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An Exelon Company

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September 6, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Petition of PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4

Dear Secretary Chiavetta:

Attached please find PECO Energy Company's Answer to The Joint Petition for Reconsideration of CAUSE- PA and TURN, et al in the aforementioned matter.

Sincerely,

Ward L. Smith
Assistant General Counsel

Enclosures
WS/ld

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company
Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4.

Docket No. M-2015-2507139

Answer of PECO Energy Company
To The
Joint Petition for Reconsideration of CAUSE-PA and TURN *et al.*

I. Introduction

On August 11, 2016, the Commission issued its Final Order approving PECO's 2016-2018 Three-Year Plan. On August 26, 2016, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("Turn *et al.*") filed a Joint Petition requesting the Commission to reconsider its Final Order. The Joint Petition asks the Commission to reconsider two specified issues related to (1) medical certificates, and (2) post-petition bankruptcy security deposits.

For the reasons set forth below, PECO does not believe that either of the issues raised in the Joint Petition warrants reconsideration of the Final Order.

II. Argument

1. The Joint Petition for Reconsideration does not meet the *Duick* standard

The Commission's standard for reconsideration of its final orders, known as the *Duick* standard, states that:

> 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. In this regard we agree with the court in the Pennsylvania Railroad case, wherein it was said that "[p]arties...cannot be permitted by a second motion to review or reconsider, to raise the same questions which were specifically considered and decided against them. . . ." 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.* Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick v. Pa. Gas & Water Co., 56 Pa. P.U.C. at 559 *quoting* Pa. R.R. Co. v. Pa. P.U.C., 118 Pa. Super 380, 17 A. 850 (1935) (emphasis added).

The Joint Petition (¶ 5) correctly quotes the *Duick* standard, and then notes (¶ 6) that the arguments in the Joint Petition "seek clarifications and reconsideration on questions of law *which appear to have been overlooked* by the Commission."[1] (emphasis added).

PECO respectfully submits that the Commission did not "overlook" any of the considerations raised in the Joint Petition for Reconsideration. For the two arguments that are raised (medical certificates and post-bankruptcy deposits), the Joint Petition itself provides a

[1] By implication, since the Joint Petition makes no reference to "new or novel" arguments, it is not pursuing reconsideration under the "new or novel" leg of the *Duick* standard.

clear roadmap of where the issue was raised in the Joint Petitioners' March 16, 2016 Comments, where PECO replied to the issue in its March 28, 2016 Reply Comments, and where the Commission addressed the substance of the issue in the Final Order. It's not that the Commission overlooked these considerations -- it addressed them at length – it is simply that the Joint Petitioners disagree with the Commission's resolution of these issues. PECO respectfully submits that, under the *Duick* standard, that is not sufficient grounds to grant a Petition for Reconsideration.

2. The Commission's Final Order with respect to medical certificates is clear and does not need to be re-written or clarified

In their March 16, 2016 Comments in this docket, both CAUSE-PA (pp. 9-11) and TURN (pp.11-12) raised questions with respect to the use of medical certificates in PECO's upcoming Fixed Credit Option ("FCO") program. In its March 28 Reply Comments (pp. 9-12), PECO provided an extensive reply.

The fundamental issue being debated is how long a customer can continue to receive the protection against termination afforded by medical certificates as to a given balance when they fall behind on their bills and then submit a medical certificate. PECO's view is that the customer has a total of 90 days – a medical certificate, and two renewals – to pay both the arrearage that was owed when they first got the medical certificate, as well as and the bills incurred while on the medical certificate. The low-income advocates view is that, as long as the customer pays the bills incurred for service received while on the medical certificate, they can continue to receive medical certificates for as long as their medical condition persists without having to pay anything toward the arrearage that existed when the medical certificate was

issued. In the case of a chronic condition, such as asthma or diabetes, the medical condition would presumptively last forever, meaning that the customer could receive an infinite number of medical certificates, as long as they continued to pay their bills for service received while on the medical certificate – and thus would never have to pay toward the initial arrearage.

