

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

PECO Energy Company

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C-2023-3041102

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

The Bureau of Investigation and Enforcement (I&E) initiated this Formal Complaint against PECO Energy Company (PECO), alleging violations of the Public Utility Code, the Commission’s regulations, and the National Electrical Safety Code. The parties to the proceeding have agreed to settle the matter. The terms of the Settlement are set forth in a Joint Petition for Settlement. This Decision finds that approval of the Joint Petition for Approval of Settlement is in the public interest.

HISTORY OF THE PROCEEDING

I&E’s Safety Division conducted an in-depth investigation of a service line, owned and operated by PECO, that fell to the ground at 287 Heather Road, King of Prussia, Pennsylvania and the subsequent inadequate repair of the service line that resulted in property damage. 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.

In its Complaint, I&E alleged that PECO's contractor, J.F. Electric, made an inadequate repair to the downed service line by using a wooden stick as an energized conductor spacer and improperly installed the neutral/support cable connection to the secondary distribution neutral, 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 alleged that PECO failed to ensure its contractor made adequate repairs to the service line connection during its repair response, which resulted in danger to public safety, in violation of 52 Pa. Code §§ 57.194, 57.28, and National Electrical Safety Code ("NESC") section 012(B). I&E's Complaint alleged that PECO failed to maintain its transmission facilities, in that PECO did not properly train, equip, monitor, and supervise its contractors in the proper repair of the service line, thereby placing the public safety in danger, in violation of 52 Pa. Code § 57.194(b) and NESC § 214(A)(5)(a). Further, I&E's complaint alleged that PECO failed to prevent dangerous conditions from existing on its system, in that PECO's contractor installed a wooden stick as an energized conductor spacer, which is not a permissible material for an emergency installation, a violation of 52 Pa. Code § 57.194(b) and NESC §§ 277 and 014B3.

I&E 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.

On June 26, 2023, PECO filed an Answer to I&E's Complaint.

By Initial Call-In Telephone Hearing Notice dated June 28, 2023, this matter was scheduled for an Initial Telephonic Hearing at 10:00 a.m. on August 22, 2023 and the matter was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell.

By letter dated July 26, 2023, PECO requested a 60-day continuance of the August 22, 2023, Initial Telephonic Hearing, as the Parties were engaged in settlement discussions. By Interim Order dated August 9, 2023, PECO's request for a continuance of the Initial Telephonic Hearing was granted and the Initial Telephonic Hearing was rescheduled for October 31, 2023.

By letter dated September 26, 2023, PECO requested a second 60-day continuance of the October 31, 2023, Initial Telephonic Hearing and by Interim Order dated October 10, 2023, PECO's request for a continuance of the Initial Telephonic Hearing was granted and the Initial Telephonic Hearing was rescheduled for January 9, 2024.

By letter dated December 11, 2023, I&E requested a 60-day continuance of the January 9, 2024, Initial Telephonic Hearing and by Interim Order dated December 21, 2023, I&E's request for a continuance of the Initial Telephonic Hearing was granted. The Interim order also directed the Parties to file, within 60 days, a status report on their ongoing settlement discussions if they had not yet filed a joint petition for approval of settlement.

On March 25, 2024, the Parties filed a Joint Petition for Approval of Settlement (Joint Petition, Settlement Agreement, or Settlement) in the instant matter resolving all issues between I&E and PECO. The attachments to the Joint Petition are the parties Joint Stipulation of Facts in Support of Settlement (Appendix A), Joint Proposed Ordering Paragraphs (Appendix B), and I&E's and PECO's respective Statements in Support of the Settlement (Appendices C and D). The parties were able to reach a comprehensive settlement of all issues pending in this proceeding.

FINDINGS OF FACT

The Parties filed the following Stipulated Facts in this matter:¹

1. On June 3, 2020, a tree limb fell on a service wire owned and operated by PECO at the residence located at 287 Heather Road, King of Prussia, Pennsylvania.

2. At approximately 12:18 p.m. on June 3, 2020, PECO's internal system registered an outage at 287 Heather Road and PECO contacted the resident.

3. At approximately 6:55 p.m. the same day, the resident called PECO and reported that a tree fell on the wire and that the wire was laying in the backyard.

