

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

Public Meeting held August 14, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair, Dissenting  
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

**TENTATIVE 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 (Joint Petition, Settlement Agreement, or Settlement) filed on March 26, 2024, by the Commission's Bureau of Investigation and Enforcement (I&E) and

FirstEnergy Pennsylvania Electric Company<sup>1</sup> (West Penn or the Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement Agreement and additional supplemental information 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. (Rosi Factors)*. Settlement at 4.

As noted, *infra*, on April 2025, the Commission entered an Opinion and Order (*April 2025 Order*) seeking supplemental comments to the record addressing the Joint Settlement. For the reasons set forth below, upon review of the record herein, including the additional information provided by the Parties pursuant to the directed inquiries in our April 2025 Order, we find it prudent, necessary, and in the public interest to modify the Settlement Agreement and increase the proposed civil penalty outlined in the Settlement Agreement from \$12,500 to \$25,000. Accordingly, we shall tentatively approve the Settlement Agreement, as modified, consistent with the discussion in this Opinion and Order.

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<sup>1</sup> Pursuant to Commission Order at A-2023-3038771, FirstEnergy Corporation’s four constituent Pennsylvania subsidiaries, Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (West Penn), 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 this merger involving 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.”

## 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.

On June 15, 2021, the Commission's Bureau of Consumer Services (BCS) referred an informal complaint to the Commission's Bureau of 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, 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 2024 Order* was published). No comments were filed.

On April 15, 2025, the Commission entered the *April 2025 Order*, wherein it sought supplemental comments to the record addressing the Joint Settlement. In the *April 2025 Order*, the Commission concluded that the record information, as presented, precluded the Commission from determining if the Settlement was in the public interest. The Commission sought supplemental information that included, but was not limited to, eight (8) very specific factual inquiries set forth in the *April 2025 Order*. The *April 2025 Order* gave the Parties thirty (30) days to respond.

On May 15, 2025, the Parties to the Joint Settlement submitted a supplemental filing in response (*Supplemental Filing*), as directed by the *April 2025 Order*. The *Supplemental Filing* addressed the eight (8) questions and provided additional attachments. That filing and those attachments are before us today as supplements to the record in this case.

## **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 its 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. I&E and West Penn intend 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 submit 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 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 are 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. April 2025 Order and Supplemental Filing**

##### ***A. April 2025 Order***

As noted above, in the *April 2025 Order*, the Commission concluded that the existing record was insufficient because it precluded the Commission from determining if the Settlement Agreement was in the public interest. The *April 2025 Order* set out several inquiries about the case to assist in determining if the Settlement Agreement is the public interest. Those inquiries included, but were not limited to, the following:

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.

*April 2025 Order* at 13-14.

In addition, the *April 2025 Order* noted that the downed wire incident at issue in the Settlement Agreement was not the first case involving downed wires and public safety with FirstEnergy Pennsylvania. Rather, the Commission noted that the instant proceeding is but one, in a series of cases involving: (1) a downed wire in FirstEnergy Pennsylvania's service territory, resulting in a negative impact to public safety, property, and the potential or actual loss of human life; (2) a subsequent investigation, settlement, and an agreed upon civil penalty; and (3) the implementation of remedial measures by the Company. *April 2025 Order* at 14-15.

For example, the Commission noted that 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. 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. *April 2025 Order* at 14-15 (citing *Pa. PUC, Bureau of Investigation and Enforcement v. West Penn Power Company*, Docket No. C-2012-2307244 (Opinion and Order entered January 9, 2014)).

Similarly, the Commission noted that on July 26, 2016, a Met-Ed conductor fell to the ground and remained energized. 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. *April 2025 Order* at 15 (citing *Pa. PUC, Bureau of Investigation and Enforcement v. Metropolitan Edison Company*, Docket No. C-2019-3011675 (Final Order entered February 4, 2021)).

Further, the Commission cited to the contested proceeding in *Keith Hartman and Rebecca Hartman v. Metropolitan Edison Company*, Docket No. C-2023-3038465 (Opinion and Order entered March 18, 2024) (*Hartman*). The Commission explained that in *Hartman*, the Commission granted, in part, and denied, in part, a complaint against Met-Ed when one of its electrical lines experienced an equipment failure and fell onto a public road. The energized line damaged an occupied vehicle. *April 2025 Order* at 15.<sup>2</sup>

Given these questions and prior incidents, the *April 2025 Order* provided the parties with an additional thirty (30) days from entry of the *April 2025 Order* to file supplemental responses that addressed the questions. The option to file additional information provided an opportunity to file additional record information that might facilitate a Commission determination if the Settlement is in the public interest.

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<sup>2</sup> We note that in *Hartman*, the Commission imposed a civil penalty of \$750 on Met-Ed and referred the matter to I&E's ESD to review: (1) the alleged unsafe and unreasonable service issues raised by the complainants in *Hartman*, besides the singular violation of 66 Pa.C.S. § 1501 on December 12, 2022; and (2) Met-Ed's practices and procedures as they relate to operating and maintaining unsecured wires or lines resting loose, as well as Met-Ed's practices and procedures for re-energizing lines, and to take whatever further action may be deemed warranted. *See Hartman* at 14, 15. We note that as of the entry of this Opinion and Order, *Hartman* remains an active proceeding with I&E.

## **B. Supplemental Filing in Response to the *April 2025 Order***

On May 15, 2025, the Parties to the Settlement Agreement submitted the *Supplemental Filing* into the record. The *Supplemental Filing* addressed the eight questions set forth in the *April 2025 Order*. The Parties' responses to these questions are summarized below. The Parties' *Supplemental Filing* did not address the prior precedent discussed in the *April 2025 Order*.

