

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

M-2021-3014286

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Joint Petition for Approval of Settlement (Joint Petition, Settlement Agreement or Settlement) filed on January 7, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO or Company) (collectively, the Settling Parties);¹ (2) the Comments to

¹ The Settlement Agreement replaces the Settling Parties prior Joint Petition for Approval of Settlement that was filed on February 12, 2021 (Prior Settlement Petition), and which the Commission permitted to be withdrawn by Order entered August 5, 2021, at the above docket.

the Settlement Agreement that were filed on October 5, 2022, by POWER Interfaith (POWER)² and jointly by the Tenant Union Representative Network (TURN)³ and the Coalition for Affordable Utility Services and Energy Conservation in Pennsylvania (CAUSE-PA)⁴ (hereinafter, TURN and CAUSE-PA will be referred to collectively as the Low-Income Advocates); and (3) the Motion of PECO Energy Company for Leave to File Reply Comments (PECO Motion for Leave) that was filed on October 20, 2022.

The Settlement Agreement was filed with respect to an informal investigation conducted by I&E concerning improper electric service terminations for approximately 48,728 impacted premises associated with 48,536 distinct customers. The Settling Parties submitted Statements in Support of the Settlement⁵ and request that the Commission approve the proposed Settlement because they aver it is in the public interest and consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving*

² POWER describes itself as a racial and economic justice organizing force in the state of Pennsylvania, helping people put faith and values into strategic action to win concrete change in the public sphere. POWER organizes in southeastern Pennsylvania and in coalitions across the state for racial and economic justice on a livable planet by shifting the moral and policy universe towards possibilities that support the common good. POWER Comments at 1.

³ TURN is a tenant service and advocacy organization that promotes the human right to housing and whose mission is to advance and defend the rights and interests of tenants and homeless people. <https://rturn.net/tenant-union-representative-network>.

⁴ CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating, and telecommunication services. Its membership is open to moderate and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence. CAUSE-PA Petition to Intervene (May 20, 2021), ¶¶ 11, 12.

⁵ I&E's and PECO's Statements in Support are included as Appendix B and Appendix C, respectively, to the Joint Petition.

violations of the Public Utility Code and Commission regulations—statement of policy (Policy Statement). Settlement ¶ 39 at 13. The Low-Income Advocates and POWER are opposed to approval of the Settlement, as filed, for various reasons discussed herein.

For the reasons set forth below, we shall grant PECO’s Motion for Leave and modify the proposed Settlement by: (1) increasing the proposed \$150,000 civil penalty, which was agreed upon by the Settling Parties, to \$200,000; and (2) increasing the \$75,000 contribution, which PECO agreed to divide evenly between its Matching Energy Assistance Fund (MEAF) agencies in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, to \$100,000, to account for the omission to address penalties associated with PECO’s violations of Section 1407(a) of the Code, 66 Pa. C.S. §1407(a), and Section 56.191(a) of our Regulations, 52 Pa. Code § 56.191(a), which authorize PECO to collect a reconnection fee only “following lawful termination of the service.”

I. History of the Proceeding

On February 12, 2021, the Settling Parties filed a Joint Petition for Approval of Settlement at Docket No. M-2021-3014286 (Prior Settlement or Prior Settlement Petition) related to the improper electric service terminations for approximately 49,500 customers.

On May 6, 2021, the Commission issued an Opinion and Order (*May 2021 Order*) which directed that notice of the *May 2021 Order* and the Prior Settlement Petition be published in the *Pennsylvania Bulletin* to provide an opportunity for interested parties to file comments with the Commission concerning the Prior Settlement Petition within twenty-five days from the date of publication.

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

On May 22, 2021, the Commission's *May 2021 Order*, along with the Prior Settlement Petition were published in the *Pennsylvania Bulletin*, 51 Pa.B. 2902 (May 22, 2021). In accordance with the *May 2021 Order*, comments on the Prior Settlement Petition 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, I&E and PECO filed their Joint Petition to Withdraw the Prior Petition (Joint Petition to Withdraw), after PECO discovered and self-reported that, in addition to the improper service terminations addressed in the Prior Settlement Petition, it also had erroneously charged reconnection fees to some of its customers.

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

On June 14, 2021, CAUSE-PA filed its Answer to the Joint Petition to Withdraw in which it indicated that it did not oppose I&E's and PECO's request to withdraw the Prior Settlement Petition. No objections from other parties were filed.

On June 16, 2021, comments in response to the *May 2021 Order* were filed individually by CAUSE-PA and TURN.

On June 21, 2021, PECO filed a Motion to Strike CAUSE-PA's Answer to the Joint Petition to Withdraw. No objections were filed.

By Opinion and Order entered on August 5, 2021 (*August 2021 Order*), the Commission granted the Joint Petition to Withdraw. The *August 2021 Order* also granted PECO's Motion to Strike CAUSE-PA's Answer to Joint Petition to Withdraw; deemed moot the Petition to Intervene filed by CAUSE-PA; and marked the proceeding at Docket No. M-2021-3014286 closed.

On January 7, 2022, the Commission reopened Docket No. M-2021-3014286 when the Settling Parties filed the instant Settlement Petition in place of the Prior Settlement Petition that had been withdrawn.

By Opinion and Order entered August 25, 2022 (*August 2022 Order*), the Commission directed that the *August 2022 Order*, Settlement Agreement and Statements in Support of the Settlement be published in the *Pennsylvania Bulletin* to provide an opportunity for interested parties to file comments to the Settlement Agreement. To be considered timely, the Commission directed comments be filed no later than twenty-five days after the date of publication in the *Pennsylvania Bulletin*, or by October 5, 2022.

On September 10, 2022, the *August 2022 Order*, Settlement Agreement and Statements in Support of the Settlement were published in the *Pennsylvania Bulletin* for comment. As noted, Comments were filed on October 5, 2022, by POWER and the Low-Income Advocates.

On October 20, 2022, PECO filed a Motion for Leave to File Reply Comments.

II. Background

This matter involves an informal investigation initiated by I&E, consistent with Sections 331(a) and 506 of the Public Utility Code (Code), 66 Pa. C.S. §§ 331(a) and 506, regarding an incident that occurred on June 25, 2018, after PECO's call center third-party vendor made a dialer platform change involving software changes that caused two separate computer errors to occur that ultimately resulted in the improper service termination for approximately 48,728 premises serviced by PECO. Additionally, PECO subsequently discovered, with respect to the reconnection of PECO customers, that those

customers never received proper notices of termination. PECO self-reported this discovery to the Commission in late May 2021.

According to PECO, the first computer error (Issue A) occurred because the dialer platform change incorrectly recorded the second three-day notice telephone attempt as successful when it was not. Therefore, PECO did not complete the second three-day telephone attempt to contact the customer before their service was terminated. This resulted in improper service terminations for 1,552 premises. Issue A was discovered on August 9, 2018, at which time PECO suspended all service terminations. On August 16, 2018, PECO informed the Commission's Bureau of Consumer Services (BCS) about its discovery. PECO internally resolved this matter by August 20, 2019. Settlement Petition at 4-5.

PECO explained that the second error (Issue B) occurred because the dialer platform change caused the seventy-two-hour call (hereinafter, referred to as "72-hour call") to incorrectly list the customer's current bill due date as the termination date. Therefore, PECO did not provide the correct termination date during the 72-hour call. This resulted in the improper service termination for 47,176 premises. Issue B was not detected until September 10, 2019, when the Company was investigating an informal complaint filed by a customer on September 5, 2019. PECO suspended all service terminations on September 10, 2019, immediately upon learning of the second error. PECO internally resolved this issue by September 12, 2019. Settlement Petition at 5.