The Commission clearly resolved that dispute in its Final Order, stating in material part (pp. 20-21) that:

> The Commission has previously clarified that customers who meet the conditions for a medical certificate can lose the protection against service termination provided by the medical certificate process if they do not pay their current bills or budget bills in full by the due date. *Chapter 14 Implementation Final Order* at 15. *The medical certificate process allows up to 90 days of relief from termination based on the original certificate and two renewal certificates or "three certificates" for a given balance due. By the end of the term of the medical certificates, customers are expected to have brought their accounts into current status.* After satisfying the current balance, qualifying customers may again utilize medical certificates to protect against termination of service. (emphasis added).

In the Petition for Reconsideration, the Joint Petitioners claim (¶ 12) that this language from the Final Order "provides conflicting and/or unclear instruction" on this issue, and thus the Joint Petitioners seek "clarification" of it.

PECO does not believe that the Commission's holding is unclear. The customer who obtains the protection of a medical certificate can have up to 90 days' relief from termination for the balance that was due when the customer got the medical certificate. For example: If a customer has a $500 balance due and seeks the protection of a medical certificate to avoid termination for non-payment of that balance, then the customer receives up to 90 days of relief from termination on that $500 balance. If, at the end of that 90 days, the customer still has all

or a material part of the $500 balance outstanding, the medical certificate procedure no longer provides protection against termination for non-payment of that $500 balance.

The claimed lack of clarity is simply the Joint Petitioners way of stating that they disagree with the Commission's holding. This is made clear by review of the remainder of this section of the Joint Petition (¶¶ 13-20), which is simply a straightforward repeat of the arguments that Joint Petitioners presented on this issue in their March 16, 2016 Comments. Thus, this section of the Joint Petition should not be seen as a request for the Commission to clarify its holding. Instead, it should be understood that the Joint Petitioners are simply claiming that the Commission got it wrong. PECO respectfully submits that such a claim is not a proper basis for a Petition for Reconsideration.

3. The requested clarification regarding post-bankruptcy security deposits is not needed, but if it is provided, the Commission should also state that even with that clarification PECO's 2016-2018 Three-Year Plan is compliant with its regulations and in the public interest

The second argument in the Joint Petition (¶¶ 21-26), addresses the requirement that low-income customers provide deposits in certain post-petition bankruptcy situations. The Commission concluded (p. 40) that it is legal for PECO to require such deposits because, on this issue, the federal Bankruptcy Code preempts the state Public Utility Code.

At first reading, it does not appear that the Joint Petitioners are directly challenging this holding. Instead, they somewhat obliquely request that the Commission "clarify whether PECO may require post-bankruptcy deposits that result in unaffordable bills for CAP customers."

Of course, since PECO's new Fixed Credit Option program is designed to provide affordable utility service without reference to post-bankruptcy deposits, this definitionally means that each customer who must pay both a post-bankruptcy deposit AND their FCO amounts will remit to PECO total cash that is greater than the Commission's affordability guidelines.[2] That further means that the Joint Petitioners are not really asking for clarification – they are really asking the Commission to find that it violates state law for PECO to require a post-petition deposit if it would result in unaffordable service, and that such deposits are thus not allowed. The request for "clarification" should thus be understood as an overall challenge to the Commission's conclusion on this issue.

PECO does not believe this "clarification" is needed or appropriate. However, if the Commission does provide the requested clarification, PECO requests that the Commission also state that, even with this clarification, PECO's 2016-2018 Three-Year Plan complies with the Commission's CAP Policy Statement and is in the public interest.

By way of further detail, in their March 16, 2016 Comments, CAUSE-PA and TURN *et al.* argued that PECO should not be allowed to require post-bankruptcy deposits from low-income customers because, they argued, it is prohibited by a provision of state law, citing 66 Pa. C.S. §1404(a.1). In PECO's March 28, 2016 Reply Comments (pp. 25-26), it argued that the federal Bankruptcy Code preempts state law with respect to bankruptcies. In the Final Order (pp. 38-

[2] PECO notes that a deposit, which eventually gets refunded if the customer pays their bills, is not really an additional "payment" for utility service and thus does not actually cause the customer's payments to exceed the Commission's affordability guidelines. For purposes of the argument in text, PECO is willing to assume *arguendo* that a deposit is a payment for purposes of determining affordability, but reserves all rights to argue otherwise in future proceedings.

