



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 28, 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 Reply Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Exceptions of the Bureau of Investigation and Enforcement 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
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov

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*)
Office of Special Assistants (*via Electronic Mail* – ra-osa@pa.gov)
Per Certificate of Service

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. REPLY EXCEPTIONS 2

 1. Reply to IBEW Exception Nos. 1 and 2: The ALJ Applied the Proper Standard of Review to the Settlement (RD, pp. 35-36, and 73-75; IBEW Exceptions, pp. 2-3). 2

 2. Reply to IBEW Exception No. 6: The ALJ Appropriately Recommended Adoption of the Settlement Based on Substantial Evidence. (RD, p. 73-75; IBEW Exceptions, pp. 6-7). 5

III. CONCLUSION..... 8

TABLE OF AUTHORITIES

CASES

Pa. P.U.C. v. C S Water and Sewer Associates,
74 PA PUC 767, 771 (1991)..... 6, 7

Pa. P.U.C. v. Citizens’ Electric Co. of Lewisburg, PA,
Docket No. R-2010-2172665 (Final Order entered January 13, 2011)..... 4, 7

Pa. P.U.C. v. Peoples TWP LLC, Docket No. R-2013-2355886, p. 28
(Order entered December 19, 2013)..... 4

Pa. P.U.C. v. Philadelphia Electric Company,
60 PA PUC 1, 22 (1985)..... 6

Pa. P.U.C. 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) 6

Pa. P.U.C. v. Wellsboro Electric Co.,
Docket No. R-2010-2172662 (Final Order entered January 13, 2011)..... 4, 7

STATUTES

66 Pa. C.S. § 1308(d)..... 1

REGULATIONS

52 Pa. Code § 69.401 3

52 Pa. Code §5.231 6

I. INTRODUCTION

On March 28, 2024, PECO Energy Company – Electric Division (PECO or Company) filed 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.

The Company used the Fully Projected Future Test Year (FPFTY) ending December 31, 2025, as the basis for its rate increase request.

On April 25, 2024, pursuant to 66 Pa. C.S. § 1308(d), the Commission ordered suspension of the proposed tariff changes until December 27, 2024, unless permitted by Commission Order to become effective at an earlier date. The Commission directed that the case be assigned to the Office of Administrative Law Judge (OALJ) for scheduling of hearings as may be necessary for the Administrative Law Judge (ALJ) to render a Recommended Decision. A Prehearing Conference was held on May 7, 2024, at 10:00 a.m., before Administrative Law Judges Marta Guhl and Darlene Heep. Pursuant to the procedural schedule, the parties exchanged direct, rebuttal, and surrebuttal testimony, as well as oral rejoinder outlines.

Hearings were held telephonically on August 8 and August 12, 2024.

On September 6, a Joint Petition for Non-Unanimous Partial Settlement was filed. The parties to this settlement are the PECO Energy Company (PECO), I&E, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the National Railroad Passenger Corporation (Amtrack), Electrify America (EA), EVgo Services LLC (EVgo), the Philadelphia Area Industrial Energy Users Group (PAIEUG), the Southeastern

Pennsylvania Transportation Authority (SEPTA), the Tenant Union Representative 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). IBEW Local 614 opposed the Non-Unanimous Settlement in its entirety. As such, Main and Reply Briefs were filed by various Parties, along with Statements in Support of the Settlement from the Joint Petitioners.

On October 15, 2024 a Recommended Decision (RD), was issued by Administrative Law Judges Darlene Heep and Marta Guhl which recommended adoption of the Non-Unanimous Settlement without modification.

I&E now files these timely Reply Exceptions in response to the Exceptions raised by IBEW Local 614.

II. REPLY EXCEPTIONS

1. Reply to IBEW Exception Nos. 1 and 2: The ALJ Applied the Proper Standard of Review to the Settlement (RD, pp. 35-36, and 73-75; IBEW Exceptions, pp. 2-3).

IBEW's Exceptions 1 and 2 largely deal with the same topic, the proper standard of review for a base rate case settlement. Because these exceptions deal with the same topic, I&E will address them together rather than separately. In these Exceptions, IBEW indicates that the ALJs improperly applied the "just and reasonable standard." Further IBEW criticizes the ALJs for explaining that the Commission looks favorably upon rate case settlements and typically approves them. These criticisms are misplaced. While the ALJs note it is the

Commission's policy to favor settlements,¹ nowhere do they state this is the sole reason for approving the instant Settlement. However, when weighing the evidence, the ALJs must also acknowledge that there is longstanding Commission precedent and policy favoring settlements.

