PULP
PENNSYLVANIA
UTILITY LAW PROJECT

December 15, 2016

*Via Electronic Filing*
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: PECO Energy Company's Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan**

**Docket No. P-2016-2573023**

*Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)*

Dear Secretary Chiavetta,

Please find attached for filing the Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in the above-captioned proceeding. Copies of this filing have been served in accordance with the attached Certificate of Service.

Please feel free to contact me directly should you have any questions.

Sincerely,

Joline Price
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Enclosures

cc: Certificate of Service

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code §56.17 | : | |
| AND | : | Docket No. P-2016-2573023 |
| PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with respect to that plan | : | |

## CERTIFICATE OF SERVICE

I hereby certify that I have this day, December 15, 2016, served copies of the **Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania,** as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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**Dated: December 15, 2016**

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**Comments of the Coalition for Affordable Utility Services**

**and Energy Efficiency in Pennsylvania**

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**December 15, 2016**

## I. INTRODUCTION

On October 26, 2016, PECO Energy Company ("PECO") filed a Petition requesting that the Pennsylvania Public Utility Commission ("Commission") approve its pilot plan for an Advance Payments program and requested waivers of specific regulations governing Advance Payments programs, located at 52 Pa. Code § 56.17 ("Petition", "PECO's Proposal" or "Prepay Program"). Two days later, on October 28, 2016, the Commission issued a Secretarial Letter acknowledging receipt of PECO's petition and setting out a comment procedure for evaluation of that Plan. On November 12, 2016, PECO's Petition was published in the Pennsylvania Bulletin.[1] On November 15, 2016, the Office of Consumer Advocate ("OCA"), the Tenant Union Representative Network and Action Alliance of Greater Philadelphia (collectively, "TURN et al.") and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA")[2] each filed Answers to PECO's Petition. CAUSE-PA submits the following comments pursuant to the Secretarial Letter and Notice published in the Pennsylvania Bulletin.

Advanced Payments are more commonly referred to as prepayments, prepaid electricity or Prepay. As opposed to traditional "postpay" service, where customers pay for their metered usage after consumption, customers participating in PECO's Prepay Program would pay in advance of consumption. As the customer consumed electricity over time, the prepaid account balance would decline until the customer either ran out of credit or reloaded the account with more money.

Although Commission regulations adopted in 1978 permitted Prepay programs under specific circumstances,[3] to the best of CAUSE-PA's knowledge, no major jurisdictional Pennsylvania utility has implemented a Prepay program in the last 38 years. On the other hand, in the almost 40 years since the Commission adopted those regulations, the electricity landscape has changed dramatically in Pennsylvania. In particular, the Electricity Generation and Customer Choice Act (Choice Act)[4] set up parameters for the restructuring of the electric utility industry,

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[1] 46 Pa.B. 46.

[2] CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence.

[3] *See* 52 Pa. Code § 56.17

[4] 66 Pa. C.S. § 2801–2815.

and the Responsible Utility Customer Protection Act (Chapter 14)[5] set out specific standards for billing, collection, and termination.

The regulations allowing prepayment meters have never been evaluated in light of these changes to Pennsylvania's statutes and public policy regarding continuity of electric service. Both the United States Supreme Court and the Pennsylvania legislature have specifically recognized that utility service is necessary for health and safety.[6] Sudden loss of utility service can cause serious harm – loss of refrigeration and the ability to cook food, inability to use critical medical equipment, and dangerously cold or hot conditions in the home.[7] To be lawful, a prepaid electricity plan must meet the requirements set forth in 66 Pa. C.S. §2801 to §2815 ("Choice Act"), including that "[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions;"[8] and "[t]he commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory."[9] Because PECO's Prepay Program does not and cannot meet this standard, CAUSE-PA opposes the pilot in its entirety

The Commission should not approve PECO's Prepay Program because it is not in the public interest to do so and because PECO has provided scant details about its implementation. PECO's desire that the Commission simply trust it to work out the details after approval is inappropriate. As outlined more fully below, CAUSE-PA has the following specific concerns regarding PECO's Proposal:

- PECO's Prepay Proposal is harmful to the health, safety, and welfare of Pennsylvanians and it is not in the public interest.

[5] 66 Pa. C.S. § 1401–1419.
[6] *See Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 18 (1978) ("Utility Service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety."); 66 Pa. C.S. § 2802(9) ("Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.")
[7] *See* Nat'l Consumer Law Center, Rethinking Prepaid Electric Utility Service: Customers at Risk 8 (June 19, 2012), https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf
[8] 66 Pa. C.S. § 2802(9). *See also* 66 Pa. C.S. § 2203(8).
[9] 66 Pa. C.S. § 2804(9).

- PECO's proposed Prepay Program would deprive PECO's consumers of numerous consumer protections, as required by 66 Pa. C.S. §1401 to 1419 ("Chapter 14"), thereby creating a "second class service;"
- Any and all benefits identified by PECO in the Petition can be provided without depriving consumers of protections from service disconnection or causing needless harm to vulnerable customers.
- PECO's Petition is vague and lacks sufficient detail to determine the scope, depth, and impact of the pilot PECO proposes.

## II. COMMENTS

### a. PECO's Prepay proposal is harmful and is not in the public interest

PECO claims the initial results from programs run by larger, investor-owned utilities are "promising."[10] Despite this claim, there is simply no information contained within PECO's Petition to support such a conclusion. More data and information is needed to make an appropriate, factually-based assessment of existing programs, and to evaluate PECO's conclusory statements that existing programs in other parts of the nation have high levels of voluntary enrollment and customer satisfaction.

Most Prepay programs in the United States are run by unregulated municipal utilities and electric cooperatives. These are programs that are not subject to state regulatory oversight of service – including but not limited to bill payment timeframes, notice of disconnection, winter and/or medical prohibition on termination, payment plans, and payment assistance programs.[11] This contrasts with the many tools available to PECO and the Commission – consumer protections developed and implemented with consumer health and safety in mind.

[10] PECO Petition at ¶ 4.
[11] Nat'l Consumer Law Center, Prepaid Electric Utility Service: The Need for Essential Consumer Protections (June 24, 2015), http://www.nclc.org/images/pdf/energy_utility_telecom/electric_and_gas/prepaid-electricity-service-ppt.pdf.

b. PECO's Prepay proposal would attract customers who *already struggle* to keep up with utility bills.

Prepaid electricity attracts already payment troubled consumers. The National Consumer Law Center, surveying existing prepayment programs, found that prepaid utility service is concentrated among lower-income consumers.[12] In the United Kingdom, pre-payment meter customers are more likely to be low-income.[13] Similarly, in Arizona, the Salt River Project's M-Power program, the largest prepayment program in the United States, concentrates among low-income, younger households who have low or new credit ratings.[14]

PECO's program is designed to appeal to customers who already struggle to keep up with their electric bills. The benefits to customers touted by PECO will be most attractive to payment troubled customers. By allowing customers to avoid paying a deposit to establish credit, PECO's Prepay Program will appeal to customers who could not afford to pay a deposit or who are required to pay a deposit because of past credit and collection activities with the utility. Likewise, by allowing customers with prior arrearages to avoid paying off that debt in full, the Prepay Program is designed to appeal to customers who have previously been disconnected for nonpayment.

While PECO purports to exclude low-income consumers from its pilot, PECO's proposal does not contain any information about whether and how PECO will identify the income of consumers who sign up for the pilot. This is troubling, as there are many customers in PECO's service territory that are not known to PECO to be low-income. Based on census data, PECO estimates that more than 380,000 of its electric customers have income below 150 percent of the federal poverty level (FPL).[15] Of those consumers, less than half – 174,618 customers – are

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[12] Nat'l Consumer Law Center, Rethinking Prepaid Utility Service: Customers at Risk 25 (June 2012), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.

[13] *Id.* at 11, 16 ("Sixty percent of electricity and natural gas customers with prepayment meters in 2010 had annual incomes below . . . $27,704.").

[14] Electric Power Research Institute, Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program 4-6 (Oct. 2010), https://www.smartgrid.gov/files/Paying_Upfront_Review_Salt_River_Project_MPower_Prepaid_Pr_201007.pdf. It is important to note that neither the Salt River Project nor the utilities in the United Kingdom report the number of service disconnections associated with prepayment, making it hard to assess the true harm of their programs. Nat'l Consumer Law Center, Rethinking Prepaid Utility Service: Customers at Risk 16–17 (June 2012), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.

