



October 5, 2022

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 Joint Comments of Tenant Union Representative Network (TURN) and Coalition for Affordable Utility Services and Energy Conservation in Pennsylvania (CAUSE-PA) to the Joint Petition for Approval of Settlement of the Bureau of Investigation and Enforcement and PECO Energy Company in the above-referenced matter.

A copy of the Joint Comments are being served via email, as indicated on the attached Certificate of Service.

Respectfully Submitted,

Robert W. Ballenger
Counsel for TURN

cc: Service list



BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served the Joint Comments of TURN/CAUSE-PA in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54

SERVICE VIA EMAIL ONLY

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I. Background

On February 12, 2021, the Commission's Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO) filed a Joint Petition for Approval of Settlement (herein, Prior Petition) with respect to an informal investigation conducted by I&E concerning PECO's improper electric service terminations of approximately 49,500 PECO customers. On May 6, 2021, the Commission entered an Order requesting comment from interested parties concerning the proposed settlement terms within twenty-five days after publication in the Pennsylvania Bulletin. On May 22, 2021, the Prior Petition was published in the Pennsylvania Bulletin. Later, on June 9, 2021, PECO and I&E filed a Joint Petition for Leave to Withdraw the Prior Petition. Following that, the Tenant Union Representative Network (TURN) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (collectively, the Low Income Advocates) separately filed comments on the Prior Petition for the Commission's consideration on June 16, 2021.

On August 5, 2021, the Commission granted the Joint Petition to Withdraw the Prior Petition and marked this docket closed. Thereafter, on January 7, 2022, PECO and I&E again filed a Joint Petition for Approval of Settlement (Joint Petition). The Joint Petition modifies the Prior Petition in several important respects, as discussed further in these comments, including the following:

- The settling parties disclosed updated numbers of customer premises where service was improperly terminated. Joint Petition ¶18.
- Restoration timeframes for customer premises affected by PECO's improper terminations were detailed. Joint Petition ¶23.

- It was acknowledged that PECO failed to properly refund reconnection fees charged to 47,175 customer premises after it discovered its outbound calls provided incorrect termination dates. Joint Petition ¶27.
- The settling parties proposed a civil penalty of \$150,000 (increased from \$50,000 in the Prior Petition) to resolve all allegations of illegal termination of service. Joint Petition ¶51. No civil penalties were proposed with respect to PECO's collection of reconnection fees, delay in restoration, and delay in undertaking efforts to refund reconnection fees.
- The settling parties agreed that PECO will make a \$75,000 contribution to its Matching Energy Assistance Fund (MEAF), an increase from the \$25,000 proposed in the Prior Petition. Joint Petition ¶51.
- A further agreement was reached that PECO will make a \$320,591.88 contribution to MEAF, representing the erroneously charged reconnection fees that it has been unable to refund to its customers. Joint Petition ¶51.

The Low Income Advocates submit these comments in response to the Commission's August 25, 2022 Opinion and Order, published in the Pennsylvania Bulletin on September 10, 2022, inviting interested parties to comment within 25 days. Through these comments, the Low Income Advocates again identify multiple concerns with the proposed settlement negotiated between I&E and PECO. Except as modified herein, and as relevant to the differences between the Prior Petition and the Joint Petition, TURN and CAUSE-PA incorporate by reference their previously submitted comments regarding this matter.

II. The Low Income Advocates Submit that the Proposed Settlement is Not Clearly in the Public Interest.

The Low Income Advocates question whether the proposed settlement is in the public interest. PECO's errors resulted in the loss of modern life-essential utility service for nearly 50,000 PECO customers. As set forth in the settlement, PECO improperly terminated electric service to 48,728 distinct premises between June 25, 2018 and September 10, 2019. Joint Petition ¶18. These customers had their service terminated without receiving the required three-day personal contact (1,552 premises), or they were terminated on different day than they were erroneously informed by PECO's calling system (47,176 premises). Joint Petition ¶¶18, 22. With respect to 47,176 of the impacted customer premises, PECO's outbound three-day contact erroneously informed customers they would be shut off on their next bill due date. Joint Petition ¶16. As a result, the vast majority of affected PECO customers were led to believe that *they had more time* to resolve the threatened shut off. Indeed, only a small, unidentified number of customers whose next bill due date was within three days of PECO's 72-hour contact could have conceivably been put on notice that termination was imminent. This reveals that tens of thousands of PECO customers who experienced improper terminations were caught off-guard, with many likely expecting they had two weeks or more to resolve their threatened shut off.

