COMMONWEALTH OF PENNSYLVANIA

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December 15, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: PECO Energy Company Pilot Plan for an Advance Payment Program and Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan
Docket No. P-2016-2573023

Dear Secretary Chiavetta:

Please be advised that the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Lauren M. Burge
Lauren M. Burge
Assistant Consumer Advocate
PA Attorney I.D. 311570

Attachment
cc: Office of Administrative Law Judge
Certificate of Service
227938

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	:	

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15th day of December 2016.

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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		

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: December 15, 2016

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I. INTRODUCTION

Pursuant to the notice published in the *Pennsylvania Bulletin* on November 12, 2016 at 46 Pa.B. 7232, the Office of Consumer Advocate (OCA) submits the following comments regarding PECO Energy Company's (PECO or the Company) Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan (herein after referred to as "Pilot Plan"). The OCA has been assisted in the preparation of these comments by John Howat, Senior Policy Analyst at the National Consumer Law Center (NCLC).[1] An Affidavit by Mr. Howat in support of these comments is attached as Appendix A. As set forth in more detail below, the OCA submits that PECO's Petitions represent unsound public policy and are inconsistent with the consumer protections set forth in Chapter 14 of the Public Utility Code. As such, PECO's Petitions should be denied.

A. Background

On October 26, 2016, PECO filed its Petitions containing a Pilot Plan designed to implement a prepaid meter pilot program utilizing PECO's advanced metering system. According to the Pilot Plan, PECO seeks the Commission's approval to permit 1,000 residential customers and applicants for service to voluntarily participate in a pilot program in which the customers/applicants prepay for electric service. *Plan* at ¶¶ 5, 6. PECO intends to use the pilot

[1] John Howat has been involved with energy programs and policies since 1981, including the past 17 years at National Consumer Law Center. At NCLC, Mr. Howat manages projects in support of low-income consumers' access to affordable utility services, working with clients in 30 states on design and implementation of low income energy affordability and efficiency programs, utility consumer protections, rate design, and metering technology. Mr. Howat has previously testified in California regarding prepaid meters, and is the author of the NCLC report titled "Rethinking Prepaid Utility Service: Customers at Risk" (June 2012). He has testified as an expert witness in 14 states, and is a contributing author of NCLC's treatise, Access to Utility Service. Previously, he served as Research Director of the Massachusetts Joint Legislative Committee on Energy, Economist with the Electric Power Division of the Massachusetts Department of Public Utilities, and Director of the Association of Massachusetts Local Energy Officials. Mr. Howat has a Master's Degree from Tufts University's Graduate Department of Urban and Environmental Policy and a BA from The Evergreen State College. Mr. Howat's Resume is included as an Attachment to his Affidavit.

program to, among other things, collect data on customer usage and payment patterns which may be used to develop a broad-scale advanced payments program. *Plan* at ¶ 5. PECO also seeks to obtain information on customer satisfaction with such a payment structure. PECO seeks to begin the prepaid meter pilot program in early 2018. *Plan* at ¶ 7.

In Pennsylvania, advanced payments for service was originally included in the Commission's regulations in 1978 at 52 Pa. Code § 56.17. Section 56.17 provides that advance payments may be required for four specific types of service, including "seasonal service," "the construction of facilities and furnishing of special equipment," "gas and electric rendered through prepayment meters," and "temporary service for short-term use, including installation and removal, with credit for reasonable salvage." 52 Pa. Code § 56.17(1)-(4). For "gas and electric rendered through prepayment meters," Section 56.17(3) provides a number of limitations on this service, including requirements that the customer is nonlow income, the service is being provided to an individually-metered residential dwelling, that the company provide emergency backup credits, and that a specific process is in place for evaluating the prepayment meter program. 52 Pa. Code § 56.17(3). Since 1978, to the best of the OCA's knowledge, no public utility in Pennsylvania has utilized this regulation to establish an advanced payment program. PECO has also indicated that it is not aware of any other public utility serving in Pennsylvania that has implemented an advanced payments program pursuant to this regulation. *Plan* at ¶ 3.

While relying heavily on Section 56.17, PECO is seeking a waiver of a number of its provisions as part of its Pilot Plan. *Plan* at ¶¶ 31-35. In addition to asking for Commission approval pursuant to 52 Pa. Code § 56.17(3)(iv), the Company's filing seeks Commission approval of waivers of provisions of the Commission's regulations regarding advance payment customer participation, limitation to participants with a delinquency, limitation of participation to

"customers" but not "applicants," the requirement that program participants agree to remain on prepaid service until pre-existing arrears are retired, and provisions regarding return of customer deposits. *Id.*

PECO's Pilot Plan seeks to implement an advance payments program at this time because its advanced meter infrastructure network (i.e., smart meters) now has the capability to allow customers to prepay for electric service and provides the Company with the ability to remotely connect and disconnect customers. *Plan* at ¶ 3. PECO did not include any mention of an advance payment program as part of its Smart Meter Implementation Plan, although the Settlement in PECO's smart meter proceeding did address consumer protections that must be in place in order for the Company to remotely connect or disconnect customers from service for nonpayment.[2] While the OCA recognizes that PECO's advanced meter infrastructure makes prepayment possible, the advanced meter infrastructure has many other functionalities that can be used to the benefit of customers and utilities without many of the significant problems and issues presented by prepayment metering. For example, advanced metering infrastructure includes the capability to provide all customers – not just those who prepay for service – with a rich stream of real-time information on electricity usage and expenditures. This information can be used by customers on a real time basis to monitor their usage and their budgets throughout the course of a billing period. This information can also be used to establish alerts for customers as the customer desires.

[2] *See* Pa. P.U.C., *Opinion and Order*, Docket No. M-2009-2123944, at 11-13 (entered May 6, 2010) ("The Settlement Petition provides that PECO will comply with Chapter 14 of the Public Utility Code (Code), 66 Pa. C.S. § 1401, et seq. and Chapter 56 of the Commission's Regulations, 52 Pa. Code § 56.91, et seq., with respect to the application of the remote connect/disconnect capability for the termination of service. PECO will also, at the minimum: (1) send an appropriately trained employee to make contact with a responsible adult; (2) where personal contact is not made, provide a notice containing specific information relating to PECO's programs and payment information; and (3) stop termination if the customer can show specific confirmation of payment. PECO agrees to charge a reduced restoration fee where the remote feature is utilized and that restoration timeframe improvements will be considered as part of the collaborative process.")

PECO requested that its Pilot Plan be evaluated and resolved on the basis of written comments and reply comments. *Plan* at ¶ 37. The OCA submits these Comments pursuant to the notice published in the *Pennsylvania Bulletin* at 46 Pa.B. 7232 that provided for a comment and reply comment period. The OCA also filed an Answer to PECO's Pilot Plan on November 15, 2016, which was submitted in accordance with the Commission's regulations requesting that this matter be sent to the Office of Administrative Law Judge for development of a full and complete record, including the presentation of expert witnesses. Of particular note, although the Company seeks full approval to proceed with an advance payments pilot, it provides no details on fundamental aspects of program operation and cost. The public interest and public safety require that a fully developed proposal, including details on customer communications, notifications, disconnection and reconnection time lines, rates to be charged, applicability of third party transaction fees, data reporting protocols, and program costs – to name just a few – be provided and fully evaluated. In addition, all of PECO's protocols will need to be reviewed for compliance with Chapter 14 of the Public Utility Code and other provisions of Chapter 56 of the Commission's regulations.

B. <u>The OCA's Position on PECO's Pilot Plan</u>

For the reasons discussed in detail below, the OCA respectfully submits that the Commission should not approve PECO's Pilot Plan. Access to, and the maintenance of, electric service is essential to the health and safety of customers as well as entire communities. Pennsylvania law has developed a carefully balanced set of consumer and utility protections that respects the essential nature of this service while providing the utility a reasonable opportunity to

manage its revenues. Prepaid metering would disrupt this careful balance that has been achieved with no discernable benefit but with a great potential for harm.

The experience in other states and countries that have implemented prepayment programs demonstrates that the ill effects of these programs, when widely deployed, fall disproportionately on low and moderate income consumers who already struggle to pay for basic utility service. Rather than assist consumers in need by addressing their payment difficulties through payment arrangements or programs designed to address their needs, prepayment programs can obfuscate these needs and allow many to fall through the cracks.

PECO's program is also lacking in essential detail. From PECO's filing it is not possible to determine if consumers will retain their rights under Chapter 14 of the Public Utility Code or Chapter 56 of the Commission regulations. Many other details that are essential to the operation of the program and to consumer protection have not been developed. Without this information, it is difficult to assess the full impact on consumers.

If the Commission does consider the Pilot Plan, the OCA provides a number of consumer protections and data collection and reporting requirements that must be included in any pilot prepaid meter program. As outlined in its Answer, the OCA also maintains that if this proceeding moves forward, it should be assigned to the Office of Administrative Law Judge for hearings and development of a full evidentiary record.

II. COMMENTS

A. PECO's Proposed Pilot Program is Not Consistent with Pennsylvania Law

Pennsylvania law and policy has consistently ensured that all customers are able to maintain essential utility service. The Commonwealth has done this by codifying standards and practices for billing services, and by developing programs to ensure universal service in the electric and natural gas industries. Pennsylvania's Public Utility Code provides many examples of this: from Section 1501 requiring safe, adequate, continuous, and reasonable service; to Sections 2804(9) and 2203(8) requiring that universal service programs be adequately funded and available to ensure affordability and maintain service; to the enactment of Chapter 14 of the Public Utility Code, known as the Responsible Utility Customer Protection Act, in which the General Assembly sought to establish the key consumer protections applicable to basic utility service in Pennsylvania. These protections not only protect consumers and utilities, but they protect the basic safety of our communities. As we are all painfully aware, the loss of utility service can have tragic consequences to individuals and communities. Because of this, the loss of utility service has always been a matter of last resort when all else has failed.