[15] *See* Pa. PUC Bureau of Consumer Services, Report on 2015 Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies and Natural Gas Distribution Companies at 7, http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf

confirmed low-income customers.[16] Without clear guidelines as to how PECO will be asking about income from program applicants – and checking income over the course of the pilot – many vulnerable low-income consumers could enrolled in PECO's pilot program.

Furthermore, it is essential to realize that 150% of FPL is an arbitrary determination as to whether a household is or is not economically vulnerable and/or able to pay all of their bills. Many households with income above 150% of FPL struggle to afford basic life necessities.[17] A recent report identified a self-sufficiency standard in Pennsylvania, defining self-sufficiency as enough income to meet basic needs:

> Overall, using the Self-Sufficiency Standard, about one in four households (25.6%), lack sufficient income to meet their basic costs in Pennsylvania. This is more than double the proportion found to be poor using the FPL: if the Federal Poverty Level (FPL) is used, only about one in nine (11%) Pennsylvania households included in the analysis for this report are designated officially as poor (excluding elderly and disabled). This means that while the FPL identifies 355,936 households as "poor," nearly 840,000 households lack enough income to meet all basic needs. **Moving from statistics to people, that translates to over 2.3 million men, women, and children struggling to make ends meet in Pennsylvania. Over half of these Pennsylvanians are overlooked and undercounted using the official poverty thresholds.**[18]

The Public Utility Code specifically recognizes the vulnerability of these higher income households, protecting customers up to 250% FPL from termination in the winter and providing specific, and longer payment agreement terms for households up to 300% FPL.[19] Finally, PECO's Universal Service Program recognizes this reality as well – the income limit for PECO's Hardship Fund, the Matching Energy Assistance Fund, is 175% FPL.[20]

Thus, even if PECO did agree to screen out all households who are at or below 150% FPL, there would nonetheless be thousands of vulnerable households that would not be excluded from the pilot. For all households struggling to make ends meet, PECO's proposal does only harm, as explained below, and provides no benefits.

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[16] *Id.*
[17] DIANA M. PIERCE, OVERLOOKED AND UNDERCOUNTED: HOW THE GREAT RECESSION IMPACTED HOUSEHOLD SELF-SUFFICIENCY PENNSYLVANIA 5 (Oct. 2012), http://depts.washington.edu/selfsuff/docs/PA2012_Web_101112.pdf.
[18] *Id.* at 11.
[19] *See* 66 Pa. C.S. § 1406 (b)(1)(iii); 66 Pa C.S. § 1405(b).
[20] PECO Energy Company Revised 2016-2018 Universal Service and Energy Conservation Plan, M-2015-2507139.

c. PECO's Prepay proposal creates a second tier of electric service for vulnerable households and asks to implement imprudent and potentially unlawful policies.

Although PECO purports that its pilot is designed to give households more options, the pilot would in actuality create two tiers of service: one for those who can afford to post-pay and a second class service for vulnerable households. This second class of electric service is specifically designed to appeal to households who are payment troubled and have previously been disconnected for nonpayment – while at the same time eliminates or otherwise circumvents almost all of the statutory and regulatory consumer protections for those households, including protection from termination in the winter. In return for the consumer's waiver of statutory and regulatory protections, the pilot does not provide any tangible benefit to payment troubled households. Rather, households prepaying for their electricity would likely experience frequent interruptions in electric service, threatening both the health and safety of the household, and would face higher ancillary costs as a result of frequent transaction fees.[21]

*i. PECO's Prepay proposal eliminates consumer protections*

As noted above, Chapter 14 includes several protections for payment-troubled consumers. All customers are entitled to written notice of termination, as well as additional contact by the utility prior to termination.[22] In addition, specific payment agreement terms are available, depending on income levels, and low and moderate income customers are protected from termination in the winter months.[23] Under PECO's Proposal, customers and applicants enrolling in Prepay lose all of these protections.

In addition, without a notice of termination, customers may be ineligible for a hardship fund grant until they were actually terminated.[24] PECO's hardship fund guidelines require that a customer meet all of the following eligibility requirements:

- Meet the income eligibility of 175% of the FPL.

[21] *See Memphis Light, Gas & Water Division v. Craft,* 436 U.S. 1, 18 (1978) ("Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.")
[22] 66 Pa. C.S. §1406 (b).
[23] *See* 66 Pa. C.S. § 1406 (b)(1)(iii); 66 Pa C.S. § 1405(b).
[24] PECO Energy Company Revised 2016-2018 Universal Service and Energy Conservation Plan, 16 M-2015-2507139.

- Demonstrate an emergency need / hardship, (i.e. service is in imminent danger of termination or has been terminated),
- Be a resident within the county where they are applying for a MEAF grant,
- Not received a MEAF grant in the past 2 years.
- Must bring the account balance to zero - this requirement can be met via a MEAF grant, customer co-payments and/or other grants.[25]

In addition to having difficulty demonstrating an emergency hardship, PECO's Prepay customers with arrears would be logistically unable to "bring the account balance to zero" with a grant. Similarly, without a notice of termination, consumers would be ineligible for a Low-Income Home Energy Assistance Program (LIHEAP) Crisis grant to reconnect to service.[26]

Lack of written notice is problematic for an entirely different reason as well. PECO proposes to send updates and notices via text message or email. The California Public Utility Commission, rejecting a Prepay pilot proposed by San Diego Gas & Electric, noted in its reasoning that

> depending on the communications means chosen (e.g., text message, automated phone message, or email), customers on the proposed Prepay Program might receive no advance notice of termination at all since customers who are behind on their electric bills may also behind on their internet or phone bills. We find that such an outcome is unacceptable.[27]

Customers who rely on prepaid cell phone service and/or have insecure access to internet service may never receive those critical notices.[28]

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[25] *Id.*

[26] Commonwealth of Pennsylvania, Low-Income Home Energy Assistance Program, Fiscal Year 2017, Final State Plan, Appendix B §601.108 (hereinafter LIHEAP State Plan). Although PECO proposes to exclude consumers with incomes under 150% of FPL, it is still possible that customers eligible for LIHEAP crisis would be receiving prepay service – either because LIHEAP raises income eligibility, or PECO fails to ensure that low-income customers are truly excluded from the program.

[27] Decision Addressing the Application and the Motions to Adopt Partial Settlements, Application of San Diego Gas & Electric Company for Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design, Application 11-10-002 at 54 (Cal. Pub. Util. Comm. Jan. 16, 2014), http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M086/K541/86541422.PDF.

[28] Consumers who rely on prepaid cell phone service routinely run out of minutes before the end of the month and/or frequently change their number as the cost of service changes.

*ii. PECO's Proposal seeks to implement section 56.17(3)(iii)(D), which is inconsistent with protections provided by the Public Utility Code.*

The Commission's 1978 regulations and PECO's plan provide that failure to load additional funds would constitute a request for discontinuance and would therefore not be considered a termination of service. The regulations state that "[t]he customer agrees that failure to renew the credits by making prepayment for additional service constitutes a request for discontinuance under § 56.72(1) (relating to discontinuance of service), except during a medical emergency, and that discontinuance will occur when the additional usage on the emergency backup credits runs out."[29] This regulation is inconsistent with later enacted law protecting economically vulnerable customers from loss of service – particularly in the winter months. Because it has been specifically recognized by the United States Supreme Court and the General Assembly of Pennsylvania that utility service is necessary for health and safety,[30] a household cannot waive statutorily provided protections that seek to preserve this health and safety and any attempt to do so by a utility should be null and void. This is particularly true for any household whose income is below 250% of the federal poverty income guidelines as it is the public policy of Pennsylvania that non-payment of utility bills for these customers cannot lead to termination during the months of December through March each year and, at least during this period.

CAUSE-PA asserts that failure to pay (be it prepay or postpay) is involuntary given these households' poverty-stricken status. As such, any attempt to enforce this section is not only inconsistent with the public interest but would also violate with the Commission and PECO's statutory mandates.[31] CAUSE-PA submits that the Commission cannot act to implement PECO's request pursuant to 52 Pa Code §56,72(1) without violating the Winter termination procedures found in § 1406(e) of the public utility code. Simply stating that households who do not reload credits onto an account are asking that their service be discontinued flies in the face of the General

[29] 52 Pa. Code §56.17(3)(iii)(D).
[30] *See Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 18 (1978) ("Utility Service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety."); 66 Pa. C.S. § 2802(9) ("Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.")
[31] *See* Lookenbill v. Garret, 490 A.2d. 857, 862 (Pa. Super. 1985) (stating that where a later enacted statute is contrary to a regulation enacted by an administrative agency prior to the statute's existence, it is the statute and its declaration of policy that controls, not the regulation.)