Under these circumstances, the Low Income Advocates do not find the proposed \$150,000 civil penalty, amounting to only approximately \$3 per impacted premise, adequate in light of the gravity and scope of harm resulting from PECO's failures.

The Low Income Advocates are also concerned about the settling parties' continued disregard for proper reference to the provisions of Chapter 14 of the Public Utility Code and their incorrect reliance upon Commission regulations which, by their terms, apply only to survivors of

domestic violence.¹ As discussed more fully below, the Joint Petition, like the Prior Petition, fails to take into consideration all of the applicable provisions of the Public Utility Code and Commission regulations that are implicated by PECO’s failure to provide accurate, timely notice of involuntary termination.

The proposed settlement does not indicate that the parties contemplated the full magnitude of the harm that resulted from PECO’s actions. Likewise, the proposed settlement does not appear concerned with the real-world consequences of PECO’s actions, nor does it examine the range of customer experiences that resulted from PECO’s conduct.

To the extent the proposed settlement is helpful in determining how customers were impacted, it reveals that just under 30,000 premises were able to restore service within 24 hours. Joint Petition ¶23. In contrast, more than 13,000 premises were unable to be restored within 96 hours. Of those, over 2,600 premises were incapable of having service restored at all.² *Id.* This stands in stark contrast to the representations included in the Prior Petition, namely, the expectation that “95% of restorations occur within three days of the termination.” Prior Petition ¶23. The harms and losses experienced by households unable to quickly regain electric service are likely far greater than an inconvenience. The involuntary termination of service to a home, even for a brief period of time, can have reverberating impacts on the financial stability of the household – causing families to suffer substantial financial losses (like the spoilage of food and medicine and lost work time), significant health consequences (like respiratory illness and

¹ The Joint Petition cites extensively to Subchapter P of the Commission’s Chapter 56 regulations. As explained in 52 Pa. Code §56.1(b), Subchapters L-V of Chapter 52 “apply to all customers who have been granted protection from abuse orders as provided by 23 Pa.C.S. Chapter 61 (relating to Protection from Abuse Act) or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence against the applicant or customer.”

² This is a notable increase from the “approximately 1500” households who remained without service as of January, 2021, when the settling parties previously notified the Commission of a proposed settlement. Prior Petition ¶24.

exposure), and other severe consequences to the safety and welfare of the family (like family separation, increased risk of fire, and eviction).³

Objectively, more than 25% of PECO customers affected by the improper terminations were exposed to clear and identifiable harm, revealing the serious consequences thousands of PECO's customers faced as a result of its violations and warranting a higher penalty than proposed by the settling parties. The fact that 2,600 premises (nearly 6% of the total premises impacted) were never able to restore service provides a small insight into the enduring housing and financial instability resulting from PECO's errors.⁴

The Low Income Advocates also question the Joint Settlement's failure to propose civil penalties with regard to the reconnection fees PECO unlawfully imposed and sluggishly refunded. As set forth in the proposed settlement, the civil penalty is tied solely to the two identified termination errors. Joint Petition ¶51.A. But PECO's failure to promptly refund reconnection fees to some 47,175 premises where PECO's outbound calling system relayed an incorrect termination date constitutes a separate and distinct violation. The Low Income Advocates find this omission troubling. Although PECO "internally resolved" the outbound calling issue as of September 12, 2019, it did not take any steps to refund reconnection fees for those accounts until late May 2021. Indeed, due to its own delay, PECO was unable to fully refund reconnection fees to approximately 12,000 premise accounts.⁵ While the Low Income

³ See, e.g., 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> (documenting adverse health impacts of loss of utility service); see also Review of Universal Service and Energy Conservation Programs, Docket M-2017-2596907, Comments of Cynthia Figueroa, Commissioner – Philadelphia Department of Human Services (2017).

⁴ See, e.g., PA House Democratic Policy Committee, Public Hearing on Utility Terminations, Testimony of Tanya J. McCloskey Acting Consumer Advocate (October 26, 2020) (testifying that utility terminations cause housing instability).

⁵ $\$320,591.88 / 25 = 12,103$. The Low Income Advocates assume that some accounts did not have the reconnection fee fully applied, if for example, they had final balances below \$25.

Advocates agree that PECO should not retain the funds it improperly collected (increased by \$5 interest credited), the proposed settlement is deficient in making no provision for civil penalties associated with PECO's delay.