The total 48,728 impacted premises affected by Issues A and B are associated with 48,536 distinct customers. Although a vast majority of the impacted customers have been reconnected, PECO averred that over 2,600 remaining customer premises, which were surveyed at least three times as part of its Winter Survey process, remain without service and have an "Off" meter status. *Id.*

In addition to Issues A and B, PECO subsequently discovered in late May 2021, that while it had refunded the \$20 reconnection fee to customers who were impacted by Issue A, as well as to the customer whose informal complaint was the catalyst for discovering Issue B, it had not yet refunded the reconnection fees to the other 47,175 premises representing 49,145 bill records/accounts which represented a total unrefunded amount of \$982,900. Settlement Petition at 8. However, by August 4, 2021, PECO had refunded the \$20 reconnection fee, plus \$5 interest (\$25 per reconnection fee charged, totaling \$1,228,625) to the remaining impacted customers, regardless of when their service was restored. Of the \$1,228,625 to be refunded, \$908,033.12 was applied to customer accounts. *Id.* Under the instant Settlement, the remaining amount of \$320,591.88, which could not be refunded to customers because they are no longer receiving PECO service, will be transferred to PECO’s MEAF agencies to fund grants to eligible customers. *Id.* The Parties point out that the \$320,591.88 will not be subject to “matching” by the Company when transferred to MEAF. *Id.*

Upon completion of its informal investigation, I&E was prepared to file a Formal Complaint against the Company alleging that PECO, through its call center third-party vendor acting on behalf of PECO, violated Section 1503(b) of the Code, 66 Pa. C.S. § 1503(b), regarding personal contact before service is discontinued,⁶ and Section 56.333 (a) - (c) of the Commission’s Regulations, 52 Pa. Code § 56.333, regarding termination

⁶ 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.

of service.^{7,8} Settlement Petition at 11. However, I&E and PECO engaged in voluntary negotiations and achieved an agreement to resolve the matter through the Prior Settlement Petition, which was filed on February 12, 2021, for the Commission's consideration. *Id.*

III. Terms of the Settlement

In their Comments, the Low-Income Advocates provided a detailed evaluation of the modifications included in the instant Settlement compared to the Prior Settlement which the Settling Parties previously withdrew. The major modifications to the instant Settlement, as presented by the Low-Income Advocates, include 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.

⁷ Section 56.333 of the Commission's Regulations, which we note applies only to customers who have been granted protected from abuse orders, 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 72-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.

⁸ As will be addressed later in this Opinion and Order, PECO notes in its Motion for Leave that the citation to Section 56.333 in the Settlement was made in error in lieu of Section 52 Pa. Code § 56.93 (Personal Contact). PECO points out, however, that the pertinent text of the section for those who are covered by protection from abuse orders is the same as for those who are not protected. PECO Motion for Leave at 3-4, n1.

- 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.
- 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.

Low-Income Advocates' Comments at 2-3.

Pursuant to the Settlement, the Parties agree to stipulate to the following terms which include the above-stated modifications to the Prior Settlement:

- A. PECO will pay a civil penalty amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) to resolve all allegations of illegal termination of electrical service to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations arising from, or related to, the termination of the accounts at issue. No portion of this civil penalty payment shall be recovered from Pennsylvania consumers by any future proceeding, device, or manner whatsoever. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and shall be made by certified check or money order made

payable to the “Commonwealth of Pennsylvania” and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

- B. PECO will also make a contribution of Seventy-Five Thousand Dollars (\$75,000.00) to its Matching Energy Assistance Fund (“MEAF”) within thirty (30) days of the date of the Commission’s final order. Specifically, PECO will donate Fifteen Thousand Dollars (\$15,000.00) to each of its five major MEAF agencies to fund additional MEAF grants: Bucks County – Bucks County Opportunity Council, Inc.; Chester County – Human Services, Inc.; Delaware County – Community Action Agency of Delaware County, Inc.; Montgomery County – Community Action Development Commission; and Philadelphia County – Utility Emergency Services Fund. PECO’s MEAF assists approximately 750 customers annually who have been terminated or are in danger of termination. While not precedent setting, due to the unique and continuing challenges surrounding the pandemic, the contribution to PECO’s MEAF will provide much needed assistance to the Company’s most vulnerable customers.
- C. PECO will also transfer Three Hundred and Twenty Thousand Five Hundred and Ninety-One Dollars and Eighty-Eight Cents (\$320,591.88) to its MEAF within thirty (30) days of the date of the Commission’s final order. This is the amount of erroneously charged customer reconnection fees that PECO was unable to apply to customer accounts.
- D. PECO will or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future termination issues as outlined above. The pertinent portions of

PECO's corrective actions are briefly described as follows:

PECO implemented a change to fix the dialer system glitch, which has been validated through testing and confirmation in the results file. The primary change implemented was to add a new dialer code ("unsuccessful") for calls not made. PECO also corrected the error resulting in an incorrect termination date being listed in the 72-hour calls.

E. For the next two years (from January 1, 2022 through December 31, 2023), PECO will summarize and report the results of its regulatory noticing audits as part of its quarterly meeting with BCS:⁴

- The noticing audits track transactions between CIMS [Customer Information Management System], vendors, and customers to ensure notices are being processed and delivered correctly;
- The notices that will be audited are: Disconnect Notice; 72-hour (first call); 72-hour (second call)/48 Hour (field notice); and Cut Out for Non-Pay (post termination notice);
- The data points reviewed for accuracy will be as follows: account balances; termination dates; and dates and times of each contact;
- With respect to frequency of audits: detailed transactions will be audited on a monthly basis at the notice level and daily monitoring will include recording transactions through each hand off to ensure the process is working as designed; and

- PECO will confirm with both I&E and BCS when the change to its new call center third-party vendor (Agent511) has been completed.⁵

⁴ PECO will begin this reporting at the BCS quarterly meeting following the filing of this Settlement Petition.

⁵ The changeover to Agent511 was completed on December 10, 2020.

Settlement ¶ 51 at 13-15.

The Settling Parties agree, *inter alia*, that the Settlement is conditioned upon the Commission's approval, without modification, of the terms and conditions contained in the Joint Settlement Petition. If the Commission modifies the Settlement, any Settling Party may elect to withdraw from this Settlement Agreement and may proceed with litigation; in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw will be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty business days after the entry of an Order modifying the Settlement. Settlement ¶ 56 at 17.

IV. Discussion

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is 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); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must review proposed settlements to

determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). In this regard, the Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b). Based on our review of the Settlement, we find, as discussed in more detail below, that the application of these factors supports approval of a modified Settlement which would increase the originally proposed civil penalty from \$150,000 to \$200,000 and increase the originally proposed contributions that PECO must make to its MEAF agencies from \$75,000 to \$100,000.

A. PECO Motion for Leave

As noted, October 20, 2022, PECO filed a Motion for Leave to submit Reply Comments, attached as “Appendix A” to the Motion for Leave, in order to address a limited number of statements made in the Comments submitted by Power and the Low-Income Advocates on October 5, 2022, at this docket. More specifically, PECO requests that the Commission grant it leave to submit the attached Reply Comments to permit PECO to respond to what it believes are misleading statements about PECO’s conduct as well as to recommendations that would involve the public release of confidential information.

For good cause shown, we shall grant PECO's Motion for Leave and consider its Reply Comments herein.

