

COMMONWEALTH OF PENNSYLVANIA



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January 13, 2017

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 Reply Comments in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

Lauren M. Burge
Assistant Consumer Advocate
PA Attorney I.D. 311570

Attachment

cc: Office of Administrative Law Judge
Certificate of Service

227938

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

PECO Energy Company's Petition for
Temporary Waiver of Portions of the
Commission's Regulations with
Respect to that Plan

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Docket No. P-2016-2573023

REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: January 13, 2017

I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Reply Comments pursuant to the notice published in the *Pennsylvania Bulletin* on November 12, 2016 at 46 Pa.B. 7232, regarding PECO Energy Company's (PECO or the 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 (hereinafter referred to as "Pilot Plan").

On October 26, 2016, PECO filed its Petitions containing a Pilot Plan designed to implement a prepaid meter pilot program utilizing PECO's advanced metering system. 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 and payment patterns which may be used to develop a broad-scale advanced payments program. *Plan* at ¶ 5. PECO also seeks to obtain information on customer satisfaction with such a payment structure. PECO proposes to begin the prepaid meter pilot program in early 2018. *Plan* at ¶ 7. As part of its Pilot Plan, PECO is also seeking a waiver of a number of provisions contained in 52 Pa. Code § 56.17 which allows for advance payments through the use of prepaid metering in certain circumstances. *Plan* at ¶¶ 31-35.

PECO requested that its Pilot Plan be evaluated and resolved on the basis of written comments and reply comments. *Plan* at ¶ 37. The OCA filed an Answer to PECO's Pilot Plan on November 15, 2016, which was submitted in accordance with the Commission's regulations requesting that this matter be sent to the Office of Administrative Law Judge for development of a full and complete record, including the presentation of expert witnesses. The OCA filed its

Comments on December 15, 2016 in which it stated that PECO's Pilot Plan should not be approved. Since that time, this proceeding was sent to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Angela T. Jones (ALJ Jones). ALJ Jones issued a Prehearing Conference Order on December 21, 2016. Pursuant to this Order, a Prehearing Conference has been scheduled for January 23, 2017.

The OCA notes that nothing in the other parties' Comments have alleviated the concerns with PECO's Pilot Plan that the OCA raised in its Comments. Numerous other commentators raised significant issues with PECO's Pilot Plan including: CAUSE-PA; TURN; AIDS Law Project of Pennsylvania; AARP Pennsylvania; Clean Air Council; Natural Resources Defense Council (NRDC); Philadelphia Workers Benefit Council; Earth Quaker Action Team; Neighborhood Energy Centers; Health, Education and Legal Assistance Project: A Medical-Legal Partnership (HELP: MLP) et al., and the Montgomery County Community Action Development Commission (CADCOC). As the OCA and these commentators pointed out, prepaid metering disproportionately harms low and moderate income consumers. None of the comments submitted on December 15, 2016 have changed the OCA's position regarding PECO's Pilot Plan as outlined in the OCA's Comments and in its Answer.

The OCA submits these Reply Comments in order to respond to points raised by other parties in their Comments, in particular NRG Energy, Inc., Direct Energy, and Retail Energy Supply Association (RESA) (collectively, EGS Parties). In general, the EGS Parties argue that allowing PECO to institute its Pilot Plan would be harmful to electric competition. Instead, the EGS Parties argue that the Commission should implement supplier consolidated billing,¹ making

¹ See *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016-2579249, Petition filed December 8, 2016.

it possible for the EGS Parties to offer prepaid meter services as a competitive product.² As will be discussed in greater detail below, the OCA submits that the negative effects and lack of consumer protections that raise concerns about PECO's Pilot Plan would also be present if a prepayment program were offered by the EGS Parties. Thus, in the OCA's view, prepaid service is not a sound policy direction for Pennsylvania, whether offered through a regulated utility or by competitive suppliers. The advanced metering infrastructure being deployed provides the opportunity to develop a wide variety of programs to address the needs of Pennsylvania consumers without introducing the demonstrable harms of prepaid metering service. These opportunities should be pursued rather than offering prepaid metering service.

² See Comments of NRG Energy, Inc. at 5; Comments of Direct Energy at 5-6; Comments of RESA at 9-11.

