

COMMONWEALTH OF PENNSYLVANIA



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November 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 Answer in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Amy E. Hirakis
Amy E. Hirakis
Assistant Consumer Advocate
PA Attorney I.D. #310094

Attachment

cc: Office of Administrative Law Judge
Certificate of Service
227333

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 Answer, 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 November 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	:	
	:	
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	:	
PECO ENERGY COMPANY’S	:	
PETITION FOR TEMPORARY	:	
WAIVER OF PORTIONS OF THE	:	
COMMISSION’S REGULATIONS	:	
WITH RESPECT TO THAT PLAN	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE PECO ENERGY COMPANY’S PILOT PLAN
AND PETITION FOR TEMPORARY WAIVER

NOW COMES, the Office of Consumer Advocate (OCA), pursuant to 52 Pa. Code § 5.61, with the following Answer to PECO Energy Company’s (PECO or 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”:

I. INTRODUCTION

On October 26, 2016, PECO Energy Company (PECO or Company) filed a “Pilot Plan for an Advance Payments Program” and Petition requesting a waiver of portions of the Commission’s regulations related to the Pilot Plan (hereinafter referred to as “Pilot Plan”) with the Pennsylvania Public Utility Commission (Commission) seeking approval to implement a prepaid meter pilot program. 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 program to, among other things, collect data on

customer usage, satisfaction and payment patterns to possibly develop a broad-scale advanced payments program. *Plan* at ¶ 5. PECO seeks to begin the prepaid meter pilot program in early 2018. *Plan* at ¶ 7.

In Pennsylvania, advanced payments for service was authorized by regulation in 1978, pursuant to 52 Pa. Code § 56.17. PECO is not aware of any other public utility company serving Pennsylvania that has implemented an advanced payments program. *Plan* at ¶ 3. PECO's Pilot Plan provides that it seeks to implement an advanced payments program now because its advanced meter infrastructure network (i.e., smart meters) 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 has requested that its Pilot Plan be evaluated and resolved on the basis of written comments and reply comments. *Plan* at ¶ 37. The Commission has set the date for Comments as December 15, 2016 and the date for Reply Comments as January 16, 2017. The OCA will provide Comments and Reply Comments in accordance with the schedule as set forth in the Pennsylvania Bulletin on November 12, 2016. 46 Pa.B. 7232 (Nov. 12, 2016). The OCA also provides this Answer in accordance with the Commission's regulations to preliminarily identify key failings of the Petition and to request that this matter be sent to the Office of Administrative Law Judge for the development of a full and complete record for the Commission's consideration.

II. THE OCA'S POSITION ON PECO'S PILOT PLAN

The OCA has preliminarily reviewed PECO's Pilot Plan and finds that it raises significant questions of law, fact and public policy and will require significant consideration by the Commission. As PECO readily acknowledges in its filing, PECO's Advanced Payments

Plan is the first of its kind in Pennsylvania to utilize prepayment metering technology as a means of meeting the public service obligation to electric customers. PECO's plan to pilot such a significant change is devoid of critical details as to the protocols for the pilot, any details as to how PECO will protect consumers and public safety, or any details as to how PECO will provide the protections to which customers and applicants are entitled under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.

PECO relies heavily in its proposal on the Commission's regulation at 52 Pa. Code §56.17 regarding advance payments through the use of prepaid metering. Section 56.17, however, has not been applied in Pennsylvania since its enactment in 1978. Since that time, there have been many changes in Pennsylvania statutes, regulations and policies regarding the rules for the provision of electric service. PECO's Petition and Plan do not address these significant changes or the impact that its Pilot Plan will have on the protections provided by these statutes, regulations and policies. These issues must be thoroughly examined in any consideration of PECO's proposal.

