it did not adequately address the following concerns: (1) the identity of all of the impacted customers; (2) the real-world harm experienced by each affected customer; (3) the failure by PECO to take reasonable and available efforts to restore all improperly terminated customers; (4) the non-aggressive and ineffective outreach by PECO that resulted in “approximately 1500” customers remaining without service; (5) the failure of PECO to protect vulnerable customers from improper termination, including medically ill customers and customers under a protection from abuse order; and (6) the failure of PECO 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. TURN Comments at 5-6.

 TURN also asserts that the Joint Settlement Petition lacked sufficient information about the harm that resulted from PECO’s errors. TURN is of the opinion that the following information, disaggregated by whether the customer’s service was restored or remains off, should be obtained and reported to fully account for the harm PECO has caused: (1) the number of impacted customers who had previously submitted a medical certification to PECO; (2) the number of impacted customers who had previously submitted to PECO a protection from abuse order or comparable order evidencing domestic violence; (3) the number of impacted customers who remained without service in the winter following the improper termination; (4) the number of impacted customers known to PECO to be tenants; (5) the number of impacted customers known to PECO to have household members that are minor children; (6) the number of customers who had service restored within twenty-four hours; (7) the number of customers who had service restored within seventy-two hours; (8) the number of customers whose service restoration occurred more than seventy-two hours after improper termination. TURN Comments at 7.

 TURN also contends that PECO’s corrective actions, upon discovering the dialer platform errors, were insufficient. With regard to PECO’s policy of providing a Deferred Payment Arrangement (DPA) only if the balance was between $350 and $3000 was unreasonable, TURN argues that 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. Therefore, TURN suggests that 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.*, whether PECO’s actions result in restoration of service for improperly terminated customers, especially when it is clear in the Joint Settlement Petition that PECO’s actions did not result in restoration for approximately 1,500 customers. TURN Comments at 12‑13. TURN argues that this significant oversight weighs against any finding that the proposed settlement is in the public interest. Accordingly, TURN avers that 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. TURN Comments at 13‑14.

 Finally, TURN argues that the civil penalty and PECO’s Matching Energy Assistance Fund (MEAF) contribution proposed in the Joint Settlement Petition are inadequate and poorly targeted to address the harm caused by PECO’s actions. In this regard, TURN addresses each of the ten factors in Section 69.1201, 52 Pa. Code, § 69.1201, that the Commission considers in determining whether a fine is appropriate. In its discussion of each factor, TURN provides an explanation of the additional information that would be necessary for the Parties to consider in determining the appropriate penalty on this matter in future settlement negotiations. TURN Comments at 14-19.

**B. Joint Petitioners’ Petition to Withdraw; CAUSE-PA’s Answer to Joint Petitioners’ Petition to Withdraw; CAUSE-PA’s Petition to Intervene; and PECO’s Motion to Strike**

Withdrawal of pleadings in a contested proceeding is governed by Section 5.94 of our Regulations, 52 Pa. Code § 5.94. Section 5.94(a) provides the following:

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

 In their Joint Petition to Withdraw, the Joint Petitioners explain that following the entry of the May 2021 Order, the Company’s counsel advised I&E of additional data that was discovered after the Joint Settlement was filed regarding the reconnection of additional PECO customers who did not receive proper notices of termination. In light of that data, the Joint Petitioners determined that certain provisions of the Joint Settlement would need to be revised. Joint Petition to Withdraw at 2.

 The Joint Petitioners further state that “while both parties are optimistic that a new agreement will be reached, both parties believe that the current docket should be closed upon approval of the withdrawal of the Settlement that gave rise to this proceeding.” The Joint Petitioners also agree that closing the current docket will not “impact any potential claim that could be raised by PECO regarding the [three-year] statute of limitations pursuant to 66 Pa.C.S. § 3314, as I&E duly preserved the claims raised in the instant matter by timely concluding its investigation and filing a Settlement and the Settlement is only being withdrawn to consider newly discovered evidence.” Joint Petition to Withdraw at 2-3.

