

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO ENERGY COMPANY'S	:	
PILOT PLAN FOR AN ADVANCE	:	
PAYMENTS PROGRAM SUBMITTED	:	Docket No. P-2016-2573023
PURSUANT TO 52 PA. CODE §56.17	:	
	:	
	:	
PECO ENERGY COMPANY'S	:	
PETITION FOR TEMPORARY WAIVER	:	
OF PORTIONS OF THE COMMISSION'S	:	
REGULATIONS WITH RESPECT TO	:	
THAT PLAN	:	

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**COMMENTS OF THE  
BUREAU OF INVESTIGATION & ENFORCEMENT**

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**I. INTRODUCTION**

On October 26, 2016, PECO Energy Company (“PECO”) filed a Petition for Approval of an Advance Payments Program and a corresponding Petition for Temporary Waiver of Commission Regulations (collectively the “Petition”). The Petition, filed at Docket No. P-2016-2573023, serves as both PECO’s request to implement a pilot program that will enable a select number of residential customers to pay for utility service in advance of usage (“Program”) and its request to waive certain impacted regulations (“waiver requests”).<sup>1</sup> According to PECO, the Program will use a “test and learn”

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<sup>1</sup> 52 Pa. Code §52.17(3)(i); 52 Pa. Code §56.17(3)(iii)(B); 52 Pa. Code §56.53.

approach to evaluate customer adoption, usage impacts, satisfaction, payment patterns, frequency and duration of disconnections, and the effect of marketing and education strategies for its customers.<sup>2</sup> In its Petition, PECO proposes a timeline for implementation of the Program,<sup>3</sup> commencing with a proposal to obtain Commission approval for the program in the fourth quarter of 2016 and culminating in customer enrollment in the Program between the fourth quarter of 2017 and the first quarter of 2018. PECO opines that its Petition should be evaluated and resolved through a process of written comments and reply comments.<sup>4</sup>

On October 28, 2016, the Commission issued a Secretarial Letter that acknowledged its receipt of PECO's Petition and set due dates of December 15, 2016 and January 16, 2017 for Comments and Reply Comments, respectively. In accordance with the terms of the Secretarial Letter, notice of PECO's Petition and the comment deadlines were published in the Pennsylvania Bulletin on November 12, 2016.<sup>5</sup> On November 15, 2016, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Answer to PECO's Petition. On the same date, Intervention Petitions and Answers to PECO's Petition were filed by both the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") and the Tenant Union Representative Network ("TURN") and Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") (collectively "TURN et al."). In their Answers, OCA, CAUSE-PA, and

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<sup>2</sup> Petition at ¶5.

<sup>3</sup> Petition at ¶7.

<sup>4</sup> Petition at ¶37.

<sup>5</sup> 46 Pa.B. 46.

TURN et al. each requested that PECO's Petition be referred to the Office of the Administrative Law Judge.

The Bureau of Investigation and Enforcement ("I&E") has conducted a thorough review of PECO's Petition and opines that more information regarding the Program is needed before it can be comprehensively evaluated and implemented. While I&E does not now specifically oppose any of PECO's waiver requests, it also cannot endorse them until further information is provided. Additionally, on a preliminary basis, I&E has several concerns regarding the service termination provisions proposed in PECO's Petition, mirroring the concerns expressed in the Answers filed by OCA, CAUSE-PA, and TURN et al. Specifically, I&E questions the legality of the Program's termination provisions, which the Company categorizes as requests for discontinuance of service, and I&E opines that these provisions may be contrary to the public interest. For this reason, I&E supports OCA, CAUSE-PA, and TURN et al.'s requests for the Petition to be referred to the Office of Administrative Law Judge to schedule such hearings as are necessary to determine whether it is in the public interest. Additionally, in accordance with the Commission's invitation for interested parties to submit Comments regarding PECO's Petition, I&E now submits this timely Comment for the Commission's consideration.

## **II. I&E's COMMENTS**

### **A. PECO's Petition Fails to Identify Costs and Cost Recovery Information for the Program**

PECO's Petition fails to include any information regarding the costs of the Program. Instead, PECO evades the issue of cost by merely stating that it is not seeking recovery of any Program costs at this time.<sup>6</sup> Later, when PECO does intend to recover Program costs, it plans to include them in future electric base rate claims as "normal operating expenses," to the extent that those costs are incurred in the applicable period for determination of rate base expenses.<sup>7</sup> Although PECO alleges that it is not requesting any determination regarding the reasonableness or prudence of Program expenditures,<sup>8</sup> the unknown and unidentified costs that would result from implementation of the Program raise significant concerns.