### **1. What caused the energized wire to fail?**

The Parties to the Settlement Agreement stated that, beginning on the morning of June 14, 2021, a powerful storm front impacted southwestern Pennsylvania. This front produced sustained high winds and periods of heavy rain with maximum wind gusts up to 60 miles per hour in some areas. During this storm, a tree outside the right-of-way of the power line fell onto the line, causing the line to then fall to the ground. On the McGovern Circuit that was located on Arden Road, there were four locations with wires down, each caused by trees outside the right-of-way falling onto the lines. *Supplemental Filing* at 4.

### **2. Does West Penn have a record of any call received to report a down wire on the McGovern Circuit?**

The Parties explained that West Penn had received 14 wire down notifications for the entire McGovern Circuit, including the four on the Arden Road section on June 14, 2021. *Supplemental Filing* at 4-5.

**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?**

The Parties stated that the documented procedure then in place for incidents involving a downed wire or downed energized wire was to include it in the Create Trouble Ticket (CTT) Quick Reference Card. Attachment A to the *Supplemental Filing* contained a sample CTT.

In the *Supplemental Filing*, the Parties reiterated that it is First Energy's view that a CTT was generated and that use of such CTTs in the future would continue. On the other hand, I&E stated that it would dispute that assertion about the CTT if litigation ensued.

The Parties further stated that a wire down notification was created when Mr. Schmitt, a customer residing at 586 Arden Road, contacted the West Penn Customer Care Center with information about a downed wire that was documented in the notification. However, the Parties represented that information was not relayed to the crew in the field.

A West Penn crew was investigating downed lines on the McGovern Circuit, but the crew working that circuit was at their end-of-shift, having already worked overtime. The downed wire call from Mr. Schmitt about another downed wire was not relayed to the new crew. The West Penn crew did not go to the address, 586 Arden Road, because the information regarding Mr. Schmitt's call to report a line down at that location on his property was not conveyed to the crew. *Supplemental Filing* at 5.

**4. Has the process or procedure in question number 3, changed since the June 2021 incident?**

The Parties noted that this procedure relating to calls for a downed wire has been retained, but West Penn has added several policies to ensure effective communication between its distribution system operator, 911 operator, and operations supervisor in the field.

The parties explained that since this incident, West Penn has implemented one-on-one communications between the 911 dispatcher and the distribution system operator to obtain specific detail, and a specific contact person on site, referred to as the Incident Commander, to understand the emergency situation. This “person on duty” operations supervisor is contacted to report to the location of a downed wire.

*Supplemental Filing at 5.*

**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?**

The Parties stated that on June 14, 2021, at 1557 hours, Mr. Schmitt, the resident at 586 Arden Road, contacted West Penn to report a downed wire across his carport at that residence, 586 Arden Road, in Washington County.

The Parties further stated that on June 15, 2021, at 0725 hours, Mr. Schmitt called West Penn to check the status of the repair and reported that he still had a wire down on his carport. He stated that he was not sure if the line was de-energized and if it was safe to leave his residence. He requested to speak to a supervisor but the call was disconnected from the customer’s side.

On June 15, 2021, at 1315 hours, the downed wire at the 586 Arden Road residence was repaired and made safe. *Supplemental Filing* at 5-6.

**6. What was the extent of any property damage at the Arden Road residence?**

I&E and West Penn stated that they are unaware of any property damage at 586 Arden Road. *Supplemental Filing* at 6.

**7. How many down wires on the McGovern Circuit were West Penn's responders aware of before they started to repair the circuit?**

The Parties claimed that on the section of the McGovern circuit between Poles 30718 and 138173, the West Penn responders were aware of three of the four locations with a wire down prior to starting repairs. The hazard responders believed they made safe the portion of the circuit that served 586 Arden Road by verifying that the fuse at Pole 30718 was open, thereby eliminating the main feed.

The Parties further claimed that the crew did not recognize that there was also a fuse at Pole 32869, which remained closed. Following the repair of the three down wire locations at Pole Nos. 434596, 32869, and 450156, the line crew patrolled the line prior to closing the fuse at Pole 30718. According to the Parties, the line crew was not aware, and did not observe, the portion of the line that was down near 586 Arden Road.

After closing the fuse at 30718 and re-energizing the circuit, 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.

The parties provided Attachment B, which diagrammed the wires down locations on Arden Road to further illustrate and explain the event. *Supplemental Filing* at 6.

**8. Any other additional information pertinent to these events that can assist the Commission in making a determination in this matter.**

Additionally, the Parties explained that effective February 1, 2022, guidelines were established for response time improvement and effective communication between the Company's distribution control centers, customer contact centers, and 911 dispatchers for confirmed life/limb situations.

The parties stated that the updates included one-on-one communications between the 911 dispatcher and the distribution system operator to obtain specific details and a contact person on site, referred to as the incident commander, were now in place to understand the emergency situation.

In addition, the identified "person on duty" operations supervisor is contacted to report to the location. The Parties provided Attachment C, which is a Quick Reference Card that sets forth the guidelines for 911 Call Handling. *Supplemental Filing* at 6-7.

## **V. 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). Based on our review of the Settlement terms and conditions and the *Supplemental Filing*, we shall tentatively approve the Settlement, as modified, consistent with the following discussion.

#### **A. Supplemental Filing**

As outlined above, the responses provided by the Parties to the inquiries set forth in our *April 2025 Order* include additional key information that we find dispositive to a final determination in this proceeding. This information includes the following.

