



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 26, 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.
FirstEnergy Pennsylvania Electric Company
Docket No. M-2024-3030738
I&E 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: Appendix A – the Bureau of Investigation and Enforcement’s Statement in Support and Appendix B – FirstEnergy Pennsylvania Electric 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 'G. Rosul', is written over a light blue horizontal line.

Grant Rosul
Prosecutor
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GR/ac
Enclosures

cc: Office of Special Assistants (*via email* – ra-OSA@pa.gov)
Michael L. Swindler, Deputy Chief Prosecutor, I&E-Enforcement (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2024-3030738
	:	
FirstEnergy Pennsylvania Electric Company	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and FirstEnergy Pennsylvania Electric Company on behalf of the West Penn Power Rate District¹ (“West Penn” or “FE PA” or “the Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed informal investigation.

As part of this Settlement Agreement, I&E and FE PA (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement without modification. Statements in Support of the Settlement expressing the individual views of I&E and FE PA are attached hereto as Appendix A and Appendix B, respectively.

¹ Pursuant to Commission Order at A-2023-30338771, FirstEnergy Corp.’s constituent Pennsylvania subsidiaries merged into one company, the FirstEnergy Pennsylvania Electric Company. When the incident that is the subject of this Joint Petition occurred, the merger had not yet taken place and West Penn Power Company was the responsible utility. Accordingly, FirstEnergy Pennsylvania Electric Company may be referred to herein as “West Penn.”

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, with a principal address of Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 and FirstEnergy Pennsylvania Electric Company with its principal place of business at 2800 Pottsville Pike, Reading, PA 16001.

2. The 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 the Public Utility Code (the "Code"), 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 Pennsylvania Public Utility Code ("Code"), 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

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 National Electric Safety Code [(“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. FE PA 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 electric distribution company (“EDC”) in the Commonwealth of Pennsylvania to the public for compensation.

9. FE PA, 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 the subject matter and the actions of FE PA in its capacity as an EDC.

11. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal

proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

12. I&E instituted an informal investigation of West Penn based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS") on June 15, 2021, regarding a complaint that had originated from a June 14, 2021, storm incident. I&E determined that this complaint warranted further investigation to examine whether the actions of West Penn violated the Code, Commission regulations, and NESC.

13. As a result of successful negotiations between I&E and FE PA, the Parties have reached an agreement on an appropriate outcome to the informal investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

II. BACKGROUND

14. On June 15, 2021, BCS referred an informal complaint to I&E's Electric Safety Division regarding a storm incident where a West Penn primary distribution line was brought down by a falling tree (hereinafter referred to as "incident").

15. On June 14, 2021, a windstorm caused significant damage to area trees and power lines. An energized, 7200-volt (phase-to-ground) primary line fell across a carport

roof of the 586 Arden Road residence. The resident, Chris Schmitt, called 911 for immediate help for an energized power line down on his house, then he called West Penn for assistance. The customer waited for someone from West Penn to come to his home and inform him when it would be safe for him and his girlfriend to evacuate, but nobody came to his assistance.

16. I&E's Electric Safety Division ("ESD") initiated an investigation. The following background consists of a summary of the findings of the ESD investigation:

17. A total of approximately 15,000 West Penn customers were impacted.

18. On the section of the McGovern circuit, there were four locations with wires down. Following the repair of three down wire locations, the line crew patrolled the line prior to closing the fuse at Pole 30718. The line crew was not aware, and did not observe, the portion of the line that was down near 586 Arden Road. After closing in the fuse at Pole 30718 and re-energizing the circuit the following day (June 15, 2021), the line crew heard a bang from the fuse operating at Pole 32869, which then de-energized the portion of the circuit serving 586 Arden Road.

19. There was no response or information given by West Penn to the customer for the report of a "line down" on the customer's home or instruction for his safety.

20. Following the incident investigation, ESD sent two data requests to West Penn to obtain more information about the incident. The data requests sought information on West Penn's hazard responders, their qualifications, and the procedure used for reports of a line down. The two responders assigned were identified and their training credentials were provided. Additionally, the Company's procedure for responding to

such an event was provided. A timeline and map of the restoration activities was also obtained.

21. Through the review of the investigation findings, and the policy materials provided, ESD determined that West Penn failed to follow NESC general requirements for corrections of its lines and equipment while in service as well as their Emergency Plan for responding to a report of a wire down.

