



July 3, 2019

**VIA EFILE**

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

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

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

Dear Secretary Chiavetta,

Please find attached the **Joint Petition for Reconsideration and/or Clarification of CAUSE-PA and TURN et al.** in this proceeding. Copies of this filing have been served in accordance with the attached Certificate of Service.

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

Sincerely,

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Enclosures

cc: Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, July 3, 2019, served copies of **Joint Petition for Reconsideration and/or Clarification of CAUSE-PA and TURN et al.**, as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA EMAIL and/or FIRST CLASS MAIL**

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Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**

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**Dated: July 3, 2019**

**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	:	

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**JOINT PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF  
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY  
EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

**AND**

**TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF  
SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN ET AL)**

**OF THE FINAL ORDER ENTERED JUNE 18, 2019**

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The Pennsylvania Utility Law Project  
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Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.41 and 5.572, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project (PULP), and the Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively TURN *et al.*), through counsel at Community Legal Services, hereby petition the Commission for reconsideration and/or clarification of its June 18, 2019 Opinion and Order in the above captioned proceeding.

CAUSE-PA and TURN *et al.* respectfully assert that the Commission should reconsider its Order and deny, in full, PECO's Petition to implement an Advanced Payments Plan, more commonly referred to as 'prepay' or 'prepaid electricity'. In the alternative, CAUSE-PA and TURN *et al.* further request reconsideration and/or clarification of the Commission's Order regarding various aspects of the Commission's modifications to PECO's initial Petition. In support thereof, CAUSE-PA and TURN *et al.* assert as follows:

## **I. INTRODUCTION AND BACKGROUND**

1. On June 18, 2019, the Commission issued a Final Order (June 18 Order), granting, in part, PECO Energy Company's Petition for a Pilot Plan for an Advanced Payments Program (herein, Prepay Program). The Commission permitted PECO to file a revised pilot plan in compliance with its Opinion and Order. That Opinion and Order, which is the subject of this Petition, created a modified Prepay Program subject to a number of terms and conditions, including:
  - a. Automatic removal from the Prepay Program and return to standard payment terms and conditions (including traditional termination procedures) for any customers who do not

- make the required pre-payments within the five-day grace period.
- b. Automatic removal from the Prepay Program for any participant who informs PECO that they will be providing a medical certification.
  - c. Allowing PECO to use existing customer deposits for application to the Prepay Program, but requiring PECO to return those deposits at the election of the customer.
  - d. Allowing PECO to enroll customers with an active protection from abuse order (PFA) into the program, but requiring PECO to inform those customers of other payment plan options.
  - e. Prohibiting PECO from initiating a fee for Prepay Program payments made on the website or customer portal.
2. The June 18 Order also granted waivers of several Commission regulations on a temporary basis, including the following regulations:
    - a. 52 Pa. Code §56.17(3), to allow PECO to include applicants for service in the Prepay Program.
    - b. 52 Pa. Code § 56.17(i), to allow PECO to include persons without delinquencies in the Prepay Program.
    - c. 52 Pa. Code § 56.17(3)(iii)(B), to allow consumers to participate in the Prepay Program for any duration of time, without requiring the consumer to extinguish a delinquency.
    - d. 52 Pa. Code § 56.53, to allow PECO to apply previously paid security deposits to the consumer's prepay balance.
  3. The June 18 Order permitted PECO to file a compliance plan within sixty days, noting that if PECO chooses not to file a compliance plan, the docket may be closed by Secretarial Letter.
  4. CAUSE-PA and TURN *et al.* continue to oppose PECO's Prepay Program and urge the

Commission to reject PECO's Petition in its entirety. Even with the Commission's modifications, PECO's Prepay Program continues to have the potential to harm low and moderate income customers, and creates additional barriers to residential consumers seeking to access various statutory protections.

5. CAUSE-PA and TURN *et al.* file this Petition for Reconsideration and/or Clarification, urging the Commission to reconsider and/or clarify specific aspects of its decision, including (as described more thoroughly below):
  - a. Reject PECO's Prepay Program in its entirety, as the Commission does not have the legal authority to approve a form of residential service which conflicts with the statutory laws governing residential billing, collections, and termination standards.
  - b. Allow for additional investigation and review of PECO's revised Prepay Program.
  - c. Include specific and enforceable requirements for PECO to engage with stakeholders throughout the redesign, implementation, and review stages of its Prepay Program.
  - d. Limit eligibility to households with income at or above 300% of the Federal Poverty Level, and require PECO to verify the income of Prepay Program participants.
  - e. Require PECO to fully comply with Chapter 15, subchapter B of the Public Utility Code, which protects tenants from a landlord's nonpayment of service.
  - f. Require PECO to fully comply with section 1417 of the Public Utility Code, which protects victims of domestic violence with certain court orders.
  - g. Prohibit all Prepay Program payment fees, including fees charged by third parties.
  - h. Require PECO to comply with *all* statutory provisions contained in Chapters 14 and 15 of the Public Utility Code and Chapter 56 of the Commission's regulations upon returning

the customer to standard payment terms and conditions.