- The customer first contacted West Penn on June 14, 2021, at 3:57 p.m., reporting the downed wire across his carport. The customer then contacted West Penn again on June 15, 2021, at 7:25 a.m., to check the

status of the repair and report he still had a wire down on his carport. On June 15, 2021, at 1:15 p.m., more than 21 hours after the initial report, the downed wire at the 586 Arden Road residence was repaired and made safe.

- I&E and West Penn remain in dispute as to whether West Penn ever created a trouble ticket for the reported downed wire atop the carport at 586 Arden Road.
- The Parties represented that after the wire down notification was created by the customer at 586 Arden Road, such was not relayed to the crew in the field, and the West Penn crew did not go to the address.

It is important to emphasize that this is not the first incident involving a downed wire in the FirstEnergy Pennsylvania Electric service territory. As noted above, in our *April 2025 Order*, the Commission highlighted a number of downed wire events which led to a subsequent investigation, settlement, along with an agreed upon civil penalty and implementation of remedial measures. These incidents included fatalities caused by downed lines on June 2, 2009, and July 26, 2016, at the former utilities Met-Ed and West Penn Power. Our *April 2025 Order* also highlighted a December 12, 2022, incident at Met-Ed involving an energized line on a roadway damaging an occupied vehicle. *April 2025 Order* at 14-15.

## **B. *Rosi Factors* and Civil Penalty**

Consistent with the Commission's policy to promote settlements, and in consideration of the public interest, we have promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors (*i.e.*, the *Rosi 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.

Based upon the information contained in the *Supplemental Filing* and the prior Settlement Agreement, we find that, in applying the above guidelines, the record supports tentative approval of the Settlement, as modified by imposing an increased civil penalty, as discussed below, as being in the public interest. The basis for this conclusion is explained in more detail below.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id.* We agree with I&E that, in this case, First Energy’s 720 kV primary distribution line fell onto the carport of a residence and remained there unattended.

As with our prior decisions addressing First Energy’s downed wires, the facts set out in the Settlement Agreement and the *Supplemental Filing* establish that this downed wire incident involved conduct of a serious nature given the potential impact to public safety, property, and the loss of human life. As noted above, prior cases involving the Company in 2009, 2016, and 2024 resulted in property damage and the potential or actual loss of human life.

The implementation of remedial measures going forward does not obviate the fact that a downed wire presents a very real potential for harm to public safety,

property, or human life. This is not an incident where the seriousness of the conduct does not warrant a penalty. A penalty addresses what happened here in a way that emphasizes not only past action but also the need to prevent similar harm to public safety, property, or human lives in the future.

Response No. 5 in the *Supplemental Filing* shows that the serious nature of the incident spanned from the time Mr. Schmidt first reported a downed wire at his premises on June 14, 2021 at 1557 hours, through a second inquiry on June 15, 2021 at 0725 hours, until it was repaired on June 15, 2021 at 1315 hours. There is no showing that Mr. Schmidt was updated on developments about this downed wire on his property despite the serious nature of the incident. The failure of West Penn to attend to the downed line promptly in this timeline was a very serious matter that presented a threat to life and violated Sections 214 A.1 and 214 A.5 of the National Electric Safety Code (NESC) §§ 214.A.1 and 214.A.5.

Response No. 6 does illustrate that there was no harm to property from this conduct. The response, however, does not address prior precedents in 2009, 2016, and 2024 that did involve public safety, property damage and, in some instances, the loss of life.

The *Supplemental Filing* provides more details on the McGovern Circuit malfunction related to the unattended wire incident at 586 Arden Road. Response Nos. 1 through 4 explain that of the fourteen wire down reports arising from the June 2021 storm, four of the reports concerned the McGovern Circuit on Arden Road and that the Arden Road repairs completed on June 14, 2021, were limited to three of the four downed wires. The fourth downed wire at 586 Arden Road was left unattended June 14, 2021 until it was remedied on June 15, 2021 because the crew did not receive notice about that downed wire.

The responses also explain that the malfunction on Arden Road required repair of the McGovern circuit between Poles 30718 and 138173. The West Penn responders were aware of three of the four locations on the McGovern Circuit with a wire down. The hazard responders believed they made safe the portion of the circuit that served 586 Arden Road by verifying that the fuse at Pole 30718 was open, thereby eliminating the main feed.

Response No. 7 shows that the crew did not know that there was also a fuse at Pole 32869, which remained closed. Following the repair of the other three down wire locations at Poles 434596, 32869, and 450156, 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 the fuse at 30718 and re-energizing the circuit, 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. The wire down at 536 Arden Road was repaired on June 15, 2021 at 1315 hours. As previously noted, Attachment B to the *Supplemental Filing* provides a diagram of the incident.

This information and supplemental facts provided in the *Supplemental Filing, supra*, when combined with the Settlement Agreement, establish that the incident was of a serious nature. This same information supports approval of this Settlement Agreement, as modified by this Opinion and Order, as being in the public interest. In modifying the Settlement Agreement by increasing the civil penalty, *infra*, we find that this reflects the serious nature of what occurred and the potential harm that could have arisen from the Company's conduct. Further, as outlined in the Settlement, the Company has made a commitment to additional remedial measures to prevent similar incidents of a similarly serious nature in the future.

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.*

I&E correctly recognizes that one serious consequence from the downed line being left on the ground was that the homeowner and his girlfriend were unable to leave their home for twenty-one hours and eighteen minutes. Response No. 5 in the *Supplemental Filing* establishes that one consequence of this period of uncertainty about whether they could leave their home occurred from the time Mr. Schmidt first reported a wire down on June 14, 2021 at 1557 hours until the repair of the downed wire on 586 Arden Road on June 15, 2021 at 1315 hours. The delay in corrective action, coupled with the absence of information showing that Mr. Schmidt was kept apprised of developments, left the residents legitimately concerned if the downed wire was live and at what point West Penn intended to fix it, effectively preventing egress.