III. ALLEGED VIOLATIONS

22. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations and relevant regulations and statutes, I&E was prepared to contend by the filing of a formal complaint that FE PA violated certain provisions of the Commission's regulations, the NESC, and the Code in that:

1. FE PA failed to ensure that their employees took reasonable steps to ensure that the work performed was done following the Company's operating procedures at Article 6.3 of their Hazard Process (Wire Down Process).
 - a. The hazard responders failed to proceed and report to the specific address location of the distress call of a wire down.
 - b. The hazard responders failed to properly identify the hazardous situation as reported by the caller for a wire down at the 586 Arden Road residence.
 - i. The hazard responders were not familiar with all types of construction and line configurations including transmission, primary and secondary applications.
 - c. The hazard responders failed to provide a detailed assessment of the hazardous situation to the hazard dispatcher including the facilities affected as identified in the line down call at the 586 Arden Road residence.

- d. The hazard responders failed to stand by until relieved by another hazard responder crew, line service crew, or public protector when they were near the end of their shift and did not reach the 586 Arden Road residence.
2. FE PA hazard dispatcher failed to follow up on the line down distress call with another hazard responder crew or the customer at the 586 Arden Road residence.
3. FE PA failed to recognize the level of severity of the energized line down (on the customer's carport roof, attached to his house) during and after the storm event at the 586 Arden Road residence.

23. These allegations, if proven, constitute a violation of NESC §§ 214.A.1 and 214.A.5 (requiring that “lines and equipment shall comply with these safety rules when placed in service” and that “[l]ines and equipment with recorded conditions or defects that would reasonably be expected to endanger human life or property shall be promptly corrected, disconnected, or isolated.”); 52 Pa. Code § 57.28(a)(1) (requiring an electric utility to “use reasonable effort to properly warn and protect the public from danger” and to “exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities”); 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”); 52 Pa. Code § 57.12(a) (requiring an EDC to make a full and prompt investigation of a customer complaint); and 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.”).

24. Had the matter been litigated, FE PA would have denied the alleged violations, raised defenses and/or mitigating factors in support of its defense, and defended against the same at hearing.

25. FE PA understands the nature of the allegations that I&E would have asserted in a formal complaint and has put into effect appropriate measures that have been approved by I&E to ensure that such issues would not be likely to reoccur.

26. As a mitigating factor to the above allegations, I&E acknowledges that FE PA cooperated with I&E’s investigation. During the investigatory process, FE PA 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.

IV. SETTLEMENT TERMS

27. Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest,² I&E and FE PA held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E’s informal investigation and to settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to

² See 52 Pa. Code § 5.231(a).

this incident.

28. FE PA fully acknowledges the seriousness of I&E's allegations and recognizes the need to prevent the reoccurrence of the misconduct which was the subject of I&E's instant investigation.

29. The Parties recognize that their positions and claims are disputed and given that the precise outcome of a contested proceeding is uncertain, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement.

30. I&E and FE PA, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- A. FE PA will pay a civil penalty in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

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

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 FE PA's customers in Pennsylvania.

- B. FE PA agrees to implement the following corrective action;
- FE PA, through review of its Emergency Plan procedures, shall oversee the wire down reporting process and follow-up

for reports of line down reports to reduce the risk of contact incidents and property damage in their service area.

- Supervisors should verify reports of lines down and follow the FE PA procedures to identify and address hazardous situations as quickly as possible and make safe the area from public contact.
- FE PA shall provide better initial and continued training for the appropriate hazard responder personnel on the Line Down / Hazard process requirements.

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

31. I&E and FE PA 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 I&E's allegations that are the subject of I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, various expenses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Attached as Appendices A and B are Statements in Support submitted by I&E and FE PA, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

32. This document represents the Settlement Agreement in its entirety. 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.

33. 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 or take such other action that is deemed appropriate 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.

34. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure 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, FE PA has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

35. 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.

36. 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 Agreement 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 future proceedings, except to the extent necessary to effectuate 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.

37. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing 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 FirstEnergy Pennsylvania Electric 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

FirstEnergy Pennsylvania Electric Company

By: 

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Date: March 26, 2024

Dated: March 21, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
 :
 v. : Docket No. M-2024-3030738
 :
FirstEnergy Pennsylvania Electric Company :

**STATEMENT IN SUPPORT OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Bureau of Investigation and Enforcement (“I&E”) offers the following Statement in Support of the Joint Petition for Approval of Settlement between FirstEnergy Pennsylvania Electric Company on behalf of the West Penn Power Rate District (“West Penn” or “FE PA” or “the Company”) and I&E for FE PA’s violations of the Public Utility Code (the “Code”), 66 Pa.C.S. §§ 101 *et seq.* and Commission regulations.