- i. Ensure that customers with arrearages are provided with the payment arrangements they are entitled to under Chapters 14 and 56.
- j. Require PECO to collect and report on additional data, including data regarding participant income level.

## **II. LEGAL STANDARD**

6. The standard for granting reconsideration of a Commission order is articulated in Duick et al. v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982), in which the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Id. at 559.

7. CAUSE-PA and TURN *et al.* seek reconsideration and/or clarification on several issues, including both fundamental errors of law and important public policy and statutory considerations, which were overlooked by the Commission in its June 18 Order.

### III. REQUEST FOR RECONSIDERATION AND CLARIFICATION

CAUSE-PA and TURN *et al.* respectfully assert that the Commission's June 18 Order should be revised and/or clarified in the following ways:

**A. Reject PECO's prepaid meter plan in its entirety, as the Commission does not have the legal authority to approve a form of residential service which conflicts with the statutory laws governing residential billing, collections, and termination standards.**

8. As discussed in further detail throughout this Petition, the Commission's revisions to PECO's Prepay Program continue to be at odds with various statutory provisions governing residential electric service, including Chapters 14, 15, and 28 of the Public Utility Code.
9. In approving PECO's Prepay Program pursuant to section 56.17 of the Commission's regulations, and allowing for waivers associated with various sections thereof, the Commission noted that the regulation was passed in 1978, and that it substantially predated the enactment of Chapter 14 in 2004 and its reauthorization in 2014. (June 18 Order at 84). Nevertheless, the Commission concluded that the passage of time since the regulation's enactment was not dispositive, explaining that the provision was never updated after the Chapter 14 legislation was passed because the Commission had no practical experience to guide reforms. (*Id.*) However, the Commission's June 18 Order never expressly considered whether the regulation could be applied at all. CAUSE-PA and TURN *et al.* assert that this was a critical oversight, and that the Commission should reconsider its decision.
10. When statutory provisions change, regulations may become unenforceable. (See 66 Pa. C.S. § 501(b)). In this proceeding, the Commission approves a pilot program for implementation of prepaid electricity service for residential consumers, pursuant to section 56.17, which is at odds with numerous terms and conditions for residential service prescribed in Chapters 14, 15, and

28 of the Public Utility Code.

11. When it authorized Chapter 14, the General Assembly explicitly declared that statutory guidelines were necessary because the Commission’s formal service rules, initially adopted in 1978 to include section 56.17, “have not successfully managed the issue of bill payment.” (66 Pa. C.S. § 1402(1)). In doing so, the General Assembly set forth new standards for the terms and conditions of residential service, as well as the protections to which residential consumers are entitled. As TURN *et al.* explained in its Main Brief, the Chapter superseded all inconsistent requirements contained in the Commission’s formal service rules:

In enacting Chapter 14 of the Public Utility Code, the Pennsylvania legislature indicated that “the addition of 66 Pa. C.S. Ch. 14 supersedes any inconsistent requirements imposed on public utilities [.]” Further Chapter 14 abrogated “all other regulations [...] to the extent of any inconsistency with 66 Pa. C.S. Ch. 14.”<sup>1</sup> As a threshold matter, the Commission must not permit any utility to take actions under regulations that may be inconsistent with the provisions of the Public Utility Code, including Chapter 14.

(TURN *et al.* MB at 6-7 (quoting 66 Pa. C.S. § 1401 (historical statutory notes))).

12. The General Assembly also explained that, in passing Chapter 14, it sought to strike a new balance of interests, providing public utilities “with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections” while also ensuring “that service remains available to all customers on reasonable terms and conditions.” (66 Pa. C.S. § 1402(3)). If the General Assembly believed prepaid meter service was part of that equation, it could have authorized the Commission to allow for this type of residential service within the Act as an exception to the terms and conditions of service provided for the Chapter. It did not.
13. While the Commission’s modifications to PECO’s proposed Prepay Program attempted to address conflicts with Chapter 14, CAUSE-PA and TURN *et al.* assert that many conflicts still

remain. Many of these remaining conflicts are discussed throughout this Petition, and more are likely to arise through implementation. Indeed, even with the Commission's revisions, PECO's Prepay Program will create substantial barriers for consumers seeking to access the rights and protections provided to them through Chapter 14, and must not be approved.

