

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held March 27, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

M-2024-3030738

v.

FirstEnergy Pennsylvania Electric Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement Agreement or Settlement), filed on March 26, 2024, by the Commission's Bureau of

Investigation and Enforcement (I&E) and FirstEnergy Pennsylvania Electric Company¹ ((West Penn) (collectively, the Parties)), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. The Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Settlement at 4.

For the reasons set forth below, we believe that the record in this proceeding is insufficient to complete the analysis of whether the Joint Settlement is in the public interest. The record lacks important factual details which would permit us to determine if this settlement is in the public interest. Consequently, we issue this Opinion and Order seeking additional missing facts that include, but are not limited to, the specific inquiries set out in detail below. The parties shall have 30 days from the entry of an Opinion and Order in this case to file supplemental facts and/or stipulated facts addressing this deficiency in support of the proposed Settlement Agreement.

I. History of the Proceeding

On June 14, 2021, a windstorm caused significant damage to area trees and power lines in the West Penn service territory. A total of approximately 15,000 West Penn customers were impacted. Settlement at 4-5.

¹ Pursuant to Commission Order at A-2023-3038771, FirstEnergy Corporation’s constituent Pennsylvania subsidiaries merged into one company, the FirstEnergy Pennsylvania Electric Company. However, the incident, which is the subject of this Joint Petition, occurred prior to Commission approval of the merger involving West Penn Power Company (West Penn). Therefore, hereinafter FirstEnergy Pennsylvania Electric Company shall be referred to as “FirstEnergy Pennsylvania” or “West Penn” and in citations to the Joint Petition as “FEPA.”

On June 15, 2021, the Commission's Bureau of Consumer Services (BCS) referred an informal complaint to the Commission's Investigation and Enforcement Electric Safety Division (ESD) regarding a storm incident where a West Penn primary distribution line was brought down by a falling tree (hereinafter referred to as the incident). I&E initiated an investigation of the incident. Settlement at 5.

From June 15, 2021, through March 25, 2024, I&E and West Penn addressed the incident, including two data requests sent by I&E to obtain more information about the incident. The Parties engaged in successful negotiations. Settlement at 4 and 5.

On March 26, 2024, counsel for I&E and West Penn filed the proposed Settlement to terminate I&E's informal investigation of the incident and to settle the matter completely without litigation, even though the Parties' positions and claims are disputed, to resolve the proceeding in a manner that is fair and reasonable and in the public interest. The Parties ask that the Commission issue an Opinion and Order approving the terms of the Joint Petition in their entirety, without modification, as in the public interest. Settlement at 1, 8, 9, 12, and 13.

On August 22, 2024, the Commission adopted an Opinion and Order on the proposed Settlement (the *August 2024 Order*). In the *August 2024 Order*, the Commission directed that the *August 2024 Order*, along with the proposed Settlement and the Statements in Support, be published in the *Pennsylvania Bulletin*. The Commission also directed that public comment be sought within a twenty-five (25) day comment period after publication in the *Pennsylvania Bulletin*.

On September 7, 2024, the *August 2024 Order*, along with the Settlement Agreement and Statements in Support, was published in the *Pennsylvania Bulletin* at 54 Pa.B. 5693 (September 7, 2024). In accordance with the *August 2024 Order*,

comments on the proposed Joint Settlement were due on or before October 2, 2024 (*i.e.*, twenty-five days after the *August Order* was published). No comments were filed.

II. Background

A. Chronology of Events

Following a BCS referral to I&E concerning the incident, I&E instituted an informal investigation based on I&E's determination that the matter warranted further investigation.

As part of the investigation, I&E sent two data requests to West Penn seeking information on West Penn's hazard responders, their qualifications, and the procedures used for reports of a line down. The West Penn response identified the two responders and their training background. In addition, West Penn provided their procedures for responding to such an event. Finally, West Penn provided a timeline and map of the restoration activities. Settlement at 5-6.

B. Alleged Deficiencies

The Settlement Agreement stipulates as follows:

- The June 14, 2021 storm referred to in the incident caused significant damage to area trees and power lines, including an energized 7200-volt (phase-ground) primary line that fell across a carport roof at the 586 Arden Road residence in Washington County, Pennsylvania. Settlement Agreement at 4-5 and Statement in Support of the Bureau of Investigation and Enforcement (Appendix A) at 3.

