

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19101-8699

Direct Dial: 215-841-6863

January 19, 2017

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

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

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Prehearing Conference Memorandum of PECO Energy Company* with regard to the matter referenced above.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Honorable Angela T. Jones, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Pilot Plan for an	:	
Advance Payments Program and Petition for	:	P-2016-2573023
Temporary Waiver of Portions of the Commission's	:	
Regulations with Respect to the Plan	:	

Prehearing Conference Memorandum of PECO Energy Company

On October 26, 2016, PECO Energy Company (PECO) filed a Petition with the Pennsylvania Public Utility Commission (PUC or Commission) for approval of a pilot plan for an advance payments program (Plan) and for temporary waiver of portions of the Commission regulations that are reflected in the Plan (Petition). In its Petition, PECO requested that the Commission grant its Petition on the basis of written comments and reply comments, without utilizing an evidentiary hearing.

A Notice of the Petition was published in the Pennsylvania Bulletin on November 12, 2016. 46 Pa.B. 7232. The Notice directed comments to be filed with the Commission by no later than December 15, 2016, and reply comments to be filed by January 16, 2017.¹

Comments or supporting letters were filed by 18 stakeholders.² Although the comments are disparate as to scope and issues raised, many of the commenters opined that PECO's proposal is too complex or controversial to be resolved on the basis of written comments and reply comments, and

¹ The January 16 date for reply comments falls on Martin Luther King Day, which is a legal holiday recognized in the Commonwealth. By Commission regulation, the date for filing reply comments thus moves to the next business day, January 17, 2017. See 52 Pa. Code §1.12.

² The Commission's website has comments filed by: (1) the Commission's Bureau of Investigation & Enforcement (BI&E); (2) the Office of Consumer Advocate (OCA); (3) the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA); (4) Tenant Union Representative Network et al (TURN et al); (5) NRG Energy Inc; (6) AIDS Law Project; (7) AARP Pennsylvania; (8) PPL Electric Utilities Corporation; (9) the Retail Energy Supply Association; (10) Direct Energy; (11) Clean Air Council; (12) Duquesne Light Company; (13) Natural Resources Defense Council; (14) Workers Benefit Council; (15) Earth Quaker Action Team; (16) Neighborhood Energy Centers; (17) Montgomery County Community Action Development Committee, and (18) a supporting letter filed by the Health, Education and Legal Assistance Project: A Medical-Legal Partnership.

requested that the matter be assigned to the Office of Administrative Law Judge to be resolved on the basis of evidentiary hearings.

The next day – December 16, 2016 – the Commission issued a Notice of an Initial Call-In Telephonic Prehearing Conference, with the matter assigned to Administrative Law Judge Angela T. Jones. On December 21, 2016, Administrative Law Judge Jones issued her Prehearing Conference Order. The Prehearing Conference Order establishes a procedure to decide this matter on the basis of record evidence developed during evidentiary hearings, rather than on the basis of written comments and reply comments. In relevant part, the Prehearing Conference Order (Ordering Paragraph ¶3) sets forth the procedure by which the parties shall develop the evidentiary record, stating that:

Each party should consider the issue(s) you intend to present, a listing of your proposed witnesses and the subject of their testimony, a proposed procedural schedule, and if possible a settlement conference(s). Each party should be prepared to affirm this information during the prehearing conference. These items should be included in a prehearing memorandum that is sent to all known participants to this proceeding and the undersigned ALJ by or before 12 noon on January 20, 2017. See 52 Pa.Code § 5.222(d)(1) and (2).

1. Issues that PECO intends to present

PECO's Petition provides a detailed inventory of issues that will be addressed in PECO's direct testimony. In addition, PECO may choose to use its direct testimony to preemptively respond to a few, but by no means all, of the issues raised in the comments filed by some of the commenters.

In general, PECO intends to demonstrate that, with the exception of the various waivers requested in the Petition, its Plan complies with existing Commission regulations. As for the requested waivers, as set forth in the Petition PECO intends to demonstrate that granting each of the requested waivers is in the public interest.