14. With respect to Chapter 15, PECO's Prepay Program appears to also conflict with the billing procedures outlined in Chapter 15 by requiring consumers to pay for service upfront, rather than allowing at least 20 days to pay for service as the statute requires. (See 66 Pa. C.S. § 1509). Likewise, and as described more fully below, PECO's Prepay Program could create additional barriers for tenants seeking to exercise their rights under Chapter 15, Subchapter B of the Pennsylvania Code, the Discontinuance of Service to Leased Premises Act (DSLPA).
15. With respect to Chapter 28, the Electric Competition Act provides: "Customer services shall, at a minimum, be maintained at the same level of quality under retail competition." (66 Pa. C.S. § 2807(d)). As noted above, and discussed throughout this Petition, PECO's Prepay Program will create barriers for consumers seeking to exercise their statutory rights – notwithstanding the Commission's revisions. At its core, such a result would erode the quality of service available to residential consumers, in contradiction with the customer service standard set forth in the Electric Competition Act.
16. CAUSE-PA and TURN *et al.* respectfully assert that the Commission has overlooked a critical aspect of its decision: Whether the Commission has the authority to authorize a prepaid meter program. CAUSE-PA and TURN *et al.* assert that the Commission lacks the authority to approve PECO's Prepay Program because it conflicts with provisions of Chapters 14, 15, and 28. The Commission must therefore reject PECO's Prepay Program in its entirety.

**B. Allow for additional investigation and review of PECO's revised prepaid service pilot program.**

17. If the Commission ultimately permits PECO to file a modified Prepay Program after reconsideration, it should establish a process for additional investigation and review of the program to determine whether the terms and conditions are consistent with the Commission's June 18 Order and applicable laws, as well as any additional modifications to the program which may be approved after review of this Petition.
18. The revised plan that the Commission has permitted PECO to submit is fundamentally different from the initial plan PECO filed.<sup>1</sup> The Commission acknowledges this in its June 18 Order, stating "[W]e have made significant modifications to the proposed program," and suggesting that PECO simply not file a revised plan if such modifications are not acceptable to PECO. (June 18 Order at 87).
19. CAUSE-PA and TURN *et al.* have identified several critical concerns regarding the Commission's modifications, and implementation of those modifications by PECO. As described throughout this Petition, CAUSE-PA and TURN *et al.* assert that the Commission's modifications to PECO's Prepay Program still conflict with a number of statutory consumer protections, lack clarity, and leave substantial room for error in law and/or far-ranging unintended consequences for consumers.
20. CAUSE-PA and TURN *et al.* assert that it would contradict important principles of due process to allow PECO to file a significantly modified pilot program in the form of a compliance filing, which would provide parties with just 10 days to review PECO's new pilot program and submit

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<sup>1</sup> It is noteworthy that PECO also made substantial changes to its initial proposal throughout the course of litigation. The ever-shifting terms and conditions of PECO's proposal has made it difficult to fully investigate and thoroughly assess all of the unintended consequences to consumers. See CAUSE-PA MB at 4.

Exceptions thereto. (See 52 Pa. Code § 5.592(c)).

21. It is important to keep in mind that this proceeding is not time sensitive. As the Commission repeatedly asserted in its June 18 Order, the purpose of allowing PECO to move forward with its proposal is to allow PECO and the Commission to gain experience with prepaid electric service without causing harm to vulnerable consumers. (June 18 Order at 82-83). It is therefore critical that the terms of PECO's significantly revised program and its plan for implementation be fully vetted to ensure that consumers are not harmed by the experiment, and that meaningful insight is ultimately gained.

22. The significant and substantial changes to PECO's initially proposed Prepay Program have raised new questions about the feasibility and legality of the program. CAUSE-PA and TURN *et al.* therefore believe that it is incumbent on the Commission to thoroughly evaluate the revised proposal, and to permit the parties an opportunity to comprehensively assess the revised pilot program on the record to explore whether PECO's revised program is compliant with all applicable statutes, regulations, and policies, and adheres to the Commission's revisions as well as any further modifications required after the Commission's consideration of this Petition.

**C. Include specific and enforceable requirements for PECO to engage with stakeholders throughout the redesign, implementation, and review stages of its Prepay Program.**

23. The June 18 Order explains that the Commission "expect[s] PECO to take sufficient time to collaborate with the public and low-income advocates in the development and preparation of educational materials and scripts that will be used when the program is ready for implementation." (June 18 Order at 87). The Commission notes that this expectation "includes, but is not limited to, ensuring that customers understand they may be required to

restore a full security deposit if they choose to revert to standard service.” (*Id.*)<sup>2</sup> No further issues are explicitly included for collaborative discussion in the Commission’s June 18 Order.

