



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 12, 2024

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission v.
PECO Energy Company – Electric Division
Docket No. R-2024-3046931
I&E Statement in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Statement in Support of Joint Petition for Settlement of Rate Investigation in the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

Carrie B. Wright
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CBW/ac
Enclosures

cc: Administrative Law Judge Marta Guhl (*via Electronic and First-Class Mail*)
Administrative Law Judge Darlene Heep (*via Electronic and First-Class Mail*)
Per Certificate of Service

Network and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (TURN/CAUSE-PA) the City of Philadelphia and the Philadelphia Energy Authority (City/PEA) and Walmart Inc. (Walmart) (collectively, the Joint Petitioners). The parties to this Settlement Agreement have conducted extensive formal and informal discovery and have participated in numerous Settlement Conferences. The extensive discussions and sharing of information has culminated in the submission of the attached Settlement Agreement. The request for approval of the Joint Petition is based on I&E's conclusion that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."¹ The Commission has recognized that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."² The Settlement Agreement in the instant proceeding protects the public interest in that a comparison of the original filing submitted by the Company and the negotiated agreement demonstrates that compromises are evident throughout the Joint Petition.

The Bureau of Investigation and Enforcement is of the opinion that the terms and conditions of the Joint Petition are in the public interest. In support of this position, I&E offers the following:

¹ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 Pa.PUC 1, 22 (1985).

² *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 Pa.PUC 767, 771 (1991).

I. INTRODUCTION

A. Background

Modern utility regulation grants monopoly status to utility companies.³ Then, in exchange for a generally exclusive, monopoly position, a utility's ratepayers receive the assurance that an essential service will be available, adequate to meet demand, provided to all who require it, and reasonably priced.⁴ "The utility assumes the obligation to serve a defined region; to serve all customers within this area; and to charge only the rates permitted by the government."⁵

As a public utility, an electric distribution company (EDC) shall provide just and reasonable rates to customers receiving electric service in the Commonwealth of Pennsylvania.⁶ A public utility is entitled to a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers and allows the utility an opportunity to obtain a reasonable rate of return on its investment.⁷ A public utility shall also provide safe and reliable service by furnishing and maintaining adequate facilities and reasonable services and by making the necessary improvements thereto.⁸

Through its bureaus and offices, the Commission has the authority to take appropriate enforcement actions that are necessary to ensure compliance with the Public

³ *A Guide to Utility Ratemaking*, Cawley and Kennard (2018 Edition), p. 1.

⁴ *Id.*

⁵ *Id.*

⁶ 66 Pa.C.S. §§ 102, 1301; *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-603 (1944) (*Hope*).

⁷ *City of Lancaster v. Pennsylvania Public Utility Commission*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002); *see also Hope*, 320 U.S. at 602-603.

⁸ 66 Pa.C.S. § 1501.

Utility Code and Commission regulations and orders.⁹ The Commission established I&E to serve as the prosecutory bureau to represent the public interest in ratemaking and utility service matters and to enforce compliance with the Public Utility Code.¹⁰ By representing the public interest in rate proceedings before the Commission, I&E works to balance the interest of customers, utilities, and the regulated community as a whole to ensure that a utility's rates are just, reasonable, and nondiscriminatory.¹¹

B. Procedural History

On March 28, 2024, PECO Energy Company – Electric Division (Company or PECO) filed proposed Tariff Electric-PA. P.U.C. No. 8. PECO's initial requested increase equaled \$464 million based on a fully projected future test year (FPFTY) ended December 31, 2025. Additionally, PECO proposed one-time surcharge credits equaling \$64 million resulting in a net increase in electric rates of \$399 million.

On April 25, 2024, the Commission entered an Order instituting an investigation into the lawfulness, justness and reasonableness of the Company's proposed rates. Pursuant to 66 Pa.C.S. Section 1308(d), proposed Tariff Electric-PA. P.U.C. No. 8 was suspended by operation of law until December 28, 2024¹², unless permitted by Commission Order to become effective on an earlier date.