Response Nos.1 and 5 in the *Supplemental Filing* indicate that the consequences from the conduct would have been quite serious given that there were fourteen down wires from the June 2021 storm, that four of those were on Arden Road, and that the only one left unattended was the downed wire at 586 Arden Road. A downed wire can, as in the past, result in serious consequences such as significant injury if not the loss of human life if left unattended. The *Supplemental Filing* explains that only three of the four downed wires on Arden Road had been addressed as of June 14, 2021. The remaining equally serious downed wire at 586 Arden Road was left unattended through June 15, 2021 at 1315 hours, a period totaling twenty-one hours and eighteen minutes. The repair occurred only after the resident contacted West Penn on June 14, 2021 at 1557 hours and then again on June 15, 2021 at 0725 hours. If either the homeowner or his girlfriend had gone near the carport where the downed line existed

during the time it was unattended, there could have been far more serious consequences than those already presented in the Settlement Agreement and the *Supplemental Filing*.

The *Supplemental Filing* also raises the ancillary potential for serious consequences arising from not providing critical information about the status of the unattended wire to the residents at 586 Arden Road, particularly after Mr. Schmidt made a second inquiry on June 15, 2021 at 0725 hours, and up until it was repaired on June 15, 2021 at 1315 hours. That lack of communication and information to Mr. Schmidt could have resulted in far more serious consequences given the danger to public safety, the potential for property damage, and the loss of human life throughout that time period.

These facts and their very serious consequences are mitigated by the fact that no human lives were lost, in contrast to similar incidents involving the Company in 2009 and 2016 and additional remedial measures were implemented to prevent similar serious consequences in the future. The additional remedial measures adopted here should, in conjunction with those already in place arising from the 2009 and 2016 incidents, when combined with the increased civil penalty of \$25,000 that we shall impose below, work to reduce such incidents, particularly if accompanied by timely updates or information.

Supplemental Filing Response No. 8 provides detailed information on the new remedial guidelines effective February 1, 2022 for response time improvement and effective communication between the Company's distribution control centers, customer contact centers, and 911 dispatchers for confirmed life/limb situations. This includes:

One-on-one communications between the 911 dispatcher and the distribution system operator to obtain specific details and a contact person on site, referred to as the incident commander, were now in place to understand the emergency

situation; and the identified “person on duty” operations supervisor is contacted to report to the location. Attachment C provides the Quick Reference Card guidelines for 911 Call Handling. Response No. 4 explains in more detail how these remedial measures reduce the consequences of serious harm. West Penn implemented one-on-one communications between the 911 dispatcher and the distribution system operator to obtain specific detail, and a specific contact person on site, referred to as the Incident Commander, to understand the emergency situation. This “person on duty” operations supervisor is contacted to report to the location of a downed wire.

Supplemental Filing at 6-7.

This *Supplemental Filing* information is much more detailed than the general terms set forth in the Settlement Agreement with regard to remedial measures. It was the absence of this kind of detailed information that had previously prevented the Commission from making a determination as to whether the Settlement Agreement was in the public interest, as discussed in the *April 2025 Order*. The more detailed information about what happened and what remedial measures have been implemented establish the potential for serious consequences. The more detailed information also supports approval of this Settlement Agreement, as modified. We find that the increased civil penalty from \$12,500 to \$25,000, that we shall impose via this opinion and order will result in a Settlement that is in the public interest. In our view, this combination of an increased civil penalty and remedial measures are appropriate because they are designed to prevent such incidents, and the resulting serious consequences, in the future.

The third factor is “[w]hether 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.” 52 Pa. Code § 69.1201(c)(3). The third factor pertains to litigated cases only. *Id.* Because this proceeding was settled prior to the filing of a complaint by I&E, this factor

is not applicable to this Settlement. We agree with the Parties that because this matter is settled, there is no need to address whether the conduct was intentional or negligent.

The fourth factor is 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. 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. 52 Pa. Code § 69.1201(c)(4).

We agree with I&E that the utility has modified its internal policies and procedures while this proceeding was underway to address the alleged conduct but also to prevent such incidents in the future. We particularly commend West Penn's commitments to modifying their internal procedures to prevent future incidents in a way that makes it less likely that a downed line will be left unattended. Importantly, these additional remedial measures are outlined in more detail in the *Supplemental Filing* and when combined with the Settlement Agreement, as modified, these measures establish enhanced Emergency Plan procedures and oversight of the downed wire reporting process and follow-up reports. The modification of internal policies and procedures is not, in the absence of an increased penalty, sufficient to warrant approval of the Settlement Agreement.

This approach is appropriate because the previous Settlement Agreement only generally stated that West Penn will have its supervisors verify reports of downed lines and follow internal procedures to identify hazardous situations as quickly as possible. The *Supplemental Filing* provided far more detailed information which, as presented here, is helpful in making a determination that approval of the Settlement, as modified by this Opinion and Order, is in the public interest.

The need for these modified internal policies and procedures is also evident in Response No. 2 to the *Supplemental Filing*, which detailed the fact that there were fourteen downed wires as a result of the June 2021 storm and that four of them were on Arden Road. Response No. 3 explains that in such instances a CTT Quick Reference Card is generated. Response No. 3 maintains that a CTT was created in response to the call by Mr. Schmidt reporting a downed wire on 586 Arden Road although I&E would dispute that in litigation. West Penn concedes that, unlike the CTTs generated for the other three downed wires on Arden Road, the information on the incident at 586 Arden Road was not relayed to the crew in the field nor did they visit the premises. This lapse occurred even if there had been a CTT of the type set forth in Attachment A to the *Supplemental Filing*.