PECO would also like to state two issues that it believes are not properly a part of this proceeding. Some of the comments filed in this docket suggest that the Commission's regulations that allow advance payment programs, 52 Pa. Code §56.17, are outdated and need to be re-examined. PECO respectfully submits that, if a party wishes to pursue that argument, they should

file a complaint or petition to initiate a separate docket (probably statewide) in which they pursue their challenge to the Commission's rules. But unless and until such a change to the Commission's regulations is made, PECO will take the position that it is entitled to implement a program that falls under the rubric of the Commission's lawfully-established rules and regulations -- regardless of the vintage of those rules.

The second issue has to do with low-income customers. PECO originally intended that its Plan would allow low-income customers to volunteer to participate in the Plan. During pre-filing briefings of the stakeholders, some of the parties to this proceeding requested that PECO remove that provision and exclude low-income customers from participation in the Plan. PECO acceded to that request and made low-income customers ineligible for the Plan.

Notwithstanding this, a great deal of the written commentary discussed claimed effects of prepaid service on low-income customers. PECO respectfully submits that this issue is not appropriately a part of this proceeding. PECO understands that some of the parties are genuinely concerned that prepaid service programs, in general, could adversely affect low-income customers. That is why PECO made the pre-filing concession to make low-income customers ineligible to participate in its Plan. The purpose of that concession is to allow a discussion – and a pilot – in which prepaid service can be evaluated outside of the low-income context. Having made that concession, PECO should not be required to present a case – and the Commission should not be required to spend its resources evaluating evidence – on this excluded population.

2. Proposed witnesses and subject of testimony

At this time, PECO believes that it will have three witnesses in this proceeding. PECO reserves the right to substitute other witnesses if required by witness availability, and to supplement this list after reviewing the evidentiary case presented by other parties.

Jude Scarpello, PECO Energy Company. During the development of PECO's Plan and Petition, Mr. Scarpello was manager of the PECO Customer Financial Operations Revenue Management team and was responsible for development of the Plan. PECO expects that Mr. Scarpello will be its primary witness with respect to description of the Plan and PECO operations under the Plan.

Mark Kehl, PECO Energy Company. Mr. Kehl is Principal Rates and Regulatory Specialist in PECO's Retail Rates group. PECO expects Mr. Kehl to provide testimony on the relationship between the Commission's regulations and PECO's Plan (and the waivers requested in the Petition).

James Reiley, PECO Energy Company. Mr. Reiley is a manager in PECO's Energy and Marketing Services group. PECO expects Mr. Reiley to provide testimony regarding the methods by which PECO will choose volunteer participants in its Plan, and data collection/metrics for evaluating the Plan.

3. Proposed procedural schedule, including settlement conference

The parties have had extensive communications regarding procedure and schedule. (PECO notes that those communications occurred throughout the week of January 16. Because RESA did not file its intervention until Thursday afternoon, it was not included in those initial communications.) While the parties were not able to agree as to all issues, significant progress was made toward a common framework.

First, it appears that all parties believe that we should utilize pre-filed written testimony in this proceeding. The parties have a difference of opinion as to how many rounds of written testimony are needed. PECO believes that three rounds of written testimony and oral rejoinder at hearing are sufficient; the other parties are proposing four rounds of written testimony.

As to discovery, the other parties have proposed a 10-day reply period. By this memorandum, PECO agrees to use of a 10-day reply. Times for objections and motions to compel will of course need to be shortened accordingly; as of the time of filing the parties have not had the opportunity to reach agreement on that detail.

It is PECO's understanding that some of the parties may request that public input hearings be scheduled as part of this proceeding. PECO does not believe that we need public input hearings. We already had a period for written comments and reply comments in which numerous entities and individuals filed their comments, the main import of which was that this matter can and should be

decided on the basis of an evidentiary hearing to develop a factual record on sworn testimony and cross-examination.

Finally, as to the filing of briefs, some of the parties suggested a due date for Main Briefs 30 days after the hearings end. Given that it normally takes 30 days or more for a transcript to be created, this is obviously not a workable proposal.


With that said, the parties were able to discuss a potential common schedule, which would have many common elements and dates, regardless of how the issues above are resolved.