II. REPLY COMMENTS

A. The EGS Parties Must Meet the Requirements of the Public Utility Code and Chapter 56 of the Commission's Regulations For Any Service Offering

In its Comments, the OCA pointed out that PECO's filing does not address numerous issues regarding what, if any, consumer protections will be in place under the Pilot Plan or how the Pilot Plan will comply with Pennsylvania laws and regulations regarding the rights and responsibilities of utility consumers. The EGS Parties argue in their Comments that PECO should not be permitted to offer prepaid products, but rather that the Commission should implement consolidated billing which would allow EGSs to offer prepaid meter services as a competitive product. The OCA submits that whether prepaid service is offered by PECO through its Pilot Plan or by an EGS as a competitive product, the consumer protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations still apply. Competitive suppliers must comply with Pennsylvania laws and regulations protecting consumers and the quality of service those consumers receive.³

As the OCA discussed in its Comments, Pennsylvania law and policy has consistently ensured that all customers are able to maintain essential utility service. The Commonwealth has done this by codifying standards and practices for billing services, and by developing programs to ensure universal service in the electric and natural gas industries. Chapter 14 of the Public Utility Code established basic consumer protections for utility service and codified policies regarding the rights and responsibilities of consumers, utilities, and the Commission regarding the provision of basic utility service. 66 Pa. C.S. §§ 1401 *et seq.* For example, Chapter 14 set forth termination and payment arrangement protections, established deposit requirements, and provided for the reconnection of service. This statute, along with others, recognizes that utilities

³ See 66 Pa. C.S. § 2809(e); *Delmarva Power & Light Co. v. Commonwealth*, 582 Pa. 338 (2005).

provide an essential service that is fundamental to the health and safety of the public and must remain available to all customers on reasonable terms and conditions.

Similarly, Chapter 56 of the Pennsylvania Code includes the Commission's regulations regarding standards and practices for residential utility service, and outlines consumer protections and consumer responsibilities regarding billing and payment, deposits, terminations, complaints, and other standards related to residential utility service. 52 Pa. Code §§ 56.1 *et seq.* As set forth in Section 56.1, the purpose of the chapter is to assure the adequate provision of residential public utility service, to restrict the unreasonable termination of service and to provide functional alternatives to termination. 52 Pa. Code § 56.1.

An electric generation supplier is defined as:

A person or corporation . . . brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company.

66 Pa. C.S. § 2803. Section 2809(e) of the Public Utility Code provides that “[i]n regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including . . . assuring that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.” 66 Pa. C.S. § 2809(e).⁴ As the Pennsylvania Supreme Court recognized in *Delmarva Power & Light Co. v. Commonwealth*, pursuant to Section 2809(e), EGSs may be regulated like public utilities when “necessary to maintain current

⁴ Section 1501 of the Public Utility Code requires that utilities “furnish and maintain adequate, efficient, safe, and reasonable service,” and is the foundation for establishing the quality of service provided to consumers. 66 Pa. C.S. § 1501.

standards of electric service,” including billing practices and other standards included in Chapter 56.⁵

The Commission has further clarified that when the General Assembly stated that EGSs could be regulated in order to maintain quality of service, the General Assembly intended to maintain the quality of service that existed at the time that electric competition was instituted.⁶ The Commission stated that the legislature intended that “the quality of service then being provided with the enactment of Chapter 28 through bundled, regulated electric utility service not be allowed to degrade as a result of the opening of the electric market to competitive generation suppliers.”⁷

Thus, the language of Section 2809(e), as well as interpretations by the Pennsylvania Supreme Court and the Commission, make it clear that EGSs are subject to the billing requirements and other consumer protections contained in Chapter 56 of the Commission’s regulations, as well as Chapter 54, Chapter 57, and Chapter 111 of the Commission’s regulations. In order to maintain the quality of electric service, compliance with the consumer protections contained in Chapter 14 of the Public Utility Code is also required. Therefore, all of the issues raised by the OCA in its Comments regarding compliance with Pennsylvania law and regulations, including the applicable consumer protection provisions, apply equally to EGS parties as well as EDCs. Likewise, the OCA’s Comments outlining the reasons that PECO’s Pilot Plan is unsound public policy and requiring a broad array of additional consumer protection measures, data collection, and reporting requirements, would apply to any proposal by an EGS to enroll customers in a prepaid metering program.

⁵ *Delmarva Power & Light Co. v. Commonwealth*, 582 Pa. 338, 355 (2005).

⁶ *Tom Darlington v. Blue Pilot Energy, LLC*, Docket No. F-2015-2500535, *Opinion and Order* (entered June 30, 2016), at 30.

⁷ *Id.* (emphasis removed).

