

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	C-2023-3041107
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

The Bureau of Investigation and Enforcement (I&E) filed this Formal Complaint with the Pennsylvania Public Utility Commission (Commission) 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 Approval of 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 regarding a reenergized downed line which sparked multiple house fires on the 15000 Block of Beverly Drive, Philadelphia, Pennsylvania causing severe damage to six homes and collateral damage to

two other homes. The results of the investigation formed the basis for the allegations set forth in I&E's Formal Complaint ("Complaint"), which was filed on June 2, 2023.

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

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

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

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

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

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

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

By letter dated December 12, 2023, I&E requested a 60-day continuance of the Initial Telephonic Hearing. The request was granted, and the parties were directed to provide a status update in 60 days.

In the status update, the parties indicated that they had reached a settlement in principle and were working on settlement documents.

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 Settlement representing a comprehensive resolution of all issues pending in this proceeding.

#### FINDINGS OF FACT

The Settling Parties filed the following Stipulated Facts in this matter:<sup>1</sup>

1. On June 3, 2020, a conductor owned and operated by PECO fell at 1299 Southampton Road, Philadelphia, Pennsylvania.
2. 1299 Southampton Road adjoins the residences located on Beverly Drive, Philadelphia, Pennsylvania.
3. On June 3, 2020, at approximately 2:33 p.m., PECO received a call from the resident of 1299 Southampton Road reporting a downed wire adjacent to the property, on the right side of the house.

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<sup>1</sup> 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.

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

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

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

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

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

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

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

11. Six (6) homes were severely damaged, and two (2) homes experienced collateral damage from the fire. The homes damaged by the fire included 15111 Beverly Drive,

15113 Beverly Drive, 15115 Beverly Drive, 15117 Beverly Drive, 15121 Beverly Drive, 15125 Beverly Drive, 15127 Beverly Drive, and 15135 Beverly Drive. Some PECO facilities were also damaged.

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

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

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

### 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.<sup>2</sup> 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 ALJs.

As set forth above, I&E initiated this Complaint against PECO, alleging: that PECO's received no less than three phone calls from residents alerting PECO to a downed line at

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<sup>2</sup> *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*).

1299 Southampton Road, in response PECO deenergized the line, but then the following day, PECO reenergized the line without having repaired or rehung the downed line, which created an ongoing, unsafe, and hazardous condition in violation of 66 Pa.C.S. § 1501. In addition to alleging violations of Section 1501 of the Code, I&E’s Complaint alleged that PECO failed to adequately respond to multiple reports of a downed wire on June 3, 2020, which posed a threat to life and property, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194. I&E’s complaint alleged that PECO failed to properly enter/document the three calls reporting a downed wire on June 3, 2020, in its Operating Management System (“OMS”), which posed a threat to life and property, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194(a). Further, I&E’s complaint alleged that due to PECO’s failure to respond and document the downed wire, PECO improperly allowed a failed conductor to be re-energized, resulting in multiple house fires, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194(a). Finally, I&E’s complaint alleged that PECO failed to identify impermissible materials within the right-of-way during its Right-of-Way (“ROW”) inspections, such as fences, buildings, and swimming pools that were all located within the right-of-way behind the Beverly Drive properties and to report them, a violation of 52 Pa. Code § 57.28 and 52 Pa. Code § 57.194(a).

PECO filed an Answer to the Complaint, generally denying the material allegations of fact set forth in the Complaint. Following assignment of this matter to the Office of Administrative Law Judge, I&E and PECO reached a Settlement regarding the allegations set forth in I&E’s Complaint.

Commission policy promotes settlements.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 52 Pa. Code § 5.231.

<sup>4</sup> 52 Pa. Code § 69.401.

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.<sup>5</sup> 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

I&E 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 30 (the original numbering is maintained here for ease of reference), provide that:

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

**a. Civil Penalty:**

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

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

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<sup>5</sup> *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).

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

**b. Updates to Storm Restoration Procedures for Foreign Crews:**

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

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

c. **Knowledge Check:**

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will provide its updated Storm Restoration Manual for Foreign Crews and Non-COC Contractors to all currently contracted foreign contractor companies and agrees to also provide such to any future foreign contractor company. PECO will require the foreign contractor company to acknowledge receipt of the Storm Restoration Manual for Foreign Crews and Non-COC Contractors, including any updated versions, and acknowledge distribution of the same to the foreign contractor company's employees.

d. **Storm Foreign Contractor Inspection Pilot Program:**

Within three (3) months of the entry date of the Commission's Final Order approving the Settlement Agreement, PECO will develop and implement a Storm Foreign Contractor Inspection Pilot Program-(the "Pilot"), in order to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. The Pilot will provide PECO an opportunity to observe the worksites and work practices of foreign contractors during storm restoration efforts. The Pilot will expire two (2) years after the initiation date and, after expiration of the Pilot, PECO will evaluate lessons learned and determine if any adjustments to the Pilot are warranted and/or if the Pilot should be converted into a standard business practice. PECO shall meet with the Commission's Bureau of Investigation and Enforcement— Electric Safety Division no later than ninety (90) days after the Pilot has concluded to evaluate the program and discuss lessons learned. PECO will have the right to make changes to the Pilot during its duration, as necessary. PECO will notify the Bureau of Investigation and Enforcement— Electric Safety Division of any proposed changes to the Pilot and provide an explanation for the change(s), at least five (5) days prior to implementation of the change. If emergency or safety reasons require PECO to implement the change prior to notifying the Commission's Electric Safety Division, PECO will notify the Commission's Electric Safety Division

of the change(s) no later than three (3) days after the change is implemented. The Pilot will include, but may not be limited to:

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

Settlement Agreement at ¶¶ 30-33.