Of particular note here, Chapter 14 was added to the Public Utility Code in 2004 and reenacted with certain amendments in 2014. 66 Pa. C.S. §§ 1401 *et seq*. Chapter 14 established basic consumer protections for utility service and codified policies regarding the rights and responsibilities of consumers, utilities, and the Commission regarding the provision of basic utility service. For example, Chapter 14 set forth termination and payment arrangement protections, established deposit requirements, and provided for the reconnection of service. This statute, along with others, recognizes that utilities provide an essential service that is fundamental to the health and safety of the public and must remain available to all customers on

reasonable terms and conditions. As to electric service, Section 2802(9) of the Public Utility Code perhaps said it best as follows:

> 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.

66 Pa. C.S. § 2802(9).

Similarly, Chapter 56 of the Pennsylvania Code includes the Commission's regulations regarding standards and practices for residential utility service, and outlines consumer protections and consumer responsibilities regarding billing and payment, deposits, terminations, complaints, and other standards related to residential utility service. 52 Pa. Code §§ 56.1 *et seq*. As set forth in Section 56.1, the purpose of the chapter is to assure the adequate provision of residential public utility service, to restrict the unreasonable termination of service and to provide functional alternatives to termination. 52 Pa. Code § 56.1.

In its proposal, the Company relies on Section 56.17, which allows for advance payments through the use of prepaid metering. 52 Pa. Code § 56.17. This regulation, however, does not provide an adequate basis for the proposed Pilot Program. Section 56.17 was passed in 1978 and has not been applied in the nearly 40 years since its inception. Since that time, there have been many changes in Pennsylvania statutes, regulations and policies regarding the rules for provision of electric service. For example, Section 56.17 predates the enactment of Chapter 14 and the implementation of full scale Customer Assistance Programs. These legal and policy changes have significantly affected utility consumer rights and protections, as well as collections procedures, which were not in effect when Section 56.17 was enacted. There have also been significant technological advancements since Section 56.17 was enacted and which the regulation could not have anticipated, such as the advanced meter infrastructure that PECO has

now deployed throughout its service territory. The fact that the Company has found it necessary to seek a waiver of significant portions of this regulation demonstrates that the Pilot Program is not within the scope of advance payment programs that the regulation was intended to cover. As such, Section 56.17 does not provide an adequate basis for the Pilot Program that PECO has outlined in its filing.

As will be discussed in greater detail below, PECO's filing does not address numerous issues regarding what, if any, consumer protections will be in place or how the Pilot Program will comply with Chapter 14, Section 1501, and the Commission's Chapter 56 regulations. Prepaid metering at its core is dependent upon consumers giving up the many consumer protections that are intended to assist them in maintaining essential utility service. These protections, however, exist not only for the safety of customers but for the safety of communities as well. Significant questions are raised as to not only whether these protections *should* be waived, but also whether they can legally be waived by individual customers given their impact on public health and safety.

Courts in other states have found that a statutory right cannot be waived if the provision is intended to benefit the public. For example, the Connecticut Supreme Court stated that:

> [A]lthough it is generally true that privately held statutory and constitutional rights are waivable, not every mandatory statutory provision can be waived, even by the party who benefits or is protected under the statute. . . The public interest may not be waived. [When] a law seeks to protect the public as well as the individual, such protection to the state cannot, at will, be waived by any individual.[3]

Similarly, the U.S. Supreme Court has stated that "[i]t has been held in this court and other courts that a statutory right conferred on a private party, but affecting the public interest, may not

[3] *Pereira v. State Bd. Of Educ.*, 37 A.3d 625, 653-54 (2012) (internal quotations omitted) (*quoting In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, 866 A.2d 554 (2005)).

be waived or released if such waiver or release contravenes the statutory policy."[4] In this instance, the consumer protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations protect individual rights, as well as public health and safety, from the dangers and societal ills associated with a lack of basic utility service. As such, the OCA submits that these protections may not be able to be waived as PECO's Pilot Program would require.

As will be discussed more below, the OCA submits that the Pilot Plan does not provide adequate consumer protections. Additionally, the Pilot Plan is not in compliance with Pennsylvania law and regulations that are intended to protect essential utility service and prevent public health and safety risks. Thus, the OCA submits that the Pilot Plan and prepaid metering in general are not consistent with the law and should not be approved by the Commission.

B. Experiences With Prepaid Meter Usage in the United States, Great Britain, and New Zealand Raise Significant Questions as to the Impact on Consumers of PECO's Proposal

While prepaid metering has not been implemented in Pennsylvania by a public utility, there is some experience with prepaid metering in the United States and internationally. Based on the experience of utilities in Great Britain, New Zealand, and the United States, the population that participates in prepaid service is concentrated among low or moderate income customers, many of whom are at risk of service disconnections for nonpayment. Prepaid service, however, does not lower the risk of service disconnection. Rather, prepaid service tends hide the risk of service disconnection. Prepaid customers generally face frequent service disconnections or interruptions, while sometimes paying higher rates than customers receiving traditional credit-based service and incurring additional fees. Affidavit of John Howat at ¶ 3.

[4] *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 704 (1945).

Prepaid service is offered to customers on what has been termed a "voluntary" basis, and, when a prepayment customer experiences a service disconnection, it is often referred to within the industry as a "self-disconnection" or "voluntary disconnection," a characterization with which the OCA does not agree. Howat Affidavit at ¶ 4. As a "voluntary disconnection," the termination of service through a prepayment program is rarely counted as a termination. This classification of the loss of service tends to hide problems from general view rather than addressing the problems directly, and potentially increases the risk to vulnerable customers who may now be outside of the view of agencies that can help them. Participating prepaid customers may not feel as though they have any other option. A customer who is facing imminent loss of essential service—often with devastating consequences—may agree to surrender consumer protections and access to a reasonable payment arrangement to keep service in the short term. Howat Affidavit at ¶ 5. This is what has been shown to happen when customers are offered prepayment services.

1. *United States*

Existing prepaid programs in the United States tend to be concentrated in service territories served by municipally- or cooperatively-owned utility systems in southeastern states that are not subject to the full regulatory jurisdiction of state utility commissions. Howat Affidavit at ¶ 7. In Texas, prepaid service is offered by over 20 of the lightly regulated retail electric providers, but not by the public utilities. Howat Affidavit at ¶ 8. Some investor owned utilities are now beginning to examine these programs. Investor owned utilities have proposed, or are considering, prepayment programs in Arizona (Arizona Public Service), South Carolina (Duke Energy), Kansas (Westar Energy), and Michigan (DTE Energy).[5] Howat Affidavit at ¶ 9.

[5] Generally, prepaid service proposals that are subject to the jurisdictional authority of state utility regulators can only be authorized based on a petition seeking permission to bypass, modify, or eliminate standard consumer

A prepaid program was recently rejected for San Diego Gas & Electric (SDG&E) by the California Public Utilities Commission. Howat Affidavit at ¶ 10. In rejecting the proposed program, the California Public Utilities Commission stated, "[w]e also take note of Consumer Groups' logical inference that, depending on the communications means chosen (e.g., text message, automated phone message, or e-mail), 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."[6] Further, the California Public Utilities Commission found SDG&E's argument that a customer may "voluntarily forego statutory prior notice requirements in order to obtain the benefits of the proposed Prepay program relies on inappropriate precedent and is unconvincing."[7]

One of the longest running prepaid meter programs in the United States is operated by Salt River Project ("SRP"), Arizona's second largest electric utility and the third largest municipally-owned utility in the United States. The SRP M-Power prepayment meter program is the largest prepayment program in the United States. Currently, approximately 152,000 customers are enrolled in the voluntary SRP program, or about 16% of residential electric customers. Howat Affidavit at ¶ 12.

The SRP reveals a troubling aspect of full scale prepaid meter programs. The vast majority of SRP prepayment program participants are low-income households, and the median income of M-Power customers has declined considerably in recent years. In 2007, the median

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protections regarding service disconnection notifications and timelines. Prepaid service providers must also obtain permission to bypass obligations to offer a reasonable payment agreement as an alternative to service disconnection. Howat Affidavit at ¶ 11.

[6] California Public Utilities Commission, Decision Addressing the Application and the Motions to Adopt Partial Settlements, Application 11-10-002 (Jan. 23, 2014), at 54, *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M086/K541/86541422.PDF.

[7] *Id.*

participant income was $27,500. Within a year, it dropped to $19,500. In 2010, the median income fell below the poverty level for a family of three or more to $17,900. In 2010, 82 percent of program participants had household income of less than $30,000.[8] Howat Affidavit at ¶ 13.

Additionally, a study of customers in the M-Power program shows an increasing proportion of racial minorities enrolled in prepayment service. Surveys prior to 2010 showed that Hispanics comprised 22 to 23 percent of SRP's prepaid service customers in 2006, but that Hispanic participation had increased to 48 percent by 2008.[9] In Phoenix, the largest city served by the Salt River Project, Hispanics account for 40.8 percent of the population, and are thus disproportionately represented in the prepaid service program.[10] Howat Affidavit at ¶ 14.

A 2009 analysis showed that M-Power customers are "more likely to be relatively young, have families, be relatively low-income, be low electricity consumers, live in apartments, have been SRP customers for less than five years, and have unsatisfactory or 'new credit ratings' compared to other residential customers."[11] On average, the head of a household with a prepaid meter is 36 years old, makes an average annual income of $24,400, and is Hispanic.[12] Howat Affidavit at ¶ 15.