B. Comments and Reply Comments

1. POWER's Comments and PECO's Reply Comments

POWER submits in its Comments that many of its members have experienced energy insecurity, and have struggled to keep up with their PECO bills. POWER contends that the consequences resulting from utility shut-offs typically fall on low-income households that are already in difficult circumstances and least likely to have the resources to deal with the problems. Thus, POWER avers that PECO's improper termination of electricity to almost 50,000 customers is part of a larger, longer-term problem. POWER Comments at 2.

In light of the above, POWER proposes three measures it believes will help avoid the recurrence of problems resulting from service terminations similar to those described in the Joint Petition. First, POWER submits that more preventative work is needed to support customers at risk of utility service termination and to connect them with the resources to avoid terminations. *Id.* In this regard, POWER requests that PECO reach out to POWER to schedule a stakeholder meeting to discuss and identify best practices and methods for avoiding shut-offs and facilitating swifter reconnections. *Id.*

In its Reply Comments, PECO submits that it is not necessary to adopt POWER's recommendation for PECO to schedule a stakeholder meeting with POWER to discuss and identify best practices and methods for avoiding shut-offs and facilitating swifter reconnections because the Company already holds quarterly Universal Service Advisory Committee (USAC) meetings during which topics related to low-income

customers, outreach, and universal service programs are routinely discussed. PECO Reply Comments at 5, n.2.

We agree with PECO that POWER's recommendation for PECO to schedule a stakeholder meeting with it is not necessary as it would be duplicative of the quarterly USAC meetings. However, to the extent possible, we encourage PECO to invite POWER to future USAC meetings for the purpose of keeping them informed of relevant issues involving service terminations.

Next, POWER cites to the Terms of the Settlement that include the "revisions to [PECO's] operating procedures" that "will act as safeguards against future issues involving service terminations" (§ 51.D.) and the bulleted list summarizing past actions PECO has performed to address the problems that formed the subject of I&E's informal investigation (Settlement Appendix B at 5-6). POWER Comments at 2. POWER asserts that more transparency to PECO's operating procedures is needed because it is the applicable "operating procedures" that are at the very heart of preventing incidents like the improper terminations from reoccurring. POWER Comments at 2-3. As such, POWER requests that PECO be required to file at this docket, a complete copy of the pertinent operating procedures with the revisions that PECO has committed to implement as part of the Terms of the Settlement, marked in redline, to ensure transparency to the public about any changes that have been made to reflect current procedures. *Id.*

Likewise, with regard to PECO's Statement in Support of the Joint Petition that refers to its agreement to "summarize and report the results of its regulatory noticing audits to BCS for the next two years,"⁹ POWER requests that PECO also make these

⁹ Joint Petition, Appendix C at 5.

reports publicly available at this docket so that all stakeholders involved in these issues will be informed about the audits. *Id.*

With regard to POWER's recommendations that PECO be required to file and make available a redline of PECO's operating procedures, which were modified as a result of the Settlement, and the reports submitted to BCS for the next two years with respect to the results of the Company's regulatory noticing audits, PECO submits that POWER's recommendations ignore the confidential nature of PECO's operating procedures and audit materials and believes that the Settlement appropriately provides for information sharing with the Commission and should not be modified to require the public release of confidential and proprietary materials. PECO Reply Comments at 6. PECO does note, however, that "the changes to the operating procedures expanded auditing to 1) include a review of all required regulatory termination notices, 2) verify voice recording for all outbound termination calls, and 3) increase the cadence of audits from quarterly to monthly." PECO Reply Comments at 6. In addition, PECO notes that it "implemented intra-day controls to facilitate faster identification and resolution of potential regulatory notice issues." *Id.* The Company further submits that future audit results, which are shared with BCS on a confidential basis, "may include account-specific information and include reports on customer noticing beyond the 72-hour notices that are the focus of the Settlement." *Id.*

We are of the opinion that PECO's operating procedures and audit materials, which are proprietary in nature should not be divulged to the public or private groups. However, to the extent that the confidential nature of its operating procedures and audit materials are not violated, we encourage PECO, to the extent practical, to include any potential or forthcoming non-proprietary changes to its operating procedures and audit materials on the agenda of future USAC meetings, or alternatively, on its website, for the purpose of keeping interested parties informed.

2. Low-Income Advocates' Comments and PECO's Reply Comments

The Low-Income Advocates submit in their Comments that the Settlement will do little to deter future violations by PECO or encourage PECO to promptly remediate such incidents in the future. They generally object to the Settlement for the following reasons:

- (1) The Settlement does not appear to be concerned with the real-world consequences of PECO's actions and does not consider the range of customer experiences that resulted from PECO's conduct. Low-Income Advocate Comments at 4-6.
- (2) The Settlement fails to detail all relevant violations of the Code and the Commission's Regulations. Low-Income Advocate Comments at 8-11.
- (3) The Settlement assesses a civil penalty of only \$150,000 associated with PECO's termination issues, but it makes no provisions for civil penalties to account for PECO's illegal imposition of a reconnection fees it charged to affected customers when the Company's outbound calling system relayed an incorrect termination date, as well as the "sluggish" delay to refund the reconnection fees to the 47,175 premises from which reconnection fees were unlawfully collected. Low-Income Advocate Comments at 6-7.

Each of the above arguments by the Low-Income Advocates in their Comments against the Settlement, along with the pertinent Reply Comments by PECO, are addressed in more detail immediately below.¹⁰

¹⁰ The Low-Income Advocates incorporate by reference their previously submitted comments to the Prior Settlement except for the modifications submitted in the instant Joint Comments.

With regard to their first argument, the Low-Income Advocates submit that the Settlement is not in the public interest because it does not appear to be concerned with the real-world consequences that the improperly terminated electric service had on the affected customers. In this regard, they contend that the Settlement does not examine the range of customer experiences resulting from the loss of modern life-essential utility service for nearly 50,000 PECO customers and the Settlement should include additional penalties on PECO because many of its customers suffered severe consequences as a result of the Company's termination and reconnection violations. Low-Income Advocate Comments at 4, 11-12.

More specifically, the Low-Income Advocates submit that because the outbound 72-hour contact erroneously informed customers they would be shut-off on their next bill due date, the vast majority of affected PECO customers were led to believe that they had more time to resolve the threatened shut-off since only a small, unidentified number of customers, whose next bill's due date was within three days of PECO's 72-hour contact, conceivably could have been put on notice that their termination was imminent. *Id.* According to the Low-Income Advocates, this reveals that tens of thousands of PECO customers who experienced improper terminations were caught off-guard because many were likely expecting they had two weeks or more to resolve their threatened shut-off. *Id.* Therefore, the Low-Income Advocates opine that the proposed \$150,000 civil penalty, amounting to only approximately \$3 per impacted premise, is inadequate in light of the gravity and scope of harm resulting from PECO's failures. *Id.*

The Low-Income Advocates next submit that the proposed Settlement reveals that just under 30,000 premises were able to restore service within 24 hours; approximately 20,000 customer premises were without service in excess of 24 hours; and more than 13,000 premises were unable to be restored within 96 hours. Low-Income Advocates Comments at 11-12. Of those 13,000 premises, over 2,600 premises were incapable of having service restored at all. Low-Income Advocates Comments at 5

(citing Joint Petition ¶ 23), 11. They argue that 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 exposure), and other severe consequences to the safety and welfare of the family (like family separation, increased risk of fire, and eviction). *Id.*

The Low-Income Advocates are of the opinion that if PECO would have taken early “corrective actions,” the uncorrected 2,600 premises for which electric service continues to be off could have been avoided. Low-Income Advocate Comments at 10-11. In this regard, the Low-Income Advocates contend that the Joint Petition places undue emphasis on supposed “corrective actions” taken by PECO even though many of the “corrective actions” easily could have been taken after restoration of service if customer contact were not required in advance. Instead, after PECO erroneously and improperly terminated service to nearly 50,000 premises, the Low-Income Advocates submit that PECO engaged in an extensive outreach campaign rather than promptly restoring service and providing compliant notice to the affected customers to correct the error. Low-Income Advocate Comments at 10. They further question, given the ubiquity of smart meters with the ability to reconnect service remotely in PECO’s service territory, whether PECO’s “corrective actions” may have delayed restoration upon successful contact with customers at the affected premises. *Id.* If the Company did not require customer contact in advance of restoration, the Low-Income Advocates submit that many of the “corrective actions” easily could have been taken after service was restored using smart meter technology. Low-Income Advocates Comments at 10-11.