Assembly's policy determination in Chapter 14 that households at or below 250% of poverty should be protected from winter termination. Neither PECO nor the Commission can counteract this policy through the fiction – whether stated in 56.17(3)(D)(iii) or otherwise – that the household is requesting discontinuance of service.

*iii. Vulnerable Households would make more frequent payments, incurring additional transaction fees*

Studies of other prepayment programs have shown that prepayment customers make more frequent payments. An evaluation of Salt River Project's M-Power program found the following:

> Another lesson learned early on was that customers on the M-Power program buy power frequently. Indeed, the utility industry has forced customers to pay on a monthly basis when in fact most customers are paid weekly or bi-weekly. **On average, M-Power customers purchase power in the $20 range approximately four times a month in the winter, and seven times a month in the summer.** Vending also peaks on Friday nights, likely coinciding with payday for many customers.[32]

Indeed, PECO appears to view more frequent payments and changes to payment patterns as a potential benefit of Prepay. However, for payment-troubled customers, the additional transaction fees associated with frequent payments do nothing more than make Prepay more expensive. Many Prepay programs actually cost customers more than standard, postpay service.[33] PECO has made no showing that Prepay customers would in fact save any money by prepaying for electricity.

*iv. Customers who enroll in PECO's Prepay Program would likely experience frequent interruptions of service, impacting both their physical and mental health*

The American Academy of Family Physicians has identified access to utility service, including heating, cooling, and refrigeration, as a factor that strongly influences a person's health

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[32] Electric Power Research Institute, Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program (Oct. 2010) at 1-3, https://www.smartgrid.gov/files/Paying_Upfront_Review_Salt_River_Project_MPower_Prepaid_Pr_201007.pdf (emphasis added).

[33] *See e.g. Id.* at 3-6 ("Using average seasonal consumption levels for M-Power customers, MPower customers may actually pay $38 more on an annual basis."). Nat'l Consumer Law Center, Rethinking Prepaid Utility Service: Customers at Risk 11 (June 2012), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.("[C]ompanies often charge prepayment customers higher rates, equipment deposits, and a range of new service fees.")

outcomes.[34] Similarly, the Centers for Medicare & Medicaid Services (CMS) recently announced an Innovation Center pilot project to test improving patients' health by addressing their social needs, and specifically identified utility needs as a "health related social need."[35] Indeed, the adverse health impacts on consumers who lack access to stable, affordable utility service is well documented.[36]

But in touting the purported benefits of prepaid service, some industry-financed reports have concluded – without any data – that prepayment of electricity promotes consumer health through "increased self-esteem."[37] However, an honest assessment of the facts reveals that the converse is more likely true: that prepaid service will reduce self-esteem, negatively impacting the mental and physical health of consumers. As explained at length throughout these comments, those enrolled in prepaid service make more frequent payments (each with additional fees) and face more frequent terminations – heaping added stress onto households that are already walking an affordability tight-rope, and compounding the impact on a consumer's mental and physical health. To ferret out the true health impact of prepaid service on consumers based on facts and data, rather than self-serving statements made by an industry seeking to profit on this service, and for the reasons addressed in section h below, it is critical that the Commission refer this proceeding to a fully litigated proceeding before an Administrative Law Judge.

*v. Prepay customers are more likely to deprive themselves of electricity, which has been falsely construed as conservation*

PECO has produced no evidence that any reduced usage that results from prepayment is in fact conservation, as opposed to deprivation through forced usage reduction (before termination

[34] Am. Academy of Family Physicians, Social Determinants of Health Policy, http://www.aafp.org/about/policies/all/social-determinants.html (last visited Dec. 14, 2016).
[35] Ctrs. for Medicare & Medicaid Svcs., Accountable Health Communities Model, https://innovation.cms.gov/initiatives/AHCM (last visited Dec. 14, 2016).
[36] *See* AARP, Affordable Home Energy and Health: Making the Connections (2010), http://assets.aarp.org/rgcenter/ppi/cons-prot/2010-05-energy.pdf; *see also* Nat'l Ctr for Medical Legal Partnership, Utility Access and Health (2010), http://www.kidscounsel.org/Utility%20Access%20and%20Health%20An%20MLPPatients-to-Policy%20Case%20Study.pdf.
[37] Electric Power Research Institute, Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program (Oct. 2010) at 4-1, https://www.smartgrid.gov/files/Paying_Upfront_Review_Salt_River_Project_MPower_Prepaid_Pr_201007.pdf ("[S]ome of the early findings . . . suggested high levels of customer satisfaction, and even "increased self-esteem" due to perceived financial benefits and feelings of self-efficacy in relation to bill payment.").

or because of termination). In fact, many prominent energy efficiency and environmental advocates have publically decried attempts by utility providers to categorize Prepay as an energy efficiency measure: Jennifer Miller, the Sierra Club's senior campaign representative for energy efficiency, has called the issue of Prepay service "an issue of economic justice."[38] She has explained that when customers "end up saving energy, it's because of how difficult it is to pay. It's deprivation, not conservation."[39] PECO's bald assertion that providing second class service to individuals will help to decrease usage should not be accepted without a factual showing that it is true and that the decreased usage is not deprivation of service.[40] Deprivation is not conservation and PECO should not be permitted to tout the social good of conservation without evidence that any energy savings are not costing the household in terms of increased health and public safety risks. Thus far, PECO has provided no information about any early data from other utility programs or identified specific utilities seeing conservation benefits.[41]

*vi. PECO's Prepay proposal does not include any protections for survivors of domestic violence*

When the Pennsylvania legislature enacted Chapter 14, it specifically exempted survivors of domestic violence with a protection from abuse order from those billing and termination requirements.[42] In doing so, the legislature made clear that survivors of domestic violence are

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[38] Josie Garthwaite, *Prepay Plans for Electricity Offer Alternative to the Usual Monthly Power Bill,* Nat'l Geographic (June 6, 2014), http://news.nationalgeographic.com/news/energy/2014/06/140604-pre-paid-electricity-billing-plans-help-or-hurt-consumers/.
[39] *Id.*
[40] PECO Petition at ¶ 4.
[41] There have been reports of conservation benefits from the Salt River Project. *See, e.g.,* Yueming Qiu and Bo Xing, Pre-paid electricity plan and electricity consumption behavior, http://cmepr.gmu.edu/wp-content/uploads/2014/01/Qiu_pre-paid-pricing_0202.pdf. However, those reports do not include an examination of the reason for disconnection among prepayment customers, or whether the conservation seen was in fact deprivation, nor is data regarding rates of disconnection available publicly. Nat'l Consumer Law Center, Rethinking Prepaid Utility Service: Customers at Risk 19 (June 2012), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.
[42] 66 Pa. C.S. §1417.

entitled to special protections when it comes to connecting to and maintaining utility service. To that end, survivors of domestic violence are not liable for arrears accrued in someone else's name, are entitled to additional notice of termination, and can get reasonable payment agreements.[43] These protections would disappear for survivors of domestic violence who enroll in a Prepay program.

d. PECO's Prepay Proposal is unnecessary

PECO's proposal is destabilizing, harmful and unnecessary. Pennsylvania law recognizes that "[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development," and that "electric service should be available to all customers on reasonable terms and conditions."[44] Similarly, "[r]eliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth."[45] The Commission is obligated under the Choice Act to "ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory."[46]

Due to the very real potential for harm associated with prepaid electricity, both the 1978 regulations found at 52 Pa. Code § 56.17 and PECO's proposal are inconsistent with this more recently stated public policy. As discussed more fully below, prepaid service is not a reasonable delivery of electricity, as it is contrary to the health, well-being, and public safety of Pennsylvania's residents.

Chapter 14 of the Public Utility Code sets out specific, statutory requirements for billing and for termination – including specific requirements for written notice, and protection from termination for low and moderate income customers during winter months. Chapter 14 also specifically exempts survivors of domestic violence with a Protection from Abuse order or other court order evidencing Domestic Violence from the somewhat strict billing and termination standards of Chapter 14.

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[43] *See* 52 Pa. Code § 56.251 – 461.
[44] 66 Pa. C.S. § 2802(9). *See also Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 18 (1978) ("Utility Service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.");
[45] 66 Pa. C.S. § 2802 (12).
[46] 66 Pa. C.S. § 2804 (9).