Whether or not PECO's Pilot Plan is in the public interest must also be examined.¹ As stated above, PECO's Pilot Plan is the first prepaid meter program introduced by a public utility company in Pennsylvania since the Advance payments regulation was adopted. Also since that time, the usage of electricity in all aspects of our lives and our homes has changed. Electricity, though, continues to be an essential service that is critical to the health, safety and welfare of the public. Any implications of prepayment metering must be thoroughly examined to determine the impact on the public interest.

¹ In its Petition, PECO states that "Commission review of the plan should not include a separate determination of whether the plan is in the public interest – that is, we do not need to have a debate on the overarching question of whether prepaid meter plans are in the public interest." Plan at ¶ 10. PECO's statement, however, raises the further question of what the purpose or goal of the proposed Pilot program may be. One of the failings of PECO's position is that it has no clear or identified goals for this Pilot making it of questionable value.

Also significant in assessing whether the Pilot Plan is in the public interest is whether there will be any benefits to having this pilot program and whether these benefits will outweigh any harms that could arise from implementing the pilot program. Regarding benefits, PECO's Pilot Plan did not directly identify the benefits it anticipates that its customers will receive by participating in this pilot program. Instead PECO points to other public utility companies that have implemented prepaid meter programs and claims that these other public utility companies are experiencing "increased levels of customer satisfaction," "observing reduced usage" from customers participating in these programs, and have seen "past due arrearages ... decreasing in program participants." *Plan* ¶ 4. PECO, however, has not provided any studies or statistics to support these claims. PECO has also not provided any information as to whether its proposed pilot program mirrors those programs of the other public utility companies it refers to in its Pilot Plan, nor does PECO address whether its service territory mirrors the service territories served by those other public utility companies. PECO also has not explained how this data is being measured, how increased satisfaction and decreased usage is defined, or how long increased usage and decreased usage is maintained by the customer. Thus, PECO's claim that its customers will receive some benefit from participating in a prepaid pilot program is unsupported, and this claim should be fully examined in an evidentiary proceeding that includes the opportunity to present expert testimony. Further, PECO's Pilot Plan does not identify the harms that could arise from the pilot program, but the OCA submits that any program that waives the consumer protections provided by Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations, raises health and safety concerns. Such risks should be examined as part of a factual inquiry into whether this program is in the public interest.

In addition to the major statutory, regulatory and public policy issues presented by PECO's proposal, a preliminary review of PECO's filing reveals that there are many facts and details that must be developed before the Commission could even consider PECO's proposal. Among the issues preliminarily identified by the OCA are the following:

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, but should be examined.

- *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.

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.

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.

Arrearages

- *Whether the 75/25 split of payments between past due balances and current charges comports 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 be 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.

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.

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.

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 this proceeding (e.g., lower customer satisfaction, decreased shopping, etc.). 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 daily, 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.

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.

Cost Recovery

- *What is the projected cost of implementing the pilot program?* PECO's Pilot Plans 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.

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.

In the Section below, the OCA provides a paragraph by paragraph response to PECO's Pilot Plan.

III. ANSWER TO SPECIFIC PARAGRAPHS

1. Admitted that PECO proposes to implement a prepaid meter pilot program. To the extent that PECO states its purpose for the filing, the OCA is without sufficient information to confirm or deny PECO's purpose and demands strict proof thereof at hearings. Otherwise denied as legal conclusion, to which no answer is required.
2. Admitted.
3. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
4. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
5. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
6. To the extent that PECO identifies the "most important elements of the Plan," the OCA denies that this list constitutes all of the "most important" elements of the Plan.
7. The OCA is without sufficient information to confirm or deny PECO's proposed timeline and effective date and demands strict proof thereof at hearings.
8. This paragraph constitutes legal conclusions to which no answer is required.
9. The OCA is without sufficient information to confirm or deny the statements in this paragraph and requests strict proof thereof at hearings.
10. This paragraph recites Commission regulations that speak for themselves.
11. This paragraph recites Commission regulations that speak for themselves.
12. This paragraph contains legal conclusions to which no answer is required. By way of further answer, the OCA denies that the review that must be conducted by the