Response No. 6 addresses property damage. That response indicates that there was no property damage at 586 Arden Road.

Response No. 7, likewise, provides more support on the need for modification of internal policies and procedures. The incident arose on the section of the McGovern circuit between Poles 30718 and 138173. The West Penn responders were aware of three of the four locations with a wire down prior to starting repairs. The hazard responders believed that they made safe the portion of the circuit that served 586 Arden Road by verifying that the fuse at Pole 30718 was open, thereby eliminating the main feed.

The need for modification to internal policies and procedures is buttressed by a record, which shows that the crew was not aware of the fourth downed wire at 586 Arden Road. They did not recognize that there was a fuse at Pole 32869, which remained closed. Following the repair of three down wire locations at Poles 434596, 32869, and 450156, 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.

Importantly, after closing the fuse at 30718 and re-energizing the circuit, 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. The crew's action can be attributed to the lack of information about the fourth down wire at 586 Arden Road on June 14, 2021, even if a CTT was generated. It was this down wire that was not corrected until June 15, 2021 at 1315 hours.

Response No. 4 reiterates that West Penn will continue to utilize its CTT process going forward. West Penn concedes that in this case any CTT notification that was generated following Mr. Schmidt's report of a downed wire was not relayed to the crew in the field. Response No. 4 also provides more detail on the changes that West Penn has made. The parties explain that West Penn has implemented one-on-one communications between the 911 dispatcher and the distribution system operator to obtain specific detail, and a contact person on site, referred to as the incident commander, to understand the emergency situation. A "person on duty" operations supervisor is contacted to report to the location of a downed wire.

This supplemental information provides far more detail on the modification to the internal policies and procedures, when compared to the general statements in the Settlement Agreement about providing initial and continued training for the appropriate hazard responder personnel on how to address such situations. The detailed modification to internal policies and procedures compared to those that are now in place should reduce the potential for serious consequences in the future. The fact that there was no harm to property in the instant case, in contrast to the above cited cases involving FirstEnergy Pennsylvania in 2009, 2016, and 2024 is more the result of the behavior of Mr. Schmidt and his girlfriend upon discovery of the downed wire, than the existence of effective

remedial measures at the time of the incident. By the same token, the new remedial measures agreed upon by the Parties supports our conclusion that approval of the Settlement Agreement, as modified by increasing the civil penalty below, is in the public interest.

Approval is also appropriate because these remedial measures expand on remedial measures adopted after downed wire incidents in 2009 and 2016. The combination of existing and modified internal policies and procedures support approval of this Settlement Agreement, as modified by imposing the increased civil penalty from \$12,500 to \$25,000. Our ratification secures those benefits of the modifications to internal policies and procedures as being in the public interest. Our action ensures that an appropriate civil penalty is paid to reflect the serious nature of what happened and could happen in the future without these measures. This combination addresses the serious nature of what happened and what could occur in the future without these modifications to internal policies and procedures. The increased civil penalty from \$12,500 to \$25,000 collectively supports our conclusion that adoption of the Settlement Agreement, as modified is in the public interest under this factor.

The fifth factor for our review under *Rosi*, is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In this case, two residents at 586 Arden Road were impacted. They contacted West Penn twice regarding the incident at 586 Arden Road. Their first inquiry was on June 14, 2021 at 1557 hours. Their second inquiry was on June 15, 2021 at 0725 hours. Those residents were concerned if the remaining downed line on their property was live or not.

West Penn correctly notes only two customers were impacted by this incident, and that this is a small amount when compared to the 15,000 customers adversely impacted by the June 2021 storm. The *Supplemental Filing* in Response Nos. 1 and 2 provide much more detail on the total impact from that June 2021 storm.

This June 2021 storm generated heavy rain and maximum gusts of wind in excess of 60 mph. The storm triggered notification of fourteen downed wires for the entire McGovern Circuit and that four of those fourteen were on Arden Road. Response No. 3 indicates that only one of those four downed wires, the one at 586 Arden Road, was not addressed by the crew on June 14, 2021. Response Nos. 3 and 5 explain that the inaction on the downed wire at 586 Arden Road occurred because the information about that fourth downed wire, which was called in by Mr. Schmidt on June 14, 2021 at 1557 hours, was not communicated to those working on down wires in the field. Consequently, the downed wire was not corrected until June 15, 2021 at 1315 hours.

The two customers impacted by one downed wire in a storm that produced fourteen downed wires may be small. However, that small number of two consumers does not detract from the fact that two consumers were harmed by a similar incident in 2009 and that one consumer was killed and the other was injured.

The fact that a consumer was not killed in this 2021 incident involving two customers, compared to the fact that a consumer was killed in the 2009 incident involving two customers, does not mean that any number of consumers would not be harmed in the future if a similar incident arose. This one downed wire left unattended could have had very serious consequences, such as those that occurred in 2009 with its adverse impacts to public safety, property, or the loss of human life. The number of people at risk does not diminish the adverse impact to public safety, property, or the potential loss of human life that did occur and could occur in the future. It is the potential and actual serious harm that matters. The Commission's concern with public safety, property, and human lives is not based solely on the number of persons impacted. It is also based on the overall potential for adverse harm to public safety, property, and human life. In such instances, a civil penalty may be appropriate to address what happened and to prevent future recurrences.

This is an important consideration because, as previously discussed, this is not the first incident involving FirstEnergy Pennsylvania where a downed wire left unattended caused harm to two people and damaged property. As noted in our *April 2025 Order*, a past incident in 2009 concerning only two persons, but that incident, unlike here, was accompanied by the loss of human life and injury to property. As also discussed above, our *April 2025 Order* also cited an incident in 2016 that triggered the loss of life. Additionally, although the 2024 incident in *Hartman* did not involve the loss of life, there was property damage.