Thus, the Low-Income Advocates opine that the serious consequences that thousands of PECO’s customers faced as a result of the violations are likely far greater than an inconvenience and, therefore, warrant a higher civil penalty than the \$150,000 penalty proposed in the Settlement. Low-Income Advocate Comments at 6.

The second reason the Low-Income Advocates disagree with the proposed Settlement is because it fails to take into consideration all of the applicable provisions of the Code and Commission Regulations that are implicated by PECO's failure to provide accurate, timely notice of involuntary termination. In this regard, the Low-Income Advocates first cite to Paragraph No. 9 of the Joint Petitions that states:

BCS notified I&E that due to a change in the dialer platform used by PECO's third-party vendor, the Company terminated service for a large number of customers 1) without completing the second 72-hour phone call to the customer or adult occupant at least three days prior to the 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).

The Low-Income Advocates point out that Section 56.333(a) and (b), cited in the above quote, are expressly applicable only to customers who are survivors of domestic violence who have been granted a protection from abuse order or some other court order that contains clear evidence of domestic violence. Accordingly, the Low-Income Advocates are concerned that the Settlement reveals that no aspect of the investigation focused on the provisions of Chapter 14 of the Code, 66 Pa. C.S §§ 1401-1419, and the Commission's accompanying Regulations in Subchapters B-K of Chapter 56, 52 Pa. Code Ch. 56, Subch. B-K, which govern termination and reconnection of service to the majority of PECO's customers who have not been granted protection from abuse orders. Low Income Advocate Comments at 4-5, 9. According to the Low-Income Advocates, 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 further contend that the Joint Petition fails to consider whether PECO violated that part of Section 56.333 which requires, for those

customers who *are* survivors of domestic violence, that the utility “conspicuously post a termination 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.” Low-Income Advocates Comments at 9.

The Low-Income Advocates also believe that I&E apparently undertook no investigation to determine whether PECO complied with its obligations to attempt personal contact “at the time service is terminated,” as required by Section 1406(b)(1)(iii) of the Code, 66 Pa. C.S. §1406(b)(1)(iii), 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.” *Id.*

The third argument the Low-Income Advocates make against approving the proposed Settlement is that the Settling Parties did not consider assessing a separate penalty to account for PECO’s unlawful collection of \$982,900 in reconnection fees it erroneously charged to 47,175 customer premises as well as for the Company’s failure to promptly refund the reconnection fees it collected. Low-Income Advocates Comments at 3 (citing Joint Petition ¶ 27), 11-12. They aver that the Company’s actions here violated Section 1407(a) of the Code, 66 Pa. C.S. § 1407(a), and Section 56,191(a) of the Commission’s Regulations, 52 Pa. Code § 56.191(a), both which govern reconnection of service. In this regard, the Low-Income Advocates submit:

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. While the Low-Income 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.

Low-Income Advocate Comments at 6-7 (footnote omitted). The Low-Income Advocates further assert:

[T]he 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.

Low-Income Advocates Comments at 11.

The Low-Income Advocates are of the opinion that PECO could have refunded the reconnection fees in a more-timely manner because the Company had been aware that its outbound calling system was providing incorrect shut-off dates as a result of a BCS informal complaint that was filed on September 5, 2019. Low-Income Advocates Comments at 7. Since PECO had refunded that informal complainant's reconnection fee in satisfaction of the complaint, the Low-Income Advocates aver that PECO's "internal resolution" of this issue on a system-wide basis in September 2019 neglected any consideration of reconnection fee refunds to 49,145 similarly impacted premises. *Id.* As a result, after more than twenty months of delay, the Low-Income

Advocates aver that approximately 12,000 former customers who were impermissibly charged reconnection fees will never be able to receive the \$320,591.88 worth of refunds that are due to them because they no longer resided at the premises address and were not able to be tracked down by the Company. Low-Income Advocates Comments at 7, 12. While the Low-Income Advocates believe that contributing the \$320,591.88 in unrefunded reconnection fees will be helpful for those customers who may qualify for grants in the future, they assert that the contribution should not be negotiated as part of a compromise because PECO is not entitled to retain reconnection fees collected in violation of the Code. Low-Income Advocates Comments at 11-12. The Low-Income Advocates aver that Settling Parties only now are proposing to contribute those sums to MEAF because PECO failed to promptly return them to the approximately 12,000 customers who should never have had to pay them in the first place. *Id.*

Under the circumstances, the Low-Income Advocates submit that the proposed \$150,000 civil penalty, which amounts to approximately \$3.00 per impacted premise, is not adequate in light of the gravity and scope of harm resulting from PECO's failures. Low-Income Advocates Comments at 4, 5. Thus, the Low-Income Advocates request that the Commission should consider not only imposing meaningful civil penalties limited just to the violations involving improper terminations, but also with regard to the separate violations involving reconnection fees that PECO "unlawfully imposed and sluggishly refunded," in order to deter such future conduct by PECO that is not consistent with the Code and Commission Regulations. Low-Income Advocate Comments at 6, 12.

In its Reply Comments,¹¹ PECO first submits that the Low-Income Advocates' Comments include a variety of speculative statements and allegations suggesting that PECO failed to provide the required customer notification beyond the 72-hour noticing issues addressed in the Settlement. PECO Reply Comments at 2, 3. In particular, PECO cited the following instances where the Low-Income Advocates' Comments contained speculative statements:

- Regarding the requirement to attempt personal contact at the time of termination, the TURN/CAUSE-PA Comments (p. 9) state: “it appears likely PECO did not attempt such personal contact”
- Regarding the 48-hour notice applicable to survivors of domestic violence, the TURN/CAUSE-PA Comments (p. 9) suggest that PECO may have been noncompliant: “To the extent applicable, this [additional requirement] indicates that the scope of PECO’s failure is even more significant than set forth in the Joint Petition.”
- Regarding overall customer noticing, the TURN/CAUSE-PA Comments state (p. 4): “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.”

PECO Reply Comments at 2.