I&E opposes implementation of the Program without having an estimation of the costs involved and information identifying from whom and how they will be recovered. I&E agrees with CAUSE-PA's assessment that "[p]rogram cost is part and parcel to the Commission's determination of whether the Program is in the public interest."<sup>9</sup> Without any cost information, parties cannot undertake any cost/benefit analysis that should be considered in the evaluation of the Program. Accordingly, before moving forward with the Program, PECO should be required to provide an estimate of costs and to identify the intended source and mechanism of cost recovery.

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<sup>6</sup> PECO Petition at ¶9.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> CAUSE-PA Answer at ¶9.

Finally, the Program's unidentified costs implicate several ratemaking concerns. Although it is unclear how much deposit money PECO may retain during the term of the Program, I&E notes that PECO will likely earn interest on the deposits. The Petition does not provide any information regarding PECO's intended treatment of such interest, and I&E opines that this information is also an important consideration in any public interest determination. PECO's receipt of advance payments raises the issue of whether the dollar amount of those prepayments should reduce the Company's rate base claim in future rate cases or be reflected otherwise as an adjustment to a cash working capital claim. Furthermore, PECO's rate treatment of advanced funds raises a novel issue because no major jurisdictional utility in Pennsylvania has implemented an advance payment program, and thus no precedent exists for the recognition of advance payments. While the Program, operating on a pilot basis, may not have an overwhelming impact on PECO's rate base, concerns are implicated both because the impact cannot be measured at this time and because it will increase if the program extends beyond the pilot term.

#### **B. PECO Fails to Include Crucial Participant Selection and Disclosure Information**

PECO provides very little information regarding its intended selection process for the Program. Instead, PECO's Petition simply indicates that participation in the Program will be limited to approximately 1,000 electric-only and dual service customers and applicants, on a voluntary basis. Participants cannot have a delinquency in excess of \$1,500, and they can be either default service or shopping customers.<sup>10</sup> However, PECO

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<sup>10</sup> Petition at ¶6.

provides no underlying basis for the development of participant criteria and makes no connection between that criteria and fulfillment of Program goals.

Additionally, PECO fails to explain the manner in which customers will be targeted and invited to participate. It is unclear whether eligible customers will be informed of the Program and then participants are selected on a first come-first-served basis, whether random selection be used, or whether an arbitrary method be used to determine which customers will have the option to participate. Without this information, it cannot be determined that PECO's manner of selecting interested participants is equitable. Furthermore, depending upon the manner in which customers are invited to participate, the pilot results may not be representative of those associated with a larger-scale program. For these reasons, PECO should be required to provide more information regarding its selection process.

Additionally, like CAUSE-PA, I&E is concerned about what type of disclosures PECO will make to Program participants. PECO states that as a condition of program participation, the customer must agree that failure to make additional payments constitutes a request for discontinuance of service.<sup>11</sup> Furthermore, service can be discontinued after only five days of a customer's additional emergency backup usage have been exhausted.<sup>12</sup> Notably, by implementing these conditions, PECO asks participants to waive many of the protections afforded to them under the Responsible Utility Customer Protection provisions of the Public Utility Code ("Chapter 14").<sup>13</sup>

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<sup>11</sup> Petition at ¶24.

<sup>12</sup> Id.

<sup>13</sup> 66 Pa. C.S. §§1401-1409.

These protections include, but are not limited to, PECO's obligations to provide written notice at least 10 days prior to termination, to follow protocols for contacting customers prior to termination, to refrain from termination on Friday through Sunday, and to follow specific guidelines for winter service termination for customers whose incomes are at or below 250% of the Federal poverty level.<sup>14</sup>

To the extent that PECO is legally able to impose such a condition upon Program participants, it is incumbent on PECO to provide adequate disclosures to participants regarding what types of termination protections they are waiving. Absent this type of disclosure, participants cannot knowingly and voluntarily waive the protections contained the Public Utility Code. As a preliminary matter, PECO should be required to identify all existing termination protections that participants will have to waive and be required to provide the exact scripts that it will use to inform participants of the protections being waived.