The major difference between this case and the incident in 2009 is not the number of persons involved, but the loss of human life that occurred in the 2009 incident.. The same is true of the incident in 2016, which resulted in another loss of life. The difference is that the loss of human life that occurred in the 2009 and 2016 incidents, and not necessarily the number of lives lost. The difference between this case and the 2024 incident in *Hartman* is the absence of property damage here, compared to the property damage that occurred in *Hartman*.

The differing result when it comes to the loss of human life in 2009 and 2016 compared to the instant proceeding seems to have occurred because Mr. Schmidt called in at 1557 hours on June 14, 2021. An inordinate period of time (*i.e.*, 21 hours and 15 minutes) elapsed between the time the downed wire was first reported and the time it was repaired. There is no indication that Mr. Schmidt was provided with any updates despite his second inquiry on June 15, 2021 at 0725 hours. The duration from when it was first reported until it was finally repaired could have resulted in far more serious consequences but for Mr. Schmidt's actions.

As previously noted, the fact that no human life was lost here seems to be more the result of the reluctance of Mr. Schmidt and his girlfriend to leave the residence, rather than the effectiveness of the Company's conduct or the remedial measures adopted

in 2009 and 2016 to shorten the duration of downed wires. This not only supports ratifying these additional remedial measures but also imposing an increased civil penalty, as modified by this Opinion and Order, to address what occurred and to underscore the need to prevent future recurrences.

Our ratification of remedial measures that did not exist until this Settlement Agreement benefits not only the two persons impacted here but also future persons impacted by any downed wire. Our consideration of the number of persons impacted and our imposition of an increased civil penalty ensures that remedial measures addressing the experience of two persons here, where there has been no loss of human life compared to the loss of life in the 2009 and 2016 incidents creates standards that reduce the potential harm to public safety, property, and the loss of human lives arising from downed wires left unattended for an inordinate amount of time with no communication about what is occurring to an inquiring consumer directly impacted by the downed wire.

We take that approach here considering the number of persons impacted as well as the imposition of an increased civil penalty from \$12,500 in the Settlement Agreement to \$25,000. This combination of the number of persons affected and an increased civil penalty addresses not only the failure to remedy promptly a downed wire that was overlooked for two persons who were not updated on what was occurring, but also the need to communicate what is happening to impacted persons while avoiding adverse consequences to any life or property in the future. That makes approval of a Settlement Agreement, as modified by an increased civil penalty, consistent with the public interest under this factor.

The sixth *Rosi* factor authorizes the Commission to consider the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “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.” *Id.* We

appreciate that West Penn subsequently reviewed its Emergency Procedures, including follow up on reports of downed lines and procedures to identify and address such hazards.

Our *April 2025 Order* cited several West Penn incidents in the past that were of a similar nature from 2009 through 2024. The Parties to the *Supplemental Filing* did not address this compliance history from the *April 2025 Order* on downed wires.

Our considered examination of the Company's compliance history, and these facts set out in the Settlement Agreement and the *Supplemental Filing* not addressed previously, shows that there have been multiple incidents involving downed wires in 2009, 2016, and 2024. The incidents in 2009 and 2016 resulted in the loss of human life. The incident in 2009 killed one person and harmed another. The incident in 2016 killed one person. The incident in 2024 did not result in the loss of life but did result in property damage. These downed wire incidents show that subsequent remedial measures did not prevent harm to public safety, property, or the potential loss of human life. The remedial measures from the 2009 and 2016 incidents do suggest that they helped prevent the loss of life in the instant proceeding.

However, the fact that the compliance history shows that higher penalties occurred where there is a loss of human life from a downed wire, as in 2009 and 2016, does not prevent the imposition of an increased civil penalty when, as here, another downed wire incident is left unattended for an inordinate period and the impacted consumers are not updated on developments even when there is no loss of human life. This is particularly true if prior remedial measures agreed to when there were downed wires in the past prove insufficient in preventing downed wires from being left unattended for long periods in the future with no communication to the consumer, as occurred here. The prior compliance history involving this Company shows that remedial measures alone do not prevent a considerable lapse in time between when a

downed wire report is received until it is finally corrected or whether such information is conveyed to the impacted public. This longer than reasonable duration and the absence of communication presents danger to public safety, property, and life.

In this case, as in 2009, the noncompliance concerned a downed wire that impacted two persons. Unlike the 2009 incident, however, this 2021 incident did not involve the loss of human life. That fact that the prior remedial measures from 2009 did not prevent a downed wire from being left unattended for a long period in 2021 supports the need for more remedial measures compared to 2009. The instant Settlement Agreement, as modified by this Opinion and Order, provides the necessary additional remedial measures.

The fact that no lives were lost in 2021 compared to 2009 or 2016 may support an increased penalty compared to one proposed in a Settlement Agreement if downed wires are left unattended for an inordinate time period and updates are not communicated to the impacted public. An increase in the civil penalty, *infra*, underscores the serious impact or harm that is associated with downed wires. This difference in result when it comes to lives does not negate the imposition of an increased civil penalty, in conjunction with additional remedial measures and modifications to internal policies and procedures, when appropriate.

We appreciate the modifications to internal policies and procedures addressed in this Settlement, with regard to revised Emergency Procedures, training of personnel, and a follow-up process on downed lines even as the incident was under investigation. In our view, this demonstrates a compliance history that contemplates additional remedial measures when needed to reduce the potential for the loss of life, damage to property, or threats to public safety. This same compliance history also shows that more remedial measures may be needed if the prior measures fail to prevent a long lapse of time from reporting on and then remedying a downed wire.