24. CAUSE-PA and TURN *et al.* assert that the Commission’s stated *expectation* that PECO engage in a collaborative process lacks specificity, and is inadequate to ensure that consumers will be adequately apprised of the terms of the program and their rights related thereto. As the Commission itself noted, PECO expressed “trepidation” with using the stakeholder collaborative process to develop educational materials. (June 18 Order at 43). CAUSE-PA and TURN *et al.* request that the Commission reconsider and/or clarify its Order, and set forth clear and enforceable directives regarding the collaborative process.

25. First, the Commission should explicitly require PECO to collaborate with stakeholders in the development of a revised Prepay Program before the plan is filed. Additional time, beyond 60 days, should be provided to allow for meaningful stakeholder engagement, perhaps through a Commission-led workshop process. Ultimately, this additional stakeholder process would help to minimize areas of contention which may be subject to further Exceptions and/or ongoing litigation or appeal.

26. Second, CAUSE-PA and TURN *et al.* assert that educational materials and notices developed for the Prepay Program should be subject to a similarly *mandatory* collaborative process, with explicit parameters for when the group will meet and the specific issues to be addressed.

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<sup>2</sup> The consequences of this instruction are severe. Essentially, the Commission permits PECO to re-charge a security deposit, which was previously released as a condition to participation in the Prepay Program, after the customer has already demonstrated an inability to pay for five days of prepay service. This undermines the Commission’s requirement that Prepay Program participants be returned to standard service terms, and creates an additional barrier for residential consumers seeking to exercise their statutory rights.

It is of critical importance that, at the very least, all notices, disclosures, and customer education and outreach materials are carefully designed to fully inform all consumers of both the risks they would assume and the rights that they would forfeit by participating in PECO’s Prepay Program.

Indeed, it is of critical importance that all notices, disclosures, and customer education and outreach materials are carefully designed to fully inform all consumers of both the risks they would assume and the rights that they would forfeit by participating in PECO's Prepay Program. The Commission should require PECO to meet with stakeholders before the educational materials and notices are created, while the educational materials and notices are in development, and after the educational materials and notices are finalized to allow for input and feedback at each stage of the process. Final educational materials and notices developed through the collaborative process should also be subject to review by the Commission to ensure that unresolved conflicts that arise in the course of the collaborative process will be fully addressed.

27. Finally, the Commission should be specific in requiring an *ongoing* stakeholder process throughout the Prepay Program and when the program concludes to evaluate metrics and participation. A similar ongoing collaborative process is required for Act 129 Energy Efficiency and Conservation Programming. In that context, the ongoing stakeholder process provides a useful conduit for both the Commission and stakeholders to monitor the progress of Act 129 programming, address pressing issues as they arise, and allow for stakeholders to better understand the outcomes and associated data when the programs conclude. A similar process is needed here to help monitor the Prepay Program, address issues as they arise, and analyze relevant data to identify any troubling patterns that require immediate attention. Given the high risks to consumers posed by prepaid electric service, and the broad and diverse range of opposition to PECO's Prepay Program, the Commission must ensure that the revised Prepay Program adequately resolves all concerns in a timely and appropriate manner. Imposing clear

and specific requirements for PECO to engage in a robust stakeholder process from development through implementation would help ensure that the collaborative process is meaningful, and will help shield consumers from harm.

**D. Limit eligibility to households with income at or above 300% of the Federal Poverty Level, and require PECO to verify the income of Prepay Program participants.**

28. The June 18 Order does not expressly discuss the issue of income eligibility for the Prepay Program, other than to note that the program is limited to households with income above 150% FPL (June 18 Order at 5) and in summarizing and acknowledging the various arguments from the parties that both low and moderate income consumers may be attracted to PECO's Prepay Program. (See id. at 86). The Order also fails to impose any requirements on PECO to verify income eligibility or to assess whether participants remain income eligible throughout their enrollment in the program.

29. In allowing PECO's Prepay Program to go forward, the Commission overlooks the substantial record evidence demonstrating that (1) households up to 300% FPL most often struggle to meet their basic needs and would be uniquely vulnerable to the harms associated with the Prepay Program (see CAUSE-PA MB at 27); (2) the Commission has previously recognized that, consistent with the legislative intent of Chapter 14, prepaid service should not include households with income lower than 250% FPL (CAUSE-PA MB at 22); and (3) PECO's Prepay Program was not appropriately designed to identify whether a customer seeking to participate is low income and therefore ineligible for the program or to assess whether participants remain income eligible throughout their participation in the pilot. (CAUSE-PA MB at 36; TURN *et al.* MB at 22-24). CAUSE-PA and TURN *et al.* will address each of these shortcomings in turn.