PECO further submits that contrary to the Low-Income Advocates allegations, the dialer platform changes that caused the 72-hour issues did not affect other termination noticing or any other aspect of termination noticing/procedures, and also

¹¹ PECO notes that the limited scope of its Reply Comments should not be interpreted as an indication that it agrees with the statements/allegations made by the Low-Income Advocates and POWER that are not specifically addressed in the Reply Comments. PECO Reply Comments at 1.

contrary to the allegations of the Low-Income Advocates, all customers who were impacted by the 72-hour issues received all other required termination notices that contained the correct termination date and were provided in the timeframes directed in Chapter 56. PECO Reply Comments at 3. In this regard, PECO asserts:

Contrary to the allegations of TURN/CAUSEPA, customers impacted by the 72-hour issues received all other required termination notices. All customers received the 10-day written notice (52 Pa. Code § 56.91(a)) as well as the day-of personal contact (*i.e.*, door knock) prior to termination (52 Pa. Code § 56.94), and PECO placed the post-termination notice at the premises following the termination of service (52 Pa. Code § 56.96).

* * *

Further, in accordance with 52 Pa. Code § 56.251 *et seq.*, customers who submitted a valid Protection from Abuse order or other court order evidencing that they are victims of domestic violence would have been coded as such in PECO's Customer Information Management System ("CIMS") and received all appropriate additional noticing – including the 48-hour noticing (52 Pa. Code § 56.335). The 48-hour notice is not provided by an auto-dialer – it is a physical (paper) notice left at the property. Therefore, any customers coded in CIMS as having a valid domestic violence order received the 10-day (mailed) notice (52 Pa. Code § 56.331), 48-hour in-person notice (52 Pa. Code § 56.335), pre-termination door knock (52 Pa. Code § 56.334), and post-termination notice (posted at the property) (52 Pa. Code § 56.336).

PECO Reply Comments at 3. In view of the above, PECO asserts that the dialer platform change underlying the 72-hour noticing issues did not affect any other aspect of termination noticing/procedures contrary to the Low-Income Advocates' Comments. *Id.*

PECO points out that, as a basis for some of their unsupported allegations, the Low-Income Advocates point to a citation error in the Settlement which cites

52 Pa. Code § 5.333 – Personal Contact instead of 52 Pa. Code § 56.93 – Personal Contact. While PECO acknowledges the inadvertent citation error, it points out that it is important to note that the text of both sections, in relevant part, is identical. PECO Reply Comments n.1 at 3.

With regard to the Low-Income Advocates' Comments suggesting that the Company created unnecessary delays by performing outreach prior to restoring certain affected customer premises, PECO submits that the Low-Income Advocates' allegations ignore the safety issues that can arise when restoring service to a customer's premises. PECO Reply Comments at 4. PECO notes that in instances of storm-related outages, it is able to automatically restore service to customers whose service has been cut off because those customers are provided with an estimated time of restoration and can anticipate when service will be restored. *Id.* However, in other circumstances, where customers do not have notice of reconnection timing, PECO states it is not appropriate to perform automatic restoration. *Id.* With regard to the Settlement, PECO explained that the dialer platform issue occurred in the summer of 2018, and for Issue B customers (See Settlement at 5), the problem was not discovered until September 2019. *Id.* As such, PECO notes that if it had forgone customer outreach, as suggested by the Low-Income Advocates, the Company would have restored service, without providing any notice, to some premises for cuts that happened more than a year prior. *Id.* PECO points out that in addition to the possible issues of reestablishing service to a vacant property or to a home where the customer may no longer live, legitimate safety concerns surround the restoration of electric service without notice. For instance, PECO notes that a customer with an electric stove whose service was cut in the middle of cooking inadvertently could have left the burner on. If that same customer placed a flammable item, such as a pizza box, on the stove, then turning on the electricity without any notice from the Company could result in a fire at the customer's premises. PECO Reply Comments at 4-5. Thus, PECO avers that its extensive efforts to reach out to customers prior to restoration were necessary to ensure customer safety. PECO Reply Comments at 5.

PECO further replies that its extensive outreach provided multiple opportunities for power to be restored at affected premises. *Id.* In this regard, PECO explains that, while the Low-Income Advocates allege that over 2,600 premises “were incapable of having service restored at all,”¹² PECO made a number of phone calls, mailings, and in-person visits were made to each of the impacted premises. PECO Reply Comments at 5. In addition, PECO states that it extensively promoted its “no payment required” COVID reconnect which permitted all premises with an “off” meter status to receive an additional, well-publicized opportunity to reconnect service without payment. *Id.*

Upon our review of the Low-Income Advocates’ Comments and the Reply Comments submitted by PECO, we agree with PECO that the statements provided by the Low-Income Advocates in their Comments that suggest PECO failed to provide the required customer noticing beyond the 72-hour noticing issues addressed in the Settlement, which PECO cited in its Reply Comments, above, should be rejected because, they are speculative and cannot be relied upon for consideration. Therefore, although the Settlement did not specifically address the issues addressed in the Low-Income Advocates’ speculative statements, we accept PECO’s affirmation in its Reply Comments that the customers who were impacted by the 72-hour issues received the proper termination notices including the 10-day written notice required by Section 56.91(a) of our Regulations, the personal contact at the premises that is required prior to termination pursuant to Section 56.94 of our Regulations, and the placement of the post-termination notice at the premises following the termination of service as required by Section 56.96 of our Regulations.

In their Comments, the Low-Income Advocates expressed their concern that with regard to the termination noticing issues, the Settling Parties only address

¹² Low-Income Advocates Comments at 5.

violations of Section 1503(b) of the Code and Sections 56.333(a) and (b) of the Commission's Regulations, 52 Pa. Code § 56.333(a), (b), which pertain specifically only to those customers who are covered by protection from abuse orders. In so doing, they argue that the Settlement fails to address PECO's outbound calling and termination violations of Sections 1406 and 1407 of the Code and the related sections of Chapter 56 of our Regulations which apply by default and govern termination and reconnection of service to the majority of the affected customers who are not covered by protection from abuse orders. In our opinion, the Low-Income Advocates correctly argued that the Settlement fails to detail all relevant violations of the Code and Commission Regulations.

However, in its Reply Comments, PECO explained that the Settlement contains a citation error that only cites to "52 Pa. Code § 5.333 – Personal Contact" instead of "52 Pa. Code § 56.93 – Personal Contact" as a basis for some of the Low-Income Advocates unsupported allegations. PECO points out that the pertinent text of the section for those who are covered by protection from abuse orders is the same as for those who are not protected. Therefore, based on PECO's clarification, we conclude it is not necessary to address the Low-Income Advocates' allegations and arguments in opposition to the Settlement which were premised upon the citation error in the Settlement.

Furthermore, to the extent that the Settlement addresses violations related to Section 1503(b) of the Code and Sections 56.333(a) and (b) of the Commission's Regulations, 52 Pa. Code § 56.333(a), (b), we shall interpret it as also applying to PECO's violations with respect to Sections 1406 and 1407 of the Code and the related sections of Chapter 56 of our Regulations that govern termination and reconnection of service to the majority of the affected customers who are not covered by protection from abuse orders.

The Low-Income Advocates also suggested that PECO may have failed to abide by the provision of Section 56.333 that requires that a termination notice be

“conspicuously” posted “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” in instances where prior contact for customers granted protection from abuse orders has not been accomplished. However, again, although the Settlement did not address this specific requirement, PECO provided clarification in its Reply Comments that it has complied with the 48-hour noticing in Section 56.335, for those customers who submitted a valid protection from abuse order or other court order evidencing they are victims of domestic violence.

More specifically, PECO noted in its Reply Comments that since protection from abuse customers are coded in PECO’s CIMS, all of those customers would have received the appropriate noticing, including the 48-hour noticing, because the 48-hour notice is accomplished through the delivery of a physical paper notice left at the property and is not provided through the use of the auto-dialer. In this regard, PECO clarified that all protection from abuse orders would have received the 48-hour notice because “any customers coded in CIMS as having a valid domestic violence order received the 10-day (mailed) notice (52 Pa. Code § 56.331), 48-hour in-person notice (52 Pa. Code § 56.335), pre-termination door knock (52 Pa. Code § 56.334), and post-termination notice (posted at the property) (52 Pa. Code § 56.336).