- The consumer residing at 586 Arden Road called 911 for immediate help and then called FirstEnergy Pennsylvania (West Penn) for assistance and waited for someone from FirstEnergy Pennsylvania (West Penn) to come to his home and inform him when it would be safe for him and his girlfriend to evacuate, but nobody came to his assistance. As a result of the downed line remaining on the carport, the homeowner and his girlfriend were unable to leave their home. Had the homeowner or his girlfriend gone near the carport, the downed line could also have presented a risk of serious injury or death. Settlement at 5 and Appendix A at 7.
- On the section of the McGovern circuit in question, there were four locations with wires down. Following the repair of three down wire locations, the line crew patrolled the line prior to closing the fuse at Pole 30718. The line crew was not aware, and did not observe, the portion of the line that was down near 586 Arden Road. After closing in the fuse at Pole 30718 and re-energizing the circuit the following day (June 15, 2021), the line crew heard a bang from the fuse operating at Pole 32869, which then de-energized the portion of the circuit serving 586 Arden Road. Settlement at 5.
- FirstEnergy Pennsylvania (West Penn) undertook an investigation of the events related to the incident and cooperated with and assisted I&E with its investigation of the events surrounding the incident. FirstEnergy Pennsylvania Statement in Support (Appendix B) at 1.
- FirstEnergy Pennsylvania (West Penn) acknowledges the seriousness of the allegations and recognizes the need to prevent the reoccurrence of the misconduct which was the subject of the instant investigation and has already implemented certain of the terms included in the Settlement. Settlement at 9 and Appendix B at 6.

C. Alleged Violations

If this matter had been fully litigated, the Parties agreed that I&E was prepared to present evidence that West Penn had violated several provisions of the Public Utility Code (Code) and the Commission's Regulations, as follows:

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

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

23. These allegations, if proven, would constitute a violation of NESC §§ 214.A.1 and 214.A.5 (requiring that “lines and equipment shall comply with these safety rules when placed in service” and that “[l]ines and equipment with recorded conditions or defects that would reasonably be expected to endanger human life or property shall be promptly corrected, disconnected, or isolated.”); 52 Pa. Code § 57.28(a)(1) (requiring an electric utility to “use reasonable effort to properly warn and protect the public from danger” and to “exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities”); 52 Pa. Code § 57.194(a) (requiring an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public”); 52 Pa. Code § 57.12(a) (requiring an EDC to make a full and prompt investigation of a customer complaint); and 66 Pa.C.S. § 1501 (requiring a public utility to “furnish and maintain adequate, efficient,

safe, and reasonable service and facilities”and to “make all such repairs, changes, . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public” and requiring that such service and facilities “be in conformity with the regulations and orders of the Commission.”).

Settlement at 6-8.

III. Terms of the Settlement

The Settlement recognizes that, had the matter been litigated, West Penn would have denied the alleged violations, raised defenses and/or mitigating factors in support of its defense, and defended against the same at hearing. Settlement at 8.

The Settlement also acknowledges that West Penn understands the nature of the allegations that I&E would have asserted in a formal complaint. West Penn has already put into effect appropriate measures that have been approved by I&E to ensure that such issues would not be likely to reoccur. Settlement at 8.

The Settlement further states that, as a mitigating factor to the above allegations, I&E acknowledges that West Penn cooperated with I&E’s investigation. During the investigation, West Penn also complied with I&E’s requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E. Settlement at 8.

The Parties recognize that their positions and claims are disputed and given that the precise outcome of a contested proceeding is uncertain, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement. Settlement at 9. I&E and West Penn, intending to be legally bound and for consideration

given, desire to conclude this informal investigation and agree to stipulate as to the terms of the Settlement solely for the purposes of the Settlement Agreement. Settlement at 9.

The Settlement was filed by the Parties to provide a complete settlement of I&E's investigation of West Penn's alleged violations of the Code and the Commission's Regulations and to settle this matter completely without litigation as it relates to the incident which occurred in Washington County, Pennsylvania. Settlement at 8.

Pursuant to the proposed Settlement, I&E and West Penn have agreed to the following:

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

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

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

- B. FEPA agrees to implement the following corrective action;

- FEPA, through review of its Emergency Plan procedures, shall oversee the wire down reporting process and follow-up for reports of line down reports to reduce the risk of contact incidents and property damage in their service area.
- Supervisors should verify reports of lines down and follow the FEPA procedures to identify and address hazardous situations as quickly as possible and make safe the area from public contact.
- FEPA shall provide better initial and continued training for the appropriate hazard responder personnel on the Line Down / Hazard process requirements.

Settlement at 9-10.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against West Penn at the Commission with respect to the allegations which were the subject of I&E's informal investigation of the incident. Settlement at 10.

I&E and West Penn jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the *Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings*, 52 Pa. Code § 69.1201. Settlement at 10.

The Parties also claim that approval of the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of I&E's informal investigation of the incident and avoids the time and expense of litigation, which entails hearings, various expenses, and the preparation and filing of briefs,

exceptions, and reply exceptions, as well as possible appeals. Attached as Appendices A and B are Statements in Support submitted by I&E and West Penn, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest. Settlement at 10.