### **C. Alleged Customer Benefits are Tentative**

In seeking a waiver of the requirement permitting only customers who have a delinquency to participate in advance payment programs,<sup>15</sup> PECO alleges that advance payment programs may increase these customers' satisfaction and help them to decrease usage.<sup>16</sup> PECO bases these speculative benefits on early data from other utility programs, but it fails to identify the names and industries of those utilities, the source of the data,

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<sup>14</sup> 66 Pa. C.S. §1406.

<sup>15</sup> 52 Pa. Code §56.17(3)(i).

<sup>16</sup> Petition at §32.

and the composition of the data. Additionally, PECO fails to explain whether its Program is similar to the unidentified utilities' programs.

Assuming, arguendo, that PECO can provide specific information regarding other utilities' experiences with advance payment programs, other key information is also missing. PECO also fails to explain how any data received from its Program will be measured to gauge customer satisfaction and usage decline. Without having mechanisms to evaluate the purported benefits, PECO cannot make any meaningful determination of the Program's value. Nonetheless, PECO touts these unsupported benefits as being in the public interest. I&E submits that PECO has failed to provide any support for the alleged customer benefits that will result from its waiver request and that it must do so before any public interest determination is made.

#### **D. PECO's Program Conditions May Invalidate Important Consumer Protections**

Although PECO alleges that its Program is a low-risk opportunity for the Commission because it will be conducted on a small scale, it is not the scale of the pilot but instead the conditions upon Program participation that raise concerns. As I&E mentioned above, participants will be subject to termination provisions that do not appear to honor Chapter 14.<sup>17</sup> While PECO does not directly ask for a waiver of these termination protections that currently exist for customers, its request to implement the terms of the Program appear to operate as a de factor waiver request. More specifically, PECO requires participants to waive current termination protections by agreeing that

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<sup>17</sup> 66 Pa. C.S. §§1401-1419.



their failure to make additional payments under the program constitutes a voluntary request for discontinuance of service.<sup>18</sup> Additionally, instead of respecting the prescribed notice and timing protocols in place for service termination,<sup>19</sup> PECO simply asserts that service termination will occur when five days of a customer's additional emergency backup usage have been exhausted.<sup>20</sup>

As previously explained, these terms appear to directly contravene service termination protections arising under Chapter 14. Additionally, because PECO makes no mention of structuring its Program in a way that comports with the termination protections currently in place, I&E is left to deduce that PECO is requesting a waiver. I&E opines that the alleged benefits for participants can be provided without depriving participants of the protections in place for service termination. As an example, in lieu of service termination, PECO could take alternate action, such as removing participants from the Program if they fail to maintain prepayments or otherwise fail to meet conditions of the Program. Accordingly, to the extent that PECO is indirectly requesting a waiver of Chapter 14 by requiring Program participants to agree to "voluntary" terminations in the manner prescribed under the Program, I&E submits that the waiver of termination protections is not in the public interest and it should be denied.

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<sup>18</sup> Petition at ¶24.  
<sup>19</sup> 66 Pa. C.S. §1406.  
<sup>20</sup> Id.

### III. CONCLUSION

In summary, PECO's Petition raises important questions about the costs and benefits of the Program. The Program's termination provisions also implicate concerns about participants' continued access to electric service. With this in mind, I&E opines that an investigation into the Program and its ramifications is warranted. Accordingly, I&E requests that this matter be referred to the Office of the Administrative Law Judge.

**WHEREFORE**, for the reasons state herein, the Bureau of Investigation & Enforcement respectfully requests that PECO Energy Company's Petition for Approval of an Advance Payments Program and the corresponding Petition for Temporary Waiver of Commission Regulations be referred to the Office of Administrative Law Judge to schedule such hearings as are necessary to determine whether they are in the public interest.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gina L. Miller", is written over a horizontal line.

Gina L. Miller

Prosecutor

PA Attorney ID #313863

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

Dated: December 15, 2016



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

December 15, 2016

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

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

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Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E)  
**Comments** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of  
service. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Miller  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313863

GLL/sea  
Enclosure

cc: Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Comments** dated December 15, 2016, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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