SRP, like other municipally- or cooperatively-owned utilities in the U.S., do not publicly report rates of service disconnections for prepaid service customers or post-paying customers. However, in response to a media inquiry in 2012, SRP divulged the troubling fact that, on average, M-Power customers experience loss of electric service once per month, compared to an

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[8] Bruce Neenan, "Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program," *Electric Power Research Institute* (2010) (hereinafter, "EPRI Report"), Table 4-3, p. 4-6, *available at* http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=000000000001020260&Mode=download.
[9] *Id*. at 4-6.
[10] U.S. Census Bureau, "State & County Quick Facts," (2012), *available at* http://www.census.gov/quickfacts/table/RHI725215/0455000,4260120,04.
[11] EPRI Report, Table 4-3, p. 4-6.
[12] *Id*.

average disconnection rate among traditional payment customers of less than once per year.[13] Howat Affidavit at ¶ 16.

2. *Great Britain*

Electric and natural gas utilities in Great Britain have implemented prepaid service. Howat Affidavit at ¶ 17. The number of electric prepayment meters in Great Britain was about 3.6 million in 1997. Howat Affidavit at ¶ 18. In 1997 there were also 1.2 million natural gas prepayment meters deployed in Great Britain. Howat Affidavit at ¶ 19. By 2009, 3.7 million electric prepayment meters and 2.5 million natural gas prepayment meters had been deployed, serving 14% of electricity customers and 11% of natural gas customers.[14] Howat Affidavit at ¶ 20. Currently, about 15% of residential natural gas and electric utility customers in Great Britain use prepayment meters.[15] Howat Affidavit at ¶ 21.

Historically, a vast majority of prepayment meter users in Great Britain have been low-income customers.[16] Utility companies targeted marketing of prepayment meters to low-income households in arrears, even though they charged substantially more for service delivered under prepayment than for service paid for by traditional billing means or through direct debit.[17] Howat Affidavit at ¶ 22.

Prepayment meters in Great Britain are still concentrated disproportionately in lower-income households. Sixty percent of electricity and natural gas customers with prepayment

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[13] Randazzo, "Prepaid Utilities Criticized as Unfair," The Republic, AZcentral.com, June 19, 2012. http://archive.azcentral.com/business/articles/2012/06/18/20120618prepaid-utilities-criticized-unfair.html.

[14] Owen, Ward, "Smart Prepayment in Great Britain," Sustainability First, March 2010, at 11, *available at* http://www.sustainabilityfirst.org.uk/images/publications/other/Sustainability%20First%20-%20Smart%20Pre-Payment%20in%20Great%20Britain.pdf.

[15] Office of Gas and Electricity Markets, "Prepayment Review: Understanding Supplier Charging Practices and Barriers to Switching," June 2015, at 8, *available at* https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf.

[16] Centre for Sustainable Energy and National Right to Fuel Campaign, "Counting the Hidden Disconnected," (1998), p. 8.

[17] National Right to Fuel Campaign, "Fuel Poverty Fact File: Progress and Shortfall," (2000), p. 23-26.

meters in 2010 had annual incomes below £17,500 ($27,704). Further, over half of prepayment meter customers received a means-tested benefit, nearly half had an unemployed head of household, and more than a third had one or more household members with a long-term physical or mental illness or disability.[18] Howat Affidavit at ¶ 23. Similar to the SRP experience, average income among prepaid service customers in Great Britain is declining. In 2008, the average household income for prepaid customers was £16,091 ($27,523). By 2009, the average income fell to £13,466 ($21,929).[19] The number of customers with disabilities increased from 26 percent to 39 percent.[20] Howat Affidavit at ¶¶ 24 and 25.

Information regarding rates and service disconnections among prepaid service customers is very difficult to come by, since implementing utilities in Great Britain are not required to track and report this critical information. Howat Affidavit at ¶ 26. Customer surveys have been conducted and help to fill the information gap. Accent, an independent research firm in the UK, surveyed prepaid service customers. It found that in 2008, 9% of prepaid electric service customers had experienced disconnections during the previous twelve months.[21] Customers using traditional, credit-based service experienced a disconnection rate of about one-tenth of one percent during that same period.[22] Howat Affidavit at ¶ 27. Further, a 1997 customer service survey found that twenty-eight percent of prepayment customers in Great Britain were disconnected from service over the previous twelve month period.[23] The survey also found that

[18] Mummery and Reilly, Consumer Focus, "Cutting Back, Cutting Down, Cutting off: Self Disconnection Among Prepayment Meter Users," July 2010, ("Mammery and Reilly") page 5.
[19] Accent for National Housing Federation, "Pre-Payment Meter Utilities Customers: Wave 2 Final Report," (April 2009), p. i.
[20] *Id.*
[21] Accent report prepared for National Housing Federation, "Pre-Payment Meter Utilities Customers, Final Report," (June 2008), p. 12.
[22] Calculated by National Consumer Law Center using Office of Gas and Electricity Markets Domestic Suppliers Quarterly Debt and Disconnections Reports from 2008.
[23] Centre for Sustainable Energy and National Right to Fuel Campaign, "Counting the Hidden Disconnected," (1998), p. 20.

over half of prepaid service customers experiencing disconnection went without fuel supplies up to three times during the previous year. Over half of the households reporting disconnection from prepaid service went without fuel between five and twenty-four hours, and four percent of those disconnected from natural gas service went without fuel for between four and seven days.[24] Howat Affidavit at ¶ 28. Finally, a 2010 survey conducted in Great Britain for the organization Consumer Focus showed that twenty-two percent of prepaid service customers had foregone other necessities such as food and medicine in order to retain utility service, forty-five percent had reduced their energy usage to retain service, fifty-four percent had used a "emergency credit" to retain service, and fully sixteen percent had service disconnected during the previous year.[25] Howat Affidavit at ¶ 29.

3. *New Zealand*

A 2010 national prepayment meter users' survey in New Zealand revealed that over 50% of prepayment meter users had experienced a service disconnection during the previous 12 months. Seventeen percent of respondents indicated that they had experienced six or more disconnection events during the preceding year. Howat Affidavit at ¶ 30. Households with children made up about 54% of prepaid service households. Howat Affidavit at ¶ 31. Among New Zealand households with children and prepayment meters, 26% began using prepaid service because of electricity bill debt, 58% had experienced disconnection during the past 12 months, 45% reported inability to pay telephone, gas, or water bills ontime during the past 12 months, and 17% received a grant or loan to help pay for electricity during the past 12 months. Howat Affidavit at ¶ 32. Researchers concluded that prepayment customers were more likely than the general population to experience financial hardship, low household income, and high levels of

[24] *Id*. at p. 21.
[25] Mummery and Reilly at p. 17.

"bill stress." Further, among prepayment customers, households with children experienced greater levels of hardship than prepayment customers with no children.[26] Howat Affidavit at ¶ 33.

4. *Conclusion*

As can be seen from the experience in other states and internationally, prepaid metering service, when more broadly deployed, tends to compromise the ability of low and moderate income households to maintain essential and affordable utility service.

C. PECO's Proposed Pilot Program to Introduce Prepayment Service Does Not Represent Sound Public Policy

The OCA submits that the introduction of prepaid metering in Pennsylvania as part of our advanced metering infrastructure not only raises significant questions as to its consistency with Pennsylvania's statutory and regulatory consumer protections, but constitutes unsound public policy. The fundamental basis of prepaid metering is that it bypasses or eliminates vital consumer protections, and it reduces or eliminates the utility's incentive to negotiate effective, reasonable payment arrangements with consumers and to implement effective bill payment assistance and arrearage management. As discussed above, in states and countries that have implemented prepaid metering programs, experience has shown that such programs quickly become targeted and concentrated among customers with low or moderate incomes that are payment troubled, result in more frequent service disconnections or interruptions, and tend to provide service at a higher rate, rather than a lower rate, than traditional credit-based service.

[26] O'Sullivan, et al., "Kids in the Cold: Outcomes for New Zealand Households with Children Using Prepayment Metering for Electricity," The New Zealand Medical Journal, March 2013, p. 1-5, *available at* https://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2013/vol-126-no-1371/article-osullivan.

Prepaid metering compromises basic access to continuous utility service that is vital to the health and safety of customers and communities.

The increased electric and natural gas service disconnections, and bill payment pressure, that would likely result from a prepayment program pose a threat to the health and safety of customers as well as the communities in which we live. As noted above, in Great Britain, a survey showed that 22% of prepaid service customers had foregone food and medicine to retain utility service while 45% had reduced energy usage. Howat Affidavit at ¶ 29. Similar steps are common in American households today. The National Energy Assistance Directors' Association's (NEADA) National Energy Assistance Survey outlines the steps that many individuals and families must take in order to afford basic utility services, often at a risk to their own health.[27] The NEADA survey found that in vulnerable homes, "[b]ecause of the difficultly they faced in paying their utility bills . . . as many as 37% went without medical or dental care, and 34% did not fill a prescription or took less than their full dose of prescribed medication." Many individuals reported making difficult or even dangerous decisions when addressing unaffordable energy costs: 39% closed off part of their home; 23% kept the home at a temperature they felt was unsafe or unhealthy; 21% left their home for part of the day; 33% used their kitchen stove or oven to provide heat; and 24% went without food for at least one day.[28] The NEADA survey includes households that received assistance from the Low Income Home Energy Assistance Program (LIHEAP); in most states, this includes homes earning at or below 150% of the federal poverty level, but in some states includes those earning 60% or less of the

[27] National Energy Assistance Directors' Association, *National Energy Assistance Survey* (Nov. 2011), *available at* http://neada.org/wp-content/uploads/2013/05/NEA_Survey_Nov11.pdf.
[28] *Id.* at 5 (Table II).

state median income, or those enrolled in programs such as Temporary Assistance for Needy Families (TANF), food stamps, SSI, or similar assistance.[29]

Even with consumer protections in place, we hear about tragic occurrences all too often in our communities when homes are cut off from utility service. As AARP et al. noted in a report titled *The Need for Consumer Protections: Smart Metering Proposals and the Move to Time-Based Pricing*, "[i]t is common for a household that is denied electricity to turn to alternative and often dangerous means of providing light and heat in the home. . . there are instances reported every year of the deaths of children and adults due to the use of a candle in a dwelling without electricity or heat."[30] Citizens in Pennsylvania, including children, have lost their lives in house fires as they use candles, space heaters, or stoves as alternative heating or lighting sources when terminated from utility service.[31] In cold weather, young children and the elderly are particularly at risk for cold-related illness or death.[32] Extreme heat is similarly dangerous for the elderly, the very young, and those with chronic health conditions.[33]

In addition, loss of essential utility service results in other costs to the consumer, including spoiled food, lost wages, and the like; as well as costs to society, such as hospital room

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[29] National Energy Assistance Directors' Association, *2009 National Energy Assistance Survey* (Apr. 2010), at 1-2, *available at* http://neada.org/wp-content/uploads/2013/03/2010-04-19NEADA_2009_Survey_Report.pdf.