4. PECO assigned a contractor, J.F. Electric, to repair and rehang the service line.

5. J.F. Electric is a qualified Exelon ComEd Contractor of Choice that assisted PECO in its storm restoration.

6. On June 6, 2020, at approximately 4:30 p.m., J.F. Electric arrived at 287 Heather Road.

7. As part of repairing the service line, J.F. Electric used a wooden stick as a conductor spacer and improperly installed the neutral/support cable connection to the secondary distribution neutral.

8. The service line was energized after it was rehung and reconnected.

¹ Joint Stipulation of Facts in Support of Settlement, Appendix A to Joint Petition for Approval of Settlement, pp. 1-2. The Settling Parties' Stipulated Facts are reprinted here verbatim.

9. The resident observed smoke on the first floor of the property and notified J.F. Electric of the smoke. Smoke was also observed outside coming from the eaves of the residence.

10. The main panel was turned off inside the residence.

11. The resident contacted the fire department who responded and extinguished the fire.

12. At approximately 6:30 p.m., PECO received a notification from the fire department requesting PECO to turn the gas and electric service off at 287 Heather Road.

13. The fire caused substantial water and smoke damage throughout the property.

14. On June 7, 2020, the Bureau of Investigation and Enforcement's Electric Safety Division ("Electric Safety") visited 287 Heather Road.

15. Electric Safety observed the wooden stick which was used as an energized conductor spacer by J.F. Electric when making repairs on June 6, 2020.

16. On June 7, 2020, PECO and J.F. Electric returned to 287 Heather Road to correct the inadequate repairs made to the service line on June 6, 2020. Specifically, the wooden stick was removed and proper repairs were made between the service and open wire secondary cables.

DISCUSSION

The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S. § 501(a). Pursuant to Act 129 of 2008, the Commission was

reorganized, and the Commission created I&E.² In the *I&E Implementation Order*, the Commission moved responsibility for all prosecutory functions to I&E. The Commission stated that I&E would serve as the prosecutory bureau in matters brought before the Commission's Office of Administrative Law Judge.

Commission policy promotes settlements.³ Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.⁴

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.⁵ As discussed below, I find that the Joint Petition for Approval of Settlement, which is unopposed, is in the public interest.

TERMS OF THE SETTLEMENT

The parties filed a Joint Petition for Approval of Settlement on March 25, 2024. The Joint Petition includes the terms of the Settlement, and also includes the parties' Statements in Support of the Joint Petition for Approval of Settlement. The principal terms and conditions of the Settlement, contained in Section IV of the Petition beginning at paragraph 31 (the original numbering is maintained here for ease of reference), provide that:

31. 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:

² *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Procedural Order entered Aug. 11, 2011) (*I&E Implementation Order*).

³ 52 Pa. Code § 5.231.

⁴ 52 Pa. Code § 69.401.

⁵ *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

a. Civil Penalty:

PECO will pay a civil penalty in the amount of Thirteen Thousand Dollars (\$13,000) pursuant to 66 Pa. § 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-2023-3041102, 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 shall 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 customer 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 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.
32. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file 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.
33. 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.
- 34 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 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 Appendix 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.⁶

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Settlement Agreement at ¶¶ 31-34.

CONDITIONS OF THE SETTLEMENT

The Parties note that the Settlement Agreement constitutes a negotiated resolution solely of the proceeding at Docket No. C-2023-3041102. No changes to obligations set forth in the Settlement Agreement may be made unless they are in writing and are expressly accepted by the parties involved. The Settlement Agreement shall be construed and interpreted under Pennsylvania Law, irrespective of the application of any conflict of laws provisions.

The Parties agree that this Settlement may be executed in one or more counterparts, each of which will 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.

The Parties note that the Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Joint Petition without modification. If the Commission modifies the Settlement Agreement, any party may elect to withdraw from the Settlement 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 business days after entry of an Order modifying the Settlement.

In the event that I issue an initial decision approving the 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).

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 on the merits in this Complaint proceeding. Additionally, 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 the Joint Settlement Petition. Nor

may this Settlement be used by any other person or entity as a concession or admission of fact or law.

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.

The Parties maintain that 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 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.