I. INTRODUCTION

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 *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).

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. 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.

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 National Electric Safety Code [(“NESC”).” See also 52 Pa. Code §§ 57.193-194.

FE PA 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 electric distribution company (“EDC”) in the Commonwealth of Pennsylvania to the public for compensation. FE PA, 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.

Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order

to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

I&E instituted an informal investigation of FE PA based on information referred to I&E Enforcement by the Commission's Electric Safety Division ("ESD") regarding an incident where an FE PA primary distribution line was brought down during a storm by a falling tree onto the roof of a carport at a residence located at 586 Arden Road in Washington County, Pennsylvania. I&E determined that this complaint warranted further investigation to examine whether the actions of FE PA violated the Code, Commission regulations, or the NESC.

However, after a thorough review of the case and discussion with FE PA, the parties have reached mutually agreeable settlement terms and believe that it is in the public interest to settle the matter.

II. SUMMARY OF SETTLEMENT

The Joint Petition for Approval of Settlement ("Settlement") resolves all outstanding violations of the Code stemming from the incident wherein FE PA's energized, 7200-volt (phase-to-ground) primary distribution line fell across a carport roof of the 586 Arden Road residence (hereinafter referred to as "incident").

Pursuant to the Settlement, FE PA will implement certain corrective actions, which will act as safeguards against future misconduct. Specifically, FE PA will review its Emergency Plan procedures and shall oversee the wire down reporting process and follow-up for reports of line down reports to reduce the risk of contact incidents and property damage in their service area.

Further, FE PA will have its supervisors verify reports of lines down and follow the FE PA procedures to identify and address hazardous situations as quickly as possible and make safe the area from public contact.

Additionally, FE PA will provide better initial and continued training for the appropriate hazard responder personnel on the Line Down / Hazard Process requirements.

In addition to the foregoing corrective actions, FE PA will pay a civil penalty of \$12,500 to the Commission within 30 days of approval of the Settlement.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SATISFIES THE ROSI FACTORS TO DETERMINE THE APPROPRIATE CIVIL PENALTY

Section 3301(a) of the Code provides that a public utility, or any other person or entity subject to the Code, violates any part of the Code, is subject to a civil penalty of not more than one thousand dollars (\$1,000) per violation. 66 Pa.C.S. § 3301(a). The Code further provides that each and every day's continuance in the violation of the Code or any regulation, order, judgment, or decree shall be a separate and distinct offense. 66 Pa.C.S § 3301(b).

Had this matter been litigated, I&E would have alleged that FE PA's actions and failure to act constituted a violation of NESC §§ 214.A.1 and 214.A.5 (requiring that "lines and equipment shall comply with these safety rules when placed in service" and that "[l]ines and equipment with recorded conditions or defects that would reasonably be expected to endanger human life or property shall be promptly corrected, disconnected, or isolated."); 52 Pa. Code § 57.28(a)(1) (requiring an electric utility to "use reasonable effort to properly warn and protect the public from danger" and to "exercise reasonable

care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities”); 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”); 52 Pa. Code § 57.12(a) (requiring an EDC to make a full and prompt investigation of a customer complaint); and 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.”)

The Commission’s Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201, lists the following factors which the Commission shall consider in determining the appropriate civil penalty:

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

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

52 Pa. Code § 69.1201(c).

Regarding the first and second factor, the conduct at issue was of a serious nature. FE PA's 720 kV primary distribution line fell onto the carport of a residence and remained there unattended by FE PA. Failure to promptly attend to this downed line was in violation of the requirements of NESC § 214.A.1 and 214.A.5. The consequences of

the conduct were also serious. As a result of the downed line remaining on the carport, the homeowner and his girlfriend were unable to leave their home. Further, they were left wondering whether or when an FE PA crew would attend to the situation. Had the homeowner or his girlfriend gone near the carport, the downed line could also have presented a risk of serious injury or death.

The third factor, whether the conduct at issue was intentional or negligent, is not relevant here, as this factor “may only be considered in evaluating litigated cases.” Here, the parties have reached a settlement.

Regarding the fourth factor, FE PA has made a commitment to modify its internal practices and procedures to avoid the conduct responsible for the incident and prevent similar future incidents where a downed line is left unattended. As stated above, FE PA will review its Emergency Plan procedures and shall oversee the downed wire reporting process and follow-up for reports of downed lines to reduce the risk of contact incidents and property damage in their service area.

