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December 15, 2016

<u>Via Electronic Filing</u>
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted 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 the Plan
<u>Docket No. P-2016-2573023</u>

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Comments of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M O'Dell

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Comments upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: December 15, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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Date: December 15, 2016

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I. INTRODUCTION

On October 26, 2016, PECO Energy Company ("PECO") submitted its prepayment meter program with the Commission in which it proposes to allow certain residential customers/applicants to voluntarily enter a program in which they pay their bills for utility service in advance of receiving service ("Prepay Pilot Program"). The purpose of PECO's filing is to set forth the details of its proposed Prepay Pilot Program and to request waivers of certain portions of the Commission's regulations in support of the pilot. Pursuant to notice in the Pennsylvania Bulletin (46 Pa.B. 7232), the Commission invited interested parties to file comments on or before December 15, 2016 and/or file Reply comments on or before January 16, 2017.

For the reasons explained more fully below, the Retail Energy Supply Association ("RESA")[1] recommends that the Commission reject PECO's Prepay Pilot Program and instead focus on making more impactful structural changes regarding the current billing structure that would open up a pathway for electric generation suppliers ("EGSs") to offer their own prepay billing options (as they do in other jurisdictions). Importantly, these structural issues are at the very heart of PECO's petition here because this petition makes clear that only the EDC is in a position in Pennsylvania to offer a prepay billing option. Not moving forward to address the structural and practical reasons preventing competitive market deployment of prepay options will not lead to any different outcome in the future. This, coupled with allowing the EDC to be the

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1 The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

only provider of prepay service, is not consistent with the statutory requirement to foster the development of a robustly competitive retail electric market that encourages the development of innovative products and services that add value to customers beyond the electric commodity.

If, nonetheless, the Commission elects to approve PECO's Prepay Pilot Program over RESA's objections, then it must condition approval on all of the following requirements:

- Limiting the scope of the pilot and requiring the impact evaluation to include an evaluation of retail market impact; and,
- Incorporating retail choice messaging in communications with consumers about the prepay product; and,
- Directing PECO to undertake a direct mailing of EGS offers similar to the program utilized by the FirstEnergy Companies; and,
- Directing PECO to work with EGSs to identify other actions that can be taken to address negative retail market impacts.

II. COMMENTS

A. Consumers benefit when there is a vibrant competitive market capable of delivering products like prepay billing

RESA is a diverse organization of competitive energy suppliers which includes EGSs of varying sizes and business plans serving all types of consumers in Pennsylvania and elsewhere. There is no dispute that many Pennsylvania consumers would likely view as highly valuable the ability to prepay their utility bills. In fact, many competitive energy suppliers (including RESA members) offer such products in other jurisdictions (notably Texas) and the success of these prepay products is undeniable.[2] Some of the features available with prepay that consumers

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[2] In January 2011, Empiric Marketing & Sales, LLC filed a petition for a declaratory order asking the Commission to conclude that 52 Pa. Code § 56.17 did not apply to the prepaid electric service that the EGS wished to offer in Pennsylvania. *Petition of Empiric Marketing & Sales, LLC for Investigation and Issuance of a Declaratory Order*, Docket No. P-2011-2222777 (petition filed January 25, 2011). Although the EGS elected to withdraw its petition just a few weeks after it was filed, the petition provides excellent detail about how an EGS-provided prepay option could

particularly appear to appreciate include: (1) no need to pay a security deposit; (2) not receiving any billing surprises at the end of their billing cycle; (3) the ability to pay as often and for as much as they desire; (4) daily account updates with balance and usage information; and, (5) the ability to receive information via alternate communication methods (i.e. SMS text messaging). Given the proven success of prepay options and the experience of many RESA companies offering prepay options to consumers, RESA fully supports bringing such opportunities to Pennsylvania consumers through the competitive market.

For consumers to truly realize all the potential benefits of prepay options, these competitive products and services need to be offered by EGSs and not the EDC. As the Commission is well aware, it is the policy of the Commonwealth to foster the development of a robustly competitive retail electric market in Pennsylvania,[3] a policy that this Commission has embraced. One of the major benefits of competition is that it encourages the development of innovative products and services that add value to customers beyond the electric commodity. EGSs are starting to develop these products including electricity bundled with energy efficiency, demand response, direct load control, smart thermostats, distributed solar generation and other forms of on-site generation, battery storage technology, products bundled with loyalty rewards and products bundled with home protection, to name a few. These value added products and services not only add value to customers, but many of these products enable customers to use electricity more efficiently, reduce customer's energy costs and enhance electric reliability on the grid.