30. First, the record contains substantial evidence that the appropriate income threshold for inclusion in the Prepay Program is 300% FPL. Several experts testified about the Self Sufficiency Standard, which examines the income necessary to meet the most critical costs of living. As CAUSE-PA Witness Mitchell Miller described:

The Self Sufficiency Standard examines – on a county-by-county basis – the income necessary to meet six of the most critical costs of living – housing (including utilities), food, childcare, transportation, health care, and taxes. “The Standard calculates the true cost of living facing American families, illuminating the economic ‘crunch’ experienced by so many families today.” By way of example, the self-sufficiency standard for a household with one adult and 2 children (one preschooler and one infant) in Philadelphia was \$57,746 in 2012, the last year for which information was available. For a household of 3 based on 2012 federal poverty income guidelines, this would place the household at approximately 300% of the poverty level. Within PECO’s service territory there are a significant number of households, of all types, who are not considered “poor” as defined by the federal poverty income guidelines, but who nonetheless have income below the self-sufficiency standard[.]

(CAUSE-PA St. 1 at 7).<sup>3</sup>

31. In light of this record evidence, which the Commission appears to have overlooked, CAUSE-PA and TURN *et al.* urge the Commission to reconsider its decision, and raise the income threshold required to participate in the Prepay Program to 300% FPL. We assert that the record supports this higher threshold, which was suggested by OCA Witness John Howat, as this level approximates the self-sufficiency standard and reflects the highest income thresholds identified

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<sup>3</sup> Since the Commission announced a decision in this case, the United Way of Pennsylvania issued a report reiterating this concept of self-sufficiency, which it has dubbed “ALICE: Asset Limited, Income Constrained, Employed.” United Way of Pennsylvania, *Alice in Pennsylvania: A Financial Hardship Study* (2019), <https://www.uwp.org/wp-content/uploads/ALICE-Report.pdf>. Similar to the self sufficiency standard, ALICE survival budgets includes the following costs: housing (including utilities), child care, food, transportation, health care, technology and taxes, and reflects the cost of these basic needs and the bare minimum needed to afford those costs. *Id.* at 1, 27-28. In Pennsylvania, the Alice survival budget for 2 adults, 1 infant and 1 preschooler is \$59,340. *Id.* at 26. In Philadelphia, the number is even higher – \$63,528 for 2 adults, 1 infant, and 1 preschooler. United Way of Pa., Philadelphia County, PA, 2017, *ALICE Household Survival Budget* (2019), <https://www.uwp.org/wp-content/uploads/ALICE-County-Budgets-For-PA.pdf>.

by the legislature for protection by Chapter 14. (See OCA St. 1 at 47; see also 66 Pa. C.S. §§ 1405, 1407).

32. At the very least, CAUSE-PA and TURN *et al.* assert that the Commission should raise the income threshold to 250% FPL, consistent with the income threshold for the winter moratorium. As CAUSE-PA explained in its Main Brief, the Commission has previously recognized that, through Chapter 14, the General Assembly evidenced its intention to protect a broader category of economically vulnerable customers – beyond 150% FPL – from prepayment meter service:

In Chapter 14, the General Assembly indicates that the protected customers should be those at or below 250% of the federal poverty level. For example, the winter restrictions at Section 1406(e) apply to those at or below 250% of poverty, and the PUC payment agreement formulas at Section 1405(b) are more lenient for those at or below 250% of poverty. Based on these actions of the General Assembly, if anything, the income threshold for this section should be raised to 250% from 150%.

(Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; Gen. Review of Regulations, Docket No. L-00060182 (June 9, 2011); see also CAUSE-PA MB at 22). In failing to address the proper income threshold for PECO’s Prepay Program, the Commission appears to have overlooked its prior pronouncement of policy. As such, CAUSE-PA and TURN *et al.* implore the Commission to reconsider this aspect of its June 18 Order and – at the very least – require PECO to set its income threshold at 250% FPL.

33. Finally, CAUSE-PA and TURN *et al.* assert that the Commission overlooked the need for explicit guidance for how PECO will determine whether a potential program participant is low income and how PECO will assess whether a participant remains income eligible. The

Commission explained in its June 18 Order that, in approving the Prepay Program with additional restrictions, its intent was to provide an opportunity to gain experience with prepaid metering *without increasing the risk of harm to vulnerable consumers*. (June 18 Order at 82-83). However, as designed, PECO's Prepay Program does not include any process to verify or confirm the income of participants to ensure that the household is not low income. (CAUSE-PA MB at 36). The record is replete with evidence that prepaid service is harmful to economically vulnerable low income consumers – and that, at the same time, it is also enticing – which could drive more low income customers to seek to enroll. Without a way to verify income, many low income consumers could wind up in the Prepay Program and, in turn, could face substantial deprivation of service. (OCA MB at 36). Moreover, as discussed more thoroughly below, failure to identify and track household income of Prepay Program participants will create critical holes in the data, which will hinder the ability for the Commission to gain the insight and experience it seeks through the program. CAUSE-PA and TURN *et al.* assert that the Commission should reconsider its decision to allow the program to go forward without requiring PECO to verify the income of its participants.