The standards in Chapter 14 are intended to strike a balance – protecting payment troubled consumers while also enabling the utility to collect for services it rendered. PECO's proposal eliminates the consumer protections in Chapter 14 intended to protect consumers struggling to pay for utility service. Advanced written notice of termination and a moratorium on winter shutoffs are key to ensuring that electric service is available to all customers on reasonable terms and conditions – protections that cannot be waived by consumers in advance for some undetermined time in the future. These customers must also be screened for universal service programs prior to enrollment.

Despite all the harm prepaid electricity could cause PECO customers, there do not appear to be any clear benefits to customers that would counterbalance the harm. PECO does not propose any discount on rates for choosing to prepay and, nor does it provide any incentives for foregoing consumer protections. All of the benefits that PECO purports could be implemented without eliminating consumer protections or even requiring prepayment at all. For example, PECO touts that ability of customers to better manage their usage and align payments with their paychecks. PECO could provide tools to customers to allow them to do this now. Nothing prevents a PECO customer from paying a little at a time over the month so that he or she is not surprised by a large bill at the end of the month. If PECO has the tools to provide prompts, texts, and app reminders to customers it should be doing so for those customers who wish to interact with PECO in this manner.

A full assessment of the proposed program reveals that only one entity would derive any clear benefit from PECO's proposal: PECO. Prepaid programs shift the risk of service termination from the utility to consumer. This is unacceptable in a world in which Chapter 14 exists and utilities have robust tools at their disposal for collection. In making this shift, PECO would no longer have any incentive to be proactive in its approach to payment agreements, in how it designs and implements affordability programs, or in maintaining bill affordability to ensure the availability of electric service.

e. <u>PECO's Prepay Proposal does nothing to address underlying issues of affordability.</u>

Households across PECO's service territory face high energy burdens. Those with the lowest income, below 50% FPL, pay an average of 30% of their income toward their home energy

bills.[47] Those between 50-100% FPL pay an average 16% of their income on home energy costs, and those between 100-150% FPL pay an average of 9%. Even households with income above 150% FPL have unaffordable bills: those with income between 150-185% FPL pay an average of 7% of their household income on home energy bills.[48] By contrast, households at higher incomes often only pay between 3% and 4% for their energy, and some pay even less.[49]

Studies have shown that customers are more likely to pay an affordable bill.[50] If PECO or the Commission wants to target true affordability of service, they should focus on the incredibly high affordability guidelines in the Commission's CAP Policy Statement.[51] As recently noted by the Commission's Vice Chairman, Andrew Place, "the Commission's Energy Burden guidelines, which are used to determine what a low-income customer can afford, are antiquated, unsupported by sufficient analysis and fail to account for regional climatic heterogeneity."[52]

As discussed above, many households with income that exceeds CAP eligibility limits still struggle to pay their energy bills. PECO's proposal does not offer a lower rate or any other benefits to lower energy costs. The only identified potential financial benefit to customers is the waiver of deposits. However, waiver of security deposits alone is insufficient to justify removal of consumer protections. Pennsylvania law currently allows utilities to require 50% of a deposit to be paid up front, prior to the start of service[53] – a lower amount could be required upfront before service was started, and/or service could be started and the deposit spread out over several months. And, of

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[47] Fisher, Sheehan, and Colton, The Home Energy Affordability Gap 2015 (Apr. 2016), *available at* http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html. Households between 50% and 100% of FPL pay 16% of their income towards home energy bills, and households between 100% and 150% of FPL pay 9% to 11% towards home energy bills. *Id.*

[48] *Id.* ("Home energy unaffordability, however, is not only the province of the very poor. Bills for households with incomes between 150% and 185% of Poverty take up 7% of income.")

[49] *See* Ariel Drehobl and Lauren Ross, Lifting the High Energy Burden in America's Largest Cities at 10 (2016), http://aceee.org/sites/default/files/publications/researchreports/u1602.pdf

[50] Applied Public Policy Research Institute for Study and Evaluation (APPRISE), Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund at 80 (April 2006), http://www.appriseinc.org/reports/NJ%20USF%202006.pdf.

[51] *See* Ariel Drehobl and Lauren Ross, Lifting the High Energy Burden in America's Largest Cities at 10 (2016), http://aceee.org/sites/default/files/publications/researchreports/u1602.pdf (summarizing expert opinions on what constitutes an affordable energy burden). Experts suggest 6% and 11% of income as an appropriate energy burden (combined heat and electric); the Commission's CAP Policy statement sets a much broader range of affordable for combined heat and electric – between 7% and 17% of income. 52 Pa. Code § 69.265 (2)(i).

[52] Statement of Vice Chairman Andrew G. Place, Billie Jo Knapp v. Pennsylvania Electric Company, Docket No. C-2015-2511723 (Oct. 27, 2016).

[53] 52 Pa. Code § 56.38(b).

course, Chapter 14 already waives security deposit requirements for CAP-eligible customers.[54] Additional exemptions could be built into PECO's policies or Pennsylvania law to expand the exemption for low-income consumers, or more factors could be taken into account in charging deposits. Some states even ban deposits for residential service as a whole.[55]

Indeed, prepaid electricity is a short term fix to a long term problem of affordability of service. As a recent Department of Energy report noted in evaluating the possibility of prepaid utility service, "[t]he industry should investigate and test other opportunities to address affordability that don't require prepayment or that can be incorporated into Prepay programs, such as budget billing, special rates for low-income consumers, assistance programs, and other approaches for aligning billing options with payment issues."[56]

Rather than focusing on prepaid electricity as a means to skirt real issues of affordability, PECO can and should focus on other alternatives to drive affordability of energy costs. In particular, conservation benefits can and should be achieved through less harmful means.
In addition to further education on conservation, more investment should be directed towards home repair and energy efficiency programs to effectively target the prevalent poor housing stock across PECO's service territory.[57] Health and safety issues like leaky roofs and mold often mean that homes are ineligible for energy efficiency upgrades – keeping bills unaffordable for many households.

*i. All benefits of Prepay identified by PECO can and should be implemented without removing consumer protections*

PECO identifies several potential benefits of Prepay, but does not explain why elimination of consumer protections is necessary to implement those benefits. For example, customers can

[54] 66 Pa. C.S. § 1404 (a.1)
[55] *See, e.g.,* 220 Mass. Code Regs. §27 (Massachusetts regulation prohibiting utilities from charging a "deposit to secure payment of utility bills in advance of or as a condition to new or continued service.")
[56] U.S. Dep't of Energy, Bridging the Gaps on Prepaid Utility Service 17 (Sept. 2015), http://www.energy.gov/sites/prod/files/2015/11/f27/Bridging%20the%20Gaps%20on%20Prepaid%20Utility%20Service_0.pdf
[57] *See, e. g.,* Nan Feyler, The Impact of Housing Quality on Children's Health in Philadelphia (Feb. 2015), http://healthyrowhouse.org/wp-content/uploads/2015/03/The-Impact-of-Housing-Quality-on-Children-Health-Phila-nfeyler-feb-2015.pdf.

already "load funds" on their account ahead of usage as a credit,[58] and PECO could incentivize prepayment/different payment schedules through discounts or other perks.

In addition to loading funds ahead of usage, other technologies could be brought to consumers without eliminating consumer protections, such as real-time notifications about daily usage, automated notifications, and easy-to-use portals for accessing energy usage data. As the Department of Energy notes, "[g]athering data on these tools' rate and ease of use, as well as the types of information that lead to changes in consumer behavior, can help the industry better understand how to most effectively communicate with all consumers."[59]

Reports from the Salt River Project's M-Power program also discuss the advantage of real-time consumption information:

> Perhaps a consequence of the knowledge gained regarding a household's electricity usage patterns, another advantage that is often reported is the sense of control the M-Power program provides customers. This includes the ability for customers to monitor their power usage, to pay for power at their own pace (e.g., daily or weekly instead of monthly), and even the ability to know and be ready for a disconnection if necessary.[60]

None of these benefits require prepayment, they simply require technology and appropriate messaging. The promise of new technologies can and should be studied but adding the host of negative consequences associated with Prepay is unnecessary given that all of the benefits mentioned can be implemented without eliminating consumer protections.