Further, FE PA will have its supervisors verify reports of lines down and follow the FE PA procedures to identify and address hazardous situations as quickly as possible and make safe the area from public contact. Additionally, FE PA shall provide better initial and continued training for the appropriate hazard responder personnel on the Line Down / Hazard Process requirements.

Regarding the fifth factor, only one customer — the homeowner at 586 Arden Road, Washington County — was affected by the incident. The homeowner was unable

to leave his home due to the downed line lying across his carport and was left wondering when FE PA would respond to the situation.

The compliance history of the regulated entity is the sixth factor. FE PA has a history of compliance with the Code and Commission regulations. However, it has engaged in conduct that violated the Code on several occasions in the past, including incidents in 2018¹, 2019,² and 2020.³

As to the seventh factor, whether the regulated entity cooperated with the Commission's investigation, it is I&E's position that FE PA has been cooperative in this investigation.

The civil penalty agreed to by both parties is sufficient to deter future violations of the Code, but less than the amount sought by I&E in its complaint. It represents a compromise that reflects the factors discussed above. I&E believes the civil penalty agreed upon by the parties is sufficient to deter future violations. The agreed-upon civil penalty in the Settlement is similar to the civil penalty sought in other electric safety cases wherein an EDC violated the NESC, the Code, and Commission regulation as a result of improper or unsafe response to reports of a downed line. This settlement will encourage FE PA's compliance with the Code and Commission regulations.

IV. CONCLUSION

The Settlement is a fair and reasonable compromise between the parties. Had this matter proceeded to litigation, FE PA would have disputed the allegations in the

¹ See C-2021-3024913.

² See C-2020-3019952.

³ See C-2023-3042656.

complaint and I&E would have been required to expend staff time and resources to prepare for and participate in the hearing. Aside from avoiding litigation, the Settlement is in the public interest because it appropriately penalizes FE PA for its non-compliance with the NESC, the Code, and Commission regulations and puts future compliance efforts and safety at the center of the agreement.

For the reasons set forth above, the Commission should approve the Joint Petition for Approval of Settlement, without modification.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Rosul", written in a cursive style.

Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2024-3030738
 :
FirstEnergy Pennsylvania Electric Company :

**FIRSTENRGY PENNSYLVANIA ELECTRIC COMPNAY’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

FirstEnergy Pennsylvania Electric Company, on behalf of its West Penn Rate District (“West Penn” or “FE PA” or the “Company”), hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement”) entered into between FE PA and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), hereinafter, collectively the “Joint Petitioners,” in the above-captioned proceeding. The Settlement, if approved, will fully resolve all issues related I&E’s informal investigation regarding an incident where a West Penn primary distribution line was brought down by a falling tree and fell across a carport roof at the 586 Arden Road residence on June 14, 2021 (“Incident”). FE PA respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

The Company undertook an investigation of the events related to the Incident and cooperated with and assisted I&E with its investigation of the events surrounding the Incident. As discussed in the Settlement, FE PA and I&E engaged in discussions that culminated in the Settlement. The Settlement is in the public interest because it effectively addresses I&E’s

allegations that are the subject of the I&E’s informal investigation, promotes public safety, and avoids the time and expense of litigation which entails hearings, travel for FE PA’s witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. For these reasons and the reasons set forth below, the Settlement is fair, just, and reasonable, and should be approved without modification.

I. INTRODUCTION

A. PARTIES

I&E is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308(b). Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission’s regulations.

FE PA is a “public utility” and an “electric distribution company” (“EDC”) as those terms are defined in Sections 102 and 2202 of the Code, 66 Pa.C.S. §§ 102, 2803. FE PA provides electric distribution and is a supplier of last resort services to approximately 2,108,000 electric customers throughout its certificated service territory subject to the regulatory jurisdiction of the Commission.

B. BACKGROUND

On June 14, 2021, a windstorm caused significant damage to area trees and power lines. A total of approximately 15,000 West Penn customers were impacted. An energized, 7200-volt (phase-to-ground) primary line fell across a carport roof of the 586 Arden Road residence.

On the section of the McGovern circuit, there were four locations with wires down. Following the repair of three down wire locations, the line crew patrolled the line prior to closing the fuse at Pole 30718. The line crew was not aware, and did not observe, the portion of the line that was down near 586 Arden Road. After closing in the fuse at Pole 30718 and re-energizing the circuit the following day (June 15, 2021), the line crew heard a bang from the fuse operating at Pole 32869, which then de-energized the portion of the circuit serving 586 Arden Road.