As explained in the I&E Statement in Support,² and the ALJ's Recommended Decision,³ this Commission looks favorably upon settlements and encourages the parties, where possible, to endeavor to settle cases. The following policy statement articulates general settlement guidelines and procedures for major base rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulations, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.⁴

This policy highlights the importance of settlements in Commission proceedings. Regarding settlements, the ALJs explain that the standards are the same as those for a unanimous settlement and must be supported by substantial evidence.⁵

The ALJs also acknowledged that the burden lies with the Company to establish the justness and reasonableness of its requested rate increase.⁶ Further, the ALJs's recommendation that the Settlement be adopted is supported by prior Commission cases as it has previously endorsed the use of black box settlements:

¹ RD, p. 25.

² I&E Statement in Support, pp. 5-6.

³ RD, pp. 24-25.

⁴ 52 Pa. Code § 69.401.

⁵ RD, pp. 24-25.

⁶ RD, p. 22.

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. P.U.C. v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. P.U.C. v. Citizens’ Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a “black box” settlement in this proceeding and, accordingly, deny this Exception.⁷

The prior Chairman of the Commission explained that black box settlements are beneficial in the context of rate proceedings precisely because of the difficulties in reaching an agreement on each component of a company’s revenue requirement calculation, when he stated

determination 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.⁸

In matters of Non-Unanimous settlements, the statements of the joining parties do hold weight. Particularly those of the Statutory Advocates, I&E, OCA and OSBA, who are generally involved in all base rate proceedings before this Commission. Regarding a Non-

⁷ *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013).

⁸ *See*, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662. *See also*, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens’ Electric Company of Lewisburg, PA*, Docket No. R-2010-2172665.

Unanimous Settlement in a 2021 Pennsylvania American Base Rate Case, the Commission explained that, “[w]e are further persuaded by I&E’s endorsement of the Settlement rates, based upon I&E’s thorough analysis of PAWC’s ratemaking claims in its base rate filings...”⁹ I&E conducted the same type of analysis in the instant proceeding. Here, I&E, OCA, and OSBA all of whom conducted a thorough analysis of PECO’s claims have entered into the settlement and endorsed its approval. The statements made by these parties, and the others who have entered into the settlement, should hold weight with this Commission.

IBEW contends that the Commission’s policy of promoting settlements is not legal a standard.¹⁰ However, this argument ignores the numerous cases and regulations that establish this precedent. As laid out above, in the I&E Statement in Support, and in the Recommended Decision there are numerous cases that set forth the Commission's standards and policies on the approval of settlements that come before it. The standards were appropriately followed.

It is clear the ALJs committed no errors of law in approving the Non-Unanimous Settlement. The appropriate standards were applied and the weight of the substantial evidence fell in favor of adopting the Non-Unanimous Settlement. Therefore, IBEW’s Exceptions Nos. 1 and 2, must be rejected and the Commission should adopt the Non-Unanimous Settlement consistent with the RD.

2. Reply to IBEW Exception No. 6: The ALJ Appropriately Recommended Adoption of the Settlement Based on Substantial Evidence. (RD, p. 73-75; IBEW Exceptions, pp. 6-7).

IBEW has again misconstrued the Recommended Decision stating that the “..ALJs

⁹ *Id.* at 36.

¹⁰ IBEW Exceptions, p. 3.

erred in adopting the Joint Petitioners' conclusory statements as 'substantial evidence' that the Non-Unanimous Settlement was in the public interest."¹¹ This statement is inherently misleading given that there was a very extensive record upon which the ALJs based their decision that the Settlement achieved in this proceeding was in the public interest.

As explained above and reiterated in the *2021 PAWC* decision, the Statements of the settling parties hold weight with this Commission. The Commission encourages settlements, which eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion.¹² 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."¹³ 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."¹⁴ 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 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

¹¹ IBEW Exceptions, p. 6.

¹² *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.

