



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 25, 2024

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
PECO Energy Company
Docket No. C-2023-3041107
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A - Joint Stipulation of Facts in Support of Settlement; (2) Appendix B – Joint Proposed Ordering Paragraphs; (3) Appendix C –Bureau of Investigation and Enforcement’s Statement in Support; and (4) Appendix D – PECO Energy Company’s Statement in Support.

Copies have been served on the parties of record in accordance with the Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Colby B. Widdowson', is written over a light blue circular stamp.

Colby B. Widdowson
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 326185
(717) 787-2139
cwiddowson@pa.gov

Enclosures
CBW/ac

cc: Honorable Marta Guhl (*via email*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2023-3041107
	:	
PECO Energy Company	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT¹

TO PRESIDING ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E” or “Complainant”) and PECO Energy Company (“PECO,” “Company,” or “Respondent”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed I&E Formal Complaint (“Complaint”) proceeding. The Complaint alleges violations of the National Electric Safety Code (“NESC”), Pennsylvania Code, and Pennsylvania Public Utility Code (“Code”), which were raised in connection with multiple house fires, which occurred on June 4, 2020 at the 15000 block of Beverly Drive, Philadelphia, Pennsylvania. As part of this Settlement Agreement, I&E and PECO (hereinafter referred to collectively as the “Parties” or “Joint

¹ This Joint Petition for Approval of Settlement is being filed concurrently with a Joint Petition for Approval of Settlement at *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. PECO Energy Company*, Docket No. C-2023-3041102. While the Joint Petition for Approval of Settlement in this case was negotiated in conjunction with and in reference to the Joint Petition for Approval of Settlement at Docket No. C-2023-3041102, the instant Settlement constitutes a negotiated resolution solely of the above-referenced proceeding at Docket No. C-2023-3041107.

Petitioners”) respectfully request that Your Honor issue an initial decision or recommended decision approving the Settlement without modification. A Joint Stipulation of Facts in Support of Settlement is attached hereto as **Appendix A**. Joint Proposed Ordering Paragraphs are attached hereto as **Appendix B**. Statements in Support of the Settlement expressing the individual views of I&E and PECO are attached hereto as **Appendix C** and **Appendix D**, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, Pennsylvania 17120 and PECO, an electric distribution company (“EDC”), with a mailing address of 2301 Market Street, Philadelphia, Pennsylvania 19103.²

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to 66 Pa.C.S. §§ 101, et seq.

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *see also* Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

² PECO is a subsidiary of Exelon Corporation.

5. Section 2804(1)(ii) of the Code, 66 Pa.C.S. § 2804(1)(ii), requires the Commission “to ensure [the] continuation of safe and reliable electric service to all consumers in the Commonwealth, including . . . [t]he installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the [NESC].” *See also* 52 Pa. Code §§ 57.193-194.

6. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

7. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code, the Commission’s regulations, or both. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s). 66 Pa.C.S. § 3301.

8. PECO is a “public utility” as that term is defined at 66 Pa.C.S. § 102 as it is engaged in providing public utility service as an EDC in the Commonwealth of Pennsylvania to the public for compensation.

9. PECO, as an EDC, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

10. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over this subject matter and the actions of PECO in its capacity as an EDC.

II. BACKGROUND

11. On June 3, 2020, a conductor owned and operated by PECO fell at 1299 Southhampton Road, Philadelphia, Pennsylvania.

12. PECO received no less than three phone calls on June 3, 2020, reporting the downed line. In response to the calls, PECO deenergized the line on June 3, 2020.

13. PECO reenergized the line on June 4, 2020. The reenergized downed line sparked multiple house fires on the 15000 Block of Beverly Drive, causing severe damage to six homes and collateral damage to two other homes.

14. The results of I&E's investigation formed the basis for I&E's Complaint that was filed with the Commission on June 2, 2023 at Docket No. C-2023-3041107. The Complaint included the following allegations:

- a. On June 3, 2020, a conductor owned and operated by PECO fell at 1299 Southhampton Road, Philadelphia, Pennsylvania.
- b. 1299 Southhampton Road adjoins the residences located on Beverly Drive, Philadelphia, Pennsylvania.
- c. On June 3, 2020, at approximately 2:33 p.m., PECO received a call from the resident of 1299 Southhampton Road reporting a downed wire adjacent to the property, on the right side of the house.
- d. PECO subsequently received two (2) more calls from the resident at approximately 3:50 p.m. and 5:41 p.m. The resident reported that the wire was sparking on the ground near his/her driveway.
- e. After receiving the phone calls, PECO deenergized the line due to a break in the line. However, PECO did not label the incident as a

downed wire in its Operating Management System (“OMS”) system, but did open an Emergency Operations Center with Screener Options pursuant to its procedures. However, PECO’s records failed to demonstrate that PECO personnel responded to the report of downed wires.

- f. Pursuant to PECO’s Screening Operation Procedures, a Screener would be dispatched to the location to report all hazardous conditions to the dispatcher and would request the immediate deployment of a wire sitter if a PECO wire is down. This action/procedure did not occur on June 3, 2020.
- g. The line was reenergized on June 4, 2020 at approximately 2:01 p.m.
- h. On June 4, 2020, PECO received three (3) phone calls from residents who resided on Beverly Drive. The phone calls were received at approximately 3:39 p.m., 3:50 p.m., and 4:25 p.m.
- i. At approximately 3:50 p.m., PECO received notice from the local fire department that a live wire was on the ground which sparked multiple house fires on the 15000 block of Beverly Drive.
- j. PECO employees responded to the fire and observed two spans of primary and neutral wires down on the 187-00 line in the backyards of the homes on the 15000 block of Beverly Drive.
- k. Six (6) homes were severely damaged and two (2) homes took smoke and exterior heat damage from the fire. The homes damaged by the fire included 15111 Beverly Drive, 15113 Beverly Drive, 15115 Beverly

Drive, 15117 Beverly Drive, 15121 Beverly Drive, 15125 Beverly Drive, 15127 Beverly Drive, and 15135 Beverly Drive. Some PECO facilities were also damaged.

- l. On or about June 5, 2020, the Bureau of Investigation and Enforcement's Electric Safety Division ("Electric Safety") visited the site of the multiple house fires and observed vegetation, fences, a building, a swimming pole, and a trampoline within PECO's right-of-way.
- m. PECO's procedures provide for the inspection of a Right-of-Way to include looking for fences, buildings, and swimming pools on the right-of-way. Items discovered or observed in the right-of-way are required to be documented and reported.
- n. PECO advised Electric Safety that no objects or issues were found during PECO's previous right-of-way inspections between poles 67395A and 79151, the backyards of the 15000 block of Beverly Drive.