⁹ Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11); 66 Pa.C.S. § 101 *et seq.*; 52 Pa.Code § 1.1 *et seq.*

¹⁰ *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

¹¹ *See* 66 Pa.C.S. §§ 1301, 1304.

¹² PECO agreed to request an extension of the suspension period until December 30, 2024 and that request was granted.

The Commission assigned the Company's filing to the Office of Administrative Law Judge (OALJ) for the development of an evidentiary record culminating in a Recommended Decision (RD). The OALJ subsequently assigned the suspended proceeding to Administrative Law Judges Marta Guhl and Darlene Heep for investigation and scheduling of hearings to consider the lawfulness, justness and reasonableness of the Company's rate increase request.

A Prehearing Conference was held on May 7, 2024, at which time a procedural schedule was discussed. The procedural schedule included filing dates for written Direct, Rebuttal, and Surrebuttal Testimony and Main Briefs and Reply Briefs, as well as dates for Evidentiary Hearings. Five in person and two telephonic public input hearings were held in PECO's service territory. A telephonic evidentiary hearing was held on August 8, 2024. At this hearing several PECO witnesses presented oral rejoinder testimony and were cross examined. I&E witness Christine Wilson was also cross examined by counsel for IBEW Local 614. In addition, the parties' written testimony and exhibits were entered into the record.

II. DISCUSSION

The Commission encourages settlements, which eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion.¹³ Here, the Joint Petitioners successfully achieved a Settlement Agreement.

¹³ *Pa. PUC v. Venango Water Co.*, Docket No. R-2014-2427035, 2015 WL 2251531, at *3 (Apr. 23, 2015 ALJ Decision) (adopted by Commission via Order entered June 11, 2015); *See* 52 Pa. Code §5.231.

The Settlement Agreement is a “Black Box” agreement, which does not specifically identify the resolution of certain disputed issues.¹⁴ Instead, an overall increase to base rates is agreed to and Joint Petitioners retain all rights to further challenge all issues in subsequent proceedings. A “Black Box” settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses.¹⁵

I&E contends that an agreement as to the resolution of each and every disputed issue in this proceeding would not have been possible without judicial intervention. Additional testimony and exhibits, three days of litigious hearings, briefing, and further involvement of both ALJs would have added time and expense to an already cumbersome and complex proceeding. Ratepayers benefit when rate case expenses stay at a reasonable level.¹⁶ The request for approval of the *Joint Petition for Settlement* is based on the I&E conclusion that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”¹⁷ The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”¹⁸ The Settlement Agreement in the instant proceeding protects the public interest in that a comparison of the original filing submitted by the Company and the negotiated agreement demonstrates that compromises are evident throughout the Joint Petition.

¹⁴ See *id.* at *11.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

¹⁸ *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

A. Revenue Requirement (Joint Petition ¶¶ A.13-14)

The proposed Settlement will allow PECO to file new tariff rates designed to provide an annual increase in electric distribution revenues of approximately \$354.0 million in electric operating revenues, exclusive of the \$64.3 million of revenues currently recovered through the Distribution System Improvement Charge (DSIC), for service rendered on or after the Commission enters an Order approving the Settlement, instead of the Company's requested approximately \$464 million increase. The DSIC will be rest to zero. The parties to the Joint Settlement have agreed upon the additional annual electric distribution revenues as a Black Box settlement, subject to a few specific provisions that affect rate design and the setting of rates in the future.

Based on I&E's analysis of the Company's filing and discovery responses received, the rate increase under the proposed Settlement represents a result that is within the range of likely outcomes in the event that the case was fully litigated. If the case were to fully litigate, I&E's recommended revenue requirement was \$328,204,000.¹⁹ The increase agreed to as part of the settlement is reasonably close to the I&E litigation position and is appropriate. When accompanied by other important provisions contained in the Settlement, this yields a result that is both just and reasonable and in the public interest.