Finally, the Low Income Advocates submit that the Joint Petition overstates the presence of mitigating factors, and that greater penalties are warranted. The Joint Petition contends that PECO did not discover its failure until more than three months after the settling parties had concluded their original negotiations and filed for Commission approval of a prior settlement.⁶ Joint Petition ¶¶17, 27. However, PECO became aware that its outbound calling system was providing incorrect shut off dates because of a BCS informal complaint filed on September 5, 2019. In fact, PECO refunded that customer's reconnection fee in satisfaction of its complaint. Joint Petition ¶27. Yet PECO's "internal resolution" of this issue on a system-wide basis in September 2019 neglected any consideration of refunds to similarly impacted customers. Following more than 20 months of delay, thousands of former customers who were impermissibly charged reconnection fees cannot now receive the refunds due to them. The Low Income Advocates find that, far from mitigating the harm, PECO's failure to promptly refund reconnection fees weighs in favor of additional civil penalties.

For all of the foregoing reasons, the Low Income Advocates submit that, contrary to assertions of the settling parties, the Joint Petition and the settlement terms reflected therein are not clearly within the public interest and will do little to deter future violations by PECO nor encourage PECO to promptly remediate such incidents in the future.

⁶ TURN raised the Prior Petition's omission of consideration of reconnection fees in its June 16, 2021 comments.

III. The Joint Petition for Settlement Fails to Detail All Relevant Violations 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, it states that 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 56.333(a) and (b) of the Commission’s regulations are expressly applicable only to customers who are survivors of domestic violence with a Protection from Abuse Order or some other court order that contains clear evidence of domestic violence,⁷ and do not apply by default to all customers. Although certainly some of the customers impacted could be survivors of domestic violence, most households impacted by PECO’s unlawful terminations were not likely also survivors of domestic violence under the parameters of subchapters L-V of Chapter 56 of the Commission’s Regulations.

The settling parties’ failure to accurately cite to the correct statutory and regulatory requirements is troubling, in and of itself, as it evidences a misunderstanding and underestimation of the extent to which PECO violated statutory and regulatory requirements. Contrary to the narrow regulatory violations cited in the Joint Petition, PECO’s outbound calling and termination issues likely violated, at minimum, sections 1406 and 1407 of the Public Utility Code and sections 56.82, 56.91-.100 of the Commission’s Regulations.

The Low Income Advocates note that section 56.333 requires that, for those customers who are survivors of domestic violence, PECO must also “conspicuously post a termination

⁷ See 52 Pa. Code §§ 56.1(b) & 56.251; see also 66 Pa. C.S. § 1417.

notice at the residence of the customer and the affected 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.⁸ To the extent applicable, this indicates that the scope of PECO’s failure is even more significant than set forth in the Joint Petition. As a result, the Joint Petition fails to consider whether PECO violated this requirement with respect to those customers who are domestic violence survivors.

Concerningly, the settlement reveals that no aspect of the investigation focused on the provisions of Chapter 14 of the Public Utility Code,⁹ and the Commission’s accompanying regulations,¹⁰ which apply by default and govern termination and reconnection of service to the majority of PECO’s customers. Although I&E’s investigation focused on the 72-hour notice requirement, which is incorporated into Chapter 14’s termination provisions,¹¹ I&E apparently undertook no investigation to determine whether PECO had complied with its obligations to attempt personal contact “at the time service is terminated” as required by Chapter 14.¹² Indeed, it appears likely PECO did not attempt such personal contact because, if it had done so, it could have discovered its termination errors earlier and taken appropriate action to reduce the number of customers impacted.

Additionally, the Joint Petition reveals that no consideration was given to the provisions of Chapter 14 and the Commission’s regulations governing *reconnection* of service. Pursuant to Chapter 14, PECO is only authorized to collect a reconnection fee “following lawful termination of the service.”¹³ Indubitably, having failed to comply with the notice provisions required in

⁸ 52 Pa. Code § 56.335.

⁹ 66 Pa. C.S §§ 1401-1419 (Chapter 14).

¹⁰ 52 Pa. Code Ch. 56, Subch. B-K.

¹¹ 66 Pa. C.S. §1406(b)(1)(ii).

¹² 66 Pa. C.S. §1406(b)(1)(iii).

¹³ 66 Pa. C.S. §1407(a).

advance of termination, PECO’s collection of reconnection fees was not authorized by Chapter 14. As discussed above, PECO’s failure to promptly rectify this unlawful imposition of fees has resulted in the inability to refund fees to approximately 12,000 affected customers.

Finally, Chapter 14 requires PECO to reconnect service “[w]ithin 24 hours for erroneous terminations.”¹⁴ Again, because PECO failed to fulfill its notice obligations, PECO’s termination of service to nearly 50,000 premises was clearly erroneous, indicating that PECO was obligated to restore service within 24 hours. Even if Chapter 14 could be read to require PECO to restore within 24 hours of *its discovery* of erroneous terminations (which the Low Income Advocates do not concede to be a valid interpretation), PECO unquestionably failed to restore service within that time frame to approximately 20,000 customers. Joint Petition ¶23.