The Company's compliance history shows that unattended downed wire incidents have, can, and could continue to cause harm. The Commission has approved settlement agreements in the past with remedial measures when downed wires caused the loss of human life. The compliance history shows improvement regarding downed wire remediation because the loss of life that occurred in 2009 and 2016 did not occur in 2021. The absence of any loss of human life does not mean that there is no need for additional remedial measures and civil penalties to address what did happen and to prevent incidents like this in the future. The compliance history supports our determination that approval of this Settlement Agreement is in the public interest.

The seventh *Rosi* factor for our consideration is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E and West Penn, there has been full cooperation with the investigation. West Penn's participation in the submission of more detailed information in the *Supplemental Filing* further supports that statement. West Penn again stresses its commitment to preventing such serious incidents in the future.

Cooperation after an incident has occurred is commendable and should be encouraged. Cooperation can and has reduced what would otherwise be a far larger sanction, although it does not preclude imposition of an increased civil penalty compared to that proposed in a Settlement Agreement. Here, the Company cooperated not only in 2021 when there was no loss of life but also in 2009 and 2019 when human lives were lost.

Nonetheless, cooperation does not detract from the fact that an unattended downed wire and failure to communicate with the impacted public poses a very serious threat to public safety, property, and human life. Cooperation can mitigate a far larger civil penalty, but it does not obviate the imposition of an increased civil penalty compared to that proposed in a Settlement Agreement when the facts, prior remedial

measures, and the Company's compliance history establish a serious threat to public safety, property damage, or the loss of human life.

Remedial measures, particularly those taken immediately following an incident, and modifications to internal policies and procedures, constitute significant proof of cooperation. Cooperation is particularly appreciated and evident in those cases where additional remedial measures and changes to internal policies and procedures are undertaken while an investigation for leaving a downed wire unattended is in progress. That occurred here. The *Supplemental Fling* contains a far more detailed discussion of the additional processes and remedial measures that have occurred compared to the general language in the Settlement Agreement. This cooperation supports a conclusion that approval of a Settlement Agreement, as modified by our imposition of an increase civil penalty below, is in the public interest.

The eighth *Rosi* factor for our consideration is the appropriateness of the penalty. 52 Pa. Code § 69.1201(c)(8). We will address the amount of the civil penalty proposed here in light of what happened here, prior incidents, and what would deter future violations. 52 Pa. Code §§ 69.1201(c)(8).

We recognize that the focus of a civil penalty is to address not only past action but also to encourage action that will deter future incidents of a similar nature. The civil penalty proposed here, as with the past incidents in 2009 and 2016, is accompanied by remedial actions and commitments.

A civil penalty is appropriate when it addresses action that raises serious impacts to public safety, property, or human lives. A downed wire left unattended is one such an incident given the potential impact on public safety, property, and human lives. A civil penalty may differ from civil penalties for similar incidents in the past, particularly if there is no loss of human life. By the same token, a larger penalty may be

imposed regardless of the loss of human life if the remedial actions fail to reduce the harm to public safety, property damage, or human life in similar incidents in the future.

Upon review of the record herein, including the additional information provided by the Parties pursuant to the directed inquiries in our *April 2025 Order*, we find it prudent, necessary, and in the public interest to increase the civil penalty set forth in the Settlement Agreement from \$12,500 to \$25,000.

Of the utmost concern, the customers at the 586 Arden Road residence placed a call detailing the downed wire on their carport at 3:57 p.m. The issue was not resolved until 1:15 p.m. the following day, noting that Mr. Schmidt called again that morning to seek a status update. As the proceeding details, had Mr. Schmidt or his girlfriend attempted to depart the home, they would have been at risk of injury or death. Consequently, Mr. Schmidt and his girlfriend were trapped in their home for over twenty-one hours.

Further substantiating a higher civil penalty is the apparent failure of West Penn to properly communicate the situation at 586 Arden Road to its crews. Such failure is significant insofar as it can be directly tied to why Mr. Schmidt and his girlfriend were trapped in their home for twenty-one hours and eighteen minutes, since this breakdown in communication resulted in the failure of a crew to timely respond.

Compounding our concerns is a further lack of information showing that Mr. Schmidt was kept apprised of developments, therefore leaving the residents legitimately concerned if the downed wire was live and uninformed as to when West Penn intended to fix it. Finally, the record indicates that West Penn re-energized its McGovern Circuit without knowing of the situation at 586 Arden Road, resulting in a loud bang caused from a short circuit at a fuse on one of the McGovern Circuit poles.

Accordingly, we find this increase of 100% of the agreed upon civil penalty set forth in the Settlement (*i.e.*, an increase from \$12,500 to \$25,000) is necessary and proper given the gravity of circumstances outlined above along with the Company and its previous affiliates history of similar events. We further note that all other provisions of the proposed Settlement Agreement would remain intact.

The ninth *Rosi* factor for our consideration is prior Commission decisions in similar cases. 52 Pa. Code § 69.1201(c)(9). We agree with West Penn that the instant Settlement in the circumstances is consistent with prior decisions. We also underscore our agreement with I&E that the agreed-upon civil penalty is similar to that assessed in prior Commission decisions involving violations of the NESC, the Code, and the Commission's Regulations.

However, as we noted earlier, this downed wire incident was left unattended as occurred with prior decisions in similar cases. Each of these cases raise serious concerns about public safety, property, and the loss of human life. The increased civil penalty of \$25,000 that we shall apply in this Opinion and Order, must be evaluated in light of these prior decisions.