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[58] One example of loading funds onto an account is seen with LIHEAP cash grants. If a customer's grant is more than their current bill, the remainder gets applied to future months of service. *See* LIHEAP State Plan, Appendix B, §601.45.

[59] U.S. Dep't of Energy, Bridging the Gaps on Prepaid Utility Service 17 (Sept. 2015), http://www.energy.gov/sites/prod/files/2015/11/f27/Bridging%20the%20Gaps%20on%20Prepaid%20Utility%20Service_0.pdf

[60] Electric Power Research Institute, Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program 4-4 (Oct. 2010), https://www.smartgrid.gov/files/Paying_Upfront_Review_Salt_River_Project_MPower_Prepaid_Pr_201007.pdf.. *See also* U.S. Dep't of Energy, Bridging the Gaps on Prepaid Utility Service 18 (Sept. 2015), http://www.energy.gov/sites/prod/files/2015/11/f27/Bridging%20the%20Gaps%20on%20Prepaid%20Utility%20Service_0.pdf ("The debate around prepay often combines a discussion of two disparate issues: prepay's effectiveness as a payment option and its ability to make electricity service more affordable for low-income consumers.").

f. PECO's Explicit and Implicit Waiver Requests Must be Denied as Contrary to Public Policy

PECO asserts that the Commission's review should be limited to "a determination of whether the plan meets the requirements set forth in the regulations."[61] But PECO's petition should not be divvied up into those parts that purport to comply and those that do not comply with the Commission's regulations. CAUSE-PA submits that the entirety of the petition and proposal must be evaluated in reference to the public interest. In addition, regulations promulgated in 1978 must be evaluated with regard to the specific impacts of PECO's proposal, and with regard to the Choice Acts and Chapter 14. The reasons to reject PECO's proposal as not in the public interest are addressed in detail above. To the extent the Commission wishes to address specific waivers of regulations, CAUSE-PA addresses each request below. CAUSE-PA submits that PECO's proposal would require several additional waivers not specifically requested in PECO's Petition.

*i. PECO's definition of nonlow income does not comport with Section 56.17(3)(i)*

Without further information and specifics, CAUSE-PA asserts that a waiver of 56.17(3)(i) would be required for PECO's current proposal. CAUSE-PA opposes any such waiver and asserts that, prior to approval of any pilot, PECO must make an affirmative showing that none of the program participants will be low-income at the time of enrollment or at any time throughout the duration of the pilot. In addition, PECO avers in footnote 3 of its Plan that it removed the option of having low-income customers in the pilot "at the request of . . . the low-income advocates."[62] This misrepresents what happened. While counsel for CAUSE-PA met with representatives of PECO before this filing occurred, and opposed the inclusion of low-income customers in the pilot program, counsel for CAUSE-PA also made clear to PECO representatives that it opposed the pilot program in its entirety – for the reasons stated throughout these comments – even if low-income customers were excluded.

[61] PECO Petition ¶13.
[62] Petition ¶ 16 n. 3.

*ii. In addition to a waiver of Section 56.17(3)(iii), further investigation is needed for the Commission to evaluate whether the payment agreement required by PECO in its Plan meets the requirements set out in Chapter 14*

PECO's pilot proposes the following payment processing: for customers/applicants with a delinquency, 25% to delinquency and 75% to future service; for customers/applicants without a delinquency, 100% to future service. This payment processing may or may not be appropriate under Chapter 14 guidelines for payment agreements and protections for victims of domestic violence, depending on a customer or applicants' specific arrearage. Section 56.17(3)(iii) requires a customer to enter into a payment arrangement, and PECO seeks a waiver to allow customers without delinquencies to participate in the Prepay Program. CAUSE-PA disagrees that the payment agreement proposed in this paragraph meets the requirements of the regulation for customers with a delinquency, or that such payment arrangements meet the statutory requirements of Chapter 14.

Chapter 14 provides for specific payment arrangement terms based on income level, with a payment amount determined in part by the amount of the delinquency.[63] The proposed payment arrangement in PECO's proposal requires a waiver and must be considered and the Commission must reconcile any such payment arrangements with those provided by Chapter 14. Chapter 14 further exempts victims of domestic violence with a Protection from Abuse Order or other court order which provides clear evidence of domestic violence against the applicant or customer from Chapter 14's specific payment arrangement requirements.[64] As such, victims of domestic violence are entitled to reasonable payment arrangements as provided by 52 Pa. Code § 56.337. PECO's proposed one size fits all payment agreement is directly contrary to the requirement for reasonable terms found in the sections of the code applicable to victims of domestic violence.[65]

[63] *See* 66 Pa. C.S. §1405 and §1407.
[64] 66 Pa. C.S. §1417.
[65] 52 Pa. Code §56.337 ("Factors to be taken into account when attempting to enter into a reasonable informal dispute settlement agreement or payment agreement include the size of the unpaid balance, the ability of the customer to pay, the payment history of the customer and the length of time over which the bill accumulated."). While the regulations allowing prepay are found in both the new and old sections of Chapter 56, those regulations do not prescribe specific payment agreement terms. As such, CAUSE-PA asserts that PECO's payment agreement proposal is inconsistent with the requirements of Chapter 56 as applied to victims of domestic violence.

*iii. PECO's use of its Medical Certificate Process is inconsistent with Section 56.17(3)(iii)(D)'s exception for medical emergencies*

In its Plan, PECO proposes to implement the "medical emergency" exception, as used by §56.17, but indicates that it will rely on its current processes for obtaining a medical certificate. This is insufficient. The Commission is well aware of PECO's determination to undermine the Commission's stated 56.17, is not necessarily addressed by PECO's medical certificate process, and specifically that PECO has consistently taken the position that "unless customers 'materially' eliminate their arrearage over the course of a medical certificate and two renewals, no further renewals should be given."[66] While the Commission has once again clarified that

> [p]ursuant to Sections 56.114 and 56.116, customers who file medical certificates may renew these certificates indefinitely if they continue to pay their current bills or budget bills in full by the due date. Payment toward an existing arrearage is not necessary to qualify for additional medical certificate renewals.[67]

it is entirely unclear how a customer would meet this standard under a pre-pay model. Furthermore, the regulation itself clearly contemplates "a medical emergency," a term which is left undefined. CAUSE-PA asserts that a medical emergency applies to other situations, including but not limited to the winter moratorium contained in Chapter 14, and should not be limited by PECO or the Commission to only those criteria in which a medical certificate is appropriate. This is clearly an area where more detail and information is needed and, for the reasons stated throughout and further delineated below, necessitates a hearing based on findings of fact prior to any final determination other than an outright refusal of PECO's proposed pilot.

*iv. Allowing shopping customers to participate in the Prepay program requires a showing that doing so is in the public interest*

PECO does not specifically request a waiver for shopping customers to participate in the Prepay program. However, the regulations - written and adopted decades before the restructuring of the electric industry in Pennsylvania - do not contemplate the ability of customers to shop for electricity. PECO proposes to do a monthly reconciliation for shopping customers such that at the

[66] *See* PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018, submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2015-2507139, December 8, 2016 Order on Reconsideration at 5.
[67] *Id*. at 8.

end of the month, PECO will reconcile the balance paid with actual pricing information from the supplier. Resulting credits will be credited to the customer's available balance, and debits will be allocated and deducted daily over the following month. The Commission must make a determination that this process, not contemplated by the regulations, is in the public interest. CAUSE-PA submits that it is not, as the harms associated with prepayment will only be exacerbated for customers shopping above PECO's price to compare, and makes any benefits associated with daily usage updates much less impactful, as Prepay participants would not be able to track their usage against the price they pay for service.

*v. PECO's requested waiver to allow applicants for service to participate in Prepay should be denied, as it is not in the public interest*

Applicants for service at a new residence – particularly those who are payment troubled and economically vulnerable – often face seemingly insurmountable barriers to starting service. As such, these applicants are more susceptible to the touted benefits of Prepay and the harms associated with Prepay. Any waiver to allow applicants for service to participate in PECO's Prepay Program should be strictly conditioned on the requirement that PECO maintain all protections required by Chapter 14 for those applicants, including payment agreements, screening for universal service programs and security deposit exemptions, as well as disconnection and notice requirements when those applicants become customers.

g. <u>PECO's Proposal is vague and incomplete, and more information is necessary to evaluate PECO's Prepay Plan.</u>

For all of the foregoing reasons, CAUSE-PA does not believe that PECO's pilot should be approved or further considered. There is simply little social good that would come as a result and is unnecessary. However, if the Commission is considering approval of the pilot significantly more detail is required from PECO as the proposal provides very little information about the scope or depth of the pilot it suggests to implement, or the impact such a program will have on all of its customers and applicants, including those that take part in the Prepay proposal, those who participate in a broader-scale deployment, and those who remain on standard service but nonetheless absorb the costs of implementing the program.