[30] AARP, National Consumer Law Center, National Association of State Utility Consumer Advocates, Consumers Union, and Public Citizen, *The Need for Essential Consumer Protections: Smart Metering Proposals and the Move to Time-Based Pricing* (Aug. 2010), at 17, *available at* http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/NASUCA_Smart_Meter_White_Paper.pdf.

[31] *See, e.g.*, http://www.nbcphiladelphia.com/news/local/Deadly-House-Fire-Philadelphia-House-Fire-4th-Street-Cambria-Street-364623681.html; http://www.pennlive.com/news/2016/02/as_utility_shutoffs_have_risen.html; http://www.usatoday.com/story/news/nation/2014/02/12/space-heaters-winter-fire-deaths/5414447/; http://philadelphia.cbslocal.com/2010/10/19/heater-suspected-in-pa-fire-that-killed-5/.

[32] U.S. National Institutes of Health, National Institute on Aging, *Hypothermia: A Cold Weather Risk for Older People*, Press Release (Jan. 16, 2009), *available at* https://www.nih.gov/news-events/news-releases/hypothermia-cold-weather-risk-older-people.

[33] U.S. Centers for Disease Control and Prevention, *Extreme Heat Prevention Guide*, *available at* https://www.cdc.gov/disasters/extremeheat/heat_guide.html.

emergency care, other health care costs, and credit and collection costs.[34] As has been documented, prepaid metering increases the incidence of disconnection from service, and it is not in the public interest to place access to this necessary service further at risk for many households.

PECO's Pilot Plan has not identified any specific public policy that it intends to advance through the use of prepaid metering that justifies placing this essential utility service in jeopardy and eliminating the statutory and regulatory protections that assist Pennsylvania's struggling families. PECO has only identified a desire to more broadly deploy prepaid metering service.[35] As experience in other states has shown, this broader deployment tends to be targeted toward customers with limited means and results in greater proportions of low to moderate income customers entering the program as they search for any means to make ends meet. Such a result does not serve any sound public policy.

Some may also suggest that since PECO's program is only a limited pilot and will not enroll customers with incomes that are at or below 150% of the Federal Poverty Level, there could be no harm in such a limited pilot. It is not just low income customers with incomes at or below 150% of the Federal Poverty Level (FPL), however, that struggle to make ends meet. Throughout Pennsylvania, and particularly in the PECO service territory, income required to pay

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[34] National Association of State Utility Consumer Advocates, *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* (June 28, 2011), *available at* https://nasuca.org/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-2011-01/.

[35] If PECO is attempting to address a problem with high uncollectibles, this issue should be addressed directly rather than obscuring the problem behind prepaid meters. If the purpose of prepaid metering is to assist customers in budgeting and paying for utility service or reducing energy usage, there are many other means to achieve this end with the advanced metering and billing systems now in place. For example, in home devices (IHDs) can now be placed in the home that can show a customer the daily usage in the home, the cost of the usage, and the growing monthly bill as compared to a budgeted amount. Also, if more frequent, smaller payments would assist customers, consideration could be given to shorter billing periods, such as two weeks, for those customers that may wish such a payment plan. Finally, utilities should continually review and implement appropriate reminder and collection procedures so customers do not fall into significant arrears.

for basic household necessities -- including utility bills -- is considerably greater than income at 150% FPL. Howat Affidavit at ¶ 34. In fact, in revising winter termination procedures in 2004 when Chapter 14 was enacted, the General Assembly established the winter moratorium for customers with incomes at or below 250% of the Federal Poverty Level.[36] 66 Pa. C.S. § 1406(e). *See also*, 52 Pa. Code § 56.100. A 2012 report on income required to afford basic necessities in Pennsylvania counties found that, for a 3-person household with an infant and a toddler living in Philadelphia County, an income of $57,746 was required to meet the expenses of a basic, no-frills budget.[37] This income requirement is equal to 302% of the 2012 FPL for a 3-person household.[38] Howat Affidavit at ¶ 35.

A large percentage of PECO's customer households have income between 150% FPL and 250% FPL. Howat Affidavit at ¶ 36. These customers, despite struggling to pay their bills, would be eligible for PECO's pilot program and would lose the protections of Chapter 14, particularly the winter moratorium protection and the possibility of a payment arrangement over a three year period to address any arrearages under PECO's Pilot Program. 66 Pa. C.S. §§1406(e) and 1405(b)(2). The Table below shows the percentage of PECO households in this situation.

[36] For the Philadelphia Gas Works, the winter moratorium protection for customers with incomes between 150% and 250% of FPL contains certain exceptions. 66 Pa. C.S. § 1406(e)(2).
[37] Pearce, "Overlooked and Undercounted: How the Great Recession Impacted Household Self-sufficiency in Pennsylvania," October 2012, p. 8, *available at* http://depts.washington.edu/selfsuff/docs/PA2012_Web_101112.pdf.
[38] https://aspe.hhs.gov/2012-hhs-poverty-guidelines

Estimated Household Counts by Ratio of Income to Poverty Level - Counties Served by PECO Energy

Ratio of Income to Poverty Level	Bucks County		Chester County		Delaware County		Montgomery County		Philadelphia County	
	Population	Households	Population	Households	Population	Households	Population	Households	Population	Households
Total:	619,170	234,534	503,606	188,616	542,837	203,310	797,361	310,257	1,525,590	584,517
Under .50	21,255	8,051	12,191	4,566	24,664	9,237	25,173	9,795	185,542	71,089
.50 to .74	6,281	2,379	6,354	2,380	15,092	5,652	9,782	3,806	108,084	41,411
.75 to .99	10,458	3,961	10,233	3,833	16,381	6,135	17,646	6,866	99,577	38,152
1.00 to 1.24	12,769	4,837	13,432	5,031	16,378	6,134	16,826	6,547	87,504	33,526
1.25 to 1.49	20,066	7,601	10,138	3,797	15,028	5,628	17,413	6,775	70,674	27,078
1.50 to 1.74	14,307	5,419	15,449	5,786	23,425	8,773	22,082	8,592	83,270	31,904
1.75 to 1.84	7,144	2,706	5,273	1,975	7,208	2,700	11,883	4,624	27,161	10,407
1.85 to 1.99	11,865	4,494	7,985	2,991	8,565	3,208	13,514	5,258	40,529	15,528
2.00 to 2.49	39,183	14,842	29,937	11,212	37,553	14,065	50,993	19,841	123,574	47,346
2.50 to 2.99	39,183	14,842	29,937	11,212	37,553	14,065	50,993	19,841	123,574	47,346
3.00 to 3.99	82,859	31,386	54,505	20,414	73,577	27,557	98,842	38,460	173,806	66,592
4.00 to 4.99	75,678	28,666	50,698	18,988	60,687	22,729	104,122	40,514	126,731	48,556
5.00 and over	278,123	105,350	257,474	96,432	206,727	77,426	358,093	139,336	275,564	105,580
Average Household Size	2.64		2.67		2.67		2.57		2.61	
% of Households Below 150% Poverty	11.4%		10.4%		16.1%		10.9%		36.1%	
% of Households Between 150% and 249% Poverty	11.7%		11.6%		14.1%		12.3%		18.0%	

Sources: Calculated using 2015 American Community Survey 1-Year Estimates, Table B17002, Table B25010

Howat Affidavit at ¶ 37.

As reflected in the table above, an estimated 18% of the households in Philadelphia County have income greater than or equal to 150% FPG and less than 250% FPG. Households with income in the same range living in the remaining counties served by PECO comprise between 11.6% and 14.1% of all households living in their respective counties. Howat Affidavit at ¶ 38. These households should not be subjected to the home energy security risks that could occur in a prepaid metering program.

Prepaid metering as contemplated in PECO's Pilot is also directly at odds with other aspects of Chapter 14 and the procedures to maintain such protections contained in Chapter 56 of the Commission's regulations. One of the most significant contrasts involves the termination of

service. Under PECO's prepaid metering Pilot, PECO seeks to re-characterize the termination of the service for insufficient funds as a voluntary disconnection of service. This re-characterization of service, although included in Section 56.17, is at odds with other provisions of Chapter 56. Section 56.72(1) of the Commission's regulations addresses "discontinuance of service." This provision of the Commission's regulations states:

> A public utility may discontinue service without prior written notice under the following circumstances:
>
> (1) *Customer's residence.* When a customer ***requests*** a discontinuance at the customer's residence, when the customer and members of the customer's household are the only occupants.

52 Pa. Code § 56.72(1). PECO's characterization of loss of service under its proposed pilot as a discontinuance under the rules erroneously implies that the customer has voluntarily ***requested*** that service be shut off, and that written notice of such loss of service is not required. However, loss of service under prepayment metering in cases where the customer lacks funds to "load the meter" is not a voluntary act.