The Settlement provides that no changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved, and that the Settlement Agreement shall be construed and interpreted under Pennsylvania law. Settlement at 11.

The Parties agree that the Settlement is also conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition, without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation or take such other action that is deemed appropriate and, in such event, this Settlement Agreement shall be void and of no effect. The Parties further agree that any election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement. Settlement at 11.

In addition, the Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact, or conclusions of law rendered in this complaint proceeding. It is further understood that by entering into this Settlement Agreement, West Penn has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise because of the circumstances described in the Settlement Agreement. Settlement at 11.

The Parties further state 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. Settlement at 11-12.

The Parties also agree that this Settlement Agreement is being presented only in the context of this proceeding to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement.

By this Settlement, the Parties agree that they are not precluded 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. Settlement at 12.

Finally, the Parties state that the terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Parties submit that 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. Settlement at 12.

IV. Discussion

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*,

625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004).

Consistent with the Commission’s policy to promote settlements, we have promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a civil penalty 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 a proposed settlement agreement is in the public interest. The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.* The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted.

As noted earlier, however, we believe that the current record is insufficient and lacks important factual details which would permit us to determine if the Settlement is in the public interest. Missing facts include, but are not limited to:

1. What caused the energized wire to fail?
2. Does West Penn have a record of any call received to report a down wire on the McGovern Circuit?
3. At the time of the incident, what was West Penn's documented procedure related to handling a call about a downed wire or downed energized wire? Was this procedure followed?
4. Has the process or procedure in question number 3, changed since the June 2021 incident?
5. What was the timeline of the incident, from the time the call for help was placed to the time the residence was made safe?
6. What was the extent of any property damage at the Arden Road residence?
7. How many down wires on the McGovern Circuit were West Penn's responders aware of before they started to repair the circuit?
8. Any other additional information pertinent to these events that can assist the Commission in making a determination in this matter.

We take this action given the lack of detailed information regarding the incident and that this is not the first case involving downed wires at a FirstEnergy Pennsylvania utility. This proceeding is another in a series of cases involving a downed wire, settlement, penalty, and remedial measures.

For example, on June 2, 2009, a West Penn energized line fell from its pole and onto a customer's property. The energized line came into contact with the customer,

killing her and injuring the customer's mother-in-law who tried to render assistance.² On January 9, 2014, the Commission approved a settlement in which West Penn paid a civil penalty in the amount of \$86,000 and agreed to complete ten remedial measures.

On July 26, 2016, a Metropolitan Edison Company (Met-Ed) conductor fell to the ground and remained energized.³ The energized facility caused the fatal electrocution of a customer and property damage. On February 4, 2021, the Commission approved a settlement in which Met-Ed paid a civil penalty in the amount of \$1,000,000, made a contribution to its Hardship Fund in the amount of \$150,000, and agreed to complete a list of remedial measures.

Furthermore, on March 18, 2024, the Commission upheld a complaint against Met-Ed when one of its electrical lines experienced an equipment failure and fell onto a public road.⁴ The energized line damaged an occupied vehicle.

V. Conclusion

Given this record, our precedent, and the above-referenced cases, we conclude that this proceeding should be stayed. As such, , within thirty (30) days of entry of an Opinion and Order in this case, the Commission's Bureau of Investigation and Enforcement and FirstEnergy Pennsylvania (FEPA) shall file supplemental statements in

² *Pa. PUC, Bureau of Investigation and Enforcement v. West Penn Power Company*, Docket No. C-2012-2307244 (Opinion and Order entered January 9, 2014).

³ *Pa. PUC, Bureau of Investigation and Enforcement v. Metropolitan Edison Company*, Docket No. C-2019-3011675 (Final Order entered February 4, 2021).

⁴ *Keith Hartman and Rebecca Hartman v. Metropolitan Edison Company*, Docket No. C-2023-3038465 (Opinion and Order entered March 18, 2024).

support and/or stipulated facts in support of the proposed Joint Petition of Settlement, consistent with this determination and the eight inquiries set forth above; **THEREFORE,**

IT IS ORDERED:

1. That, the Joint Petition for Settlement, filed on March 26, 2024, by the Commission's Bureau of Investigation and Enforcement and FirstEnergy Pennsylvania Electric Company, at Docket No. M-2024-3030738, is stayed.

2. That the Commission's Bureau of Investigation and Enforcement and FirstEnergy Pennsylvania Electric Company shall, within thirty (30) days of entry of this Opinion and Order, file supplemental statements in support and/or stipulated facts in support of the proposed Joint Petition for Approval of Settlement, consistent with this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 27, 2025

ORDER ENTERED: April 15, 2025