In view of the above clarification provided by PECO, we are of the opinion that the Low-Income Advocates’ allegation that PECO may not have complied with the required 48-hour notice pursuant to Section 56.331 of our Regulations is not a matter of concern that needs further investigation.

We also are not persuaded by the Low-Income Advocates’ concern that since PECO has the ability to reconnect service remotely via smart meters throughout its service territory, the “corrective actions” taken by PECO “may have delayed restoration to many premises by apparently conditioning restoration upon successful contact with

customers at the affected premises.” Under the circumstances in this case, we are of the opinion that although PECO does indeed possess the technology to reconnect service remotely via smart meters throughout its service territory, it would not have been prudent for the Company to begin reconnecting service immediately in the manner suggested by the Low-Income Advocates because to do so would have jeopardize customer safety.

As PECO noted in its Reply Comments, because of the length of time between the summer of 2018, when the dialer platform issue occurred, and September 2019, when the problem for Issue B customers (*i.e.*, the dialer platform change caused the 72-hour call to incorrectly list the customer’s current bill due date as the termination date) was discovered, automatic restoration would not have been appropriate because the affected customers would not have had sufficient notice and time to prepare for reconnection. According to PECO, unlike in instances of storm-related outages where PECO can automatically restore service to customers with an estimated time of restoration so customers can anticipate when power will be restored, there were legitimate safety concerns that the Company had to consider with regard to the length of time and the uncertainty when service would be restored under the circumstances in the Settlement. These safety concerns, as noted by PECO, include whether the service may be reestablished to a property or home that has since become vacant, or to a residence where the appliances may have been left on when the power was terminated and remained on when power was restored. As PECO noted, these examples could result in safety issues involving fires or personal injury. Thus, we are persuaded by PECO that its extensive efforts to reach out to customers prior to restoration were reasonable and in the public interest and safety. Accordingly, with regard to this matter, we do not believe PECO’s actions warrant in favor of an increased penalty as argued by the Low-Income Advocates on this matter.

Also, as noted, the Low-Income Advocates are concerned that the Settlement does not appear to be concerned with the real-world consequences of PECO’s

actions. They are concerned that the Settling Parties did not examine the personal effects that the terminations had on the affected customers and did not examine or propose a civil penalty to account for those effects.

Although the Low-Income Advocates only provide some general examples of harmful consequences that *may* occur, they did not cite to any specific incidents of harm actually experienced and reported by those PECO's customers whose service was improperly terminated. Accordingly, other than our general acknowledgment that those customers whose electric service was terminated were subject to potential danger and undesirable consequences during the time they were without electricity, which ranged between less than one day to four days or more, it is difficult to quantify the specific extent and severity of the harm alleged by the Low-Income Advocates.

However, as a general matter, we agree with I&E's averment in its Statement in Support that the service terminations "can prove both traumatic and problematic for the affected customers" as well as the Low-Income Advocates assertion in its Comments that "[t]he harms and losses experienced by households unable to quickly regain electric service are likely far greater than an inconvenience." Accordingly, we are of the opinion that the involuntary termination of service imposes inherent dangers (*e.g.*, lack of heating or cooling, spoilage of medication, potential health consequences for those needing electricity for operation of medical devices, the inability to charge mobile telephones for emergency calls, increased risk of fire) and negative consequences (*e.g.*, spoilage of food, potential lost work time, arranging temporary living quarters). Thus, we agree with Low-Income Advocates that such general inherent dangers and consequences associated with the involuntary terminations warrant in favor of a higher penalty.

Next, we are concerned, as argued by the Low-Income Advocates, that the Settlement did not specifically address the assessment of additional penalties on the

Company due to PECO's improper assessment of reconnection fees and the extended delay in refunding the unlawful reconnection fees to its rightful customers. Inasmuch as *PECO required its customers to pay a reconnection fee following the unlawful termination of service*, we agree with the Low-Income Advocates that PECO has also violated Section 1407(b)(1) of the Code, 66 Pa. C.S. § 1407(b)(1), and Section 56.191(a) of our Regulations, 52 Pa. Code § 56.191(a), both of which state:

A public utility may require a reconnection fee based upon the public utility's cost as approved by the Commission prior to reconnection of service following lawful termination of the service. (Emphasis added.)

Therefore, in accordance with the Low-Income Advocates' request, we are of the opinion that additional remedies are necessary to address this violation. Therefore, we shall assess additional penalties on the Company to account for the unlawful reconnection fees PECO charged to its customers and the unreasonable amount of time it took to complete refunding those fees. In this regard, we are of the opinion that it would be prudent to increase the currently proposed \$150,000 civil penalty by \$50,000, for a total penalty of \$200,000, and to require PECO to increase the total \$75,000 in contributions to its MEAF agencies by \$25,000, for a total MEAF contribution of \$100,000. The additional \$25,000 would be divided evenly so that each of PECO's five major MEAF agencies located in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties would receive an additional \$5,000 resulting in an increase of the Company's total contribution to each MEAF agency from \$15,000 proposed in the Settlement to \$20,000.

3. Analysis of the Settlement under the Policy Statement

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must review proposed settlements to

determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

After our review of the terms of the Settlement and the Comments submitted thereto, we find that the Settlement, as modified in accordance with our discussion, above, which provides for: (1) a civil penalty of \$200,000 rather than \$150,000 that was proposed by the Settling Parties; and (2) an increase in PECO's total contribution to its MEAF agencies in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties from \$75,000 to \$100,000, is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate and in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement, as modified by the increased civil penalty and contributions to the MEAF agencies discussed above.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id.*

As noted, the alleged violations in the Settlement which occurred were caused by a software change to the dialer platform used by PECO's call center third-party vendor. The resulting violations include: (1) the failure by PECO to complete the second three-day telephone attempt to contact the affected 1,552 premises before they were

improperly terminated in violation of Section 56.93 of our Regulations (Issue A),¹³ and (2) failure by PECO to inform the affected 47,176 premises about the correct termination date during the 72-hour call because the platform change incorrectly listed the customers' current bill due date as the termination date, also in violation of Section 56.93 of our Regulations (Issue B). Furthermore, as discussed above, PECO also violated Section 1407(b)(1) of the Code and Section 56.191(a) of our Regulations when it improperly charged reconnection fees and substantially delayed making the associated refunds to the 47,176 premises affected by the second violation stated above. Although these violations resulted from the updates provided by PECO's call center third-party vendor and were not intentional, PECO remains legally responsible for the alleged violations. Accordingly, we are of the opinion that the alleged violations are serious matters which warrant in favor of a higher penalty.