PECO's prepaid metering Pilot also unseats the careful balance of notice requirements that have been developed in Pennsylvania law to ensure that customers receive notice of an impending termination and receive sufficient information to understand why service is being terminated and how to address the situation. In recognition of the health and safety threat posed by a loss of service, Section 56.91 of the Commission regulations provides the information that must be included in a notice of termination. The requirements include such things as the reason for the termination, how to stop the termination, the contact information for the utility and the Commission, the medical certification procedures if there is a serious illness, and information about special protections for certain customer groups. 52 Pa. Code § 56.91. Under PECO's proposed program, customers will only receive limited text messages or emails.

In addition, the use of limited notice such as text messages or emails to inform customers about the balance in the account and the number of days remaining does not respect the circumstances that customers may be facing when reaching the end of the account balances. In the 2011 San Diego Gas & Electric (SDG&E) case considering a prepaid meter program, the California Public Utilities Commission identified the concern with this approach as follows:

> We also take note of Consumer Groups' logical inference that, depending on the communications means chosen (e.g., text message, automated phone message, or e-mail), 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 [be] behind on their internet or phone bills. We find that such an outcome is unacceptable.[39]

The California Public Utilities Commission rejected the SDG&E proposal on this and other grounds.

PECO's Pilot Program also does not address one of the fundamental policy implications of the consumer protections that would be waived through participation in the program. The protections that have been put in place allow many individuals with payment problems to be identified by the utility and referred for necessary assistance. Without this process prior to termination, individuals may fall through the cracks and will not receive the benefit of programs or payment arrangements for which they qualify. This will also hide the true number of individuals lacking utility service at any given time. For example, during the winter survey, if a meter is connected on the day of the survey, the customer will not be identified as lacking heat related service even though that service could be turned off the next day if the prepayments expire.

[39] California Public Utilities Commission, Decision Addressing the Application and the Motions to Adopt Partial Settlements, Application 11-10-002 (Jan. 23, 2014), at 54, *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M086/K541/86541422.PDF.

Pennsylvania has developed a critical balance between encouraging responsible utility bill payment and consumer protection. PECO's proposed prepaid meter program disrupts this careful balance and raises questions of public safety and harm to Pennsylvania citizens and communities. PECO has provided no cogent reason to even pilot this program except that it now has the technology to do so. The OCA submits that forwarding the use of prepaid metering service as part of Pennsylvania's move to advanced metering infrastructure is unsound and should not be approved. There is no public policy identified that could not be achieved through less harmful measures.

D. PECO's Pilot Program Lacks Sufficient Detail to be Considered At This Time

In addition to raising significant legal and policy concerns, the Pilot Plan that the Company has submitted to the Commission is devoid of critical details as to the protocols for the pilot, any details as to how PECO will protect consumers or public safety, or any details as to how PECO will provide protections to which customers are entitled under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. Some of the most concerning omissions include the following:

1. *Use of Pilot Program*

- *What is the purpose and ultimate goal of the Pilot Program?* PECO's Pilot Plan states that the pilot program will allow PECO to "test and learn" a prepaid meter program so that PECO can use the information to design a broad-scale program. *Plan* ¶ 5. PECO, however, does not provide its purpose or goal behind implementing a broad-scale prepaid meter program. As such, PECO's ultimate purpose behind pursuing prepaid meters are unknown.

- *Is conducting a Pilot Program as proposed by PECO in the public interest?* As discussed above, PECO's Pilot Plan is the first prepaid meter plan that has been introduced by a public utility company in Pennsylvania, and as such, the Commission's first opportunity to assess whether such a plan serves the public interest. This Pilot Plan should not be approved without the commission's determination that the Pilot plan is in the public interest.
- *What are the potential harms to customers, if any, from participating in the pilot program? Are there any health and safety risks? What benefits will customers obtain from participating in the pilot program?* The harms and benefits of the Pilot plan need to be known in order for the Commission to determine whether the Pilot Plan is in the public interest. If the harms outweigh the potential benefits, the Pilot Plan should not be approved even on a pilot basis.

2. *Customer Outreach*

- *How will PECO screen and select the 1,000 residential customers for the pilot program?* PECO's Pilot Plan does not detail who PECO will target in its outreach campaign, or if, and if so how PECO, will screen participants to ensure that the participant is non-low income. Additionally, if a purpose of the Pilot is to obtain data, it is unknown whether PECO will obtain a random sampling of customers so that the data is not skewed if the pilot program is approved; whether there will be an equal number of delinquent and non-delinquent customers.
- *What education, if any, will customers receive prior to enrolling to participate in the pilot program?* PECO's Pilot Plan does not detail what, if any, education customers will receive prior the enrolling in the pilot program. It should be known whether any

education will be provided, and if it is, the details of the educational materials should be known and assessed prior to approval of the Pilot plan to ensure that they are sufficient and understandable to a customer.

3. *Funding*

- *Will there be any service charges associated with any of the payment options; and if so, what are these fees?* PECO states that customers will be able to use any existing payment channel to pay funds into their account. *Plan* at ¶ 6. PECO does not provide information on whether customers participating in the pilot program will be charged fees for any of the payment options. If so, what are the fees? The likelihood is that customers who participate in this pilot program will be "paying" their account more than once a month, which is the current norm. As such, as part of the Commission's assessment of the Pilot Plan, it should be known whether there is potential for customers to be assessed multiple fees in the span of a month to participate in the pilot program.

4. *Arrearages*

- *Does the 75/25 split of payments between past due balances and current charges comport with the requirements of Chapter 14?* Chapter 14 provides specific guidelines regarding the length of time a customer has to pay past due balances in the context of payment arrangements. 66 Pa. C.S. § 1405. The Pilot Plan proposes to deviate from the Chapter 14 guidelines. As part of the review of the Pilot Plan, it should evaluated whether deviation from the Chapter 14 guidelines complies with the Public Utility Code, the Commission's regulations and policies, and is in the public interest. Whether PECO will inform customers of their rights to enter into a payment arrangement under Chapter 14 is also unknown.

5. *Ongoing Access to Account Information*

- *What technology, other than smart meters, will PECO use to implement its proposed pilot program?* PECO's Pilot Plan implies that it has not selected the technology that it will use for this program. *Plan* at ¶ 7. The technology selection, whether compatible with the technology that customers currently possess (e.g., smart phones, tablets, computers, etc.); and whether the technology is secure must be determined.

6. *Disconnection of Service*

- *Are customers being asked to waive statutory protections and if so, is that legal and in the public interest?* It appears as if customers will be asked to waive important consumer protections afforded by statute to participate in this program. PECO has not addressed the legality of this waiver nor has it provided any information as to whether it intends to inform customers of these rights and protections.

7. *Monthly Reconciliations*

- *What impact will monthly reconciliations have on customers participating in the pilot program?* PECO's Pilot Plan provides that a customer's advance payments balance will be reconciled at the end of each month. *Plan*, Attachment 1 ¶ 17. PECO specifies that for shopping customers, PECO will reconcile the customer's balance with the actual pricing information from the supplier, and if necessary, either credit the account or allocate debits daily over the next month to the customer's balance. *Plan*, Attachment 1 ¶ 17. The consequences of unexpected changes to a customer's balance should be explored as part of any proceeding. PECO should also be required to specify any other billing adjustments that will affect a customer's balance.
- *How will the residential monthly customer charge be billed to customers participating in the pilot program?* PECO's Pilot Plan does not describe the method it will use to bill

customers participating in the pilot program with the monthly residential customer charge. For example, will PECO allocate the monthly residential customer charge daily to a customer's advance payments balance, deduct the charge as a lump sum at some point in the month, or does PECO intend to handle the monthly residential customer charge in a different manner. However PECO intends to handle the monthly residential customer charge, the Pilot Plan should contain this information and the Commission and interested stakeholders to this proceeding should have the ability to review and contest any billing method.

8. *Evaluations*

- *What data and level of evaluations will be necessary if the Pilot is approved?* Although PECO provides that it will collect and evaluate the data it collects during the pilot program, PECO provides little information on what data it will collect or how it will collect the data. PECO should be required to provide significantly more detail on how it will collect and evaluate data, and the Commission and interested parties should have the opportunity to review and make recommendations regarding PECO's proposed evaluation plans.

9. *Cost Recovery*

- *What is the projected cost of implementing the pilot program?* PECO's Pilot Plan does not provide the anticipated cost of implementing the proposed pilot program. PECO states that "it is not requesting any determination at this time regarding the reasonableness or prudence of Plan expenditures." *Plan*, Attachment 1 ¶ 20. PECO states that it will seek to recover the costs in a future base rate case, if such costs are incurred in a test year. *Plan*, Attachment 1 ¶ 20. The OCA submits that issues related to

the costs of implementing the proposed pilot program should be addressed as part of the Commission's assessment.

10. *Winter Moratorium*

- *How will PECO's Pilot Plan comply with the winter moratorium on terminations contained in Chapter 14?* Chapter 14 prevents electric and gas utilities from terminating service for consumers whose incomes are at or below 250% of Federal Poverty Level after November 30 and before April 1. 66 Pa. C.S. § 1406(e). This important consumer protection prevents low and moderate income families from losing access to utility service, and thus access to heat and light, during cold winter months. PECO's filing, however, does not address how its Prepaid Meter pilot will comply with this requirement. The OCA submits that the winter moratorium is a vital provision that protects public health and safety and that any prepaid meter program must be in compliance with this requirement.

11. *Notice of Termination*

- *How will PECO ensure that customers will receive timely and complete notice of termination before termination occurs?* PECO's proposal provides that it will use text messages and/or email to notify individuals of their advance payments balance, estimated days of usage remaining, and other status notifications. PECO does not address how it will comply with Commission regulations related to termination notices, how it would work with customers who do not have access to text or email, or how it will ensure that the customer still has access to text or email service.