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work. The petition also illustrates the lack of clarity among the EGS community about the ability to offer prepay in Pennsylvania.

3 66 Pa. C.S. § 2802(5); 66 Pa. C.S. § 2806(a).

As competitive markets and technology evolve, customers will start seeing electricity as more than just the commodity, but rather a package of products and services that include the electric commodity. As a part of this market evolution, the ability of EGSs to offer a variety of bill payment options – such as prepay – is of significant importance. If EGSs were free to develop their own prepay products and compete with other EGS provided products in the market, then EGSs are positively incentivized to fine tune their offerings so as to meet the specific needs and demands of their target customers. EGSs are dependent on building customer relationships to sustain business viability in a way that EDCs are not. Unlike monopoly distribution utility service, customers can leave an EGS at any time. Also, unlike default service provided by the EDC (as currently structured in Pennsylvania), customers do not "default" to EGS provided service. Further, because of the distribution monopoly over customers and the historical monopoly EDCs had regarding generation, EDCs enjoy an inherent long-established relationship with customers which EGSs do not. Finally, the fact that EDCs own the billing relationship with customers gives EDCs a monthly touch point with every customer that reinforces brand identity and the historical relationship.

Thus, creating an environment for EGSs (rather than EDCs) to develop and offer their own versions of prepay billing options for Pennsylvania consumers will lead to greater variety and innovation which ultimately benefits consumers. Simply put, innovation and responsiveness to customer needs are enhanced when services are provided by entities that must compete to win and retain customer relationships. In a competitive market, EGSs would be incented to create diverse prepay options and features in an effort to satisfy the particular needs of consumers and to distinguish their options from that of competitors. The end result would be a significant benefit for consumers who would be able to elect from a variety of prepay products offered by a variety of entities.

As discussed more fully below, permitting the historical monopoly provider (that is also the default service provider and is entitled to full cost recovery) does not lead to the same type of innovation and customer responsiveness and, in fact, snuffs out the possibility of EGS-provided products and services.

B. Permitting an EDC-only prepay stifles the potential benefit of truly competitive prepay option and acts as a barrier for EGSs wishing to develop their own prepay options

Notwithstanding PECO's efforts to limit the Commission's review of its proposal to: (1) whether PECO's proposal in fact tracks the regulatory requirements of 52 Pa. Code § 56.17; and, (2) whether variations of the regulations are in the public interest,[4] the Commission is also legally required to consider how approving PECO's petition impacts the competitive market. An expressed purpose of the Competition Act is to "transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity."[5] To achieve this, the Competition Act requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access."[6] Thus, in this context, the Commission must consider the potential negative retail market effects of approving PECO's petition.

In addition, the Competition Act requires that EDCs provide nondiscriminatory access to EGSs. Specifically, the Competition Act requires that customers be allowed "to choose among

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4 PECO Petition at 10.

5 66 Pa.C.S. § 2802(13).

6 66 Pa.C.S. § 2804(2).

electric generation suppliers in a competitive generation market through direct access"[7] and defines "Direct Access" as:

> The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.[8]

Likewise, the Competition Act requires that:

> A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.[9]

These statutory provisions require the Commission to consider how PECO's proposal will impact competition in the retail electricity market. Relying on the EDC to bring value-added products and services such as prepay billing options to Pennsylvania consumers will negatively impact the retail electricity market in several ways.

PECO would have a right to full cost recovery for the development and implementation of its proposed Prepay Pilot Plan. EGSs do not have a similar right to full cost recovery for products and services that they offer customers. Rather, innovation from EGSs is largely driven by competitive companies investing shareholder dollars and putting their own capital at risk. PECO's proposal threatens to negatively impact EGS potential investment in innovation because private companies cannot compete with a traditional utility that is guaranteed cost recovery for

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7 66 Pa. C.S. § 2804(2).

8 66 Pa. C.S. § 2803(emphasis added).

9 66 Pa. C.S. § 2804(6)(emphasis added).

its prepay billing option. Thus, the result will be to dis-incentivize EGSs from developing competitive prepay products.

In addition to this, the presence of PECO's prepay option will decrease demand for competitive products further dis-incentivizing EGSs from developing their own prepay products. This is because customers within the PECO service territory will have less incentive to seek prepay products from the competitive market because they can avail themselves of PECO's product. This is particularly problematic because PECO would have numerous opportunities due to its direct billing relationship with customers and its status as monopoly distribution provider to steer its captive customers to its own product offering rather than competitive market options. In short, the mere presence of PECO offering prepay billing options would have a chilling effect on potential third-party providers by discouraging EGSs from offering competitive options.