**E. Require PECO to fully comply with Chapter 15, Subchapter B of the Public Utility Code, which protects tenants from a landlord's nonpayment of service.**

34. In its June 18 Order, the Commission acknowledges the unique concerns of non-ratepayer occupants of a dwelling, and recounts the arguments of TURN *et al.* that a landlord who rents out rooms could enroll in the Prepay Program, and therefore that tenant would not receive notice as required Subchapter B, the Discontinuance of Service to Leased Premises Act (DSLPA), 66 Pa. C.S. § 1521-1533. (June 18 Order at 85; TURN *et al.* MB at 15-17). The ALJ, in her Recommended Decision, found that for this reason, the proposed Prepay Program

did not comply with the statute. (RD at 70).

35. Despite this acknowledgement in its Order, the Commission appears to have overlooked the impact that PECO's proposed Prepay Program would have on tenants. In discussing when a program participant would be returned to standard service, the Order only states that automatically removing a customer from the Prepay Program and returning them to standard payment terms and conditions "restores the full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission's regulations." (June 18 Order at 85). Tenants who are protected by DSLPA should always be able to exercise their right to continued service. (See 66 Pa. C.S. § 1527).
36. CAUSE-PA and TURN *et al.* request that the Commission clarify that a return to standard payment terms includes all of the protections in DSLPA, including but not limited to the right to a thirty-day written notice of termination to tenants where the landlord is the ratepayer. (66 Pa. C.S. § 1523). In turn, the Commission should require PECO to obtain written affirmation from participants that they reside at the property to prevent landlords from participating, and should immediately return landlord accounts to standard service if it becomes aware that a participant is a non-occupant landlord.

**F. Require PECO to fully comply with section 1417 of the Public Utility Code, which protects victims of domestic violence with certain court orders.**

37. The Commission's Order requires that customers holding an active protection from abuse order "be informed of their other payment plan options." (June 18 Order at 86). CAUSE-PA and TURN *et al.* request that the Commission clarify this piece of its Order to include all survivors of domestic violence covered by section 1417, and require that PECO provide information about several of the protections available. (See 66 Pa. C.S. § 1417).
38. Specifically, Chapter 14 exempts "victims under a protection from abuse order as provided by 23 Pa. C.S. Ch. 61 (relating to protection from abuse) or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer." (66 Pa. C.S. § 1417). The Commission's Order overlooks that customers with other court orders that clearly evidence domestic violence are also protected by statute.
39. The Commission also overlooks the fact that this exemption entitles survivors of domestic violence with a PFA or other court order, as defined by the statute, to obtain additional relief, beyond additional payment plan options which are noted in the Order. Indeed, survivors of domestic violence with an appropriate order are also entitled to additional notice of termination throughout the whole year. (52 Pa. Code § 56.335) Survivors of domestic violence are also not liable for and cannot be terminated for arrears accrued in someone else's name. (52 Pa. Code §§ 56.285, 56.323). These are important protections that should be fully and explicitly preserved.
40. Finally, the Commission's Order fails to specify the manner and method of notice provided to victims of domestic violence with an appropriate order. This is a critical missing piece. Will

customers be asked whether they are a victim of domestic violence with an applicable order before being provided the required notice – or will all customers seeking to enroll in the program receive notice about the domestic violence protections? Will notice be included in written materials, explained verbally, or included in electronic notice? Will notice be received before or after enrollment in the Prepay Program? These are questions that should be answered prior to approval of the Prepay Program to ensure that vulnerable consumers are protected from harm, consistent with the requirements of Chapters 14 and 56.

**G. Prohibit all payment fees for prepay meter program participants, including fees charged by third parties.**

41. The Commission’s June 18 Order states that PECO must ensure “that there is no PECO-initiated fee for payments made on the website or customer portal.” (June 18 Order at 86). As noted in CAUSE-PA’s Main Brief, one impact of a prepaid electricity program is that participants will make more payments, and therefore incur additional transaction fees – causing the cost of prepaid service to increase substantially over the cost of standard service. (CAUSE-PA MB at 28).
42. PECO acknowledged on the record that for credit or debit card payments, there will be a transaction fee of \$2.35 per transaction, and for cash payment at an authorized payment location, there will be a transaction fee of \$1.50. (See CAUSE-PA St. 1 at 28). It is not clear, however, whether those fees are “PECO-initiated” or charged by a third party vendor.
43. The Commission’s Order is unclear as to whether these fees would be permissible if charged by a third-party vendor. CAUSE-PA and TURN *et al.* request reconsideration and/or clarification from the Commission that participants in PECO’s prepay program will not be subject to any additional fees when making payments as a part of the Prepay Program,

regardless of whether initiated by PECO or a third party vendor.