42), the Commission agreed with PECO's view, providing extensive citation to case law to support its conclusion (p. 40) that:

> We conclude that PECO may require "adequate assurance of payment, in the form of a deposit or other security, for services rendered after" the date of the order for relief, regardless of the household's income level. If the only adequate assurance that PECO will accept is a cash deposit, it may require one. This comports with Section 336 of the Bankruptcy Code and with Section 1404(a.) of the Public Utility Code.

In the Joint Petition, CAUSE-PA and TURN et al. claim that, under this ruling, PECO might issue bills that exceed the affordability guidelines set forth in the Commission's CAP Policy Statement, 52 Pa. Code §69.265(2), and argue that this outcome "thwarts the state's CAP affordability objectives."

In other words, in the face of the Commission's ruling that the Bankruptcy Code preempts Section 1404(a.) of the Public Utility Code, the Joint Petitioners have simply chosen a different provision of state law and then repeated their argument that state law should dominate the Bankruptcy Code on this issue.

PECO respectfully submits that the requested clarification is not needed. The Final Order is already quite clear that, on this bankruptcy question, the federal Bankruptcy Code controls over the state Public Utility Code. PECO respectfully submits that there is no need to issue an additional order that would "clarify" that the Bankruptcy Code likewise controls over a Commission policy statement that was implemented under the authority of the state Public Utility Code.

Moreover, the Joint Petitioners have already agreed, and the Commission has already found, that PECO's 2016-2018 Three-Year Plan is in compliance with the Commission's regulations and is in the public interest even though, by design, it will not provide 100% affordability. Customers with extremely high usage can receive the maximum credit and then use so much additional utility service that they receive an unaffordable bill. The minimum bill requirements of the Commission's CAP Policy Statement will render service unaffordable for some very low-income customers, regardless of their usage. Because of these two factors, the FCO Annual Credit was "calculated to provide bills within Commission energy burden guidelines to approximately 93% of Rate R customers . . . and approximately 96% of Rate RH customers." 2016-2018 Three-Year Plan, p. 31, fn. 7. In addition, every customer who participates in the In-Program Arrearage Forgiveness ("InPAF") program will, by definition, pay their FCO amount plus their InPAF amount, which will exceed the affordability guidelines.

The Commission properly found that, even though PECO will issue bills that exceed the Commission's affordability guidelines as described above, PECO's plan is nonetheless materially compliant with the CAP Policy Statement and is in the public interest. Indeed, even CAUSE-PA is on record as stating that, with affordability targeted at less than 100%, the FCO program is in the public interest. *See* PECO's March 28, 2016 Reply Comments, pp. 8-9 (quoting at length from the CAUSE-PA Statement in Support of the FCO Settlement).

In sum, PECO does not believe that the clarification requested by Joint Petitioners – a requested statement "that PECO may require post-bankruptcy deposits that result in unaffordable bills for customers" -- is needed, because that conclusion is already inherent in

and embedded within the Commission's existing Final Order. However, if the Commission does provide the requested clarification, PECO requests that the Commission further clarify that, even though imposing such deposits may result in unaffordable bills for some customers, the FCO program, and PECO's 2016-2018 Three-Year Plan, are nonetheless in the public interest and are approved as materially complying with the Commission's CAP Policy Statement.

III. Conclusion

For the reasons set forth above, PECO requests that the Commission issue an Order denying the Joint Petition for Reconsideration.

Respectfully submitted,

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September 6, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company Universal Services	:	
And Energy Conservation Plan for 2016-2018	:	**Docket No. M-2015-2507139**
Submitted in Compliance with	:	
52 Pa. Code §§ 54.74 and 62.4	:	

CERTIFICATE OF SERVICE

I, Ward Smith, hereby certify that I have this day served copies of the Answer of PECO Energy Company to Joint Petition for Reconsideration of CAUSE-PA and TURN et al, in accordance with 52 Pa. Code § 1.54.

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