As a result of the Incident, I&E instituted an informal investigation of West Penn based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS") on June 15, 2021, regarding an informal complaint that had originated from the June 14, 2021, storm incident. I&E determined that this complaint warranted further investigation to examine whether the actions of FE PA violated the Code, Commission regulations, and National Electric Safety Code ("NESC").

II. COMMISSION POLICY FAVORS SETTLEMENT

Commission policy promotes settlements. See 52 Pa. Code § 5.231. Settlements lessen 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. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at *6 (August 31, 2012).

The Commission has promulgated a Policy Statement that sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order,

regulation, or state 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) 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 these 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 afford 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 substantial public benefits of the Settlement, as well as the ten factors that the Commission considers in reviewing a settlement of an alleged violation, are addressed in the section that follows. For the reasons explained below, the Settlement is in the public interest and should be approved.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. SUMMARY

The Settlement, once approved, will resolve all issues related to the informal investigation of I&E related to the Incident. I&E was prepared to contend, by the filing of a formal complaint,

that FE PA violated certain provisions of the Public Utility Code, the Commission's regulations and NESC, with respect to the Incident and the events leading up to the Incident. Had this matter been fully litigated, FE PA would have denied each of the alleged violations of the NESC, the Commission's regulations, or the Code, raised defenses to each allegation, and defended against the same at hearing.

During the investigatory process, FE PA 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 agreed upon changes have been implemented by FE PA as a result of the investigation and ongoing discussions with I&E. These actions have been undertaken in the interest of continuous improvement to FE PA's safety and reliability performance.

Furthermore, FE PA has made an economic concession to I&E in the form of a civil penalty. Finally, the terms and conditions of the Settlement align with the ten factors that may be considered under the Commission's Policy Statement. Accordingly, the Settlement should be approved.

B. DESCRIPTION OF THE SETTLEMENT

Among the terms and conditions of the Settlement, FE PA has agreed to the following measures to be implemented upon approval of the Settlement.

1. **Civil Penalty**: FE PA will pay a civil penalty in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding shall be indicated with the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission

Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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 FE PA's customers in Pennsylvania.

2. **Corrective Action**: FE PA agrees to implement the following corrective action;
 - a. FE PA, through review of its Emergency Plan procedures, shall oversee the wire down reporting process and follow-up for reports of line down reports to reduce the risk of contact incidents and property damage in their service area.
 - b. Supervisors should verify reports of lines down and follow the FE PA procedures to identify and address hazardous situations as quickly as possible and make safe the area from public contact.
 - c. FE PA shall provide better initial and continued training for the appropriate hazard responder personnel on the Line Down / Hazard process requirements.

Notably, FE PA has already implemented certain of the terms included in the Settlement as part of its continuous improvement efforts. It is understood that, by entering into the Settlement, FE PA has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in the Settlement.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against FE PA at the Commission with respect to the allegations which were the subject of I&E's instant investigation. As explained below, FE PA believes that approval of the Settlement is in the public interest. Further, acceptance of the

Settlement will avoid the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

3. PUBLIC BENEFITS OF THE SETTLEMENT

If approved, the Settlement will provide substantial and important benefits to the customers and communities served by FE PA, including enhancements to FE PA's training on policies and procedures for hazard responder personnel and the wire down reporting process. As noted below, these enhancements are designed to decrease the likelihood of incidents similar to the Incident from occurring in the future.

4. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Under the Policy Statement, the Commission may consider ten specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. In this case, a windstorm caused significant damage to area trees and power lines. A total of approximately 15,000 West Penn customers were impacted. An energized, 7200-volt (phase-to-ground) primary line fell across a carport roof of the 586 Arden Road residence. On the section of the McGovern circuit, there were four locations with wires down. Following the repair of three down wire locations, the line crew patrolled the line prior to closing the fuse at Pole 30718. The line crew was not aware, and did not observe, the portion of the line that was down near 586 Arden Road. After closing in the fuse at Pole 30718 and re-energizing the circuit the following day, the line crew heard a bang from the fuse operating at Pole 32869, which then de-energized the portion of the circuit serving 586 Arden Road. Electric safety is a paramount concern to FE PA and the Company continually strives to provide safe

electric service to its customers. The terms and conditions of the Settlement adequately take the alleged conduct into account.