The OCA submits that with so few details and such an unformed plan, rather than simply receive Comments and Reply Comments, the Commission should direct PECO, if PECO wants to proceed with this Pilot, to file a detailed Plan and supporting testimony. The matter should be assigned to the Office of Administrative Law Judge for the receipt of expert testimony on these important matters from all interested parties and a determination as to whether the Pilot Plan complies with the Public Utility Code, and Commission regulations and policies, and is in the public interest. Only after discovery and the development of a full record can a proper determination be made.

E. If the Pilot Program Moves Forward, Consumer Protections and Tracking and Reporting Requirements Must Be Included

If the Commission does consider the Company's Pilot Plan, the OCA submits that a number of vital consumer protections must be included in the plan to protect public health and safety and to ensure that individuals do not go without essential utility services. PECO should also be required to gather specific data points and submit regular reports assessing the status and effects of prepaid metering programs. No pilot program should move forward unless all of these measures are in place and all of the necessary information can be gathered.

1. *Consumer Protection Measures*

Some necessary consumer protection measures were detailed in a 2011 Resolution by the National Association of State Utility Consumer Advocates (NASUCA) (attached as Appendix B) and a 2013 Resolution by NEADA (attached as Appendix C).[40] The OCA will detail these necessary consumer protections below.

[40] *See* National Association of State Utility Consumer Advocates (NASUCA), Resolution 2011-3, *Urging States to Require Consumer Protections as a Condition for Approval of Prepaid Residential Gas and Electric Service*, (June 28, 2011), *available at* https://nasuca.org/urging-states-to-require-consumer-protections-as-a-condition-for-

- *Participants Should Have Household Income Greater than 250% or 300% FPL* – In recognition that prepaid service is inappropriate for low-income customers, the Commission in 1978, required that any prepaid service program be limited to "nonlow income customers." 52 Pa. Code § 56.17(3)(i). The Commission defined a nonlow income prepaid service program participant as an individual with income greater than 150% of the Federal Poverty Level (FPL). As detailed above, it is not only households with incomes at or below 150% of the FPL that struggle to pay their bills. In Philadelphia, a 3-person household requires an income of 302% of the 2012 FPL to pay for basic household necessities. In establishing the winter moratorium and the time period for payment arrangements, the General Assembly recognized that customers with income between 150% and 250% of the FPL required additional protection. Of importance, the General Assembly has ensured that the winter moratorium protections apply to households with incomes at or below 250% of FPL. 66 Pa. C.S. § 1406(e). Allowing automatic shutoff in the winter conflicts with this protection. As such, the OCA submits that, if the Commission considers PECO's proposal, it should provide that only customers with incomes above 250% or 300% of the FPL be allowed to participate in any voluntary pilot program.
- *The Pilot Program Must Maintain Existing Consumer Protections* – All consumer protections currently provided by Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations must be maintained. This includes the opportunity for a payment arrangement that meets the time frames set out in Chapter 14 rather than the

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approval-of-prepaid-residential-gas-and-electric-service-2011-03/; National Energy Assistance Directors' Association (NEADA), *Resolution: Pre-Paid Residential Gas and Electric Meters: Public Service Commissions Should Require the Inclusion of Comprehensive Consumer Protections and Rates that Are Lower than Comparable Rates for Credit-based Service*, (March 2013) *available at* http://neada.org/wp-content/uploads/2013/03/NEADAprepayresolution.pdf.

arbitrary 75%/25% split proposed by PECO and provision of notice in accordance with Chapter 14 and Chapter 56 before the shut off of service.

- *The Pilot Program Must Provide for a Grace Period and a Return to Credit-Based Service* – When a customer that is enrolled in the Pilot prepaid meter program runs out of prepaid funds, the customer should be provided at least a 5-day grace period to make additional payments. Once this grace period has lapsed, the customer should then be reverted back to traditional, credit-based service rather than having service terminated. This protection will help to prevent high disconnection rates.
- *Specific Vulnerable Populations Should be Ineligible for the Pilot Prepaid Service* – Households including any individual that is protected by law from disconnection due to medical or other health and safety reasons should be ineligible for the Pilot program.
- *The Pilot Prepaid Program Should Not Be Marketed to Payment Troubled Customers* – The Pilot prepaid meter program should not be marketed to payment troubled customers or to those facing imminent termination.
- *The Pilot Program Should Be a Voluntary Program* – The Pilot Program should be entirely voluntary. The screening process should ensure that customers do not view the program as the only means to retain service.
- *Customer Assistance Programs and Payment Arrangements Must Remain Available to All Customers* – The Company must continue to offer customer assistance programs, payment assistance, and payment arrangements to all customers, including those enrolled in the Pilot Program if they become eligible.
- *The Pilot Prepaid Meter Rates Should be Lower than Traditional Rates* – Rates for the Pilot prepaid service should be lower than for traditional credit-based service. This is

necessary to reflect the fact that the Company would have lower costs associated with cash working capital, uncollectibles, and other risks affecting the return on equity.

- *The Company Must Show that the Pilot Prepaid Program is Cost-Effective* – PECO must be required to demonstrate that the Pilot prepaid meter program is cost-effective by conducting a cost-benefit analysis.
- *The Pilot Prepayment Customers Must Not Be Charged Additional Fees* – Prepayment customers should not be required to pay a security deposit, or any additional fees not charged to traditional credit-based service. No fees should be assessed when customers purchase additional prepaid credits.
- *Prepayment Pilot Customers Can Add Funds at Any Time* – The Company must ensure that customers in the Pilot have readily available options to purchase additional service credits at any time, 24 hours per day and seven days per week.
- *Prepayment Pilot Customers Must Be Permitted to Return to Credit-Based Service at No Additional Cost* – Customers must be able to return to traditional credit-based service at any time without any additional fees and at the same rate at which a new customer would receive service.
- *Payments to Prepaid Meter Accounts Must Be Posted Quickly* – Customer payments must be posted to their account as quickly as possible after payment is received in order to avoid adverse consequences in the time between payment and posting.
- *Prepaid Funds Must Be Returned to Customers in Certain Circumstances* – Adequate mechanisms must be put in place so that prepaid funds will be returned to customers when service is not received or does not meet statutory requirements.

2. *Data Collection and Reporting Requirements*

In addition to ensuring that adequate consumer protections are in place, the Commission should also require the Company to gather specific data points and make regular reports to the Commission concerning its advance payment program if a program is pursued or approved. The following information must be gathered and reported on a monthly basis:[41]

- Number of customers enrolled;
- Income and demographics of customers entering the Pilot Program;
- Number of customers entering with arrears;
- Number of customers entering as applicants;
- Number of customers entering with a termination notice;
- Number of payments made each month by customers, and number of payments made via each payment method;
- Cost of any transaction fees for each payment method;
- Rate being charged by both the EDC and the EGS, if applicable;
- Number of reminder notices sent, by each method;
- Number of customer disconnections and time of year of disconnect;
- Income and demographics of customers experiencing disconnection;
- Length of each disconnection or loss of service;
- Number of customers switched to credit service.

[41] *See* National Consumer Law Center, *Rethinking Prepaid Utility Service: Customers at Risk* (June 2012), at 25, *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf; *see also* National Association of State Utility Consumer Advocates (NASUCA), Resolution 2011-2, *Urging States to Gather Uniform Statistical Data on Billings, Arrearages and Disconnections of Residential Gas and Electric Services* (June 28, 2011), *available at* https://nasuca.org/urging-states-to-gather-uniform-statistical-data-on-billings-arrearages-and-disconnections-of-residential-gas-and-electric-services-2011-02/.

At a minimum, PECO must be required to collect this information and report regularly to the Commission in order to identify any emerging problems with the program.

In addition, at the conclusion of the first year of the Pilot and in each subsequent year of the Pilot, the Company should conduct a survey to obtain additional information. For example, information should be gathered on the reasons for disconnection as well as the steps customers may take to make prepayments and avoid disconnection. Information should also be gathered on whether the prepayment service affected usage behaviors and if so, how. The survey questions and instruments should be reviewed by all interested parties to ensure that the necessary information is being collected in an unbiased manner.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate respectfully submits that the Commission should not approve PECO's Pilot Plan. If the Commission wishes to consider this proposal, the matter should be referred to the Office of Administrative Law Judge for development of a full record.

Respectfully Submitted,

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December 15, 2016

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Appendix A

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	: : : :	

AFFIDAVIT OF JOHN HOWAT

---

1. My name is John Howat. I am a Senior Policy Analyst employed by the National Consumer Law Center. My business address is 7 Winthrop Square, 4th Floor, Boston, Massachusetts 02110.

2. I have been retained by the Pennsylvania Office of Consumer Advocate (OCA) to assist in filing comments regarding PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17, and PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan (Docket No. P-2016-2573023).

3. Prepaid customers generally face frequent service disconnections or interruptions, while sometimes paying higher rates than customers receiving traditional credit-based service and incurring additional fees.

4. Prepaid service is offered to customers on what is termed a "voluntary" basis, and, when a prepayment customer experiences a service disconnection, it is often referred to within the industry as a "self-disconnection" or "voluntary disconnection."

5. A customer who is facing imminent loss of essential service may agree to surrender consumer protections and access to a reasonable payment arrangement to keep service in the short term.

6. In 2014 San Diego Gas and Electric Company initiated over 204,000 payment agreements with customers a past due balance. That same year, SDG&E reported that there were nearly 91,000 (44.5% of the number of agreements initiated) payment agreements that failed.

7. Existing U.S. programs are concentrated among cooperative utilities operating in southeastern states.

8. Prepaid utility service in the U.S. is concentrated in service territories served by municipally- or cooperatively-owned utility systems that are not subject to the full regulatory jurisdiction of state utility commissions. In Texas, over 20 of the lightly regulated retail electric providers deliver prepaid service through advanced meters.