As noted above, the additional revenue in this proceeding is base rate revenue and has been agreed to in the context of a Black Box settlement. A Black Box agreement does

¹⁹ I&E St. No. 1-SR, p. 4.

not specifically identify the resolution of any disputed issues. Instead, an overall increase to base rates is agreed to and parties retain all rights to further challenge all issues in subsequent proceedings. A Black Box settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses. I&E is of the opinion that an agreement as to the resolution of each and every disputed issue in this proceeding would not have been possible without judicial intervention. The involvement of the ALJ would have added time and expense to an already cumbersome proceeding. Avoiding this necessity will benefit ratepayers by keeping the expenses associated with this filing at a reasonable level. The previous Chairman of the Commission has commented on Black Box settlements and stated that the “[d]etermination of a company’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company’s cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. Black Box settlements are an integral component of the process of delivering timely and cost-effective regulation.”²⁰

This increased level of Black Box revenue adequately balances the interests of ratepayers and the Company. PECO will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting increase

²⁰ See Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662 (Order entered January 13, 2011). See also Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens’ Electric Company of Lewisburg, Pennsylvania*, Docket No. R-2010-2172665 (Order entered January 13, 2011).

minimizes the impact of the initial proposal. Mitigation of the level of the rate increase benefits ratepayers and results in rates that satisfy the regulatory standard requiring just and reasonable rates. As such, this element supports the standard for approval of a settlement as the resulting rates are just and reasonable and in accordance with the Public Utility Code and all pertinent case law.

B. Electric Base Rate Stay-Out (Joint Petition ¶ B.1)

Per the Settlement, PECO has agreed that the Company will not file another general base rate case prior to March 16, 2026. The provision affords a level of rate stability that is not otherwise available in a fully litigated base rate case.

C. Revenue Allocation and Rate Design (Joint Petition ¶¶ C. 16-18)

The allocation of rate increase among the customer classes was a significant issue in this proceeding. Per the Settlement, the parties proposed to increase residential rates by approximately \$177.6 million for the residential class and approximately \$53.5 million for the residential heating class instead of the originally requested approximately \$227.5 million for the residential rate class and approximately \$69 million for the residential heating class.²¹

In this proceeding, PECO provided a summary of various costs related to the customer charge in its exhibit TJJ-5. It is important to allow the utility to recover only those direct monthly costs that vary with the addition or loss of a customer through the Customer Charge. This charge provides the Company with a steady, predictable level of

²¹ PECO Exhibit JAB-1.

income that will allow for the proper maintenance and upkeep of the system. Establishing the proper customer charge protects ratepayers by ensuring that PECO is not being overcompensated. Moderating the requested increase in this proceeding also benefits ratepayers as it allows them to reap a greater portion of the benefit of conservation. Shifting costs to the volumetric portion of a customer's bill allows for the immediate realization of the benefit of conserving usage. Designing rates to allow customers to have greater control of their electric bills is in the public interest.

PECO proposed to increase the Rate R and Rate RH monthly Customer Charge from \$10.50 to \$14.28.²² Under the Settlement, the Company agreed to set the residential Customer Charge at \$11.25 per month. I&E supports the Settlement, which moderates the increase in the Customer Charge for residential customers.

Based on I&E's review of the cost of service studies presented in this proceeding, I&E views the Settlement to be within the range of reasonable outcomes that would result from full litigation of this case. Further, the mitigated level of Customer Charge demonstrates a compromise of the interests of the parties. As such, these provisions are in the public interest.

D. FPFTY Reports (Joint Petition ¶¶ D.19)

The Company uses a Fully Projected Future Test Year (FPFTY) in its filing. The use of a FPFTY ending December 31, 2025, resulted in a claim of \$1,270,347,000 of plant additions and \$148,926,000 of retirements associated solely with the FPFTY.²³

²² PECO Statement No. 7, p. 7.

²³ I&E Statement No. 3 p. 6.

I&E witness Sakaya recommended that the Company provide reports that in the next base rate case will allow the Commission to measure and verify the accuracy of PECO's projected investments in future facilities.²⁴

In the Joint Petition, PECO agrees to provide to I&E, OCA, OSBA, and the Commission's Bureau of Technical Utility Services (TUS) updates to PECO Exhibit MJT-2, Sch. C-2, by April 1, 2025, setting forth the electric division's actual capital expenditures, plant additions, and requirements by month from January 1, 2024 through December 31, 2024. Additionally, PECO will file an update providing these actual amounts, for the twelve months ending December 31, 2025, no later than April 1, 2026. In PECO's next base rate case, it will provide a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2025 to the projections included in this case.