*i. PECO proposes an initial Pilot program, but does not justify the necessity of such a pilot or fully detail how the pilot will be implemented*

PECO supports its request for a pilot by stating that it will "employ a 'test and learn' approach" which will allow it to design a successful broad-scale deployment of prepaid electricity.[68] However, a pilot is not justified simply because it is a pilot. A pilot is a useful tool only if it provides valuable lessons for a clearly defined end goal. PECO does not explain in its petition the purpose or goal of a broad-scale deployment of prepaid electricity. Without a clearly defined and reasonable purpose, a pilot is useless. PECO must explain why prepaid electricity is in the interest of its customers and the general public before it implements a pilot program.

PECO's pilot also lacks sufficient detail to ensure that the findings of the Pilot will be statistically valid. PECO provides no detail on how it would recruit customers and applicants to the pilot, or how it would ensure that those customers represent a cross section of PECO's customer base. Nor does PECO intend to use a control group to isolate the impact of the Prepay requirement.

PECO does not explain whether it considered any customer input in designing this pilot to appropriately address the needs of its customer base. Before launching a pilot of this magnitude – with the potential for far-reaching negative impacts on its vulnerable customer base – PECO should be required to seek out consumer input through focus groups, customer surveys, and public input hearings, and make an affirmative showing that its customers actually want and will benefit from a prepaid electricity program. Indeed, PECO must show that a pilot program of this nature is in the public interest before it is allowed to proceed. It has not met this standard.

*ii. PECO's Petition is vague and provides few details as to how its Prepay program would actually work*

PECO's Petition leaves open a lot of questions about how the pilot will operate and how it will impact consumers. These questions are critical to the Commission's determination of whether the plan is in the public interest and should be answered prior to approval of the pilot. PECO's Prepaid Plan would include the following features:[69]

[68] PECO Petition at ¶ 5.
[69] *See generally* PECO Petition, Attachment 1.

- Both customers and applicants with a remote-capable AMI (Smart) Meter would be eligible to sign up to prepay their electric service in advance of receiving electric service. Detailed information would be available to program applicants in a Welcome Packet.

    - What information will this welcome packet include? Will it include information not only about how the Prepay Program works, but the potential downsides of prepaid electricity? Will it include information about universal services programs, exemptions from security deposits, or income eligibility for the Prepay program? Will the welcome packet include information about when disconnections could and would happen, and how emergency backup credits would operate?

- Customers taking service on the Prepay Program would pay the same rates as they would on traditional "postpay" service. Enrollment would require an initial payment of $40 and ongoing payments of $15 of more. A customer's balance would be adjusted based on actual daily usage.

    - What fees will apply to these payments? Currently, PECO accepts payments by credit or debit card, but each transaction includes a $2.35 fee.[70] Would that fee be required on top of the minimum $15 payment? Would there be lapse between when a customer makes a payment and when that payment got posted to the account? When would a customer's balance be reduced based on their usage – would it be reduced in real time or would it be reduced daily?

- Customers and applicants for PECO's prepaid service will not be charged a security deposit.

[70] Pay Now with Credit/Debit, Peco, https://secure.peco.com/MyAccount/MyBillUsage/PayMyBill/Pages/ExpeditedCreditOrDebit.aspx (last visited Dec. 14, 2016).

- Will customers and applicants be evaluated for a security deposit exemption based on CAP-eligibility? How will survivors of domestic violence be informed of their right to flexible security deposit standards?

- Customers and applicants with delinquencies up to $1500 would be eligible to sign up for the program. By signing up for the Prepay Program, customers and applicants for service would be automatically enrolled in a payment agreement to pay off any old debt with PECO. 25% of each payment made would be credited towards the customer's debt, with the remaining 75% going towards future consumption.

  - Will customers be informed about other options for paying down past debt, such as payment agreements pursuant to Chapter 14, CAP enrollment to freeze arrearages, and options available to survivors of domestic violence for flexible payment arrangements? Would this payment agreement be available for CAP arrears?

- PECO would remotely disconnect customers for nonpayment when the customer runs out of credits and emergency backup credits totaling five (5) days of usage. Those disconnections would only occur during PECO business days and hours, and would be considered "discontinuances" rather than termination for nonpayment. To get restored, customers will have to pay for backup credits used before purchasing additional credits for future usage.

  - Will these backup credits be available one time only or will they be available each time a customer uses up their balance? How will PECO message the availability of credits, and ensure customer clarity about how they work? Chapter 14 prohibits Friday terminations – but will Prepay terminations occur on Fridays?

- Prepay service would not be available for customers or applicants known to PECO to be low-income (below 150% of the Federal Poverty Level (FPL), which is $1,486 monthly for an individual or $3,038 monthly for a family of four). Prepay customers facing

medical emergencies would be allowed to return to standard service and use PECO's existing medical certificate process.

  - Will income information be requested at the time of enrollment and/or over the course of the program? If not, how will PECO ensure that low-income customers are actually excluded from the Pilot?
  - How will PECO define medical emergencies? Will customers who have already used medical certificates be able to return to standard service?

- Customers on PECO's Prepay Service would receive notification of usage and balance using either text message or email. These notifications would include the dollars remaining and the estimated days of usage remaining, as well as notification of payments received, disconnections, and reconnections. Customers would also have access to a website and mobile applications that would provide similar information.

  - How will PECO ensure that customers receive these notifications, particularly customers with insecure internet access and/or prepaid cell phones? What about customers whose numbers change frequently?
  - What specific technology will be used? How will PECO evaluate the impact of that technology separate from the impact of the prepayment requirement?

- Customers will be able to leave the pilot and revert to standard ("postpay") billing. Pre-pilot arrearages and outstanding debt from the pilot would be included on the first billing statement, and deposit rules would apply once the customer is back on standard billing.

  - How will deposit rules apply once a customer is back on standard billing? Will nonpayment of the emergency backup credits lead to termination for nonpayment? Will those debts be eligible for deferment through CAP? Will customers be informed of other options to address their pre-pilot and in-pilot arrears? Will PECO track why customers revert back to standard billing?

    - What will the process be to move back to standard billing – will the switch be instantaneous or will it take some amount of time?

- PECO will reconcile, monthly, the difference based on available pricing information for shopping customers and the actual pricing information transmitted to PECO at the end of the month.

    - Will customers be able to shop after they enroll in the program? Will they be provided with information about how this reconciliation will work at the outset of the program, when they switch suppliers, or over the course of the pilot?

- PECO will evaluate the process and impact of the pilot program.

    - How will PECO evaluate the program? What questions will they be asking participants, and how will they be disaggregating data regarding participants at different socioeconomic levels, with different expenses, in different areas of PECO's service territories?

- Costs of the pilot will be accounted for as normal operating expenses, and could be included in a future electric base rate claim.

    - What are the costs of the pilot? What would the costs be of making the technology available to all customers without the harms of prepayment? How will savings be identified?

All of these questions and more must be answered prior to the Commission approving a Prepay Program. It is CAUSE-PA's position that the Commission should unequivocally reject PECO's Petition in its entirety. However, if the Commission is inclined to consider PECO's Petition, CAUSE-PA urges the Commission to refer the matter to the Office of Administrative Law Judge for a fully litigated proceeding and investigation into the scope and impact of PECO's Prepay Proposal.

h. A Comment and Reply Comment procedure is insufficient

*i. The Commission must refer this matter to the Office of Administrative Law Judge for a fully litigated proceeding*

As discussed extensively above, PECO's proposal presents many concerns. While 52 Pa. Code § 56.17 allows for prepayment meters, no major jurisdictional utility in Pennsylvania has adopted such a program in the past 38 years. Whether these regulations, as applied, comport with the entirety of Chapter 56, with subsequent legislation like the Choice Act and Chapter 14, and with the public policy of Pennsylvania is an issue of first impression for the Commission.