9. In addition to the Company's proposal at issue in this proceeding, investor owned utilities have proposed or are considering prepayment programs in Arizona (Arizona Public Service), South Carolina (Duke Energy), Kansas (Westar Energy), and Michigan (DTE Energy).

10. A prepaid program was rejected for San Diego Gas & Electric (SDG&E) by the California PUC.

11. Generally, prepaid service proposals that are subject to the jurisdictional authority of state utility regulators can only be authorized based on a petition seeking permission to bypass, modify, or eliminate standard consumer protections regarding service disconnection notifications and timelines. Prepaid service providers must also obtain permission to bypass obligations to offer a reasonable payment agreement as an alternative to service disconnection.

12. The Salt River Project (SRP) M-Power prepayment meter program is the largest prepayment program in the United States. Currently, about 152,000 customers are enrolled in the voluntary SRP program.

13. The vast majority of SRP prepayment program participants are low-income households, and the median income of M-Power customers has declined considerably in recent years. In 2007, the median participant income was $27,500. Within a year, it dropped to $19,500. In 2010, the median income fell below the poverty level for a family of three or more to $17,900. In 2010, 82 percent of program participants had household income of less than $30,000.[1]

14. Surveys prior to 2010 showed that Hispanics comprised 22 to 23 percent of SRP's prepaid service customers in 2006, but that Hispanic participation had increased to 48 percent by 2008.[2] In Phoenix, the largest city served by the Salt River Project, Hispanics account for 40.8 percent of the population, and are thus disproportionately represented in the prepaid service program.[3]

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[1] Bruce Neenan, "Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program," *Electric Power Research Institute* (2010) (hereinafter, "EPRI Report"), Table 4-3, p. 4-6, *available at* http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=000000000001020260&Mode=download.

[2] *Id.* at 4-6.

[3] U.S. Census Bureau, "State & County Quick Facts," (2012), *available at* http://www.census.gov/quickfacts/table/RHI725215/0455000,4260120,04.

15. A 2009 analysis showed that M-Power customers are "more likely to be relatively young, have families, be relatively low-income, be low electricity consumers, live in apartments, have been SRP customers for less than five years, and have unsatisfactory or 'new credit ratings' compared to other residential customers."[4] On average, the head of a household with a prepaid meter is 36 years old, makes an average annual income of $24,400, and is Hispanic.[5]

16. On average, M-Power customers experience loss of electric service once per month, compared to an average disconnection rate among traditional payment customers of less than once per year.[6]

17. Electric and natural gas utilities in Great Britain have implemented prepaid service.

18. The number of electric prepayment meters in Great Britain was about 3.6 million in 1997.

19. In 1997 there were also 1.2 million natural gas prepayment meters deployed in Great Britain.

20. By 2009, 3.7 million electric prepayment meters and 2.5 million natural gas prepayment meters had been deployed in Great Britain, serving 14% of electricity customers and 11% of natural gas customers.[7]

21. Currently, about 15% of residential natural gas and electric utility customers in Great Britain use prepayment meters.[8]

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[4] EPRI Report, Table 4-3, p. 4-6.
[5] *Id.*
[6] Randazzo, "Prepaid Utilities Criticized as Unfair," The Republic, AZcentral.com, June 19, 2012. http://archive.azcentral.com/business/articles/2012/06/18/20120618prepaid-utilities-criticized-unfair.html.
[7] Owen, Ward, "Smart Prepayment in Great Britain," Sustainability First, March 2010, at 11, *available at* http://www.sustainabilityfirst.org.uk/images/publications/other/Sustainability%20First%20-%20Smart%20Pre-Payment%20in%20Great%20Britain.pdf.
[8] Office of Gas and Electricity Markets, "Prepayment Review: Understanding Supplier Charging Practices and Barriers to Switching," June 2015, at 8, *available at* https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/prepayment_report_june_2015_finalforpublication.pdf.

22. Historically, a vast majority of prepayment meter users in Great Britain have been low-income customers.[9] Utility companies targeted marketing of prepayment meters to low-income households in arrears, even though they charged substantially more for service delivered under prepayment than for service paid for by traditional billing means or through direct debit.[10]

23. In Great Britain, sixty percent of electricity and natural gas customers with prepayment meters in 2010 had annual incomes below £17,500 ($27,704). Further, over half of prepayment meter customers received a means-tested benefit, nearly half had an unemployed head of household, and more than a third had one or more household members with a long-term physical or mental illness or disability.[11]

24. Average income among prepaid service customers in Great Britain is declining. In 2008, the average household income for prepaid customers was £16,091 ($27,523). By 2009, the average income fell to £13,466 ($21,929).[12]

25. In Great Britain, from 2008 to 2009, the number of customers with disabilities increased from 26 percent to 39 percent.[13]

26. Utilities in Great Britain are not required to track and report rates and service disconnections among prepaid service customers.

27. Accent, an independent research firm in the UK, surveyed prepaid service customers and found that in 2008, 9% of prepaid electric service customers had experienced

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[9] Centre for Sustainable Energy and National Right to Fuel Campaign, "Counting the Hidden Disconnected," (1998), p. 8.
[10] National Right to Fuel Campaign, "Fuel Poverty Fact File: Progress and Shortfall," (2000), p. 23-26.
[11] Mummery and Reilly, Consumer Focus, "Cutting Back, Cutting Down, Cutting off: Self Disconnection Among Prepayment Meter Users," July 2010, ("Mammery and Reilly") page 5.
[12] Accent for National Housing Federation, "Pre-Payment Meter Utilities Customers: Wave 2 Final Report," (April 2009), p. i.
[13] *Id.*

disconnections during the previous twelve months.[14] Customers using traditional, credit-based service experienced a disconnection rate of about one-tenth of one percent during that same period.[15]

28. A 1997 customer service survey found that twenty-eight percent of prepayment customers in Great Britain were disconnected from service over the previous twelve month period.[16] The survey also found that over half of prepaid service customers experiencing disconnection went without fuel supplies up to three times during the previous year. Over half of the households reporting disconnection from prepaid service went without fuel between five and twenty-four hours, and four percent of those disconnected from natural gas service went without fuel for between four and seven days.[17]

29. A 2010 survey conducted in Great Britain for the organization, Consumer Focus showed that twenty-two percent of prepaid service customers had foregone other necessities such as food and medicine in order to retain utility service, forty-five percent had reduced their energy usage to retain service, fifty-four percent had used a "emergency credit" to retain service, and fully sixteen percent had service disconnected during the previous year.[18]

30. A 2010 national prepayment meter users' survey in New Zealand revealed that over 50% of prepayment meter users had experienced a service disconnection during the previous 12 months. Seventeen percent of respondents indicated that they had experienced six or more disconnection events during the preceding year.

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[14] Accent report prepared for National Housing Federation, "Pre-Payment Meter Utilities Customers, Final Report," (June 2008), p. 12.
[15] Calculated by National Consumer Law Center using Office of Gas and Electricity Markets Domestic Suppliers Quarterly Debt and Disconnections Reports from 2008.
[16] Centre for Sustainable Energy and National Right to Fuel Campaign, "Counting the Hidden Disconnected," (1998), p. 20.
[17] *Id.* at p. 21.
[18] Mummery and Reilly at p. 17.

31. In New Zealand, households with children made up about 54% of prepaid service households.

32. Among New Zealand households with children and prepayment meters, 26% began using prepaid service because of electricity bill debt, 58% had experienced disconnection during the past 12 months, 45% reported inability to pay telephone, gas, or water bills ontime during the past 12 months, and 17% received a grant or loan to help pay for electricity during the past 12 months.

33. Researchers in New Zealand concluded that prepayment customers were more likely than the general population to experience financial hardship, low household income, and high levels of "bill stress." Further, among prepayment customers, households with children experienced greater levels of hardship than prepayment customers with no children.[19]

34. Throughout Pennsylvania, and particularly in the PECO service territory, income required to pay for basic household necessities -- including utility bills -- is considerably greater than income at 150% of the Federal Poverty Level (FPL).

35. A 2012 report on income required to afford basic necessities in Pennsylvania counties found that, for a 3-person household with an infant and a toddler living in Philadelphia County, an income of $57,746 was required to meet the expenses of a basic, no-frills budget.[20] This income requirement is equal to 302% of the 2012 FPL for a 3-person household.[21]

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[19] O'Sullivan, et al., "Kids in the Cold: Outcomes for New Zealand Households with Children Using Prepayment Metering for Electricity," The New Zealand Medical Journal, March 2013, p. 1-5, *available at* https://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2013/vol-126-no-1371/article-osullivan.

[20] Pearce, "Overlooked and Undercounted: How the Great Recession Impacted Household Self-sufficiency in Pennsylvania," October 2012, p. 8, *available at* http://depts.washington.edu/selfsuff/docs/PA2012_Web_101112.pdf.

[21] https://aspe.hhs.gov/2012-hhs-poverty-guidelines

36. A large percentage of PECO's customer households have income between 150% FPL and 250% FPL.

37.