The second factor considers the seriousness of the consequences of the incident at issue. FE PA has enhanced its training for appropriate hazard responder personnel on its line down and hazard process requirements. The terms and conditions of the Settlement recognize the seriousness of the incident and are designed to enhance FE PA's safety and service reliability and to minimize the likelihood of a similar incident occurring in the future.

The third factor considers whether FE PA's alleged conduct was intentional or negligent. Because this investigation is a settled matter, this factor does not apply. To the extent that this factor is to be considered, there has been no finding that FE PA's conduct was either intentional or negligent in nature as is typical in a matter that is being fully resolved through a negotiated settlement.

The fourth factor to be considered is whether FE PA made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. As a result of this Incident, FE PA undertook an investigation of the Incident and the events related and cooperated with and assisted I&E in its investigation. As outlined above, FE PA has adopted changes to its wire down reporting process and instituted better training policies and procedures for hazard responder personnel to further enhance the safety and reliability of its service. The terms and conditions of the Settlement properly acknowledge FE PA's efforts to modify and adopt internal policies and procedures to address the alleged issues.

The fifth factor to be considered deals with the number of customers affected and the duration of the violation. In this case, on June 14, 2021, a windstorm caused significant damage to area trees and power lines. A total of approximately 15,000 West Penn customers were impacted.

An energized, 7200-volt (phase-to-ground) primary line fell across a carport roof of the 586 Arden Road residence. After closing in the fuse at Pole 30718 and re-energizing the circuit the following day (June 15, 2021), the line crew heard a bang from the fuse operating at Pole 32869, which then de-energized the portion of the circuit serving 586 Arden Road. The terms and conditions of the Settlement adequately consider the nature of incident, the number of customers affected, as well as FE PA's response under the circumstances.

The sixth factor considered is the compliance history of FE PA. Since the Incident, FE PA, through review of its Emergency Plan procedures, oversees the wire down reporting process and follow up for reports of line down reports to reduce the risk of contact incidents. In addition, supervisors will verify reports of lines down and follow FE PA procedures to identify and address hazardous situations as quickly as possible. These enhancements to FE PA's existing standards, policies, and procedures will benefit its customers in the future. As such, the Settlement further evidences FE PA's good faith efforts to enhance the safety and reliability of its electrical system, consistent with the purposes of the Code and the Commission's regulations.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. FE PA supported and cooperated with the Commission and its staff throughout its investigation and settlement process. FE PA also demonstrated a commitment consistent with the Commission's public safety goals and objectives by implementing or beginning to implement many of the changes set forth in the settlement prior to the filing of the Settlement.

The eighth factor is whether the amount of the civil penalty or fine will deter future violations. FE PA submits that a civil penalty in the amount of \$12,500.00 as set forth in the Settlement appropriately recognizes the seriousness of the matter but also reflects a negotiated compromise by the parties that considered the efforts of the Company since the Incident occurred.

The ninth factor considers past Commission decisions in similar situations. When each of the relevant factors are evaluated, the Settlement is not inconsistent with the past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

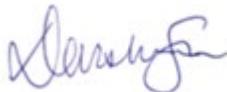
Relative to the tenth factor, FE PA submits that additional relevant factors are critically important to the Settlement. First, a settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. The fines, 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. FE PA has demonstrated a commitment consistent with the Commission's public safety goals and objectives and broadly expanded the scope of the general public that will benefit from the commitments made in this Settlement.

Based on the foregoing, the Settlement should be considered fair, equitable and reasonable under the Commission's Policy Statement.

IV. CONCLUSION

WHEREFORE, FirstEnergy Pennsylvania Electric Company submits that this Settlement is the result of the parties' cooperative efforts, and constitutes a fair, equitable, and reasonable resolution of this proceeding. The Settlement resolves all issues related to the I&E informal investigation and satisfies the ten factors set forth in the Pennsylvania Public Utility Commission's Policy Statement, 52 Pa. Code § 69.1201(c). FirstEnergy Pennsylvania Electric Company supports the Settlement and respectfully requests that the Pennsylvania Public Utility Commission approve the Settlement in its entirety, without modification.

Respectfully submitted:

By:  _____

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Dated: March 21, 2024

*Attorney for FirstEnergy Pennsylvania
Electric Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2024-3030738
 :
FirstEnergy Pennsylvania Electric 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**, in the manner and upon the parties listed below, in
accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service via Electronic Mail

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Dated: March 26, 2024