B. Reliance By the EGSs On Experience In Texas Raises Additional Concerns

NRG's comments characterize the Texas prepay market as mature and successful.⁸ Additionally, Direct Energy's comments emphasize the alleged benefits that consumers experience with prepaid metering in Texas.⁹ The OCA submits that the use of Texas as an example of the benefits of prepaid electric service is flawed.

Direct Energy has offered a prepaid meter product in Texas since 2010 through its subsidiary, First Choice Power.¹⁰ Texas has approximately 7.74 million privately-owned electric utility residential customers.¹¹ Approximately 50,000 Texans have signed up for Direct Energy's prepaid program.¹² Direct Energy's Texas prepaid billing program is based on estimated—not actual—usage over a 24-hour period.¹³ In Texas, negative balances can occur because of the time lag in tracking usage and the use of estimated future usage. Additionally, Direct Energy utilizes switch-holds on residential accounts which prevents the customer from switching to another service provider until the customer cures the debt owed to the prepaid service provider.¹⁴

In Texas, there is no limit to the number of times a consumer can be disconnected for running out of funds. Moreover, there are numerous fees associated with Direct Energy's prepayment program. Direct Energy requires a \$4.95 micropayment convenience fee for payments less than \$25 made online or over the phone, a closeout balance refund check fee of \$2.50, an account updates resend fee of \$2.95, a premium contact fee of up to \$5, a payment

⁸ NRG Comments at 9.

⁹ Direct Energy Comments at 2.

¹⁰ Direct Energy Comments at 1-2.

¹¹ According to the latest data provided by U.S. Energy Information Administration. See U.S. Energy Information Administration, *Texas Electricity Profile Table 9 Retail electricity sales Statistics, 2014*, available at <https://www.eia.gov/electricity/state/texas/>

¹² Jim Malewitz, *Consumer Advocates Scrutinize Prepaid Electricity Plans*, The Texas Tribune (June 5, 2014), available at <https://www.texastribune.org/2014/06/05/consumer-advocates-scrutinize-prepaid-plans/>.

¹³ *Id.*

¹⁴ First Choice Power, *Your Rights as a Customer – Prepaid 20160715*, available at https://refer.directenergy.com/ImageServer/Documents/DocumentName?type=YRAC&name=Prepaid_YRAC_ENG_20160715.pdf.

transaction fee at an authorized payment station of up to \$2.95, and an insufficient funds fee or returned payment fee of \$25.¹⁵ Additionally, Direct Energy charges a daily base charge of 33 cents.¹⁶ Direct Energy emphasizes that “First Choice Power strongly recommends that you have at least \$25.00 on your account balance each day to avoid interruption.”¹⁷ In their terms of service, Direct Energy emphasizes in bold that “First Choice Power is not obligated to resend Account Updates to you, even if the message could not be delivered for any reason.”¹⁸

In Texas, the prepaid service provider “shall not allow a customer’s electric service to be interrupted on a weekend day because the customer’s prepaid balance has been exhausted, or during any period in which the prepayment mechanisms are not available or the REP’s [Retail Electric Provider] customer service center is not operating.”¹⁹

In addition to Direct Energy’s comments regarding the alleged success and maturity of prepaid electricity in Texas, NRG states in its comments that it has first-hand experience with customers expressing high levels of satisfaction with prepay programs.²⁰ Indeed, NRG operates a prepaid electricity program through its Reliant subsidiary in Texas.²¹ Reliant also charges the following fees in association with its prepay program: a returned payment charge of \$25 for each payment transaction that cannot be processed, a service processing fee of up to \$5.95 for any

¹⁵ First Choice Power, *Terms of Service – First Choice Power Power-To-Go*, https://refer.directenergy.com/ImageServer/Documents/DocumentName?type=TOS&name=FCP_PTG_FIX_TOS_ENG_20160817.pdf at 5 (emphasis removed).

¹⁶ First Choice Power, *Electricity Facts Label (EFL) First Choice Power Power-To-Go*, https://refer.directenergy.com/imageserver/Documents/DocumentName?type=EFL&name=VFCRPXX0074_ENG_20170105.PDF.

¹⁷ First Choice Power, *Terms of Service – First Choice Power Power-To-Go*, https://refer.directenergy.com/imageserver/Documents/DocumentName?type=EFL&name=VFCRPXX0074_ENG_20170105.PDF.