Estimated Household Counts by Ratio of Income to Poverty Level - Counties Served by PECO Energy

Ratio of Income to Poverty Level	Bucks County		Chester County		Delaware County		Montgomery County		Philadelphia County	
	Population	Households	Population	Households	Population	Households	Population	Households	Population	Households
Total:	619,170	234,534	503,606	188,616	542,837	203,310	797,361	310,257	1,525,590	584,517
Under .50	21,255	8,051	12,191	4,566	24,664	9,237	25,173	9,795	185,542	71,089
.50 to .74	6,281	2,379	6,354	2,380	15,092	5,652	9,782	3,806	108,084	41,411
.75 to .99	10,458	3,961	10,233	3,833	16,381	6,135	17,646	6,866	99,577	38,152
1.00 to 1.24	12,769	4,837	13,432	5,031	16,378	6,134	16,826	6,547	87,504	33,526
1.25 to 1.49	20,066	7,601	10,138	3,797	15,028	5,628	17,413	6,775	70,674	27,078
1.50 to 1.74	14,307	5,419	15,449	5,786	23,425	8,773	22,082	8,592	83,270	31,904
1.75 to 1.84	7,144	2,706	5,273	1,975	7,208	2,700	11,883	4,624	27,161	10,407
1.85 to 1.99	11,865	4,494	7,985	2,991	8,565	3,208	13,514	5,258	40,529	15,528
2.00 to 2.49	39,183	14,842	29,937	11,212	37,553	14,065	50,993	19,841	123,574	47,346
2.50 to 2.99	39,183	14,842	29,937	11,212	37,553	14,065	50,993	19,841	123,574	47,346
3.00 to 3.99	82,859	31,386	54,505	20,414	73,577	27,557	98,842	38,460	173,806	66,592
4.00 to 4.99	75,678	28,666	50,698	18,988	60,687	22,729	104,122	40,514	126,731	48,556
5.00 and over	278,123	105,350	257,474	96,432	206,727	77,426	358,093	139,336	275,564	105,580
Average Household Size	2.64		2.67		2.67		2.57		2.61	
% of Households Below 150% Poverty	11.4%		10.4%		16.1%		10.9%		36.1%	
% of Households Between 150% and 249% Poverty	11.7%		11.6%		14.1%		12.3%		18.0%	

Sources: Calculated using 2015 American Community Survey 1-Year Estimates, Table B17002, Table B25010

38. An estimated 18% of the households in Philadelphia County have income greater than or equal to 150% FPG and less than 250% FPG. Households with income in the same range living in the remaining counties served by PECO comprise between 11.6% and 14.1% of all households living in their respective counties.

Re: PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17, and PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to the Plan (Docket No. P-2016-2573023)

COMMONWEALTH OF MASSACHUSETTS :
: ss
Suffolk County :

John Howat, Senior Policy Analyst at the National Consumer Law Center, being duly sworn (affirmed) according to law, deposes and says that the facts contained in the foregoing Affidavit in the matter of PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17, and PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to the Plan are true and correct; or are true and correct to the best of his knowledge, information and belief and that he expects to be able to prove the same at the hearing hereof.

John Howat
Senior Policy Analyst,
National Consumer Law Center

Commonwealth of Massachusetts
SS: Suffolk County
Sworn and subscribed
before me this 15th day

of December, 2016.

My Commission
Expires 12/24/21

Signature of Official
Administering Oath
Stuart T. Rossman

227875

JOHN G. HOWAT

PROFESSIONAL EXPERIENCE

Senior Energy Policy Analyst: National Consumer Law Center. 1999 - Present Boston, MA

- Advocate for enhanced low-income home energy security with particular focus on energy and utility economics, technologies and regulation
- Manage broad range of state and national low-income energy advocacy projects
- Provide expert testimony on low-income energy and utility issues before state regulatory agencies
- Support the enhancement of advocacy capacity of a national network of low-income program delivery and policy organizations through targeted advice and assistance, trainings, and maintenance of communications networks
- Track technology, economic, programmatic, regulatory and policy developments pertaining to low-income access to energy and utility service
- Provide state and federal legislative services on behalf of low-income advocates and clients
- Develop reports and publications; coordinate and present low-income energy advocacy perspectives at national energy conferences

Sole Proprietor: John Howat Associates. 1995 - 1999 Boston, MA

- Conducted market and economic analysis, analysis of customer energy consumption and load profiles, development of power supply requests for proposals, and analysis of utility rates, assets and power purchase contracts.
- Provided Legislative and Regulatory representation
- Provided communications planning and program implementation
- Registered Massachusetts Energy Broker

Resource Planning Economist: Massachusetts Department of Public Utilities. 1991 - 1995 Boston, MA

- Participated in adjudication and settlement proceedings pertaining to electric utility resource planning.
- Conducted technical analysis in conjunction with development of regulatory review policies.
- Prepared and conducted discovery and cross examinations of witnesses.
- Drafted Orders, Decisions, and internal communications.
- Acted as liaison to various public and private sector organizations.

Massachusetts State Legislature. 1985 - 1991 Boston, MA

Research Director: Joint Committee on Energy. 1991

- Directed all committee legislative activities.
- Hired, trained and supervised research and support staffs.
- Conducted legal research and quantitative analysis leading to development of new legislation.
- Worked with Committee Chairmen, rank and file legislators, lobbyists, members of the public and the press.

Legislative Director: State Senator Sal Albano. 1988 - 1990

- Coordinated all legislative and budgetary activities for Senate Chairman of the Joint Committees on Education and Public Safety, including drafting of legislation, amendments and budgetary proposals, and supervision of legislative aides and interns.
- Advised the Senator on policies and programs related to education, health care, human services, housing, the environment, public safety, and taxation.
- Coordinated public relations, including drafting of press releases and answering press inquiries.
- Developed a legislative tracking system.
- Wrote briefing materials for debates and public presentations.

Senior Legislative Research Analyst: Joint Committee on Energy. 1985 - 1988

- Conducted research and analysis of legislation before the committee.

- Drafted new legislation relative to energy efficiency programs and policies, non-utility generation, low-income energy programs, utility rates, municipal utilities, and the "Bottle Law."

Executive Director: Association of Massachusetts Local Energy Officials. 1982 - 1985 Boston, MA

- Promoted, monitored and evaluated four statewide institutional energy conservation programs as a consultant to the Mass. Municipal Assn. and the Mass. Executive Office of Energy Resources.
- Wrote and negotiated grant proposals.
- Conducted member recruitment, fund raising and financial management.
- Produced, edited and contributed to quarterly newsletters distributed statewide.
- Organized workshops and conferences for public sector energy managers.

Teaching Assistant: Tufts University Graduate Department of Urban and Environmental Policy.
1983 - 1984 Medford, MA

- Conducted graduate workshops in financial analysis and management of local governments and non-profit organizations.
- Subject matter included cash flow, net present value, internal rate of return, business planning and benefit/cost analyses with emphasis on externalities and non-quantitative values.

Legislative Aide: Washington State Senator King Lysen. 1981 - 1982 Olympia, WA

- Conducted inquiry into energy consumption, rate structures and taxation of Direct Service Industrial customers of energy suppliers and brokers in the Pacific Northwest.
- Coordinated media relations and production of constituent newsletters.

County Coordinator/Research Analyst: "Don't Bankrupt Washington" Campaign. 1981 Olympia, WA

- Conducted analysis of economic impacts to electric utility ratepayers caused by cost overruns on five Washington Public Power Supply System nuclear power plants.
- Served as Thurston County Coordinator of the organization that sponsored Initiative Measure No. 394, requiring voter approval for bonding of public energy facilities.
- Conducted fund raising activities, coordinated the efforts of 30 volunteers, and waged an effective voter turnout campaign.

EDUCATION

Master of Urban and Environmental Policy. Tufts University. Graduate Department of Urban and Environmental Policy. Medford, Massachusetts. January, 1984.

Areas of Study: Community Energy Planning, Energy Economics, Housing Policy, Community Economic Development, Communications Methods, Financial Analysis and Management, Research Methods, Statistical Analysis, and various computer applications.

Bachelor of Arts. The Evergreen State College. Olympia, Washington. June, 1981.

Areas of Study: Economics, Political Science, American and European History.

SWORN TESTIMONY RELATIVE TO PREPAID ELECTRIC SERVICE

- June 2012, California Public Utilities Commission, San Diego Gas and Electric Company Application 11-10-002 on behalf of National Consumer Law Center, The Utility Reform Network and Center for Appropriate Technology
- June 2004, Public Utilities Commission of Nevada, Nevada Power Company Docket No. 04-5003 on behalf of Nevada Bureau of Consumer Protection

Appendix B

Call Us Today! (301) 589-6313 | nasuca@nasuca.org

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.

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Appendix C

NEADA
National Energy Assistance Directors' Association

RESOLUTION

Pre-Paid Residential Gas and Electric Meters: Public Service Commissions Should Require the Inclusion of Comprehensive Consumer Protections and Rates that Are Lower than Comparable Rates for Credit-based Service

Whereas the National Energy Assistance Directorsô Association, representing the state directors of the Low Income Home Energy Assistance Program (LIHEAP) has a long standing interest in helping poor families stay connected to the grid and afford the cost of home energy through the use of bill payment assistance and weatherization; and

Whereas access to home energy includes a range of bill payment and shut-off protections including winter shut-off rules; and

Whereas the California Public Service Commission[i] recently rejected an application from the San Diego Electric and Gas Company to implement prepaid electric utility service because the program lacked adequate consumer protections that were available to post-paying ratepayers; and

Whereas the National Association of State Utility Consumer Advocates[ii], whose members include state designated officials whose mission is to represent utility customers before their respective public service commissions approved a resolution proposing that utilities be required to satisfy each of the following twelve conditions prior to any implementation of prepaid gas and electric service as well that:

(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 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 utilityôs 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 customerôs 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;

Now, therefore, be it resolved that the National Energy Assistance Directorsô Association (NEADA):

recommends that public service commissions only consider approving proposals to implement prepaid electric service that meet each of the conditions set forth above;

recommends that any 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; and

recommends that utilities implementing prepaid service programs 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 to gather uniform statistical data on billings, arrearages and disconnections of residential gas and electric service.

[i] http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M086/K541/86541422.PDF pages 50-55, California Public Service Commission 1/16/2014 Decision 14-01-002

[ii] http://nasuca.org/urging-states-to-require-consumer-protections-as-a-condition-for-approval-of-prepaid-residential-gas-and-electric-service-2011-03/