The updates are important because as I&E witness Sakaya explained, "there is value in determining how closely PECO's projected investments in future facility compare to the actual investments that are made by the end of the FTY and FPFTY... Determining the correlation between PECO's projected plant additions and actual plant additions will help inform the Commission and the parties in PECO's future rate cases."²⁵ I&E avers this term is within the public interest as it allows the parties and Commission to compare actual numbers to the Company's projections to gauge the accuracy of PECO's projected investments in future proceedings.

²⁴ I&E Statement No. 3 pp. 6-7.

²⁵ I&E Statement No. 3, p. 7.

E. DSIC (Joint Petition, ¶¶ E.20-22)

In accordance with the Settlement, PECO will not implement a DSIC during the calendar year ending December 31, 2025. Additionally, the first DSIC in 2026 will be effective no earlier than March 31, 2026 and will be based on DSIC-eligible expenditures during January and February 2026. Further, PECO will impose its DSIC in a manner that is consistent with the Commission’s Supplemental Implementation Order at Docket No. M-2012-2293611. I&E avers that this is in the public interest and benefits both PECO and its ratepayers. First, PECO benefits because it will have access to DSIC funding for necessary infrastructure improvements which helps to ensure PECO is able to meet its obligation to provide its customers with safe and reliable service. Second, customers will benefit because they will not need to fund the DSIC any earlier than March 31, 2026. In sum, ratepayers will have a defined period of time during which they will be relieved from paying any DSIC costs; however, even when the DSIC charge becomes effective, the customers will benefit from the assurance that improved infrastructure will facilitate safe and reliable service.

F. Storm Reserve Account (Joint Petition ¶ F.23-24)

As part of this settlement, PECO has agreed to withdraw, its request to establish a Storm Reserve Account. As explained by I&E witness Wilson, “[t]he Company is making significant effort to focus on storm hardening and resiliency which reduces the impact of extreme weather in its service territory. All of the money spent in this area

conflicts with the proposal for a storm reserve account.”²⁶

Additionally, per the settlement PECO has agreed to petition the Commission separately for any future desired extraordinary storm expense recovery. This is the appropriate avenue through which extraordinary storm expense recovery should be sought. Therefore, I&E’s concerns in this area have been mitigated by the terms of the settlement agreement. I&E submits that the withdrawal of the storm reserve account and the commitment to petition for future extraordinary storm expense recover are in the public interest.

G. Universal Service Programs (Joint Petition ¶¶ G.25-41)

I&E witness Wilson addressed the issue of PECO’s Low-Income Usage Reduction Program (LIURP).²⁷ Specifically witness Wilson addressed the testimony of CAUSE-PA witness Max that recommends PECO Electric increase its annual LIURP budget by approximately \$4.4 million to approximately \$10 million.²⁸ As witness Wilson notes, CAUSE-PA’s recommendation is well-intentioned, it is inappropriate to consider such a significant increase in the LIURP budget in this base rate proceeding²⁹

Per the settlement, PECO will increase its LIURP budget by \$1 million from \$6.6 million to \$7.6 million. Per the settlement, the approximately \$4.4 million increase requested by CAUSE-PA has been significantly mitigated. While I&E generally believes that a universal service proceeding is the more appropriate forum to increase this budget I&E

²⁶ I&E St. No. 1, p. 38 (footnote omitted).

²⁷ I&E St. No. 1-R, pp. 4-10.

²⁸ TURN/CAUSE-PA Direct Testimony, pp. 48-51.

²⁹ I&E St. No. 1-R, p. 6.

also recognizes that a settlement reflects compromise on the part of all parties. The increase is less substantial than that which was recommended by CAUSE-PA witness Marx, but significant enough to assist low-income ratepayers, which is an important consideration. This is a reasonable compromise which balances the interest of PECO and its ratepayers.