**C. CAUSE-PA’s Answer to Joint Petitioners’ Petition to Withdraw; CAUSE-PA’s Petition to Intervene; and PECO’s Motion to Strike**

 In its Answer to the Joint Petition to Withdraw, CAUSE-PA submits that it does not oppose the Joint Petitioners’ request to withdraw from the proposed Joint Settlement because it believes that the Joint Settlement is legally deficient and lacks critical facts necessary for the Commission to determine whether it is in the public interest. Accordingly, CAUSE-PA recommends that the Commission place conditions on approval of the proposed withdrawal, including the issuance of directed questions and the imposition of a sixty-day deadline for submission of a revised Settlement. If a revised settlement is not proposed within sixty days, CAUSE-PA requests that the matter be referred to the Office of Administrative Law Judge for further investigation. CAUSE-PA Answer at 2. The remainder of CAUSE-PA’s Answer provides its arguments in support of its above recommendation and why it believes the Joint Settlement lacks legal and factual details. Specifically, CAUSE-PA discusses: (1) the alleged factual deficiencies it believes must be obtained and considered before reaching a decision on whether the Joint Settlement is in the public interest, CAUSE-PA Answer at 5-6; (2) the additional information it believes is necessary before it can be determined whether the Joint Settlement is in the public interest, CAUSE-PA Answer at 7-8; and (3) a list of directed questions that it believes need to be answered in order to determine the appropriate remedies under the new settlement. CAUSE-PA Answer at 9-10.

 In its Motion to Strike, PECO Energy asserts that CAUSE-PA is not a party to this proceeding and its “answer” and proposal of “conditions” on approval of a petition for leave to withdraw a proposed settlement in an informal investigation are not authorized by the Commission’s Regulations. PECO Motion to Strike at 2. PECO Energy contends that the impropriety of CAUSE-PA’s Answer is underscored by its statement in both its Answer and Comments that CAUSE-PA does not oppose withdrawal of the Settlement. *Id.* Accordingly, PECO requests that the Commission grant the Joint Petition to Withdraw and, upon such approval, strike CAUSE-PA’s Answer from the docket and reject CAUSE-PA’s proposed conditions including CAUSE-PA’s proposal for a sixty-day deadline for I&E and PECO to file a revised settlement. *Id.*

 PECO Energy asserts that because the Commission has not acted upon CAUSE-PA’s Petition to Intervene in this informal investigation, CAUSE-PA is not a party to this proceeding and its Answer should be stricken on that ground alone. PECO Motion to Strike at 4. However, even if the Commission did grant CAUSE-PA’s Petition to Intervene, PECO Energy argues that CAUSE-PA’s Answer should be stricken for the following reasons: (1) CAUSE-PA’s Answer is outside the process the Commission established in the May 21 Order for parties to address the proposed Settlement in accordance with the Commission’s Regulations at 52 Pa. Code § 3.113(b)(3) governing resolution of informal investigations; (2) The Commission’s Rules of Practice and Procedure do not authorize the filing of an “answer” to a petition by the parties to a settlement of an informal investigation; nor has CAUSE-PA alleged that any such authority exists; (3) CAUSE-PA does not identify any authority that would permit the Commission to impose CAUSE-PA’s “conditions” on approval of an uncontested petition by parties to withdraw a settlement, including a requirement that both PECO and I&E file a new, revised settlement; and (4) CAUSE-PA has already submitted Comments in accordance with the Commission’s established process in this proceeding, and both CAUSE-PA’s Answer and Comments make it clear that CAUSE-PA does not oppose withdrawal of the Settlement. *Id.*

**D. Disposition**

 Based on our review of the Joint Petition to Withdraw, and in view of the fact that no opposition has been filed, we find that the newly discovered data involving the reconnection of additional PECO customers who did not receive proper notices of termination provides a sufficient basis for us to grant the Petition. While I&E and PECO could have filed an amendment to the original Settlement instead of requesting a withdrawal of the Settlement, we are of the opinion that it may be more efficient to grant the withdrawal of the Joint Settlement so that a new Settlement, based on the updated discoveries could be submitted for our consideration. Accordingly, the Petition to Intervene that was filed by CAUSE-PA is rendered moot; and it follows that since CAUSE-PA is not a party to this proceeding, we must grant PECO’s Energy Motion to Strike CAUSE-PA’s Answer to I&E’s and PECO’s Joint Petition for Leave to Withdraw Settlement.