Date	Task	Comment
January 23	Prehearing Conference	
March 7	PECO Direct (6 weeks from prehearing conference)	
Late April	Public Input Hearings	PECO opposes, but includes this data as a place-holder
May 16	Other Parties' Direct (10 weeks from PECO Direct)	
June 27	Rebuttal Testimony (6 weeks)	
July 25	Surrebuttal Testimony (4 weeks)	4 th Round of testimony proposed by some parties, but opposed by PECO
July 10 OR August 3	Settlement Conference (10 days)	Because PECO does not wish to have four rounds of testimony, it proposes holding the Settlement Conference at the earlier July 10 date.
Jul 31-Aug. 4 OR Aug. 23-24, 29-30, as needed	Evidentiary Hearing Days (number of days depends upon number of witnesses, etc.)	Again, the earlier dates are proposed by PECO; the later dates are proposed by the other parties
September 22 or Sept. 29	Main Brief (approx. 30 days after hearing)	Dates are approximate and would be tied to delivery of transcript. PECO notes that, if the other parties' schedule is adopted, it is likely that the transcript will not be received until the end of September, so Main Briefs would be due around the end of October
Oct. 10 or 14	Reply Brief (approx. 15 days)	As with Main Briefs.

PECO respectfully requests that Your Honor set a schedule for this matter, as set forth above, utilizing three rounds of written testimony with hearings nominally from July 31-Aug. 4. Given the fact that we just completed an extensive public comment and reply comment period, PECO also opposes the use of public input hearings as a method of developing the evidentiary record in this matter.

Respectfully submitted,

Dated: January 20, 2017



Ward L. Smith
Assistant General Counsel
PECO Energy Company
2301 Market Street
S23-1
Philadelphia, PA 19103
215-841-6863
ward.smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Pilot Plan for an	:	
Advance Payments Program and Petition for	:	P-2016-2573023
Temporary Waiver of Portions of the Commission's	:	
Regulations with Respect to the Plan	:	

Certificate of Service

I, Ward Smith, hereby certify that I have on this day served PECO Energy Company's Prehearing Conference Memorandum in this matter on the following individuals and entities. Where an email is listed, a copy was provided electronically; otherwise a copy was sent by first-class mail.



Ward Smith
Counsel for PECO Energy
215-841-6863
Ward.smith@exeloncorp.com
January 20, 2017

SERVICE LIST

LAUREN M BURGE ESQUIRE
HARRISON W BREITMAN ESQUIRE
OFFICE OF CONSUMER ADVOCATE
5TH FLOOR FORUM PLACE
555 WALNUT STREET
HARRISBURG PA 17101-1923
717.783.5048
LBurge@paoca.org

JOHN R EVANS DIRECTOR
OFFICE OF SMALL BUSINESS ADVOCATE
300 N SECOND STREET SUITE 202
HARRISBURG PA 17101

**GINA L LAUFFER ESQUIRE
PA PUBLIC UTILITY COMMISSION
BUREAU OF INVESTIGATION AND ENFORCEMENT
400 NORTH STREET
HARRISBURG PA 17120
717.783.8754
ginmiller@pa.gov**

**SHELBY LINTON-KEDDIE ESQUIRE
DUQUESNE LIGHT COMPANY
800 NORTH THIRD STREET SUITE 203
HARRISBURG PA 17102
412.393.6231
Slinton-keddied@duqlight.com**

**JOLINE PRICE ESQUIRE
PA UTILITY LAW PROJECT
PENNSYLVANIA UTILITY LAW PROJECT
118 LOCUST STREET
HARRISBURG PA 17101
717.236.9486
pulp@palegalaid.net**

**JOSIE B H PICKENS ESQUIRE
LYDIA R GOTTESFELD ESQUIRE
ROBERT W BALLENGER ESQUIRE
COMMUNITY LEGAL SERVICES INC
1424 CHESTNUT STREET
PHILADELPHIA PA 19102
215.981.3788
Lgottesfeld@clsphila.org**

**Retail Energy Supplier Association
Sarah C. Stoner
Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101
717-237-6000
sstoner@eckertseamans.com**