Respectfully, the Joint Petition places undue emphasis on supposed “corrective actions” taken by PECO.¹⁵ Joint Petition ¶25. PECO erroneously and improperly terminated service to nearly 50,000 premises. Then, instead of promptly restoring service and providing compliant notice to affected customers to correct the error, PECO engaged in an extensive outreach campaign. Given the ubiquity of smart meters in PECO service territory, with the ability to reconnect service remotely, the Low Income Advocates question whether PECO’s “corrective actions” may have *delayed* restoration to many premises by apparently conditioning restoration upon successful contact with customers at the affected premises. Moreover, many of the “corrective actions” could easily have been taken after restoration of service if customer contact

¹⁴ 66 Pa. C.S. §1407(b)(1).

¹⁵ It is noteworthy that PECO promotes as one solution its “no payment” COVID reconnect. PECO’s violations occurred, at the latest, in September 2019; PECO’s COVID reconnection policy was implemented in mid-March 2020. The characterization of this policy as a “corrective action” is seriously flawed. The policy lacks any cognizable nexus to the specific violations (as it was not undertaken in an effort to assist the 50,000 premises wrongfully terminated) and was not implemented for more than six months after PECO “internally resolved” the termination issues.

were not required in advance. Ultimately, the Joint Petition reveals that, for nearly 2,600 premises, PECO's violations remain uncorrected, and electric service continues to be off.

IV. The Civil Penalty and MEAF Contributions Required by the Joint Petition are Inadequate to Address the Harm Caused by PECO's Actions and Prevent Future Recurrence.

The Joint Petition requires PECO to pay a civil penalty amount to the Commission of \$150,000 and make a contribution of \$75,000 to its Matching Energy Assistance Fund (MEAF). Joint Petition ¶¶ 51(a), (b). Additionally, the Joint Petition provides that PECO will disgorge the reconnection fees collected from customers that it has been unable to refund via bill credits, and contribute such amounts to MEAF. Joint Petition ¶51(C). As previously submitted in TURN's June 16, 2021 comments, these penalties and contributions are inadequate under the ten factors set forth in the Commission's Regulations.¹⁶

Without reiterating previously submitted comments, the Low Income Advocates find the Joint Petition unsatisfactory, as it fails to impose any penalties with respect to PECO's reconnection timing, imposition of reconnection charges, and extensive delay in refunding such charges. For 47,175 customer premises, PECO not only improperly terminated service, it then demanded and collected reconnection fees unauthorized by Chapter 14. That the settling parties did not identify this issue in the context of negotiating the Prior Petition is an inexplicable oversight given PECO refunded identical charges to the customer who filed the Informal Complaint regarding PECO's outbound calling system's use of erroneous termination dates. Furthermore, contrary to the vague assurances in the Prior Petition, the Joint Petition reveals that, in fact, many affected customers struggled to restore service quickly, even though PECO was legally obligated to reconnect service erroneously terminated within 24 hours. Indeed

¹⁶ 52 Pa. Code §69.1201(c)

approximately 20,000 customer premises were without service for in excess of 24 hours, with more than 13,000 lacking service for in excess of four days, and 2,600 unable to restore at all. These facts reveal the severe consequences of PECO's termination **and** reconnection violations. Yet the Joint Petition only seeks civil penalties regarding PECO's termination issues.

The Low Income Advocates likewise question why PECO's commitment to disgorge the \$320,000 in reconnection fees it could not refund via bill credits is presented as consideration for the settlement. Contributing those dollars to MEAF, while helpful for those customers who may qualify for grants in the future, should not be held up as part of a compromise because PECO is not entitled to retain reconnection fees collected in violation of the Public Utility Code. Ultimately, the settling parties only now propose to contribute those sums to MEAF because PECO failed to promptly return them to 12,000 or so customers who should never have had to pay them in the first place.

For all of the foregoing reasons, and as set forth in TURN's and CAUSE-PA's respective June 16, 2021 comments, the Commission should impose meaningful civil penalties that are not just limited to PECO's termination issues. These penalties should take into account PECO's separate violations regarding reconnection fees and reconnection timing, to deter future conduct inconsistent with the Public Utility Code.

V. Conclusion

The Low Income Advocates urge the Commission to act in accordance with the recommendations raised in these comments to adequately address the harm PECO's unlawful termination and reconnection practices caused.

Respectfully Submitted,



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