The second factor we may consider is whether the resulting consequences of the conduct are 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 its Statement in Support, I&E avers that PECO's failure to follow proper protocol under the Code prior to terminating service for nearly 50,000 customers constitutes a conduct of a "serious nature," and the consequences arising from this conduct are of a "fairly serious nature." Appendix B, I&E Statement in Support at 2. While it appears that there was no physical personal injuries or property damage, the consequences of PECO's conduct resulted in

¹³ As noted, with regard to the 72-hour noticing issues, the Settling Parties inadvertently cited to Section 56.333(b)(1) of our Regulations, which pertains only to those customers with protection, but not to Section 5.93(a)(1), which includes customers not covered by such orders. However, as clarified by PECO in its Motion, the language in both sections is the same and it was the intention of the Settling Parties that the Settlement applies to all customers, regardless of whether or not they are covered by protection from abuse orders. Thus, we shall interpret those parts of the Settlement referencing Section 56.333, to also include Section 5.93 of our Regulations.

the unnecessary involuntary termination of electric service that caused customers affected by the terminations to go without electricity for periods ranging between less than one day to four days or more as shown in the table below:

	Issue A	Issue B
Restoration Times Bin	Number of Premises	Number of Premises
Within 24 hrs	919	28,689
Within 25-45 hrs	107	3,632
Within 49-72 hrs	50	1,345
Within 73 - 96 hrs	23	697
>96 hrs	313	10,309
Not Restored	140	2,504
Total	1,552	47,176

Settlement at 6. According to the Settlement, the first terminations associated with Issue A were discovered on August 9, 2018, and the second terminations associated with Issue B were discovered on September 10, 2018. Settlement at 5. The Settlement states that PECO internally resolved both issues as of September 12, 2018. *Id.* Nevertheless, as the Low-Income Advocates noted, those impacted by the service terminations were subject to potential harm involving safety (*e.g.*, significant health consequences like respiratory illness and exposure) and other severe consequences to the safety and welfare of the family (*e.g.*, family separation, increased risk of fire, and eviction) as well as financial losses (*e.g.*, spoilage of food, medicine and lost work time). Low-Income Advocate Comments at 5-6.

Furthermore, the Settlement indicates that in late May 2021, PECO determined that while it had refunded the \$20 reconnection fees to customers who were impacted by Issue A, as well as to the customer whose informal complaint was the catalyst for discovering Issue B, it had not yet refunded the reconnection fees to the other 49,145 bill records/accounts which are associated with \$982,900 in distinct reconnection

fees. Settlement at 8. The Settlement further explains that as of August 4, 2021, PECO refunded the \$20 reconnection fee, plus \$5 interest (\$25 per reconnection fee charged, totaling \$1,228,625) to the remaining impacted customers, regardless of when they were restored. Of the \$1,228,625 to be refunded, \$908,033.12 was applied to customer accounts. Amounts that could not be refunded to customers because they are no longer receiving PECO service (totaling \$320,591.88) will be transferred to PECO's MEAF agencies, which will use the additional contribution to fund grants to eligible customers. The Low-Income Advocates argue in their Comments, that "[a]lthough 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." They further note that, "due to its own delay, PECO was unable to fully refund reconnection fees to approximately 12,000 premise accounts."¹⁴

In light of the above, we are of the opinion that the potential safety consequences and the inconveniences that the affected customers had to endure without electricity (28,689 customers' electric service was restored within 24 hours while 10,309 customers had to wait four days or more for service to be restored) in conjunction with the improper assessment of reconnection fees in violation of Section 56.191(a) of our Regulations and the amount of time the customers waited for PECO to refund the reconnection fees (some up to almost two years after they were assessed) are consequences of a serious nature which warrant a higher penalty than what was proposed in the Settlement.

¹⁴ $\$320,591.88$ (non-refundable amount collected from customers) \div $\$25$ (\$20 reconnection fee + \$5 interest) = 12,823 customers. The Low-Income Advocates estimate that since some accounts did not have the reconnection fees fully applied (for example, if they had final balances below \$25) that approximately 12,000 of the 12,823 customers in the results of the above calculation never received their reconnection fee refunds.

The third factor pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3). Because this proceeding was settled prior to an evidentiary hearing, this factor is not applicable to this Settlement.

The fourth factor we may consider is 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. 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. 52 Pa. Code § 69.1201(c)(4).

In this case, the Settlement states that PECO terminated its relationship with the call center third-party vendor who handled the 72-hour notification platform/calls and transitioned this function to Agent511, whom it had worked with since 2016 to support a large portion of customer outreach programs. In addition, Agent511's 72-hour notification call work will have oversight from several departments within PECO. Settlement at 7. In its Statement in Support, the Company indicated that although it had some auditing and change management procedures, the Company put into place additional checks and auditing to prevent similar issues in the future. PECO further states that it also has agreed to summarize and report the following details of the results of its regulatory noticing audits to BCS for the next two years:

- The noticing audits track transactions between PECO's Customer Information Management System ("CIMS"), vendors, and customers to ensure notices are being processed and delivered correctly;
- The notices that will be audited are: Disconnect Notice; 72-hour (first call); 72-hour (second call)/ 48 Hour (field notice); and Cut Out for Non-Pay (post termination notice);

- The data points reviewed for accuracy will be as follows: account balances; termination dates; and dates and times of each contact; and
- With respect to frequency of audits: detailed transactions will be audited on a monthly basis at the notice level and daily monitoring will include recording transactions through each hand off to ensure the process is working as designed.

Appendix C, PECO Statement in Support at 5. This demonstrates that PECO has or is taking appropriate action to avoid similar incidents in the future, which warrants in favor of a lower penalty. However, as noted, we remain of the opinion that the amount of time it took PECO to finally address and refund the reconnection fees warrants in favor of a higher penalty.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). As a result of the two errors caused by the dialer platform change, between June 25, 2018, and September 10, 2019, approximately 48,500 customers had service improperly terminated. According to the Company, upon its discovery of the two issues, PECO immediately restored service to all customers, where possible, and took a number of additional steps to contact and restore the remaining customers. Appendix C, PECO Statement in Support at 6. We again refer to the table below that shows how long it took PECO to restore electric service to the affected premises for each of the two errors:

Restoration Times Bin	Issue A	Issue B
	Number of Premises	Number of Premises
Within 24 hrs	919	28,689
Within 25-45 hrs	107	3,632
Within 49-72 hrs	50	1,345
Within 73 - 96 hrs	23	697
>96 hrs	313	10,309
Not Restored	140	2,504
Total	1,552	47,176

Settlement at 6. The table shows that the majority of customers who were terminated had their service restored within one day (919 customers due to the Issue A error and 28,689 due to the Issue B error). However, 313 customers due to the Issue A error and 10,309 customers due to the Issue B error did not have their service restored *until more than four days after they were terminated*. Additionally, the Company was unable to restore service to 140 customers affected by Issue A and 2,504 customers affected by Issue B.

With regard to the duration of the violation associated with the improper assessment and refund of reconnection fees, the Settlement indicates that in late May 2021, PECO determined that, while it had refunded the \$20 reconnection fees to customers who were impacted by Issue A and to the customer whose informal complaint was the catalyst for discovering Issue B, it had not yet refunded the reconnection fees to the other 49,145 bill records/accounts which are associated with \$982,900 in distinct reconnection fees. Settlement at 8. However, as of August 4, 2021, *more than two years after the customers were improperly assessed reconnection fees*, the Settlement states that PECO had refunded the \$20 reconnection fee, plus \$5 interest to the remaining impacted customers.

In light of the above, we are of the opinion that the number of affected customers and the duration of the violations militate in favor of a higher penalty.

The sixth factor we may consider concerns the compliance history of the regulated utility 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). We have reviewed our records regarding complaints against PECO, and we find that given the size of PECO, it has a very favorable compliance history. PECO indicated in its Statement in Support that it has a strong compliance history with regard to customer service terminations and none of the commenting parties filed any objections to that statement. We also note that it appears that the incident that led to the alleged violations is an isolated incident for which PECO has undertaken corrective actions to ensure they do not reoccur. Thus, we believe this factor warrants in favor of a lower penalty.