15. In the Complaint, I&E made several requests for relief, including that the Commission: (1) find Respondent to be in violation of the NESC, Pennsylvania Code, and Pennsylvania Public Utility Code for each of the counts set forth in I&E's Complaint; (2) impose a cumulative civil penalty upon Respondent in the amount of Thirteen Thousand Dollars (\$13,000.00); (3) direct Respondent to perform each of the corrective actions detailed in the Complaint; and (4) order such other remedies as the Commission may deem appropriate.

16. On June 26, 2023, Respondent, through counsel, filed an Answer to I&E's Complaint. In its Answer, PECO denied all material allegations of fact and denied that the Bureau of Investigation and Enforcement was entitled to relief.

17. By notice dated June 28, 2023, this matter was scheduled for an Initial Telephonic Hearing on August 8, 2023 before Administrative Law Judge ("ALJ") Marta Guhl.

18. By letter dated July 26, 2023, PECO requested a 60-day continuance of the August 8, 2023, Initial Telephonic Hearing, as the Parties engaged in settlement discussions.

19. By Interim Order dated August 4, 2023, PECO's request for a continuance of the Initial Telephonic Hearing was granted and the Initial Telephonic Hearing was rescheduled for October 10, 2023.

20. By letter dated September 28, 2023, PECO requested a 60-day continuance of the October 10, 2023, Initial Telephonic Hearing.

21. By Hearing Cancellation Notice dated October 4, 2023, PECO's request for a continuance of the Initial Telephonic Hearing was granted and the Initial Telephonic Hearing scheduled for October 10, 2023 was cancelled.

22. By letter dated December 12, 2023, I&E requested a 60-day continuance of the Initial Telephonic Hearing.

III. ALLEGED VIOLATIONS

23. I&E filed a formal Complaint alleging that PECO violated certain provisions of the Commission's regulations, the NESC, and the Code, which PECO disputes. If this matter had been fully litigated rather than resolved through this Settlement, I&E would have contended that PECO violated certain provisions of the Commission's regulations, the

NESC, and the Code in that:

- a. PECO failed to adequately respond to multiple reports of a downed wire on June 3, 2020. If proven, this is a violation of 52 Pa. Code § 57.28, 52 Pa. Code § 57.194, and 66 Pa.C.S. § 1501.
- b. PECO failed to properly enter/document the three (3) calls reporting a downed wire on June 3, 2020, in OMS. If proven, this is a violation of 52 Pa. Code § 57.28, 52 Pa. Code § 57.194(a), and 66 Pa.C.S. § 1501.
- c. Due to PECO's failure to respond and document the downed wire, PECO improperly allowed a failed conductor to be re-energized. If proven, this is a violation of 52 Pa. Code § 57.28, 52 Pa. Code § 57.194(a), and 66 Pa.C.S. § 1501.
- d. PECO failed to identify impermissible materials within the right-of-way during its Right-of-Way ("ROW") inspections, such as fences, buildings, and swimming pools that were all located within the right-of-way behind the Beverly Drive properties and to report them. If proven, this is a violation of 52 Pa. Code § 57.28, 52 Pa. Code § 57.194(a), and 66 Pa.C.S. § 1501.
- e. PECO failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities on June 3, 2020. If proven, this is a violation of 66 Pa.C.S. § 1501.

24. In its Answer, PECO denied the above-listed alleged violations, and raised defenses and mitigating factors in support of its defense.

25. If this matter had been fully litigated rather than resolved through this Settlement, PECO would have contended that it did not violate provisions of the Commission's regulations, the NESC, and the Code.

26. As a mitigating factor to the above allegations, I&E acknowledges that PECO fully cooperated with I&E's investigation. During the investigatory process, PECO fully complied with I&E's requests for information and documentation and timely provided I&E with records, correspondence, and other documents as requested by I&E.

IV. SETTLEMENT TERMS

27. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,³ I&E and PECO held a series of discussions after the filing of I&E's Complaint that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E's Complaint and to settle this matter completely without further litigation. Although I&E filed a Formal Complaint, there has been no evidentiary hearing before any tribunal, and no sworn testimony has been taken in any proceeding related to this incident. Further, the Parties have stipulated to relevant facts. *See Appendix A* attached hereto.

28. The Settlement is a compromise of a disputed Complaint, which I&E intended to prove, and that PECO intended to disprove.

29. The Parties recognize that their positions and claims are disputed and further recognize the significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

³ See 52 Pa. Code § 5.231(a).

30. I&E and PECO, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification will create the following rights and obligations:

a. Civil Penalty:

PECO will pay a civil penalty in the amount of Thirteen Thousand Dollars (\$13,000.00) pursuant to 66 Pa.C.S. § 3301(a). Said payment will be made within thirty (30) days of the entry date of the Commission’s Final Order approving the Settlement Agreement and will be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C-2023-3041107, will be indicated with the certified check or money order and the payment will be sent to:

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

The civil penalty will not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and will not be passed-through as an additional charge to PECO’s customers in Pennsylvania.

b. Updates to Storm Restoration Procedures for Foreign Crews:

Within three (3) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, PECO will

implement updates to its Storm Restoration Manual for Foreign Crews and Non Contractor of Choice (“COC”) Contractors. These updates will include, but are not limited to:

- i. Provision of contact information for the Contract Crew Emergency Response Manager, Construction Work Dispatcher (“CWD”), Foreign Crew Coordinator, and Accommodations Chaperone;
- ii. To improve safety, all electrical facilities shall be considered energized unless de-energized, blocked, tagged, and properly grounded;
- iii. Upon completion of repair work, circuits must be walked down by a worker assigned to a foreign crew to confirm whether additional areas of damage/wires down exist before re-energizing the line;
- iv. If a foreign crew completes any temporary repairs, they will provide detailed information on the temporary repairs, and the required follow up work for PECO, to PECO’s CWD; and
- v. A peer check shall be performed by another worker, prior to alteration/restoration execution, except in cases of a single-person crew. In cases of a single-person crew, workers shall confirm zones of protection and document such in the Worker Alteration Log. A single-person crew must not enter a Minimum Approach Distance (“MAD”) and must use appropriate equipment to avoid violating the MAD. If a foreign worker has any questions or concerns, they must stop work immediately and contact their PECO representative for guidance.