In light of this context, the Commission must make a finding that PECO's plan is in the public interest prior to approving the plan as a whole. PECO's plan explicitly and implicitly requests waivers of 52 Pa. Code §56.17. In addition to reviewing those requests for waivers, CAUSE-PA asserts that the entirety of PECO's plan must be reviewed in reference to the public interest. Pursuant to both statutory law and regulation, the PUC must regulate the transmission and distribution of electricity to ensure the availability of universal electric service,[71] and to ensure uniform, fair and equitable standards for credit and deposit practices and account billing and termination.[72]

It is CAUSE-PA's position that such findings are an issue of fact which must be made based on an evidentiary record developed in front of an Administrative Law Judge. An issue of this import also requires testimony from national experts, testimony that is subject to cross-examination and investigation. Absent such an evidentiary record, CAUSE-PA asserts that PECO's plan is not in the public interest, and violates the public policy of Pennsylvania.

CAUSE-PA urges the Commission to refer this matter to the Office of the Administrative Law Judge for a fully litigated proceeding, as PECO's Petition and proposed plan raise issues of material fact, including but not limited to:

- Whether the billing and termination protections contained in Chapter 14 are required and/or appropriate for PECO's proposed Advanced Payments Plan.

[71] 66 Pa. C. S. §2802(16). This includes continuing consumer protections and universal service policies. 66 Pa. C.S. § 2802 (17).
[72] 52 Pa. Code §56.1. That provision also requires that "[e]very privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement." *Id.*

- Whether PECO's Advanced Payments Plan conforms with the requirements of the Choice Act.
- Whether PECO's Advanced Payments Plan conforms with the requirements of Chapter 56.[73]
- Whether PECO's Advanced Payments Plan is in the public interest. Considerations of the public interest include, but are not limited to:
    - Whether the Plan properly safeguards customers otherwise protected by the Winter Moratorium, pursuant to 66 Pa. C.S. § 1406(e).
    - Whether PECO's proposals regarding the amounts of initial and follow-up payments are reasonable and appropriate.
    - Whether the Plan is appropriate or beneficial for customers who shop for electric generation supply.
    - Whether PECO's plan properly includes consideration of how LIHEAP and/or Hardship grant assistance would be applied to a customer's account.

Evidentiary hearings in this case are necessary because there are issues of material fact that must be addressed.[74] Whether PECO's proposed Advanced Payments Pilot properly addresses the needs of its low and moderate income consumers – in compliance with applicable policies, laws, and regulations – is an issue of material fact that requires a litigated hearing before an ALJ. In addition to the specific issues raised in these comments, CAUSE-PA reserves the right to raise other issues that arise in the course of this proceeding.

*ii. The Commission should order Public Input Hearings*

PECO has not shown that they have gathered any customer input or taken into account any community feedback in designing this program. Nor is there any evidence that PECO customers are asking for or demanding such a program. The Commission should order PECO to hold Public Input Hearings to gather broad community feedback.

[73] 52 Pa. Code § 56.1 et seq.
[74] *Chester Water Auth. v. P.U.C.*, 822 A.2d 146, 152 (Pa. Commw. 2003) (holding that "[w]here issues of material fact are raised, however, due process concerns require a hearing.")

i. Necessary protections if Prepay is approved

It is CAUSE-PA's position that, for all of the reason's stated above, the Commission should deny PECO's petition to implement a Prepay Program in its entirety. However, if in the alternative the Commission grants or partially grants PECO's Petition, CAUSE-PA submits that several additional protections must be incorporated into PECO's Plan.

*i. Maintain consumer protections*

CAUSE-PA submits that if the Commission approves PECO's proposal, it must ensure that critical consumer protections remain – including the right to a written notice of termination in addition to texts and emails, protections from termination in the winter, and the availability of hardship funds for struggling consumers. The National Consumer Law Center and the National Association of State Utility Consumer Advocates recommend several protections for consumers on a Prepay Program, all of which the Commission should consider implementing. Those lists are attached to these comments as Appendix A1 and A2.

The Commission must also require PECO to inquire about a customer's income upon enrollment and at various times over the course of the program to ensure low-income consumers are protected and appropriately directed towards Universal Service programs rather than Prepay.

*ii. Design a pilot which provides statistically relevant data*

If the Commission allows PECO's pilot to go forward, it must provide more guidance as to the design of that pilot to ensure statistically sound results. In addition to capturing a representative cross-section of PECO's customer population, PECO's Pilot must include a similarly representative control group of customers who are provided with the same technology and consumer benefits but remain on a postpay billing model.

*iii. Provide Stakeholders and the Commission with disaggregated, raw data from the pilot.*

The Commission should require PECO to provide raw numbers to all stakeholders in reporting the results of any pilot and making recommendations on how to move forward. In addition the Commission should require PECO to track the following information for each pilot participant:

- Income and household size, at enrollment and over time
- Number and length of disconnections due to failure to prepay
- Usage fluctuations over time
- Customer questions and complaints
- Number of payments made per month, including amount and any fees incurred by customers
- Amount of deferred deposit

NCLC suggests further evaluation questions for utilities operating a Prepay program.[75] The Commission should additionally order PECO to report to the Commission and to Stakeholders several times a year on this information.

## III. CONCLUSION

CAUSE-PA respectfully submits that the Commission deny PECO's request in its entirety as not in the public interest and inconsistent with statutory requirements. In the alternative, CAUSE-PA requests that the Commission refer this matter to the Office of Administrative Law Judge for a litigated proceeding so that evidence can be taken, as this matter is simply too important – and the stakes are too high – for this issue to be decided on unsworn and unverified comments.

[75] *See* Appendix A1.

# APPENDIX A

## CUSTOMER SERVICE QUESTIONS THAT UTILITIES WITH PREPAID SERVICE PROGRAMS SHOULD BE REQUIRED TO ANSWER ANNUALLY

In utility service territories where prepaid service is already adopted, the following questions should be posed "on the record" annually to implementing utilities.

1. Does the utility plan to replace prepayment meters with advanced meters?
   a. If so, will prepayment rates go down?
2. Does the utility track service disconnections among prepayment customers?
   a. If so, can the utility provide data on
      i. Duration of disconnections
      ii. # of "self-disconnections" by month over the past three years
      iii. Annual and monthly rates of "self-disconnection" (i.e., # residential self-disconnections ÷ # of residential customers)
   b. Has the utility conducted analysis or surveys among customers who self-disconnect to determine
      i. reasons for the disconnections
      ii. income and demographics of customers who self-disconnect?
3. Does the utility track disconnections among customers who post-pay?
   a. If so, can the utility provide data on
      i. Duration of disconnections
      ii. # of "self-disconnections" by month over the past three years
      iii. Annual and monthly rates of "self-disconnection" (i.e., # residential self-disconnections ÷ # of residential customers)
   b. Has the utility conducted analysis or surveys among customers who self-disconnect to determine
      i. reasons for the disconnections
      ii. income and demographics of customers who self-disconnect?
      iii. Will the utility provide survey instruments along with results and analysis?
4. Fees
   a. Does the utility charge prepayment customers fees for
      i. Paying by phone
         1. how much?
         2. how many customers pay by this method?
         3. Percentage of M-Power revenues that come from this payment method
      ii. Paying online
         1. how much?
         2. how many customers pay by this method?
         3. Percentage of prepayment revenues that come from this payment method

iii. Paying at a kiosk
    1. how much?
    2. how many customers pay by this method?
    3. Percentage of prepayment revenues that come from this payment method
iv. Paying a third party
    1. how much?
    2. how many customers pay by this method?
    3. What 3rd party fees are involved with this payment method?
    4. Percentage of M-Power revenues that come from this payment method
v. Other payment method?