The seventh factor to consider is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, PECO fully cooperated with I&E's investigation and complied with I&E's requests for information and documentation by providing I&E with records, correspondence, and other documents as requested. I&E also acknowledges that, upon discovery, PECO immediately self-reported to I&E the reconnection fees that were erroneously charged to the customers whose service was terminated and that PECO remained active in communications and informal discovery throughout the investigation. Settlement at 12. We are of the opinion that this factor warrants in favor of a lower penalty.

The eighth factor involves consideration of whether the penalty amount is sufficient to help deter future violations. 52 Pa. Code § 69.1201(c)(8). As discussed, above, the Settlement failed to address the illegal assessment of reconnection charges in violation of Section 56.191(a) of our Regulations and the extraordinary amount of time it took PECO to finally refund those charges. Thus, we are of the opinion that, in lieu of the Settling Parties' proposed \$150,000 civil penalty and \$75,000 MEAF contribution, in consideration of the nature of the violations as well as the size and resources of the

Company, a \$200,000 penalty and \$100,000 MEAF contribution better reflect the seriousness of the violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). To the best of our knowledge, we have not encountered a similar situation involving the magnitude of improper termination of customers and the subsequent illegal assessment of reconnection charges that has occurred in this case.

The tenth and final factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). In its Statement in Support, PECO agrees with I&E that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement. Appendix C, PECO Statement in Support at 7. PECO notes that a reasonable settlement avoids the necessity of the governmental agency to prove elements of each allegation and also represents economic and programmatic compromise while allowing the parties to move forward to focus on implementing the agreed-upon remedial actions. *Id.* In this regard, I&E and PECO fully support the terms of the proposed Settlement Agreement because they believe it is in the public interest and, if approved, will avoid the necessity of further administrative and potential appellate proceedings at substantial cost to the parties. *Id.*

We generally agree with PECO and I&E that the terms of the Settlement are in the public interest; however, as discussed above, we are of the opinion that the serious nature of the resulting incidents and alleged violations merit a higher civil penalty and larger contributions to PECO’s MEAF agencies than what was proposed in the Settlement. Aside from our determination that an increased penalty and MEAF contributions is warranted in the circumstances, we agree with all other aspects of the proposed Settlement.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement, as modified, is in the public interest and is consistent with the terms of our Policy Statement. We note, however, that the Settlement is conditioned on the Commission's approval of the Settlement without modification, and consistent with the terms of the Settlement, any Party can withdraw from the Settlement by filing a response within twenty days of the entry date of an Order modifying or disapproving the Settlement. Settlement at ¶ 56. Therefore, we shall permit the Parties to file a response within twenty days from date of entry of this Opinion and Order, at this docket number, as to whether they desire to withdraw from the Settlement as modified herein. If neither Party chooses to withdraw, the modified Settlement shall be approved without further action by this Commission. However, if either Party withdraws from the Settlement, the Settlement shall be disapproved without further action by this Commission, and this matter will be referred to I&E for such further action as may be necessary.

V. Conclusion

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein, in conjunction with the Comments submitted by POWER and the Low-Income Advocates, have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement, the Statements in Support, and the Comments by POWER and the Low-Income Advocates, we find that the proposed Settlement between I&E and PECO, as modified herein (*i.e.*, increase the originally proposed civil penalty from \$150,000 to \$200,000 and increase the originally proposed contributions that PECO must make to its MEAF agencies from \$75,000 to \$100,000), is in the public interest and merits approval. We will therefore approve the Settlement, as modified, subject to either or both of the Settling Parties' right to withdraw from the Settlement within twenty days of entry of this Opinion and Order; **THEREFORE**,

IT IS ORDERED:

1. That, within twenty (20) days of the date of entry of this Opinion and Order, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and/or PECO Energy Company may file to withdraw from the Joint Petition for Approval of Settlement that was filed on January 7, 2022, at Docket Number M-2021-3014286.

2. That, if the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and/or PECO Energy Company withdraw(s) from the Joint Petition for Approval of Settlement, pursuant to Ordering Paragraph No. 1, above, then it is further ordered:

- a. That the underlying Settlement Agreement contained in the Joint Petition for Approval of Settlement that was filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO Energy Company on January 7, 2022, at Docket Number M-2021-3014286, shall be deemed void and of no effect without further action by this Commission;
- b. That this matter shall be referred to the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement for such further action as may be warranted; and
- c. That the docket in this proceeding be marked closed.

3. That, if the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and/or PECO Energy Company opt(s) not to withdraw

from the Joint Petition for Approval of Settlement, pursuant to Ordering Paragraph No. 1, above, then it is further ordered:

- a. That the Joint Petition for Approval of Settlement that was filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO Energy Company on January 7, 2022, at Docket Number M-2021-3014286, shall be granted and the underlying Settlement Agreement, as modified by this Opinion and Order, shall be approved, without further action by the Pennsylvania Public Utility Commission.

- b. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date of entry of this Opinion and Order, PECO Energy Company shall pay a civil penalty in the amount of two hundred thousand dollars (\$200,000). Said check or money order shall be made payable to:

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

- c. That the civil penalty assessed by this Opinion and Order shall not be included for recovery in future ratemaking proceedings.

- d. That, within thirty (30) days of the date of entry of this Opinion and Order, PECO Energy Company shall make a contribution of one hundred thousand dollars (\$100,000) to its Matching Energy Assistance Fund. Specifically, PECO Energy Company shall donate twenty thousand dollars (\$20,000.00) to each of its five major Matching Energy Assistance Fund agencies to fund additional Matching Energy Assistance Fund grants: Bucks County – Bucks County Opportunity Council, Inc.; Chester County – Human Services, Inc.; Delaware County – Community Action Agency of Delaware County, Inc.; Montgomery County – Community Action Development Commission; and Philadelphia County – Utility Emergency Services Fund.

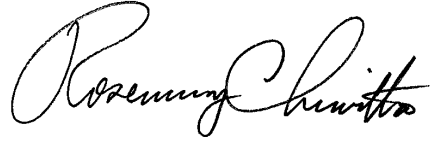
- e. That PECO Energy Company shall provide the Commission’s Bureau of Investigation and Enforcement with proof of payment of this contribution to its Matching Energy Assistance Fund agencies within thirty (30) days of the date of entry of this Opinion and Order.

- f. That PECO Energy Company shall transfer three-hundred twenty-thousand five-hundred ninety-one dollars and eighty-eight cents (\$320,591.88) to its Matching Energy Assistance Fund within thirty (30) days from the date of entry of this Opinion and Order. This is the amount of erroneously charged customer reconnection fees that PECO was unable to apply to customer accounts and is not subject to “matching” by PECO Energy Company.

- g. That a copy of this Opinion and Order shall be served upon the Pennsylvania Public Utility Commission's Financial and Assessment Chief, Office of Administrative Services; the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement; and the Pennsylvania Public Utility Commission's Bureau of Consumer Services.
- h. That, for the next two years (from January 1, 2022 through December 31, 2023), PECO Energy Company shall summarize and report the results of its regulatory noticing audits as part of its quarterly meeting with the Pennsylvania Public Utility Commission's Bureau of Consumer Services, in accordance with Paragraph 51.E of the Settlement Agreement.
- i. That following compliance with Ordering Paragraph Nos. 3.a. through 3.e., above, PECO Energy Company shall notify the Secretary of the Pennsylvania Public Utility Commission of

such compliance at which time the Secretary shall mark this docket closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022