c. **Knowledge Check:**

Within three (3) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, PECO will provide its updated Storm Restoration Manual for Foreign Crews and Non

COC Contractors to all currently contracted foreign contractor companies, and agrees to also provide such to any future foreign contractor company. PECO will require the foreign contractor company to acknowledge receipt of the Storm Restoration Manual for Foreign Crews and Non COC Contractors, including any updated versions, and acknowledge distribution of the same to the foreign contractor company's employees.

d. Storm Foreign Contractor Inspection Pilot Program:

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will develop and implement a Storm Foreign Contractor Inspection Pilot Program (the "Pilot"), in order to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. The Pilot will provide PECO an opportunity to observe the worksites and work practices of foreign contractors during storm restoration efforts. The Pilot will expire two (2) years after the initiation date and, after expiration of the Pilot, PECO will evaluate lessons learned and determine if any adjustments to the Pilot are warranted and/or if the Pilot should be converted into a standard business practice. PECO shall meet with the Commission's Bureau of Investigation and Enforcement – Electric Safety Division no later than ninety (90) days

after the Pilot has concluded to evaluate the program and discuss lessons learned. PECO will have the right to make changes to the Pilot during its duration, as necessary. PECO will notify the Bureau of Investigation and Enforcement – Electric Safety Division of any proposed changes to the Pilot, and provide an explanation for the change(s), at least five (5) days prior to implementation of the change. If emergency or safety reasons require PECO to implement the change prior to notifying the Commission’s Electric Safety Division, PECO will notify the Commission’s Electric Safety Division of the change(s) no later than three (3) days after the change is implemented. The Pilot will include, but may not be limited to:

- i. Where possible, worksite inspections will occur in “real-time” while storm restoration work is being performed, to allow for confirmation that contractors are using actual common work practices and safety standards and behaviors, and to identify any necessary corrective actions;
- ii. Inspectors will be identified based on appropriate experience and job duties. Inspectors may be PECO employees or on-system contractors already retained or employed by PECO. Third-party inspectors may be considered in the future;
- iii. A standardized “inspection checklist” will be used by inspectors;
- iv. Information on specific worksite inspections, contractor(s), and the associated outage event will be recorded and warehoused. Immediate corrective actions will take place in the field, and any additional follow ups will be done post-event. Inspectors will communicate any immediate corrective actions to the contractors. If the contractor has already left the service territory, PECO will perform any necessary corrective

actions. As needed, PECO will conduct any post-event follow ups with the contractors regarding their performance; and

- v. For each storm where foreign contractors are utilized, PECO will use commercially reasonable efforts to inspect at least one worksite worked by each foreign contractor, or contractor aggregator. The number of inspections for a particular storm will vary based on, among other things, the extent and duration of the storm response, the number of foreign contractors utilized, resources available to perform inspections, etc.

31. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any other complaints or initiate other action against PECO at the Commission with respect to the allegations that were the subject of I&E's instant Complaint.

32. Following the performance of each non-monetary, remedial measure referenced above, PECO will file with the Commission a verification acknowledging that each non-monetary, remedial measure has been met or complied with, pursuant to 52 Pa. Code § 5.591.

33. I&E and PECO jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses the allegations in I&E's formal Complaint and avoids the time and expense of further litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Attached as **Appendices C and D** are Statements in Support

submitted by I&E and PECO, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

34. This document represents the Settlement Agreement in its entirety and constitutes a negotiated resolution solely of the above-referenced proceeding at Docket No. C-2023-3041107. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law, irrespective of the application of any conflict of laws provisions.

35. The Parties agree that this Settlement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same agreement that is binding upon the Parties as if they executed a single petition.

36. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

37. In the event that the presiding ALJ issues an initial decision or recommended decision approving this Joint Petition for Approval of Settlement without modification, the Parties agree to waive the exception period, thereby allowing the Settlement Agreement to be

presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e).

38. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no Order, findings of fact, or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, PECO has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in this Joint Settlement Petition. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law.

39. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

40. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

41. The terms and conditions of this Settlement Agreement represent reasonably

negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO Energy Company respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

PECO Energy Company

By:



Colby E. Widdowson
Prosecutor
PA Attorney ID No. 326185
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cwiddowson@pa.gov

By:



Jack R. Garfinkle (Pa. No. 81892)
Jennedy S. Johnson (Pa. No. 203098)
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Jack.Garfinkle@exeloncorp.com
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Adesola.Adegbesan@exeloncorp.com

Date: March 25, 2024

Date: March 25, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. C-2023-3041107
 :
PECO Energy Company :

JOINT STIPULATION OF FACTS IN SUPPORT OF SETTLEMENT

Pursuant to 52 Pa. Code § 5.232(a), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and PECO Energy Company (“PECO” or “Company”), by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) in the above-captioned matter.

I&E and PECO have entered into the Settlement, which they recognize is a compromise of disputed claims. I&E also recognizes that the Settlement is entered into without admission of wrongdoing or liability by PECO.

STIPULATION OF FACTS

1. On June 3, 2020, a conductor owned and operated by PECO fell at 1299 Southampton Road, Philadelphia, Pennsylvania.
2. 1299 Southampton Road adjoins the residences located on Beverly Drive, Philadelphia, Pennsylvania.

3. On June 3, 2020, at approximately 2:33 p.m., PECO received a call from the resident of 1299 Southampton Road reporting a downed wire adjacent to the property, on the right side of the house.

4. PECO subsequently received two (2) more calls from the resident at approximately 3:50 p.m. and 5:41 p.m. The resident reported that the wire was sparking on the ground near his/her driveway.

5. After receiving the phone calls, PECO deenergized the line due to a break in the line. However, PECO did not label the incident as a downed wire in its Operating Management System (“OMS”), but did open an Emergency Operations Center with Screener Options pursuant to its procedures. However, PECO’s records failed to demonstrate that PECO personnel responded to the report of downed wires.

6. Pursuant to PECO’s Screening Operation Procedures, a Screener would be dispatched to the location to report all hazardous conditions to the dispatcher and would request the immediate deployment of a wire sitter if a PECO wire is down. This action/procedure did not occur on June 3, 2020.