**H. Require PECO to comply with all statutory provisions contained in Chapters 14 and 15 of the Public Utility Code and Chapter 56 of the Commission's regulations regarding credit, collections, and termination upon returning the customer to standard payment terms and conditions.**

44. As originally proposed, a consumer who failed to pre-pay service for five days would have their service terminated. The June 18 Order modifies this proposal, and requires PECO to return consumers “to standard payment terms and conditions, including, but not limited to, the traditional termination procedures” after the five-day “grace period.” (June 18 Order at 85). The Commission explains that this modification “restores the full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s regulations to the participants.” (Id.) The Commission then notes: “if a written notice is issued, the five-day grace period under the program may be the first five days in the traditional 10-day termination process.” (Id.)
45. The Commission has seemingly overlooked a substantial portion of the Code and its regulations by suggesting that PECO could simply pick up a termination five days after its five day grace period ends. If PECO returns a consumer to standard payment terms and conditions, then the consumer would not be behind on their bill. In reality, they would be ahead! Pursuant to Chapter 56, payment for service is due 20 days from the billing date. (52 Pa. Code § 56.21). After a 5-day grace period for failure to pay the meter, a pre-pay customer who is transferred back to standard payment terms is just five days into their first standard billing cycle – and has not yet incurred a bill for that service, let alone become delinquent and entered PECO’s standard collections process. Allowing a termination to proceed just five days after the five day grace period in essence merely extends the grace period to ten days. It does not, as the Commission asserts, “restore the full consumer protections in Chapter 14 of the Code and

Chapter 56 of the Commission’s regulations.” (See June 18 Order at 85).

46. As a practical matter, it is not possible for PECO to provide a written notice of termination to a pre-pay customer five days after their pre-payment runs out that also “compl[ies] with 66 Pa. C.S. § 406 (sic) and 52 Pa. Code §§ 56.91, 56.331.” (See June 18 Order at 85, n. 40). Section 56.91 requires that the notice be “for grounds authorized by 56.81.” (52 Pa. Code § 56.91(a)). But failure to pre-pay for five days of service is not an authorized basis for termination under 56.81. As explained above, a pre-pay customer who is returned to standard payment terms would not yet have received a bill for the five days of service that they failed to pay, and therefore could not be considered “delinquent” until after they fail to pay their next bill. In short, they would have to be returned to standard service, become delinquent, and receive the proper notices to be terminated under standard payment terms.

47. CAUSE-PA and TURN *et al.* assert that the Commission should reconsider its decision, and clarify that a Prepay Program participant who is returned to post-pay service for failure to pre-pay for service cannot be terminated within five days of returning to post-pay service. The Commission should instead provide clear instruction that, upon return to standard payment terms, a consumer must be treated as a new or returning standard payment customer, subject to all of the provisions of the Public Utility Code and the Commission’s regulations governing billing, credit, and collections – including receipt of an initial bill with an appropriately calculated due date, followed by any credit and collections activities that may later become warranted if the customer becomes delinquent on their standard bill.

**I. Ensure that customers with arrearages are provided with the payment arrangements they are entitled to under Chapter 14 and Chapter 56.**

48. The Commission’s Order does not address the argument made by several parties that the

payment arrangement terms in the Prepay Program violate Chapter 14. (TURN *et al.* M.B. at 14-15). By the terms of the Program, any time a customer with arrears makes a prepayment, 75% of that payment goes to load the customer's account, and 25% would go towards the arrears owed. This arrangement is in direct contrast to the payment arrangements allowed under Chapter 14. As described by TURN *et al.* in its main brief:

Under PECO's proposed plan, pilot participants will not have access to payment arrangements consistent with 66 Pa. C.S. § 1405 and 66 Pa. C.S. § 1407. Section 1405 authorizes the Commission to establish payment arrangements between utilities, customers and applicants. Section 1405(b) provides the maximum duration for these arrangements, which vary depending on the customer or applicant's household income. 66 Pa. C.S. § 1407 sets forth payment terms for applicants and customers seeking to restore service. Finally, 66 Pa. C.S. § 1303 requires PECO to compute bills under the rate most advantageous to the patron. However, PECO has proposed one type of payment arrangement for any pilot participant who enters the pilot with a delinquent balance on the participant's account. These pilot participants, regardless of their level of income, will receive an arrangement whereby for each dollar loaded to the participant's account, 25 cents will be allocated to the delinquency and 75 cents will be allocated to pay for future usage. In his testimony, Mr. Geller opined that "for some customers, the rigid 25/75 payment arrangement mandated by the prepayment program could be less generous than other payment arrangements that are available to the customer."

(TURN *et al.* MB at 14-15 (internal citations omitted)).