From a competitive market development standpoint, an EDC-only prepay product also results in making consumers more likely to perceive that prepay options are available only from the traditional monopoly provider which reinforces the historical EDC-customer monopoly relationship. Because EGSs must build from scratch their customer relationships, the availability of EDC-only consumer friendly products acts as a barrier to the EGS's ability to enter the market. Then, even if EGSs were able and elected to provide their own prepay product options, the presence of the EDC provided prepay option would "crowd out" similar competitive market offerings that may be made by EGSs.

Additionally, the availability of prepay options from only the EDC could result in consumers mistakenly believing that the EDC-provided default service is superior.[10] This can

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10 RESA recognizes that PECO proposes to make the prepay billing option available to both default and shopping customers. PECO Petition at 4. However, through this approach, PECO is still the gatekeeper between the EGS and its customer. The product will also be branded as a PECO

occur because the consumer recognizes the EDC as the traditional monopoly provider and, based on that historical relationship, concludes that the products and services offered by the EDC are superior. Following this mistaken logic, the consumer may also assume that because there are no other competitive options for prepay services, the EDC in general must be superior leading to the wrong conclusion that EDC provided default service is superior. As the Commission has rightly concluded in other contexts, endorsement of default service over competitive EGS supply products "would not be commensurate with the intent of the Competition Act and [the Commission's] duty to promote and assist in the development of the retail electric supply market."[11]

Simply put, relying on the EDC to bring value-added products and services such as prepay billing options to Pennsylvania consumers will negatively impact the development of EGS-provided products. Such result is not consistent with developing a fair and equal competitive marketplace but rather provides EDCs an unfair competitive advantage. In the end, consumers are the ones who are most negatively harmed because, without EGS-provided products, they will be deprived of the opportunity to avail themselves of a competitive marketplace offering a variety of products and services.

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product and, given the long-standing historical relationship between the EDC and consumers, it is likely that many consumers may view prepay billing as a value-added product available only from the EDC.

11 See 66 Pa. C.S. § 2802. *Petition of Duquesne Light Company For A Waiver Of The Three Business Day Switching Requirements Under 52 Pa. Code § 57.174,* Docket No. P-2014-2448863, Order entered December 4, 2014 at 11.

C. RESA urges the Commission to reject PECO's petition and, instead, concentrate its efforts on implementing policies to allow EGSs the option to build and maintain a direct billing relationship with customers

EGSs in Pennsylvania today do not offer prepay products because of the current EDC consolidated billing structure. Through consolidated billing, consumers receive one bill which includes PECO charges and EGS charges. This means that PECO "owns the relationship" with the customer and has an opportunity each month to touch base with that customer. While the Commission has required EDCs to create a more "supplier friendly" EDC-consolidated bill,[12] these actions do not overcome the significant advantages to the EDC of owning the customer relationship nor do they provide the EGSs any real ability to customize their messaging and/or products and services for their customers.

Also important is that – for residential customers – EGSs wishing to participate in the Purchase of Receivables ("POR") program are required to utilize PECO's consolidated billing for all EGS residential customers.[13] This means that if EGSs want to utilize the POR program for any residential customer, then they are required to utilize EDC consolidated billing for all residential customers. Another feature of the POR program which stifles EGS innovation is that it limits the products and services that an EGS can offer residential customers because only basic service can be billed through POR. This limits the creative ability of an EGS to develop a prepay option for customers which is then billed through the consolidated bill of PECO. While POR is an effort to mitigate the competitive advantages that utilities enjoy with respect to customer care and billing costs (i.e. all the EDC's ratepayers pay for the costs of customer care

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12 *Joint Electric Distribution Company – Electric Generation Supplier Bill,* Docket No. M-2014-2401345, Order entered May 23, 2014.

13 PECO Supplier Tariff Page 96, Billing Service Options, Section 19.

and billing), the reality of Pennsylvania's current POR structure is that it prevents EGSs from establishing direct relationships with their customers or offering them non-commodity based value-added products and services, including alternative billing options like pre-paid plans. Unless and until these structural issues are addressed, EGSs will not be in a position to offer prepay products to Pennsylvania consumers and moving forward to permit an EDC-provided product is not reasonable because it will not yield the optimal result for consumers. Therefore, RESA urges the Commission to reject PECO's petition and, instead, concentrate its efforts on implementing policies to allow EGSs the option to build and maintain a direct billing relationship with customers.