7. The line was reenergized on June 4, 2020 at approximately 2:01 p.m.

8. On June 4, 2020, PECO received three (3) phone calls regarding the downed wire. The phone calls were received at approximately 3:39 p.m., 3:50 p.m., and 4:25 p.m.

9. At approximately 3:50 p.m., PECO received notice from the local fire department that a live wire was on the ground which sparked multiple house fires on the 15000 block of Beverly Drive.

10. PECO employees responded to the fire and observed two spans of primary and neutral wires down on the 187-00 line in the backyards of the homes on the 15000 block of Beverly Drive.

11. Six (6) homes were severely damaged and two (2) homes experienced collateral damage from the fire. The homes damaged by the fire included 15111 Beverly Drive, 15113 Beverly Drive, 15115 Beverly Drive, 15117 Beverly Drive, 15121 Beverly Drive, 15125 Beverly Drive, 15127 Beverly Drive, and 15135 Beverly Drive. Some PECO facilities were also damaged.

12. On or about June 5, 2020, the Bureau of Investigation and Enforcement's Electric Safety Division ("Electric Safety") visited the site of the multiple house fires and observed vegetation, fences, a building, a swimming pole, and a trampoline within PECO's right-of-way.

13. PECO's procedures provide for the inspection of a Right-of-Way to include looking for fences, buildings, and swimming pools on the right-of way, dependent upon the circumstances. Items discovered or observed in the right-of-way are required to be documented and reported, unless they were already reported and investigated in the past.

14. PECO advised Electric Safety that no objects or issues were found during PECO's previous right-of-way inspections between poles 67395A and 79151, the backyards of the 15000 block of Beverly Drive.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. C-2023-3041107
 :
PECO Energy Company :

JOINT PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on March 25, 2024 between the Commission’s Bureau of Investigation and Enforcement and PECO Energy Company is approved in its entirety without modification.

2. That, in accordance with Section 3301(a) of the Public Utility Code, 66 Pa.C.S. § 3301(a), within thirty (30) days of the date this Order becomes final, PECO Energy Company will pay a civil penalty of Thirteen Thousand Dollars (\$13,000.00). Said payment will be made by certified check or money order payable to “Commonwealth of Pennsylvania” and will be sent to:

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

3. That the civil penalty will not be tax deductible or passed through as an additional charge to PECO Energy Company’s customers in Pennsylvania.

4. That upon fulfillment of each non-monetary, remedial measure set forth in Paragraph 30 of the Joint Petition for Settlement, PECO Energy Company will file with the

Commission a verification acknowledging compliance with each non-monetary remedial measure, pursuant to 52 Pa. Code § 5.591.

5. A copy of this Opinion and Order will be served upon the Financial and Assessment Chief, Bureau of Administration.

6. That the above-captioned matter will be marked closed upon receipt of the civil penalty and the verifications acknowledging that the non-monetary remedial measures set forth in Paragraph 30 of the Joint Petition for Settlement have been fulfilled.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. C-2023-3041107
 :
PECO Energy Company :

**THE BUREAU OF INVESTIGATION AND ENFROCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and PECO Energy Company (“PECO,” “Respondent,” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

I. Background

I&E’s Safety Division conducted an in-depth investigation of a conductor, owned and operated by PECO, that fell to the ground at 1299 Southampton Road, Philadelphia,

¹ I&E and PECO are collectively referred to herein as the “Parties.”

Pennsylvania, Pennsylvania, which sparked multiple house fires on the 15000 Block of Beverly Drive, causing severe damage to six homes and smoke and exterior heat damage to two other homes. The results of the investigation formed the basis for the allegations set forth in I&E's Formal Complaint ("Complaint"), which was filed on June 2, 2023.

The crux of I&E's Complaint alleged that PECO's received no less than three (3) phone calls from residents alerting PECO to a downed line at 1299 Southampton Road, in response PECO deenergized the line, but then the following day, PECO reenergized the line without having repaired or rehung the downed line, which created an ongoing, unsafe, and hazardous condition in violation of Section 1501 of the Public Utility Code ("Code"), 66 Pa.C.S. § 1501 (requiring a public utility to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" and to "make all such repairs, changes, . . . and improvements in or to such service and facilities" for the "safety of its patrons, employees, and the public" and requiring that such service and facilities "be in conformity with the regulations and orders of the Commission").

In addition to alleging violations of Section 1501 of the Code, I&E's Complaint alleged that PECO failed to adequately respond to multiple reports of a downed wire on June 3, 2020, which posed a threat to life and property, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194. I&E's complaint alleged that PECO failed to properly enter/document the three (3) calls reporting a downed wire on June 3, 2020, in its Operating Management System ("OMS"), which posed a threat to life and property, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194(a). Further, I&E's complaint alleged that due to PECO's failure to respond and document the downed wire, PECO improperly allowed a failed conductor to be re-energized, resulting in multiple house fires, a violation of 52 Pa. Code §

57.28 and 52 Pa. Code § 57.194(a). Finally, I&E’s complaint alleged that PECO failed to identify impermissible materials within the right-of-way during its Right-of-Way (“ROW”) inspections, such as fences, buildings, and swimming pools that were all located within the right-of-way behind the Beverly Drive properties and to report them, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194(a).

I&E’s Complaint sought relief in the form of a civil penalty of \$13,000.00, as well as a number of corrective measures designed to address emergency response, training, and updates to PECO’s procedures.

By notice dated June 28, 2023, this matter was scheduled for an Initial Telephonic Hearing on August 8, 2023 before Administrative Law Judge (“ALJ”) Marta Guhl. By letter dated July 26, 2023, PECO requested a 60-day continuance of the August 8, 2023, Initial Telephonic Hearing, as the Parties engaged in settlement discussions. By Interim Order dated August 4, 2023, PECO’s request for a continuance of the Initial Telephonic Hearing was granted and the Initial Telephonic Hearing was rescheduled for October 10, 2023.

By letter dated September 28, 2023, PECO requested a 60-day continuance of the October 10, 2023, Initial Telephonic Hearing and by Hearing Cancellation Notice dated October 4, 2023, PECO’s request for a continuance of the Initial Telephonic Hearing was granted and the Initial Telephonic Hearing scheduled for October 10, 2023 was cancelled.

By letter dated December 12, 2023, I&E requested a 60-day continuance of the Initial Telephonic Hearing.