Commission is simply whether PECO's proposal in fact tracks the regulatory requirements. Subsequent to the Advanced Payments regulation being adopted, significant changes have been made to the Public Utility Code and the Commission's regulations and policies. Changes to the Public Utility code include the enactment of Chapter 14, which provides important protections to consumers to ensure that the health and safety of the public are not placed in jeopardy. 66 Pa. C.S. §§ 1401 *et seq.* Therefore, it is denied that the Commission's scope of review is whether the Pilot plan tracks the regulatory requirements of 52 Pa. Code § 56.17. The Commission's review must include determining whether the Pilot Plan complies with the Public Utility Code, Commission regulations and public policy, and is in the public interest. As to whether variations should be reviewed under the public interest standard, this requires a factual inquiry as to whether waiving portions of the commission's regulations are, in fact, in the public interest.

13. Denied. This paragraph contains legal conclusions to which no answer is required. By way of further answer, the OCA denies that the review that must be conducted by the Commission is simply whether PECO's proposal in fact tracks the regulatory requirements. Subsequent to the Advanced Payments regulation being adopted, significant changes have been made to the Public Utility Code and the Commission's regulations and policies. Changes to the Public Utility Code include the enactment of Chapter 14, which provides important protections to consumers to ensure that the health and safety of the public are not placed in jeopardy. 66 Pa. C.S. §§ 1401 *et seq.* Therefore, it is denied that the Commission's scope of review is whether the Pilot plan tracks the regulatory requirements of 52 Pa. Code § 56.17. The Commission's review

must include determining whether the Pilot Plan complies with the Public Utility Code, Commission regulations and public policy, and is in the public interest.

14. This paragraph contains legal conclusions to which no answer is required. By way of further answer, as to whether variations should be reviewed under the public interest standard, this inquiry requires a factual inquiry as to whether waiving portions of the Commission's regulations are, in fact, in the public interest.
15. This paragraph is an introductory paragraph to which no response is required.
16. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
17. This paragraph states a legal conclusion to which no answer is required.
18. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
19. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
20. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
21. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
22. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
23. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.

24. This paragraph contains legal conclusions to which no response is required. By way of further response, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings. PECO's Pilot Plan does not provide information on how PECO plans to inform or require the customer to accept such a condition to participate in the pilot program)
25. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings. PECO's Pilot Plan does not provide information on how it plans to implement this medical emergency protection.
26. The OCA is without sufficient information to confirm or deny that the attached Pilot Plan is the complete and final Advanced Payments Plan that PECO will implement if the pilot program is approved by the Commission.
27. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
28. This paragraph contains legal conclusions to which no response is required. By way of further answer, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
29. This paragraph contains legal conclusions to which no response is required. By way of further answer, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
30. This paragraph contains legal conclusions to which no response is required. By way of further answer, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.

31. This paragraph contains PECO's request for waivers to which no response is required. By way of further answer, to the extent that PECO requests these waivers, the OCA denies that PECO has met the relevant standards.
32. This paragraph contains legal conclusions to which no response is required. By way of further answer, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
33. This paragraph contains legal conclusions to which no response is required. By way of further answer, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
34. The OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
35. This paragraph contains legal conclusions to which no response is required. By way of further answer, the OCA is without sufficient information to confirm or deny the facts alleged and demands strict proof thereof at hearings.
36. Admitted.
37. This paragraph contains a request for relief to which no response is required. By way of further answer, the OCA submits that PECO's Petition cannot be evaluated on the basis of written comments and reply comments. The OCA submits that evidentiary hearings and expert testimony are necessary for a consideration of this matter.

IV. CONCLUSION

The Office of Consumer Advocate respectfully requests that PECO's proposed Pilot Plan be referred to the Office of Administrative Law Judge for assignment to an Administrative Law Judge for hearings where all issues, particularly the issues of material facts, can be thoroughly developed.

Respectfully Submitted,

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