The supplier consolidated billing petition filed recently by NRG[14] is one pathway to achieve the result RESA supports here.[15] Through supplier consolidated billing, the EGS would be empowered to bill the customers directly for all energy charges (including those of the EDC) and other non-commodity value-added products and services, and the EGS would be able to directly manage uncollectible expense through the ability to terminate service for non-payment. With the EDC out of the billing role, the EGSs would be able to message, develop, and more proactively maintain their customer relationships. Moreover, the availability of supplier consolidated billing would spur innovation and lead to an even greater variety of EGS-provided products and services for the benefit of consumers. Notably, NRG has proposed a similar

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14 *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016-2579249, Petition filed December 8, 2016 ("*NRG SCB Petition*").

15 In its Comments during the Commission's Retail Markets Investigation, RESA recommended giving EGSs access to the billing function through supplier consolidated billing, an unbundling of the billing function or use of a third-party entity that handle all the billing for those EGSs that chose to utilize it. *See, Investigation of Pennsylvania's Retail Electric Market*, Docket No. I-2011-2237952, Comments of the Retail Energy Supply Association, dated June 3, 2011 at 28-29.

timeframe for implementation to PECO's proposal, i.e. second quarter of 2018.[16] RESA believes that spending this time focusing on how to implement supplier consolidated billing (which would open the market to a plethora of new innovation and products) rather than how to pave the way for an EDC-provided prepay option is a more efficient and reasonable use of resources. And, perhaps more importantly, the end result of implementing supplier consolidated billing will be far more positive and beneficial to a greater range of Pennsylvania consumers than PECO's proposal.

III. ALTERNATIVELY, IF COMMISSION ELECTS TO APPROVE PECO'S PETITION THEN IT SHOULD ONLY DO SO ON A LIMITED, INTERIM, AND CONDITIONAL BASIS

While RESA believes that the best course the Commission can take here is to reject PECO's proposal and instead focus on making more impactful structural changes regarding the current billing structure, if the Commission nonetheless elects to proceed with PECO's petition than it is critically important that any approval of PECO's Prepay Pilot Program be limited in nature. For all the reasons discussed previously, there are significant retail market harms associated with permitting PECO to provide the only prepay billing option available in the market. To the extent the Commission elects to move forward regarding PECO's Prepay Pilot Program, RESA urges the Commission to proceed with caution and – at a minimum – condition approval on all of the requirements suggested below.

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16 *NRG SCB Petition* at 10; PECO's proposed implementation date is end of 2017/beginning of 2018. PECO Petition at 6.

A. If the Commission elects to move forward with PECO's proposal over RESA's objections, it must only be allowed on a limited basis and the impact evaluation must include an evaluation of retail market impact

To the extent the Commission is inclined to allow PECO to offer pre-paid service to consumers, it must be viewed as only an interim measure potentially available only until systems are in place for the competitive market to offer prepay billing options. To do this, the Commission must ensure that PECO's proposal truly is a "pilot" that is in no way intended to establish a precedent that the pilot will be continued or that other EDCs should consider similar approaches.[17] To that end, PECO's proposal to limit the number of is important. Limiting the pilot may contain at least some market harm that can occur by permitting an EDC-provided prepay product. Regarding PECO's proposal to conduct an impact evaluation, such evaluation must include a broader look at the retail market impacts discussed in these comments. Although RESA's preferred approach here is for the Commission to reject the petition and focus on implementing policies to allow EGSs the option to build and maintain a direct billing relationship with customers, if the Commission elects to move forward it is critically important that the scope of the pilot be limited, be viewed only as an interim offering pending ability of EGSs to offer prepay billing, and that attention be given to the impact on the competitive market.

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17 Notably in comments filed by Duquesne Light Company ("DLC") regarding PECO's petition, DLC supports moving forward with PECO's petition on the basis that doing so will enable meaningful data to be collected and analyzed which could be used by "other EDCs when moving forward and designing similar programs for each respective territory." DLC Comments at 3. This type of precedential effect in terms of other EDCs in Pennsylvania making prepay options available to consumers fully supports RESA's concern about the longer term impact of incenting other EDC-only prepay products that could result from approving PECO's Prepayment Pilot Plan.