On March 25, 2024, the Parties filed a Joint Petition for Approval of Settlement in the instant matter resolving all issues between I&E and PECO. This Joint Petition for Approval of Settlement is being filed concurrently with a Joint Petition for Approval of Settlement at

Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. PECO Energy Company, Docket No. C-2023-3041102. While the Joint Petition for Approval of Settlement in this case was negotiated in conjunction with and in reference to the Joint Petition for Approval of Settlement at Docket No. C-2023-3041102, the instant Settlement constitutes a negotiated resolution solely of the above-referenced proceeding at Docket No. C-2023-3041107. This Statement in Support is submitted in conjunction with this Settlement Agreement.

II. The Public Interest

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's Formal Complaint proceeding. This settlement was negotiated in conjunction with and in reference to the Joint Petition for Approval of Settlement at *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. PECO Energy Company*, Docket No. C-2023-3041102. PECO has been cooperative with I&E related to identifying policies and procedures, facilities, and training that can be further improved to assist PECO in enhancing the safety and reliability of service and to satisfy the commitments that I&E has required in the settlement process.

The Settlement, if approved, will provide substantial public benefits including improved safety procedures for foreign contractor crews responding to storm damage and the design and implementation of a program designed to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and

safety standards.

I&E intended to prove the factual allegations set forth in its Formal Complaint at hearing and which PECO would have disputed. This Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it provides for a number of relevant corrective measures, as well as a civil penalty. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, I&E and PECO have agreed to the following:

a. Civil Penalty:

PECO will pay a civil penalty in the amount of Thirteen Thousand Dollars (\$13,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed-through as an additional charge to PECO's customers in Pennsylvania.

b. Revisions to Storm Restoration Procedures for Foreign Crews:

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will implement updates to its Storm Restoration Manual for Foreign Crews and Non Contractor of Choice ("COC") Contractors. These updates will include, but are not limited to:

- i. Provision of contact information for the Contract Crew Emergency Response Manager, Construction Work Dispatcher ("CWD"), Foreign Crew Coordinator, and Accommodations Chaperone;
- ii. To improve safety, all electrical facilities shall be considered energized unless de-energized, blocked, tagged, and properly grounded;
- iii. Upon completion of repair work, circuits must be walked down by a worker assigned to a foreign crew to confirm whether additional areas of damage/wires down exist before re-energizing the line;
- iv. If a foreign crew completes any temporary repairs, they will provide detailed information on the temporary repairs, and the required follow up work for PECO, to PECO's CWD; and
- v. A peer check shall be performed by another worker, prior to alteration/restoration execution, except in cases of a single-person crew. In cases of a single-person crew, workers shall confirm zones of protection and document such in the Worker Alteration Log. A single-person crew must not enter a Minimum Approach Distance ("MAD") and must use appropriate equipment to avoid violating the MAD. If a foreign worker has any questions or concerns, they must stop work immediately and contact their PECO representative for guidance.

c. Knowledge Check:

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will provide its updated

Storm Restoration Manual for Foreign Crews and Non COC Contractors to all currently contracted foreign contractor companies and agrees to also provide such to any future foreign contractor company. PECO will require the foreign contractor company to acknowledge receipt of the Storm Restoration Manual for Foreign Crews and Non COC Contractors, including any updated versions, and acknowledge distribution of the same to the foreign contractor company's employees.

d. Storm Foreign Contractor Inspection Pilot Program:

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will develop and implement a Storm Foreign Contractor Inspection Pilot Program (the "Pilot"), in order to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. The Pilot will provide PECO an opportunity to observe the worksites and work practices of foreign contractors during storm restoration efforts. The Pilot will expire two (2) years after the initiation date and, after expiration of the Pilot, PECO will evaluate lessons learned and determine if any adjustments to the Pilot are warranted and/or if the Pilot should be converted into a standard business practice. PECO shall meet with the Commission's Bureau of Investigation and Enforcement – Electric Safety Division no later than ninety (90) days after the Pilot has concluded to evaluate the program and discuss lessons learned. PECO will have the right to

make changes to the Pilot during its duration, as necessary. PECO will notify the Bureau of Investigation and Enforcement – Electric Safety Division of any proposed changes to the Pilot, and provide an explanation for the change(s), at least five (5) days prior to implementation of the change. If emergency or safety reasons require PECO to implement the change prior to notifying the Commission’s Electric Safety Division, PECO will notify the Commission’s Electric Safety Division of the change(s) no later than three (3) days after the change is implemented. The Pilot will include, but may not be limited to:

- i. Where possible, worksite inspections will occur in “real-time” while storm restoration work is being performed, to allow for confirmation that contractors are using actual common work practices and safety standards and behaviors, and to identify any necessary corrective actions;
- ii. Inspectors will be identified based on appropriate experience and job duties. Inspectors may be PECO employees or on-system contractors already employed by PECO. Third-party inspectors may be considered in the future;
- iii. A standardized “inspection checklist” will be used by inspectors;
- iv. Information on specific worksite inspections, contractor(s), and the associated outage event will be recorded and warehoused. Immediate corrective actions will take place in the field, and any additional follow ups will be done post-event. Inspectors will communicate any immediate corrective actions to the contractors. If the contractor has already left the service territory, PECO will perform any necessary corrective actions. As needed, PECO will conduct any post-event follow ups with the contractors regarding their performance; and
- v. For each storm where foreign contractors are utilized, PECO will use commercially reasonable efforts to inspect at least one worksite worked by each foreign contractor, or contractor aggregator. The number of inspections for a particular storm will vary based on, among other things, the extent and duration

of the storm response, the number of foreign contractors utilized, resources available to perform inspections, etc.

In consideration of PECO's payment of a civil penalty and contribution to the and various remedial measures, I&E agrees that it has released PECO from all past claims that were or could have been made for monetary and/or other relief based on allegations associated with the June 3, 2020 incident at Beverly Drive, King of Prussia, Pennsylvania.

IV. Legal Standard for Settlement Agreements

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend on litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M- 00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C- 00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the

Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E submits that the conduct alleged in the Complaint does not rise to the level of willful fraud or misrepresentation, but is of a more serious nature than a mere administrative error. I&E alleges that PECO’s conduct includes the following: (1) PECO failed to adequately respond to multiple reports of a downed wire on June 3, 2020, which posed a threat to life and property; (2) PECO failed to properly enter/document the three (3) calls reporting a downed wire on June 3, 2020, in OMS, which posed a threat to life and property; (3) Due to PECO’s failure to respond to and document the downed wire, PECO improperly allowed a failed conductor to be re-energized, resulting in multiple house fires; (4) PECO failed to identify impermissible materials within the right-of-way during its Right-of-Way (“ROW”) inspections, such as fences, buildings, and swimming pools that were all located within the right-of-way behind the Beverly Drive properties and to report them; and (5) PECO failed to furnish and maintain adequate, efficient, safe, and reasonable service and

facilities in that PECO allowed an unrepaired conductor to be reenergized on its system, which enabled the continuation of an unsafe and hazardous condition and the occurrence of a fire on the 15000 block of Beverly Drive.