¹³ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

¹⁴ *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

impossible. *Black Box settlements are an integral component of the process of delivering timely and cost-effective regulation.*”¹⁵

In reaching this conclusion, the ALJ simply found that PECO had met its burden of establishing that the rates produced by Settlement were in the public interest, while noting that there is long-standing Commission precedent which encourages parties before the Commission to work to achieve a settlement. As explained before, because the nature of settlements reflect compromise on the part of the parties involved, they inherently promote the public interest.¹⁶ The ALJs laid out the legal standards and burden of proof in the Recommended Decision.¹⁷ It seems abundantly clear that that ALJs were aware that the evidence supporting the Settlement must be substantial. The ALJs were not limited to the Statements in Support provided by the Joint Petitioners, but were provided an entire evidentiary record upon which to base their recommendation. Inherent in IBEW’s Exception is the notion that the ALJs would not have used the full record when making their determination. This allegation is simply unfair. Additionally, the Commission will also have the entire evidentiary record to review when making its determination. Further, the ALJs, also must acknowledge that there is Commission precedent that favors settlements. It seems clear that the ALJ correctly applied the substantial evidence standard and simply acknowledged that there is Commission case law and policy that favors settlements. The

¹⁵ 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) (emphasis added).

¹⁶ *Pa. P.U.C. v. C S Water and Sewer Associates*, 74 PA P.U.C. 767, 771 (1991).

¹⁷ RD, pp. 21-23.

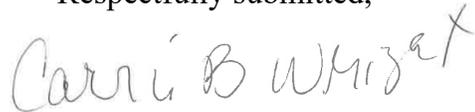
ALJs committed no error by acknowledging the statements made by the Joint Petitioners that the Settlement was in the public interest.

Because the ALJs applied the appropriate legal standards, IBEW Exception No. 10 must be rejected and the Commission should adopt the ALJs' recommendation that the Settlement be approved.

III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission deny the Exceptions of IBEW Local 614 and approve the Non-Unanimous Settlement in the instant proceeding as recommended by Administrative Law Judges Darlene Heep and Marta Guhl.

Respectfully submitted,



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

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: October 28, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2024-3046931
 :
 PECO Energy Company – Electric Division :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated October 28, 2024, in the manner and upon the persons listed below.

Served via Electronic Mail Only

Jack R. Garfinkle, Esq.
Caroline Choi, Esq.
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
jack.garfinkle@exeloncorp.com
caroline.choi@exeloncorp.com
Counsel for PECO

Sharon E. Webb, Esq.
Rebecca Lyttle, Esq.
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
swebb@pa.gov
relyttle@pa.gov

Kenneth M. Kulak, Esq.
Mark A. Lazaroff, Esq.
Brooke E. McGlinn, Esq.
Catherine G. Vasudevan, Esq.
Morgan, Lewis & Bockius LLP
222 Market Street
Philadelphia, PA 19103
ken.kulak@morganlewis.com
mark.lazaroff@morganlewis.com
brooke.mcglinn@morganlewis.com
catherine.vasudevan@morganlewis.com
Counsel for PECO

Barrett Sheridan, Esq.
Jacob Guthrie, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
OCAELECPECO2024@paoca.org

Charis Mincavage, Esq.
Adeolu A. Bakare, Esq.
Brigid Landy Khuri, Esq.
Rebecca Kimmel, Esq.
McNees Wallace & Nuruck LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17101
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
bkhuri@mcneeslaw.com
rkimmel@mcneeslaw.com
Counsel for PAIEUG

David P. Zambito, Esq.
Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com
jnase@cozen.com
Counsel for UPENN

Charlotte E. Edelstein, Esq.
Joline R. Price, Esq.
Vikram A. Patel, Esq.
Robert W. Ballenger, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
cedelstein@clsphila.org
jprice@clsphila.org
vpatel@clsphila.org
rballenger@clsphila.org
Counsel for TURN and CAUSE-PA

Charles T. Joyce, Esq.
Spear Wilderman, P.C.
230 South Broad Street, Suite 1650
Philadelphia, PA 19102
ctjoyce@spearwilderman.com
Counsel for IBEW Local 614

Nicholas J. Enoch, Esq.
Lubin & Enoch, P.C.
349 North 4th Avenue
Phoenix, AZ 85003-1505
nick@lubinandenoch.com
Counsel for IBEW Local 614

Alan Michael Seltzer, Esq.
John F. Povilaitis, Esq.
Buchanan Ingersoll & Rooney PC
409 N Second Street
Harrisburg, PA 17101-1357
alan.seltzer@bipc.com
john.povilaitis@bipc.com
*Counsel for Constellation
Energy/NewEnergy*

Alan McCarthy
705 E. Barnard St
West Chester, PA 19382
alanmccarthy25@hotmail.com

Bernice I. Corman, Esq.
Bicky Corman Law PLLC
1200 Connecticut Ave, NW, Suite 700
Washington DC 20036
bcorman@bickycormanlaw.com
Counsel for Evgo Services, LLC