¹⁸ First Choice Power, *Terms of Service – First Choice Power Power-To-Go*, https://refer.directenergy.com/ImageServer/Documents/DocumentName?type=TOS&name=FCP_PTG_FIX_TOS_ENG_20160817.pdf at 1 (emphasis removed).

¹⁹ First Choice Power, *Your Rights as a Customer – Prepaid 20160715*, https://refer.directenergy.com/ImageServer/Documents/DocumentName?type=YRAC&name=Prepaid_YRAC_ENG_20160715.pdf at 2.

²⁰ NRG Comments at 8.

²¹ Reliant Energy, *Who We Are*, <https://www.reliant.com/en/about/inside-reliant/about-us/who-we-are.jsp>.

payment processed by a Reliant Customer Care Representative, an early termination fee of \$150 for canceling service before the contract ends, and a late payment penalty charge which equals 5% of past due balances.²²

In its Comments, NRG further argues that prepaid electric plans are “very similar to the structure of many mobile phone plans available in the competitive market.”²³ The OCA submits that prepaid electricity is very different from the structure of many mobile phone plans available in the competitive market. Unlike prepaid phone plans which provide a customer with a definite amount of minutes that can be put to use at the customer’s convenience, calculating how much electricity can be utilized based on the amount of money placed into the prepay account can be difficult, if not impossible.

It has been reported that Tarrant County’s Department of Human Services in Texas receives over 2,000 complaints per month regarding prepaid electric service.²⁴ Between January 2013 and February 2014, it has been reported that the Texas PUC received 102 complaints from customers mentioning prepaid plans.²⁵ Indeed, even a Texas prepay provider confirms some troubling aspects of the Texas prepay program:

Our studies show the demographic group that purchase (sic) prepaid products comprises 3.1% of households nationally, but up to 16.4% of some local communities in Texas. These households are parents in their mid-30's with children of all ages; and a mix of white, African-American and Hispanic families, many of which are headed by single parents. These families struggle with the effects of low educational attainment and household income. They have few, if any, bank accounts and investments, sometime carry payday loans, and are twice as likely to have no life or health insurance.²⁶

²² See, Reliant Energy, *Electricity Facts Label Reliant SmartStart Plan*, <https://www.reliant.com/files/0901751881266326.pdf>; see also Reliant Energy, *Reliant SmartStart Plan Terms of Service*, <https://www.reliant.com/files/090175188091fa21.pdf>.

²³ NRG Comments at 8.

²⁴ Jim Malewitz, *Consumer Advocates Scrutinize Prepaid Electricity Plans*, The Texas Tribune (June 5, 2014), <https://www.texastribune.org/2014/06/05/consumer-advocates-scrutinize-prepaid-plans/>.

²⁵ Jim Malewitz, *Consumer Advocates Scrutinize Prepaid Electricity Plans*, The Texas Tribune (June 5, 2014), <https://www.texastribune.org/2014/06/05/consumer-advocates-scrutinize-prepaid-plans/>.

²⁶ Control Number 38765, Item Number 12, Amendments to Customer Protection Rules Relating to Prepaid Service,

The OCA submits that all of the alleged customer benefits discussed by PECO, PPL, Duquesne Light, and the EGSs can be accomplished without prepay metering. For example, advanced metering infrastructure includes the capability to provide all customers – not just those who prepay for service – with a rich stream of real-time information on electricity usage and expenditures. This information can be used by customers on a real time basis to monitor their usage and their budgets throughout the course of a billing period. This information can also be used to establish alerts for customers as the customer desires.

The OCA respectfully submits that the experience in Texas heightens the concerns already identified by the OCA rather than allays these concerns. The OCA continues to recommend that PECO's Pilot Plan not be approved.

III. CONCLUSION

For the reasons discussed above and in its Comments submitted on December 15, 2016, the OCA respectfully submits that the Commission should not approve PECO's Pilot Plan. If the Commission wishes to consider this proposal, it should refrain from doing so until after the proceeding before ALJ Jones has been completed and the Parties have had a meaningful opportunity to develop a full and complete record regarding PECO's Pilot Plan.

Respectfully Submitted,



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January 13, 2017

227981

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 Reply Comments, 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 13th day of January 2017.

SERVICE BY HAND DELIVERY and FIRST CLASS MAIL

Gina Miller, Esquire
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SERVICE BY E-MAIL and FIRST CLASS MAIL

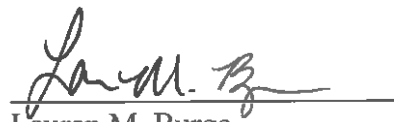
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