I&E submits that any conduct involving overhead service lines or conductors should be taken seriously due to the inherent danger involved if such lines should overheat, fall, or otherwise fail. Further, the actions and inactions of PECO described above constitute conduct that placed the public safety at risk, and therefore, I&E submits that the civil penalty is warranted in this case.

The seriousness of the conduct at issue is addressed in the costly and extensive, corrective measures that the Company has agreed to undertake, as well as the payment of the agreed-upon civil penalty.

The second factor considers whether the resulting consequences of PECO's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). In this case, there were no fatalities or personal injury; however, the conduct resulted in multiple house fires causing severe fire damage to six homes and collateral damage to two other homes. PECO's failure to ensure that the downed conductor at 1299 Southhampton Road had been repaired and rehung, prior to the line being reenergized, resulted in property damage and a threat to public safety.

The agreed-upon civil penalty and remedial measures of the Settlement acknowledge that serious consequences occurred and are designed to further enhance the safety of PECO's service and facilities, especially in response to storm damage and the use of foreign contractors.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether PECO’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether PECO has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In response to the June 3, 2020 incident and the inadequate repair, PECO has engaged in appropriate measures to correct the conduct at issue and prevent similar future conduct. PECO has agreed to take remedial action including improving safety procedures for foreign contractor crews responding to storm damage and the design and implementation of a program designed to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. A comprehensive list of the remedial actions that PECO has agreed to undertake is outlined in the Settlement Agreement at Paragraph 30. Some of the more significant, remedial actions can be found in the following settlement terms.

First, PECO will make revisions and improvements to its Storm Restoration Manual for Foreign Crews and Non COC Contractors. These revisions and improvements will include, but are not limited to: (1) To improve safety, all electrical facilities shall be considered energized unless de-energized, blocked, tagged, and properly grounded; (2) Upon completion of repair work, circuits must be walked down by a worker assigned to a foreign crew to confirm whether additional areas of damage/wires down exist before re-energizing

the line; (3) If a foreign crew completes any temporary repairs, they shall provide detailed information on the temporary repairs, and the required follow up work for PECO, to PECO's Construction Work Dispatcher (CWD); (4) A peer check shall be performed by another worker, prior to alteration/restoration execution, except in cases of a single-person crew where workers shall confirm zones of protection and document such in the Worker Alteration Log ("WAL"); and (5) A single-person crew shall not enter a Minimum Approach Distance ("MAD") and must use appropriate equipment to avoid violating the MAD.

Second, PECO will implement a knowledge check for its foreign contractor companies. PECO will provide the Storm Restoration Manual for Foreign Crews and Non COC Contractors to all currently contracted foreign contractor companies and any future foreign contractor company. PECO will require the foreign contractor company to acknowledge receipt of the Storm Restoration Manual for Foreign Crews and Non COC Contractors, including any updated versions, and acknowledge distribution of the same to the foreign contractor company's employees.

PECO's most significant remedial measure is to develop and implement a Storm Foreign Contractor Inspection Pilot Program (the "Pilot"). The goal of the Pilot is to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. The Pilot will provide PECO an opportunity to observe the worksites and work practices of foreign contractors during storm restoration efforts.

Each of these remedial actions and commitments address the alleged conduct at issue and are designed to prevent a similar incident from occurring again. The remedial actions

demonstrate that PECO is taking appropriate actions to enhance the safety of its distribution system, improve the reliability of its operations, and prevent similar occurrences in the future. These improvements will provide a significant benefit to public safety.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In this case, there was severe fire damage to six residences and collateral damage to two other residences. The downed wire was reported to PECO on June 3, 2020 and PECO deenergized the line the same day. PECO did not record the incident as a downed wire and failed to dispatch a screener to that location to report on any hazardous conditions on June 3, 2020. On June 4, 2020, PECO reenergized the downed wire without having repaired or rehung it, resulting in the aforementioned property damage. After reports of the fire, PECO deenergized the line. Therefore, I&E asserts that the violation continued from June 3, 2020 to June 4, 2020, or two days.

The sixth factor to be considered relates to the compliance history of PECO. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Aside from the instant Complaint and the Complaint at *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. PECO Energy Company*, Docket No. C-2023-3041102, I&E's investigation reveals that PECO has a generally clean compliance history, given the size of the company, and I&E is not aware of any other complaint against PECO involving a serious, ongoing violation of 66 Pa.C.S. § 1501 that resulted in serious consequences, including death and property damage.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* As previously referenced, PECO cooperated with I&E's investigation and has been cooperative with I&E related to identifying policies and procedures, facilities, and training that can be further improved to assist PECO in enhancing the safety and reliability of service and to satisfy the commitments that I&E has required in the settlement process.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that given the nature of PECO's conduct and the nature of the resulting consequences, a civil penalty amount of \$13,000.00, which is not tax deductible is an appropriate penalty payment in this case. I&E further submits that the monetary cost of PECO's performance of all of the remedial measures is sufficient to deter PECO from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). At the time of this filing, I&E is unaware of any Commission decisions, other than the Joint Petition for Approval of Settlement filed at Docket No. C-2023-3041102, that are substantially similar to the facts of this instant case.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties

negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions and enhancing public safety.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



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Dated: March 25, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2023-3041107
	:	
PECO Energy Company	:	

**PECO ENERGY COMPANY’S STATEMENT IN SUPPORT OF JOINT
PETITION FOR APPROVAL OF SETTLEMENT**

TO PRESIDING ADMINISTRATIVE LAW JUDGE MARTA GUHL:

I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) hereby submits this Statement in Support of the Joint Petition for Approval of Settlement¹ (“Settlement” or “Settlement Agreement”) that was entered into by the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and PECO (collectively, the “Parties”) in the above-captioned matter. The Settlement, if approved, fully resolves all issues related to the above-docketed I&E Formal Complaint (“Complaint”) proceeding.