5. Does any of the utility's post-paying residential customers use in-home devices to track consumption and expenditures?
   a. If so, how do these devices differ from those used by prepayment customers?
   b. Has the utility studied the energy savings associated with use of in-home devices without prepayment?
   c. If so, please provide results of analysis.
6. Energy savings
   a. What is the average energy savings realized by a prepayment customer?
      i. How is this calculated?
      ii. Is baseline consumption of individual customers used to develop savings estimates?
      iii. Has the utility analyzed the factors to which savings are attributable?
         1. self-disconnection
         2. energy efficiency
         3. energy conservationv
         4. Has the utility studied the extent to which prepayment customers engage in "self-rationing," that is, cutting back on other expenditures, including necessities, to stay connected to their electric service?
7. Customer satisfaction surveys
   a. Will the utility share instruments and results of customer satisfaction surveys conducted over the past five years?
   b. In customer satisfaction surveys, are respondents asked whether they may prefer a long-term payment agreement to prepayment as a means of managing arrearages?
   c. How is sampling conducted?
8. Marketing and Enrollment
   a. Among prepayment customers enrolled over the past three years, what proportion came to the program as
      i. a new the utility customer
      ii. an existing the utility customer
         1. with no outstanding arrearage
         2. with an outstanding arrearage
            a. average vintage
            b. average dollar value
         3. with a pending notice of disconnection
         4. with previous disconnections for non-payment

  

# URGING STATES TO REQUIRE CONSUMER PROTECTIONS AS A CONDITION FOR APPROVAL OF PREPAID RESIDENTIAL GAS AND ELECTRIC SERVICE-2011-03

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION 2011-3

URGING STATES TO REQUIRE CONSUMER PROTECTIONS AS A CONDITION FOR APPROVAL OF PREPAID RESIDENTIAL GAS AND ELECTRIC SERVICE

Whereas, the National Association of State Utility Consumer Advocates ("NASUCA") has a long-standing interest in issues and policies that affect the access of residential consumers to essential gas and electric services; and

Whereas, some gas and electric utilities have sought to replace traditional credit-based service to some residential customers with prepaid service delivered through prepayment meters or digital meters with remote connection and disconnection capabilities; and

Whereas, prepaid gas and electric service requires customers to pay in advance for their service, with prepaid account balances decreasing as service is delivered; and

Whereas, automated and remote disconnection of service can and does occur when prepaid account balances are depleted; and

Whereas, experience in the United States and United Kingdom demonstrates that prepaid metering and prepaid billing (1) is targeted toward and concentrated among customers with low or moderate incomes that are facing service disconnections for nonpayment, (2) results in more frequent service disconnections or interruptions, and (3) is delivered at a higher rate than traditional credit-based service;1 and

Whereas, most of the current state consumer protection requirements regarding the disconnection of service were not developed in anticipation of prepaid services, and such protections may be bypassed or eliminated when services are provided on prepaid basis; and

Whereas, proponents of prepaid service have sought legislation in at least one state providing that automated, remote disconnection of service upon depletion of prepaid account balances be considered a voluntary termination of service by the customer and not a disconnection by the utility subject to consumer protection laws and regulations regarding the disconnection of service;2 and

Whereas, the proliferation of digital meters with remote connection and disconnection capabilities makes implementation of prepaid service more feasible economically for utilities; and

Whereas, prepaid utility service reduces or eliminates utility incentives to negotiate effective, reasonable payment agreements and to implement effective bill payment assistance and arrearage management programs; and

Whereas, increased service disconnections of vital gas and electric service that come with implementation of prepaid service and prepaid metering threaten the health and safety of customers, particularly those who are most vulnerable to the effects of a loss of service, including the elderly, disabled and low-income families, as detailed and documented in a companion resolution encouraging state legislatures and state public utility commissions to institute programs to reduce the incidence of disconnection of residential gas and electric service based on nonpayment; and

Whereas, utilities offering prepaid service benefit financially from reduced cash working capital requirements, uncollectibles amounts and credit and collections risk; and

Whereas, utilities in at least one state require customers to pay deposits for a customer prepayment device or system;3 and

Whereas, providers of residential electric service in at least one state impose additional fees on customers choosing to make payments more frequently than once every thirty days and under other circumstances;4 and
Whereas, in at least one instance, a company has reportedly gone out of business after receiving prepayment funds from customers, resulting in large unpaid fines and more distressingly in an undetermined number of customers having lost their money;5

Now, therefore, be it resolved, that NASUCA continues its long tradition of support for the universal provision of essential residential gas and electric service for all customers;

Be it further resolved, that proposals by utility companies that seek to replace traditional credit-based service to some residential customers with prepaid service delivered through prepayment meters or digital meters with remote connection and disconnection capabilities should not be approved unless they guarantee that current consumer protections are not bypassed or eliminated and that adequate and comparable consumer protections are developed and in place. At a minimum, if prepaid services are offered, a utility should be required to satisfy each of the following conditions:

(1) All regulatory consumer protections and programs regarding disconnection limitations or prohibitions, advance notice of disconnection, premise visits, availability of payment plans or deferred payment agreements, availability of bill payment assistance or arrearage forgiveness, and billing disputes are maintained or enhanced;

(2) In the event that the billing credits of a customer receiving prepaid residential electric or natural gas service are exhausted, the customer shall be given a reasonable disconnection grace period, after which the customer shall revert to traditional, credit- based service, subject to all rules and customer protections applicable to such service;

(3) Prepayment households include no one who is

(a) income-eligible to participate in the federal Low Income Home Energy Assistance Program (LIHEAP); or

(b) protected under state law from disconnection for health or safety reasons;

(4) Prepaid service is only marketed as a purely voluntary service and is not marketed to customers facing imminent disconnection for non-payment;

(5) Utilities offering prepaid service also offer effective bill payment assistance and arrearage management programs for all customers, including customers with arrearages who choose prepayment service;

(6) Rates for prepaid service are lower than rates for comparable credit-based service, reflecting the lower costs associated with reduced cash working capital requirements, uncollectibles amounts and shareholder risk affecting a utility's return on equity;

(7) Utilities demonstrate the cost effectiveness of any proposed prepaid service offerings through a cost versus benefit analysis and reveal how costs will be allocated among various classes of customers;

(8) Prepayment customers are not subjected to any security deposits or to additional fees of any kind, including but not limited to initiation fees or extra fees assessed at any time customers purchase credits;

(9) Utilities ensure there are readily available means for prepayment customers to purchase service credits on a 24-hour a day, seven-day a week basis;

(10) Prepayment customers can return to credit-based service at no higher cost than the cost at which new customers can obtain service;

(11) Payments to prepaid accounts are promptly posted to a customer's account so as to prevent disconnection or other action adverse to the customer under circumstances in which the customer has in fact made payment; and

(12) Adequate financial mechanisms are developed and in place within the state to guarantee that funds prepaid by customers are returned to the customers who prepaid them if and when a company becomes

insolvent, goes out of business or is otherwise unable to provide the services for which the funds were prepaid;

Be if further resolved, that the implementation of prepaid service programs should be monitored to ensure that it does not in practice result in an increased rate of service disconnections for non-payment;

Be it further resolved, that utilities implementing prepaid service programs should track and report to the state regulatory commission separately for credit-based and prepayment customers each of the data points delineated in the companion resolution urging the states

to gather uniform statistical data on billings, arrearages and disconnections of residential gas and electric service; Be it further resolved, that NASUCA authorizes its Executive Committee to develop specific positions and take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking action if possible. In any event the Executive Committee shall notify the membership of any action pursuant to this resolution.

Submitted by Consumer Protection Committee

Approved June 28, 2011
San Antonio, Texas
Abstention: Tennessee

[1] “SRP’s prepaid electricity plan found to have higher rates,” The Arizona Republic,(July 11 2010), www.azcentral.com/private/cleanprint/?1299004402750; Electric Power Research Institute, “Paying Upfront: A Review of Salt River Project’s M-Power Prepaid Program, (October 2010); Talbot, “Prepayment meters: A scourge penalising the poor” (June 2009), http://www.energychoices.co.uk/prepayment-meters-a-scourge-penalising-the-poor.html; Centre for Sustainable Energy and National Right to Fuel Campaign, “Counting the Hidden Disconnected,” (1998).

[2] See 2011 Iowa Proposed Legislation, House Study Bill158, http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=hsb158.

[3] “Paying Upfront” A Review of Salt River Project’s M-Power Prepaid Program,” EPRI, Palo Alto, CA: (2010), http://www.srpnet.com/environment/earthwise/pdfx/spp/EPRIMPower.pdf.

[4] Biedrzycki, “New Fees On Residential Electric Bills Complicate Cost Comparisons For Consumers Shopping For A Better Deal And Penalize Those Who Save Electricity And Those Struggling To Pay Their Bill” (February 2011), http://www.scribd.com/doc/49467979/Fees-Report-FINAL-2232011.

[5]Texas Public Utility Commission, News Release, “PUC orders $3.7 million in penalties: two former retail electric providers fined millions (Jan. 14, 2010), http://www.puc.state.tx.us/nrelease/2010/011410.pdf; “Consumer group: Electricity companies have big

fees hidden in small print," KHOU11 Houston (April 30, 2011) , http://www.khou.com/news/local/Consumer-group-Electricity-companies-have-big-fees-hidden-in-small-print–121014164html.

June 28th, 2011|Consumer Protection