49. The Commission overlooked these arguments in making its decision. Indeed, PECO cannot prevent consumers from accessing statutorily prescribed payment arrangements. Nor can the Commission allow PECO to obscure critical disclosure requirements which would apprise consumers of their right to a Commission-issued payment arrangement. (See 52 Pa. Code § 56.91(b)(6)-(7)).

50. CAUSE-PA and TURN *et al.* urge the Commission to require PECO to ensure that Prepay Program participants with arrearages are only allowed to enroll if the payment arrangement option that the program provides is the most advantageous to that customer. In addition, PECO

must be required to provide information to potential Prepay Program participants about all of the payment arrangement options that are potentially available to them, including Commission-issued payment arrangements pursuant to sections 1405 and 1407. Finally, PECO should be required to include information about PUC-issued payment arrangements on all Prepay Program notices, consistent with 56.91(b), as well as any educational or outreach materials.

**J. Require PECO to collect additional data, including data regarding participant income level.**

51. While the Commission requires PECO to keep “meticulous records to determine the number of participants who are removed from the program, the reason for removal, at what stage removal occurred, whether the addition of the traditional termination notices resulted in the customers’ payment to prevent disconnection versus those for whom electronic notifications were sufficient,” the Commission does not require the collection of participant income information. (June 18 Order at 86).
52. The Commission’s Order specifically notes that it is allowing PECO’s Prepay Program to go forward, despite being “keenly aware of OCA’s warning that prepaid programs tend to become concentrated among low- to moderate-income customers.” (June 18 Order at 86). In doing so, the Commission specifically states that the approval of the Prepay Program is to permit “an innovative pilot program,” and that it cannot evaluate the program’s success until data is gathered to support or to weigh against its continuation. The Commission also notes the specific importance of collecting data to “aid in the determination of its viability in terms of convenience to customers, cost effectiveness, *reduction in terminations, and increase in reconnections, particularly just before the winter moratorium takes effect*, and other benefits.”

(June 18 Order at 85 (emphasis added)). The income of participant households is a critical piece to evaluating the success – or lack thereof – of PECO’s proposed Prepay Program. For example, it would be difficult to assess whether the program had any impact on termination rates – or reconnection rates prior to the winter moratorium – without knowing the relative income level of the participant. Collecting income data of participants at key points throughout the program is critical to ensuring that appropriate, data-driven conclusions are able to be drawn from PECO’s Prepay Program.

53. CAUSE-PA and TURN *et al.* urge the Commission to require PECO to collect income and household information for each potential participant in the program: At the time of enrollment, if and/or when the participant is returned to standard service, if the participant enters the grace period on two or more occasions within a six month period, and at regular intervals, we suggest annually, while enrolled in the program. As the record shows, participants in prepaid electricity programs in other jurisdictions are often concentrated among low and moderate income customers, and allowing such households to participate in such a program can lead to a host of health and safety issues. (See, e.g., CAUSE-PA MB at 26-28).

54. In addition, as noted in CAUSE-PA’s Main Brief, stakeholders should have access to raw data to enable independent analysis of the results of the pilot. (CAUSE-PA MB at 39-40).

55. CAUSE-PA and TURN *et al.* further urge the Commission to require PECO to collect all of the information delineated in CAUSE-PA’s Main Brief, including usage fluctuations, customer questions and complaints, the number and amount of payments payment in a month, including any third party fees incurred, and the amount of any deferred deposit. (CAUSE-PA MB at 40). As addressed above, this data should be regularly shared through an ongoing stakeholder

collaborative process to allow for appropriate monitoring of the program and swift resolution of any issues which may be revealed by the collected data.

**WHEREFORE**, and for the reasons enumerated above, CAUSE-PA and TURN *et al.* respectfully request that the Commission reconsider its directives in this proceeding.

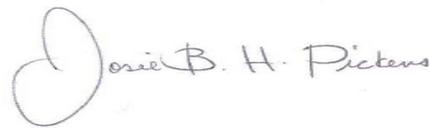
Respectfully Submitted,



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**Counsel for TURN *et al.***

### **Verification**

I, **Elizabeth R. Marx**, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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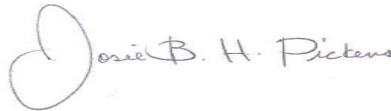
Elizabeth R. Marx, Esq.

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

Date: July 3, 2019

**Verification**

I, **Josie B. H. Pickens**, legal counsel for the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), on behalf of TURN *et al.*, hereby state that the facts contained in the foregoing Petition are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Josie B. H. Pickens, Esq.

On behalf of Tenant Union Representative Network and  
Action Alliance of Senior Citizens of Greater Philadelphia  
(TURN *et al.*)

Date: July 3, 2019