PECO respectfully submits that this Settlement, which was amicably reached by the

¹ This Joint Petition for Approval of Settlement is being filed concurrently with a Joint Petition for Approval of Settlement at *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. PECO Energy Company*, Docket No. C-2023-3041102. While the Joint Petition for Approval of Settlement in this case was negotiated in conjunction with and in reference to the Joint Petition for Approval of Settlement at Docket No. C-2023-3041102, the instant Settlement constitutes a negotiated resolution solely of the above-referenced proceeding at Docket No. C-2023-3041107.

Parties after extensive negotiations and careful consideration, balances the duty of the Commission to protect the public interest, including the Company's customers and all electric consumers in Pennsylvania, with the interests of the Company. Accordingly, PECO respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

This matter involves PECO, an electric distribution company licensed by the Commission. PECO is engaged in the transmission and distribution of electricity in territories within the Commonwealth of Pennsylvania, as authorized by its license. I&E's Safety Division investigated PECO based on allegations that during a major storm outage, after deenergizing a service line due to a downed conductor, PECO and/or a foreign contractor crew subsequently reenergized the service line which resulted in damage to eight (8) homes. The results of I&E's investigation formed the basis for I&E's Complaint that was filed with the Commission on June 2, 2023 at Docket No. C-2023-3041107.

The Settlement is a compromise of a disputed Complaint, which I&E intended to prove and PECO intended to disprove. In making the determination that the instant Settlement was appropriate, the Parties weighed the alleged violations against the various mitigating circumstances present here. Importantly, I&E acknowledges that PECO fully cooperated with its investigation. Further, during the investigatory process, PECO fully complied with I&E's requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E, which ultimately culminated in this Settlement.

III. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. The Parties, intending to be legally bound and for consideration given, desire to fully and finally resolve all issues related to I&E's Complaint proceeding and agree that a Commission Order approving the Settlement without modification will require PECO to perform certain corrective actions. These corrective actions are outlined and described in detail in Paragraph 30 of the Settlement Agreement.

PECO recognizes that its positions and claims are disputed and further recognizes the significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation. More importantly, the Settlement provides an opportunity for PECO to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. PECO submits that this Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, PECO respectfully requests that the Commission approve the Settlement without modification.

IV. TERMS OF SETTLEMENT

In the Complaint regarding this matter, I&E made several requests for relief, including that the Commission: (1) find Respondent to be in violation of the NESC, Pennsylvania Code, and Pennsylvania Public Utility Code for each of the counts set forth in I&E's Complaint; (2) impose a cumulative civil penalty upon Respondent in the amount of Thirteen Thousand Dollars (\$13,000.00); (3) direct Respondent to perform each of the corrective actions detailed

in the Complaint; and (4) order such other remedies as the Commission may deem appropriate.

I&E and PECO, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification will create the following rights and obligations:

A. Civil Penalty:

PECO will pay a civil penalty in the amount of Thirteen Thousand Dollars (\$13,000.00) pursuant to 66 Pa.C.S. § 3301(a). Said payment will be made within thirty (30) days of the entry date of the Commission’s Final Order approving the Settlement Agreement and will be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding, C-2023-3041107, will be indicated with the certified check or money order and the payment will be sent to:

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

The civil penalty will not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and will not be passed-through as an additional charge to PECO’s customers in Pennsylvania.

B. Updates to Storm Restoration Procedures for Foreign Crews:

Within three (3) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, PECO will

implement updates to its Storm Restoration Manual for Foreign Crews and Non Contractor of Choice (“COC”) Contractors. These updates will include, but are not limited to:

- i. Provision of contact information for the Contract Crew Emergency Response Manager, Construction Work Dispatcher (“CWD”), Foreign Crew Coordinator, and Accommodations Chaperone;
- ii. To improve safety, all electrical facilities shall be considered energized unless de-energized, blocked, tagged, and properly grounded;
- iii. Upon completion of repair work, circuits must be walked down by a worker assigned to a foreign crew to confirm whether additional areas of damage/wires down exist before re-energizing the line;
- iv. If a foreign crew completes any temporary repairs, the foreign crew will provide detailed information on the temporary repairs, and the required follow up work for PECO, to PECO’s CWD; and
- v. A peer check shall be performed by another worker, prior to alteration/restoration execution, except in cases of a single-person crew. In cases of a single-person crew, workers shall confirm zones of protection and document such in the Worker Alteration Log. A single-person crew must not enter a Minimum Approach Distance (“MAD”) and must use appropriate equipment to avoid violating the MAD. If a foreign worker has any questions or concerns, they must stop work immediately and contact their PECO representative for guidance.

C. Knowledge Check:

Within three (3) months of the entry date of the Commission’s Final Order approving the Settlement Agreement, PECO will provide its updated Storm Restoration Manual for Foreign Crews and Non COC Contractors to all currently contracted foreign contractor

companies, and agrees to also provide such to any future foreign contractor company. PECO will require the foreign contractor company to acknowledge receipt of the Storm Restoration Manual for Foreign Crews and Non COC Contractors, including any updated versions, and acknowledge distribution of the same to the foreign contractor company's employees.

D. Storm Foreign Contractor Inspection Pilot Program:

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will develop and implement a Storm Foreign Contractor Inspection Pilot Program (the "Pilot"), in order to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. The Pilot will provide PECO an opportunity to observe the worksites and work practices of foreign contractors during storm restoration efforts. The Pilot will expire two (2) years after the initiation date and, after expiration of the Pilot, PECO will evaluate lessons learned and determine if any adjustments to the Pilot are warranted and/or if the Pilot should be converted into a standard business practice. PECO shall meet with the Commission's Bureau of Investigation and Enforcement – Electric Safety Division no later than ninety (90) days after the Pilot has

concluded to evaluate the program and discuss lessons learned. PECO will have the right to make changes to the Pilot during its duration, as necessary. PECO will notify the Bureau of Investigation and Enforcement – Electric Safety Division of any proposed changes to the Pilot, and provide an explanation for the change(s), at least five (5) days prior to implementation of the change. If emergency or safety reasons require PECO to implement the change prior to notifying the Commission’s Electric Safety Division, PECO will notify the Commission’s Electric Safety Division of the change(s) no later than three (3) days after the change is implemented. The Pilot will include, but may not be limited to:

- i. Where possible, worksite inspections will occur in “real-time” while storm restoration work is being performed, to allow for confirmation that contractors are using actual common work practices and safety standards and behaviors, and to identify any necessary corrective actions;
- ii. Inspectors will be identified based on appropriate experience and job duties. Inspectors may be PECO employees or on-system contractors already employed or retained by PECO. Third-party inspectors may be considered in the future;
- iii. A standardized “inspection checklist” will be used by inspectors;
- iv. Information on specific worksite inspections, contractor(s), and the associated outage event will be recorded and warehoused. Immediate corrective actions will take place in the field, and any additional follow ups will be done post-event. Inspectors will communicate any immediate corrective actions to the contractors. If the contractor has already left the service territory, PECO will perform any necessary corrective actions. As

- needed, PECO will conduct any post-event follow ups with the contractors regarding their performance; and
- v. For each storm where foreign contractors are utilized, PECO will use commercially reasonable efforts to inspect at least one worksite worked by each foreign contractor, or contractor aggregator. The number of inspections for a particular storm will vary based on, among other things, the extent and duration of the storm response, the number of foreign contractors utilized, resources available to perform inspections, etc.

V. FACTORS UNDER THE COMMISSION’S POLICY STATEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements decrease the time and expense that the parties must expend litigating a case and conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

PECO submits that approval of the Settlement in this matter is consistent with the Commission’s Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations (“Policy Statement”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute

is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the 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).

The first and second factors consider whether the conduct at issue and the resulting consequences were of a serious nature. PECO acknowledges that the alleged conduct and resulting consequences in this case were as follows: during a major storm outage, after deenergizing a service line due to a downed conductor, PECO and/or a foreign contractor crew subsequently reenergized the service line which resulted in damage to eight (8) homes. As such, PECO recognizes that the resulting consequences were of a serious nature.

The third factor considers whether the conduct at issue was deemed intentional or

negligent. This factor is only to be considered when evaluating litigated cases. 52 Pa. Code § 69.1201(c)(3). Therefore, this factor does not apply to the present case because this proceeding is a settled matter.

The fourth factor to be considered is whether PECO made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. PECO has made several updates to its internal procedures involving storm restoration procedures for foreign crews. These updates include, but are not limited to:

- i. Provision of contact information for the Contract Crew Emergency Response Manager, Construction Work Dispatcher (“CWD”), Foreign Crew Coordinator, and Accommodations Chaperone;
- ii. To improve safety, all electrical facilities shall be considered energized unless de-energized, blocked, tagged, and properly grounded;
- iii. Upon completion of repair work, circuits must be walked down by a worker assigned to a foreign crew to confirm whether additional areas of damage/wires down exist before re-energizing the line;
- iv. If a foreign crew completes any temporary repairs, they will provide detailed information on the temporary repairs, and the required follow up work for PECO, to PECO’s CWD; and
- v. A peer check shall be performed by another worker, prior to alteration/restoration execution, except in cases of a single-person crew. In cases of a single-person crew, workers shall confirm zones of protection and document such in the Worker Alteration Log. A single-person crew must not enter a Minimum Approach Distance (“MAD”) and must use appropriate equipment to avoid violating the MAD. If a foreign worker has any questions or concerns, they must stop work immediately and contact their PECO representative for guidance.

PECO will also develop and implement a Storm Foreign Contractor Inspection Pilot Program to

increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards.

The fifth factor considers the number of customers affected and the duration of the violation. PECO is aware of (8) customers on the 15000 block of Beverly Drive, Philadelphia, PA who claimed to sustain property damage. PECO replaced the electric distribution equipment within a few days of the incident during the process of restoring service connection and repairing damaged facilities as a result of the major storm outage. PECO does not currently have any pending customer claims associated with this incident.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). “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.” *Id.* As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to require constantly flawless service. The Public Utility Code requires public utilities to provide reasonable and adequate, not perfect, service. 66 Pa.C.S. § 1501. PECO submits that it has an exemplary compliance history with regard to repairs made by foreign contractors and responding to outages and associated downed conductors that require reenergizing.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission’s investigation. PECO has cooperated with I&E throughout all phases of this investigation and settlement process, and had fully complied with I&E’s requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. PECO submits that no civil penalty would have been necessary to deter it from committing future violations, but nonetheless has agreed to payment of Thirteen Thousand Dollars (\$13,000.00), for this case, as a civil penalty. PECO is also committed to properly assessing and selecting reliable foreign contractor to assist the Company during emergent outages and storms, and to improve safety, updating internal Company procedures to reiterate that circuits must be walked down by a worker assigned to a foreign crew to confirm whether additional areas of damage/wires down exist before re-energizing the line.

The ninth factor examines past Commission decisions in similar situations. PECO submits that the instant Settlement Agreement should be viewed on its own merits and is fair and reasonable. PECO further submits that when all relevant factors are taken into account, in particular considering a civil penalty will be paid and corrective actions will be performed to address the alleged violations, and considering the depth of PECO's commitment to valuable safety updates, namely: reviewing and updating its manual governing instructions to contractors, revising several internal procedures addressing storm restoration processes, and creating an inspection pilot program in order to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards, the Settlement is fair consistent with past Commission actions.

Finally, the tenth factor considers any other relevant factor. PECO agrees that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a

lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions. I&E and PECO fully support the terms and conditions of this Settlement Agreement. The foregoing terms of this Agreement reflect a carefully balanced compromise of the interests of the parties in this proceeding. The parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties. For all of these reasons, PECO submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

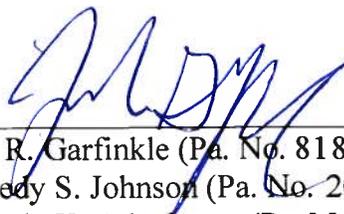
VI. CONCLUSION

This Settlement achieves significant positive results, as summarized above. PECO believes that the agreed-upon terms of this Settlement will help prevent future similar incidents from occurring and significantly enhance the Company's ability to provide safe, adequate and reliable service to its customers. All of the positive results of this Settlement are achieved without requiring hearings, briefing, and time consuming and expensive litigation. For all of the foregoing reasons, PECO Energy Company supports the Settlement Agreement and respectfully requests that the Commission approve it in its entirety and without modification.

[Signature Page to Follow]

Respectfully Submitted,

PECO Energy Company

By:  _____

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Date: March 25, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2023-3041107
	:	
PECO Energy Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Joint Petition for Approval of Settlement upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail:

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Date: March 25, 2024