### CONDITIONS OF THE SETTLEMENT

The Parties note that the Settlement Agreement constitutes a negotiated resolution solely of the proceeding at Docket No. C-2023-3041107. 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 on the merits, or conclusions of law rendered 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 Co.* at Docket No. C-2023-3041102. PECO has been cooperative with I&E related to identifying policies and procedures, facilities, and training that can be further improved to assist PECO in enhancing the safety and reliability of service and to satisfy the commitments that I&E has required in the settlement process. I&E Statement in Support at 4.

I&E maintains that the Settlement, if approved, will provide substantial public benefits including improved safety procedures and the design and implementation of a program designed to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. I&E 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.<sup>[6]</sup>

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.<sup>7</sup> In evaluating settlements, the Commission will not apply the factors in as strict a fashion as in a litigated proceeding.<sup>8</sup> 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.<sup>9</sup>

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.

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<sup>6</sup> 52 Pa. Code §69.1201.

<sup>7</sup> 52 Pa. Code §69.1201(a).

<sup>8</sup> 52 Pa. Code §69.1201(b).

<sup>9</sup> *Id.*

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 failed to adequately respond to multiple reports of a downed wire on June 3, 2020, which posed a threat to life and property; (2) PECO failed to properly enter/document the three calls reporting a downed wire on June 3, 2020, in OMS, which posed a threat to life and property; (3) Due to PECO's failure to respond to and document the downed wire, PECO improperly allowed a failed conductor to be re-energized, resulting in multiple house fires; (4) PECO failed to identify impermissible materials within the right-of-way during its ROW inspections, such as fences, buildings, and swimming pools that were all located within the right-of-way behind the Beverly Drive properties and to report them; and (5) PECO failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that PECO allowed an unrepaired conductor to be reenergized on its system, which enabled the continuation of an unsafe and hazardous condition and the occurrence of a fire on the 15000 block of Beverly Drive. I&E submits that 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 were as follows: during a major storm outage, after deenergizing a service line due to a downed conductor, PECO and/or a foreign contractor crew subsequently reenergized the service line which resulted in damage to eight homes. As such, PECO recognizes 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, smoke, and water damage to eight residences. PECO's failure to ensure that the downed conductor at 1299 Southhampton Road had been repaired and rehung, prior to the line being reenergized, resulted in property damage and a threat to public safety. 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. In response to the June 3, 2020, incident and the inadequate repair, PECO has engaged in appropriate measures to correct the conduct at issue and prevent similar future conduct. PECO has agreed to take remedial action including improving safety procedures for foreign contractor crews responding to storm damage and the design and implementation of a program designed to increase visibility into the storm restoration work performed by foreign contractors on the PECO system, reduce potential risk of error, and encourage foreign contractors to adhere to all common work practices and safety standards. A comprehensive list of the remedial actions that PECO has agreed to undertake is outlined in the Settlement Agreement at Paragraph 30.

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. Therefore, I find that the proposed Settlement, including the agreed-upon civil penalty are reasonable.

The fifth factor addresses the number of customers affected and the duration of the violation. In this case, there was severe fire damage to six residences and collateral damage to two other residences. The downed wire was reported to PECO on June 3, 2020, and PECO deenergized the line the same day. PECO did not record the incident as a downed wire and failed to dispatch a screener to that location to report on any hazardous conditions on June 3, 2020. On June 4, 2020, PECO reenergized the downed wire without having repaired or rehung it, resulting in the aforementioned property damage. After reports of the fire, PECO deenergized the line. Therefore, I&E asserts that the violation continued from June 3, 2020, to June 4, 2020, or two days. I agree with I&E in this regard and accordingly conclude that this justifies the proposed Settlement, including the agreed-upon civil penalty.

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, not 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 Co.*, Docket No. C-2023-3041102, 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 and cannot be passed through to rate payers, 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-2023-3041102, that are substantially similar to the facts of the 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 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. Under the Public Utility Code Sections 3301(a) and (b), 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

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 remit the \$13,000 civil penalty by sending a certified check or money order payable to "Commonwealth of Pennsylvania" with the docket number of this proceeding listed thereon 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.

6. That if PECO Energy Company fails to make the civil penalty payment within 60 days of the entry date of the Final Commission Order, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total amount set forth above and appropriate action.

7. That, upon receipt of the civil penalty and the verifications acknowledging that the non-monetary remedial measures set forth in Paragraph 30 of the Joint Petition for Approval of Settlement have been fulfilled, the Secretary shall mark the docket at C-2023-3041107 closed.

Date: June 24, 2024

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/s/  
Marta Guhl  
Administrative Law Judge