These terms of the Settlement serve to protect vulnerable low-income customers who are facing financial hardship while not imposing undue financial burden on non-low-income customers who must pay for these programs. Regarding the remaining universal service terms, as I&E did not present testimony on those terms I&E takes no position on those terms.

H. Customer Service Issues (Joint Petition ¶¶ H.42-52)

I&E took no position on the customer service issues described in the Settlement.

I. Electric Vehicle Programs (Joint Petition ¶¶ I.53-55)

I&E took no position on PECO's Electric Vehicle Programs as described in the Settlement.

J. Assistance with Non-Company Clean Energy and Energy Conservation Programs (Joint Petition ¶¶ J.56-61)

I&E took no position on the Non-Company Clean Energy and Energy Conservation Program as described in the settlement.

K. Interconnection Costs (Joint Petition ¶ K.62)

I&E presented no testimony on Interconnection Costs and, therefore, takes no position on this settlement term.

L. Tariff Changes (Joint Petition ¶ L.63)

As specified by the settlement term itself, I&E agrees that the tariff changes as set forth in Appendix A are necessary and appropriate to effectuate this settlement.

M. I&E's Remaining Issues

The remaining issues raised in I&E's Prehearing Memo and testimony have been satisfactorily resolved through discovery and discussions with the Company and are incorporated into the Black Box resolution of the revenue requirement in this proceeding. The very nature of a settlement is that it incorporates compromise on the part of all parties. This particular Settlement Agreement exemplifies this principle. In addition, a Black Box settlement makes the specific identification of the resolution of disputed issues impossible. Each signatory acknowledges the ultimate revenue allowance but makes no representation as to how this addition to base rate revenue was achieved.

III. CONCLUSION

Based on I&E's analysis of the base rate revenue increase requested by PECO Energy Company – Electric Division, acceptance of this proposed Joint Petition is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding. Increased litigation expenses may cause an increase in revenue beyond that agreed to in the Joint Petition. Acceptance of the foregoing Settlement Agreement will negate the need to engage in additional litigation including the preparation of Main Briefs, Reply Briefs, Exceptions, and Reply Exceptions. The avoidance of further rate case expense by settlement of these provisions in this base rate

investigation proceeding best serves the interests of PECO and its customers. As litigation of this rate case is a recoverable expense, curtailment of these charges is in the public interest.

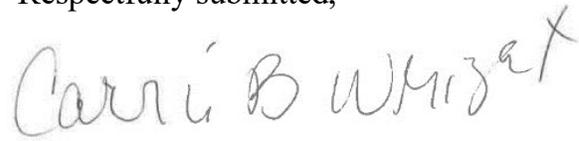
I&E agrees to settle the disputed issue as to the proper level of additional base rate revenue through a Black Box agreement with limited exceptions. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation or the continuation of this litigation in the event the Settlement Agreement is rejected by the Commission or otherwise properly withdrawn by any of the Joint Petitioners.

If the ALJ recommends that the Commission adopt the Settlement Agreement as proposed, I&E has agreed to waive the right to file Exceptions. However, I&E has not waived its rights to file Exceptions with respect to any modifications to the terms and conditions of the Settlement Agreement, or any additional matters, that may be proposed by the ALJ in her Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed by any party to this proceeding. The Settlement Agreement is also conditioned upon the Commission's approval of all terms and conditions contained therein, and should the Commission fail to approve or otherwise modify the terms and conditions of the Settlement, the Joint Petition may be withdrawn by I&E or any of the signatories.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the *Joint Petition for Settlement of Rate Investigation* as being in the public interest and respectfully requests that Administrative Law Judges Marta Guhl and

Darlene Heep recommend, and the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright". The signature is written in dark ink and is positioned above the typed name.

Carrie B. Wright
Deputy Chief Prosecutor
PA Attorney ID No. 208185

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Dated: September 12, 2024

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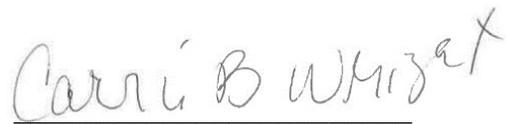
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