The Joint Petitioners aver that the terms and conditions of this Settlement Agreement represent reasonably negotiated compromises on the issues addressed herein. 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.

PUBLIC INTEREST

Having set forth the terms of the Joint Petition for Settlement, I will now address why approving and adopting the Joint Petition is in the public interest.

I&E notes that 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 I&E avers, 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

Pennsylvania Public Utility Commission v. PECO Energy Company at Docket No. C-2023-3041107. 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. I&E Statement in Support at 4.

I&E maintains that the Settlement, if approved, will provide substantial public benefits including improved safety procedures for foreign contractor crews responding to storm damage and the creation 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 Statement in Support at 4-5.

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. I&E Statement in Support at 5.

For its part, PECO notes that 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 31 of the Settlement Agreement. PECO Statement in Support at 3.

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. PECO Statement in Support at 3-4.

CIVIL PENALTY

The Joint Petition for Approval of Settlement requires PECO to pay a civil penalty of \$13,000.

The Commission, at 52 Pa. Code §69.1201, has adopted a policy statement setting forth the standards it will consider in evaluating litigated and settled proceedings before the Commission. The policy statement is set forth below:

69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy.

- (a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa. C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.
- (b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not

be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

- (c) The factors and standards that will be considered by the Commission include the following:
 - (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.^[7]

The Commission uses the factors set forth in the policy statement to evaluate whether a settlement is reasonable and whether approval of the settlement is in the public interest.⁸ In evaluating settlements, the Commission will not apply the factors in as strict a fashion as in a litigated proceeding.⁹ In settled cases, the Commission will afford flexibility to parties so that the parties may reach an amicable resolution to a complaint or other matter as long as the settlement is in the public interest.¹⁰

I&E and PECO have addressed the factors set forth in 52 Pa. Code §69.1201 in their respective statements in support of the Joint Petition for Approval of Settlement. I will address each of the factors in turn.

The first factor addresses whether the conduct at issue was of a serious nature. I&E avers that PECO's conduct at the center of the Complaint includes the following: (1) PECO

⁷ 52 Pa. Code §69.1201.

⁸ 52 Pa. Code § 69.1201(a).

⁹ 52 Pa. Code § 69.1201(b).

¹⁰ *Id.*

failed to ensure its contractor made adequate repairs to the service line connection during its repair response at 287 Heather Road on June 6, 2020, which resulted in danger to public safety and fire and smoke damage to a residence; (2) PECO failed to maintain its transmission facilities in that PECO did not properly train, equip, monitor, and supervise its contractors in the proper repair of the service line at 287 Heather Road, thereby placing the public safety in danger; (3) PECO failed to prevent dangerous conditions from existing on its system in that PECO's contractor installed a wooden stick as an energized conductor spacer which is not a permissible material for an emergency installation; and (4) PECO failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that PECO allowed an improperly repaired service line to be reenergized on its system, which enabled the continuation of an unsafe and hazardous condition and the occurrence of a fire at 287 Heather Road. 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.

For its part, PECO acknowledges that the alleged conduct and resulting consequences in this case included a third-party contractor used during emergency storm repairs that made an unacceptable repair, resulting in a fire and subsequent water and smoke damage throughout the property, requiring PECO to correct the contractor's repair. PECO acknowledges that the resulting consequences were of a serious nature.

I concur with I&E that any conduct involving overhead service lines should be taken seriously due to the inherent danger involved if such lines should overheat, fall, or otherwise fail. I also concur with I&E that PECO's actions and inactions constituted conduct that placed the public safety at risk. As noted by I&E, 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. I conclude that this justifies the proposed Settlement, including the agreed-upon civil penalty.

The second factor addresses the consequences of the conduct at issue. While there were not any injuries or fatalities, the conduct at issue did result in fire and smoke damage to a residence. In addition to this property damage, the conduct at issue posed a threat to public

safety. I agree with I&E that 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 addresses whether the conduct was negligent or intentional. Both PECO and I&E contend that this factor does not apply to this proceeding since the matter was not litigated and is instead being resolved by Settlement of the parties. I agree and will not consider this factor.