The 2024 incident in *Hartman* resulted in damaged property but not the loss of human life. The 2009 and 2016 incidents triggered the loss of human life, penalties of \$86,000 and \$1,000,000 respectively, and remedial measures. As previously noted, the incident that is the subject of the instant proceeding did not result in either property damage or the loss of life.

The absence of property damage or the loss of human life are critical differences when comparing this case to similar decisions. A civil penalty of \$25,000, as set forth in this Opinion and Order, is smaller than the \$86,000 and \$1,000,000 penalties imposed in 2009 and 2016. Those far larger penalties involved the loss of human life

which is not present here. The smaller penalty is also accompanied by additional remedial measures that built upon the measures adopted in 2009 and 2016. These considerations support a smaller penalty. Further, the increased civil penalty that we shall impose in this Opinion and Order, when compared to that originally proposed in the settlement, supports a finding that approval of the Settlement Agreement, as modified by this Opinion and Order, is in the public interest

The tenth and final factor for our consideration is the consideration of any additional factors. 52 Pa. Code § 69.1201(c)(10). In this regard, we agree with the Parties that this Settlement avoids a more protracted and costly litigation that could have produced a similar result. Our modification of the instant Settlement Agreement differs from that proposed by the Parties only as to the size of the civil penalty. We believe this is appropriate given the detail provided by the Parties in the *Supplemental Filing*, which creates a record that supports approval of the Settlement Agreement, as modified with an increased civil penalty, as is in the public interest because it is based on the grave circumstances outlined in the record while conserving scarce administrative and judicial resources compared to litigation that would likely have a result that would be very similar.

Other factors support approval as well. The \$25,000 civil penalty that we shall impose via this Opinion and Order is appropriate, consistent with prior decision, and is appropriate given how long the downed wire was left unattended but without property damage or the loss of human life. This figure is consistent with prior decisions that resulted in far larger civil penalties associated with downed wires that triggered the loss of human life.

Moreover, the additional remedial actions, and modification to internal policies and procedures, even as the investigation was underway, are factors that supports approval of this Settlement Agreement, as modified with the increased civil penalty, as

being in the public interest. Our approval does not preclude the Commission from imposing larger penalties in future cases even when there has been no loss of life or property damage if this combination of remedial measures and civil penalty fail to reduce the frequency or duration of downed wires being left unattended.

Finally, as discussed above, we have imposed an increase of 100% of the agreed-upon civil penalty set forth in the Settlement Agreement, or from \$12,500 to \$25,000. Thus, we note that in accordance with the provisions of the Settlement Agreement, should either of the Parties wish to withdraw from the Settlement based on this modification, that Party shall provide written notice to the Secretary of the Commission, and all active Parties to this proceeding, of its election to withdraw within twenty (20) business days from the date that this Opinion and Order is entered. Settlement at ¶ 33. Therefore, we shall tentatively approve this Settlement Agreement, as modified, subject to either or both Parties' election to withdraw from the Settlement. In the event that either or both Parties elect to withdraw from the Settlement, the Joint Petition for Settlement shall be denied and returned to I&E for further action.

## **VI. Conclusion**

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties' *Supplemental Filing* has now provided the Commission with a more detailed record in response to the *April 2025 Order*. This facilitates determination whether this Settlement Agreement is in the public interest.

Based upon our review of the record, as supplemented, the Commission's Regulations and policy statements, and the Company's commitments and remedial actions, we conclude that it is prudent, necessary, and in the public interest to increase the proposed civil penalty outlined in the Settlement from \$12,500 to \$25,000. We further conclude that all other provisions of the proposed Settlement should remain intact,

finding them to be in the public interest. Accordingly, we shall tentatively approve the Settlement Agreement, as modified, subject to either or both Parties' election to withdraw from it. **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 tentatively approved, as modified by this Opinion and Order.

2. That the Bureau of Investigation and Enforcement and FirstEnergy Pennsylvania Electric Company, as Parties to the Joint Petition for Settlement at Docket No. M-2024-3030738, shall have twenty (20) days from the date of entry of this Opinion and Order to file a notice provide written notice of such withdrawal to the Secretary of the Commission and all active Parties to this proceeding, in accordance with Paragraph 33 of the Joint Petition for Settlement. Should either Party elect to withdraw, the Joint Petition for Settlement shall be disapproved, without further action by this Commission, and this matter shall be returned to the Commission's Bureau of Investigation and Enforcement for further action as deemed appropriate.

3. That if neither the Commission's Bureau of Investigation and Enforcement, nor FirstEnergy Pennsylvania Electric Company elects to withdraw from the Joint Petition for Settlement, as outlined in Ordering Paragraph 2 above, then the Joint Petition for Settlement, as modified, shall be approved ordering paragraphs Nos. 4 through 7, below, shall apply.

4. That in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of the entry of this Opinion and Order,

FirstEnergy Pennsylvania Electric Company will pay a civil penalty in the amount of Twenty Five Thousand Dollars (\$25,000 payable by certified check or money order. 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 to "Commonwealth of Pennsylvania" and sent to:

Matthew L. Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

5. That, a copy of this Final Opinion and Order at Docket No. M-2024-3030738 shall be served upon the Financial and Assessment Bureau, Bureau of Administration.

6. That, if FirstEnergy Pennsylvania Electric Company fails to make the civil penalty payment required above within thirty (30) days of the entry of the final Commission Order in this proceeding, 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 any other appropriate action.

7. That, after FirstEnergy Pennsylvania Electric Company remits the civil penalty as set forth in Ordering Paragraph 2, above, and upon the receipt of the civil penalty, the Secretary's Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**

A handwritten signature in black ink that reads "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher  
Secretary

(SEAL)

ORDER ADOPTED: August 14, 2025

ORDER ENTERED: September 3, 2025