In making this determination, we find it necessary to consider the impact of Section 3314 of the Code (governing limitations of actions) on the present circumstances, where the Joint Petitioners seek withdrawal of the Settlement, and where the filing of the Settlement operated to toll Section 3314’s three-year statute of limitations on bringing claims for violation of the Code.

Relevant to our consideration of the Joint Petitioners’ request for leave to withdraw the Joint Petition for Settlement, we note that our grant of the request to withdraw and mark the docket closed, is not to be construed as our approval of the Joint Petitioners’ interpretation of the application of the statute of limitation under Section 3314, where the Parties asserted that:

The parties agree that closure of the current docket due to the withdrawal of the Settlement does not impact any potential claim that could be raised by PECO regarding the statute of limitations pursuant to 66 Pa.C.S. § 3314, as I&E duly preserved the claims raised in the instant matter by timely concluding its investigation and filing a Settlement and the Settlement is only being withdrawn to consider newly discovered evidence.

Joint Petition for Leave to Withdraw at para. 6.

We further note that the application of the statute of limitations under Section 3314 is non-waivable. The language of Section 3314 expressly provides that no action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three years from the date the liability arose. Therefore, Section 3314 terminates the right to bring an action as well as any remedy and divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose and may not be raised at any time. Accordingly, the Parties’ “agreement” regarding the application of Section 3314, whatever it may be, is inoperative.

 In the present case, as a procedural matter, we caution the Parties that Section 3314’s three-year statute of limitations for bringing a claim for violation of the Code is tolled only under the active pendency of this proceeding. As the Parties are aware, upon our approval of the request for leave to withdraw the Settlement, the present docket would be marked closed. Accordingly, the tolling of the statute of limitations under Section 3314, will cease to be in effect. In order for the tolling to remain in effect the submission of a new official action, such as a complaint, or a new settlement at a new docket number, would need to be filed prior to the expiration of the statute of limitations under Section 3314. Therefore, without such a submission, the applicable three-year statute of limitations will expire.

 As noted, as a result of our approval of the Joint Petition to Withdraw, the Petition to Intervene that was filed by CAUSE-PA is rendered moot.

 Additionally, even if we were to grant CAUSE-PA’s Petition to Intervene, we would decline CAUSE-PA’s request in its Answer for the issuance of directed questions and the imposition of a sixty-day deadline for submission of a revised Settlement because we lack authority to attach conditions to our approval of the proposed withdrawal.

1. **Conclusion**

 Based on the foregoing discussion, we shall: (1) grant the Joint Petition to Withdraw that was filed by I&E and PECO Energy relative to their Joint Petition for Approval of Settlement that was filed on February 12, 2021, and, thus, deem moot CAUSE-PA’s Petition to Intervene; and (2) grant PECO Energy’s Motion to Strike CAUSE-PA’s Answer; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Joint Petition for Leave to Withdraw Settlement that was filed on June 8, 2021, by the Bureau of Investigation and Enforcement and PECO Energy Company, relative to the Joint Petition for Approval of Settlement that was filed on February 12, 2021, at Docket No. M-2021-3014286, is granted, consistent with this Opinion and Order.

2. That the Petition to Intervene filed on May 20, 2021, by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania is deemed moot, consistent with this Opinion and Order.

3. That the Motion to Strike the Answer to Joint Petition for Leave to Withdraw Settlement filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania that was filed by PECO Energy Company on June 21, 2021, is granted, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 5, 2021

ORDER ENTERED: August 5, 2021

1. Section 1503(b) of the Code requires that, in addition to any written notice of discontinuance of a customer’s service, the utility must personally contact the customer at least three days, or seventy-two hours, prior to discontinuing service. [↑](#footnote-ref-1)
2. Section 56.333 of the Commission’s Regulations 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. If contact is attempted by telephone, the utility must attempt to call the residence on at least two (2) separate days. With respect to the content of the seventy-two-hour calls, Section 56.333 also provides that the three-day personal contact must include the earliest date at which the termination may occur. Settlement ¶¶ 20, 21 at 5-6. [↑](#footnote-ref-2)