William Lesser, Esq.
Cozen O'Connor
175 Greenwich Street, 55th Flor
New York, NY 10007
wlesser@cozen.com
Counsel for Electrify America

Derrick Price Williamson, Esq.
Barry A. Naum, Esq.
Steven W. Lee, Esq.
Spilman Thomas & Battle PLLC
1100 Bent Creek Blvd, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
slee@spilmanlaw.com
Counsel for Walmart Inc

Laura Antinucci, Deputy City Solicitor
James Kellett, Division Dep. City Solicitor
Philadelphia Law Department
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
laura.antinucci@phila.gov
james.kellett@phila.gov
Counsel for CITY and PEA

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
*Counsel for the Southeastern Pennsylvania
Transportation Authority*

Stephen Bright, Esq.
Jigar Shah, Esq.
Rhiannon Davis, Esq.
Electrify America LLC
1950 Opportunity Way, Suite 1500
Reston, VA 20190
steve.bright@electrifyamerica.com
jigar.shah@electrifyamerica.com
rhiannon.davis@electrifyamerica.com
Counsel for Electrify America

Baird Brown, Esq.
eco(n)law, LLC
3230 S Broad St
17th Floor
Philadelphia, PA 19102
baird@eco-n-law.net
Counsel for CITY and PEA

Kenneth R. Stark, Esq.
McNees Wallace & Nuruck LLC
100 Pine Street
Harrisburg, PA 17101
kstark@mcneeslaw.com
Counsel for Amtrak

Robert A. Weishaar, Jr., Esq.
McNees Wallace & Nuruck LLC
1200 G Street NW, Suite 800
Washington DC 20005
bweishaar@mcneeslaw.com
Counsel for Amtrak

Phillip D. Demanchick, Jr., Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
pddemanchick@hmslegal.com
*Counsel for
Grays Ferry Cogeneration Partnership
and Vicinty Energy Philadelphia, Inc.*

Kevin C. Higgins
Courtney Higgins
Energy Strategies
111 East Broadway, Suite 1200
Salt Lake City, UT 84111
khiggins@energystrat.com
chiggins@energystrat.com
Witnesses for OSBA

John DeFever
Larkin & Associates, PLLC
15728 Farmington Road
Livonia, MI 48154
OCAELECPECO2024@paoca.org
Witness for OCA

Ron Nelson
Volt-Watt Consulting LLC
1311 SE 53rd Avenue
Portland, OR 97215
OCAELECPECO2024@paoca.org
Witness for OCA

Clarence Johnson
CJ Energy
3707 Robinson Avenue
Austin, TX 78722
OCAELECPECO2024@paoca.org
Witness for OCA

Jeffrey Pollock
Billie S. LaConte
J. Pollock, Inc.
14323 South Outer 40 Road, Suite 206N
Town and Country, MO 63017
jcp@jpollockinc.com
bsl@jpollockinc.com
Consultants for PAIEUG

David Garrett
Resolve Utility Consulting PLLC
101 Park Avenue, Suite 1125
Oklahoma City, OK 73102
OCAELECPECO2024@paoca.org
Witness for OCA

Elizabeth Marx
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
emarx@pautilitylawproject.org
Witness for TURN and CAUSE-PA

Roger Colton
Fisher, Sheehan & Colton
34 Warwick Road
Belmont, MA 02478
OCAELECPECO2024@paoca.org
Witness for OCA

James Glenn
IBEW Local 614
4613 West Chester Pike, Upper Level
Newtown Square, PA 19073
jamesglenn@614ibew.com
Witness for IBEW Local 614

Nicholas A. DeMarco
Regulatory Analyst
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
OCAELECPECO2024@paoca.org
Witness for OCA

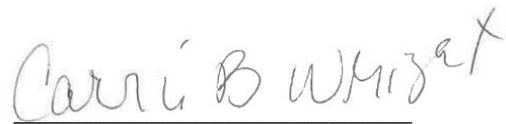
James L. Crist
Lumen Group, Inc.
4226 Yarmouth Drive, Suite 101
Allison Park, PA 15101
jlcris@aol.com
Witness for SEPTA

Dominic McGraw
dominic.mcgraw@phila.gov
Witness for CITY and PEA

Elizabeth Lankenau
elizabeth.lankenau@phila.gov
Witness for CITY and PEA

Emily Schapira
eschapira@philaenergy.org
Witness for CITY and PEA

Nidhi Krishen
nidhi.krishen@phila.gov
Witness for CITY and PEA



Carrie B. Wright
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 308185
(717) 783-6156
carwright@pa.gov