The fourth factor addresses whether remedial actions were taken by the utility to modify internal practices and procedures in order to prevent similar conduct in the future. First, in response to the June 3, 2020 incident and the inadequate repair on June 6, 2020, PECO corrected the inadequate repairs on June 7, 2020. Specifically, the wooden stick was removed and proper repairs were made between the service and open wire secondary cables. I&E's Electric Safety followed-up with PECO and confirmed that the damage was repaired.

Additionally, 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.

I agree with I&E that 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. Clearly, these improvements will provide a significant benefit to public safety.

The fifth factor addresses the number of customers affected and the duration of the violation. In the present case, the repairs to the service line at issue in this proceeding were made on June 6, 2020. After the repairs on June 6, 2020, a fire occurred at 287 Heather Road at 6:30 p.m. on the same day, and gas and electric services were turned off to 287 Heather Road the same day. On June 7, 2020, PECO and J.F. Electric returned to 287 Heather Road to correct the repairs made to the service line on June 6, 2020. Specifically, the wooden stick was removed, and proper repairs were made between the service and open wire secondary cables. The conduct affected one customer for a period of two days, from June 6, 2020 to June 7, 2020. Accordingly, I find that the agreed-upon civil penalty appropriately addresses the number of customers affected as well as the duration of the violation.

The sixth factor looks at the compliance history of the regulated entity. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate service. It does not require perfect service. Since the Public Utility Code does not require perfect service, it is a logical conclusion that it cannot require perfect compliance.

The parties are in general agreement regarding PECO's compliance history. For its part, PECO submits that it has a strong compliance history with regard to adequate repairs made by foreign contractors and responding to outages and associated downed wires. I&E notes that, aside from this Complaint and I&E's Complaint at *Pennsylvania Public Utility Commission v. PECO Energy Company*, Docket No. C-2023-3041107, its 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. Accordingly, I conclude that this factor supports a reduced penalty.

The seventh factor asks whether the regulated entity cooperated with the Commission. According to I&E, 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. I conclude that PECO's cooperation in this matter supports a reduced penalty.

The eighth factor requires that the amount of the civil penalty be enough to deter future violations. 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. I agree. Imposition of a penalty beyond the agreed-upon \$13,000 penalty is not necessary to deter future violations.

The ninth factor looks at past Commission decisions in similar situations. I&E notes that it is unaware of any Commission decisions, other than the Joint Petition for Approval of Settlement filed at Docket No. C-2023-3041107, that are substantially similar to the facts of this instant case.

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 and is consistent with past Commission actions. I agree with the parties that the \$13,000 civil penalty is appropriate in this situation.

The tenth factor looks at other relevant factors. Both I&E and PECO aver that the fact that the parties have agreed to a Settlement Agreement should be considered. Both parties agree that 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 negotiated 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. I conclude that this additional factor justifies the agreed upon civil penalty.

Upon review of the positions of the parties, I find that I&E and PECO have arrived at a civil penalty that sufficiently addresses the conduct alleged in the Complaint.

Additionally, the Settlement is a complete and final resolution of the allegations raised in I&E's Complaint that ultimately avoids the time and expense of litigation. For the reasons set forth above, I find that the proposed Settlement is in the public interest and consistent with the Public Utility Code and Commission regulations. Accordingly, I find that the Joint Petition for Approval of Settlement, including the \$13,000 civil penalty, is reasonable and in the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission has the power and the duty to enforce the requirements of the Public Utility Code. 66 Pa.C.S. § 501(a).
3. The Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. § 3301.
4. The Commission has adopted a policy statement which enumerates the standards that it uses to evaluate civil penalties. 52 Pa. Code § 69.1201.
5. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).
6. The Joint Petition for Settlement submitted by I&E and PECO, including the \$13,000 civil penalty, is reasonable and in the public interest.

ORDER

THEREFORE

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed on March 25, 2024 between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and PECO Energy Company is approved.

2. That within 60 days of the date of entry of a final Commission Order approving the Settlement, PECO Energy Company shall pay the \$13,000 civil penalty by sending a certified check or money order payable to the Commonwealth of Pennsylvania to:

Rosemary Chiavetta, 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 31 of the Joint Petition for Approval of 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. That a copy of this Initial Decision be served upon the Financial and Assessment Chief, Bureau of Administration.