B. If the Commission elects to move forward with PECO's proposal over RESA's objections, PECO should be required to incorporate retail choice messaging in communications with consumers about the prepay product

In addition to limited the scope of the pilot and evaluating the impact on the competitive market as discussed in the previous section, if the Commission is inclined to move forward with PECO's proposal over RESA's objections, then the Commission should direct PECO to incorporate messaging about retail choice in its communications with potential and actual future prepay customers. For the reasons discussed above, it is extremely important that messaging about the pilot include additional information about retail choice so that consumers understand that just because PECO is making this offering that does not mean that: (1) the customer cannot shop; (2) that PECO's default service is somehow superior to EGS-provided service; and, (3) EGSs will not offer prepay products in the future.

PECO does not provide any details about its customer communication and outreach simply noting that it would be undertaken during the 3rd quarter of 2017.[18] Therefore, it is important for the Commission to specifically direct PECO to work with suppliers to develop and include specific retail choice messaging to be provided to consumers alongside the Prepay Pilot Program information.

C. If the Commission elects to move forward with PECO's proposal over RESA's objections, the Commission should also require PECO to undertake a direct mailing of EGS offers

While limiting the scope of the pilot, evaluating the retail market impact and bolstering consumer communications to include retail choice messaging are some limited ways to attempt to contain the retail market damage that RESA believes PECO's Prepay Pilot Program will engender, these measures alone are likely insufficient. For this reason, RESA recommends that

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18 PECO Petition at 6.

more significant actions be taken to inform consumers about EGS offers. A reasonable way to do this is to require PECO to undertake a direct mailing of EGS offers similar to the direct mail program implemented by the FirstEnergy EDCs.[19] The direct mail program is a way to leverage the direct billing relationship PECO has with its customers to provide EGS offers directly to consumers. While this does not address the direct billing concerns as discussed in these comments, if the Commission elects to move forward with PECO's petition, then the direct mailing option at least provides consumers some "balancing" information about competitive offers.

D. If the Commission elects to move forward with PECO's proposal over RESA's objections, the Commission should also require PECO to work with EGSs to identify other actions that can be taken to address negative retail market impacts

While the above recommendations regarding the scope of the pilot, evaluation of retail market impacts, messaging and direct mailing of EGS offers are proven methods to better educate consumers about retail choice by leveraging the inherent historical relationship of the

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19 The FirstEnergy companies directly mailed individual EGS offers to approximately 1.6 million residential customers and 186,000 small C&I customers. The mailings directed consumers to contact one of the EGSs providing information in the offer to commence service and were paid for by the EGSs and received these mailing from their specific FirstEnergy EDC and were paid for by the participating EGSs. *See, e.g, Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs* Docket Nos. P-2009-2093053 and P-2009-2093054, Opinion and Order entered November 6, 2009 at 20-21 (mailings were sent in 2011 and 2012); *Petition of Pennsylvania Power Company for approval of default service program for period from January 1, 2011 through May 31, 2013*, Docket No. P-2010-2157862, Opinion and Order entered on November 17, 2010 (the approved settlement provided for mailings that were first sent in November 2012 and an additional mailing was scheduled for February 2013); *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520; A-2010-2176732, Opinion and Order entered March 8, 2011 (the approved settlement provided for mailings to customers regarding competitive offers and promotion of shopping opportunities which were sent in September 2012).

EDC with consumers, there may be other ways to address these issues if the Commission elects to move forward with PECO's petition. For this reason, RESA also urges that if the Commission moves forward with PECO's petition, it direct PECO to work with EGSs to identify other actions that can be taken to address negative retail market impacts occurring as a result of PECO's plan. RESA stands ready to work with PECO and other stakeholders to develop these initiatives. The important part of this recommendation, however, is the need for a clear directive to PECO that such measures must be implemented simultaneously with the prepay pilot in consideration of the retail market harm that is threatened by PECO's proposal.

IV. CONCLUSION

For the reasons explained more fully above, RESA recommends that the Commission reject PECO's Prepay Pilot Program and instead focus on making more impactful structural changes regarding the current billing structure that would open up a pathway for EGSs to offer their own prepay billing options (as they do in other jurisdictions). If, nonetheless, the Commission elects to approve PECO's Prepay Pilot Program then it must condition approval on all of the following requirements:

- Limiting the scope of the pilot and requiring the impact evaluation to include an evaluation of retail market impact; and,
- Incorporating retail choice messaging in communications with consumers about the prepay product; and,
- Directing PECO to undertake a direct mailing of EGS offers similar to the program utilized by the FirstEnergy Companies; and,
- Directing PECO to work with EGSs to identify other actions that can be taken to address negative retail market impacts

Respectfully submitted,

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Date: December 15, 2016

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