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October 17, 2017

*Via Electronic Filing*

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

**Re: PECO Energy Company's Pilot Plan for an Advance Payments 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:

Enclosed please find the Main Brief of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, in the above captioned proceeding.

Copies of this filing have been served in accordance with the attached Certificate of Service.

Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Josie B. H. Pickens'.

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

**Certificate of Service**

I hereby certify that I have this day served copies of the **Main Brief of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia** 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:

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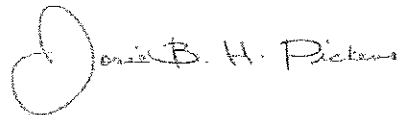


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October 17, 2017



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF

ON BEHALF OF TURN *et al.*

(TENANT UNION REPRESENTATIVE NETWORK and  
ACTION ALLIANCE OF SENIOR CITIZENS  
OF GREATER PHILADELPHIA)

October 17, 2017

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## I. INTRODUCTION AND STATEMENT OF THE CASE

PECO has proposed to implement a first of its kind Advance Payments or prepayment meter pilot program in its service territory, by which customers pre-fund their utility usage and experience immediate utility termination when those funds, and emergency back-up credits, are depleted. PECO is also seeking waivers of several provisions of the Commission's Advance Payments regulations with respect to its pilot proposal. PECO's proposed pilot plan is opposed by the Public Utility Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.* ), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Retail Energy Supply Association (RESA). PECO's proposal was overwhelmingly opposed by witnesses who provided comments and testimony at the two public input hearings that were held in this matter. PECO has failed to show that its proposed pilot is reasonable, consistent with the Public Utility Code and the Commission's regulations, and in the public interest. To the contrary, the other parties in this proceeding, all of whom oppose PECO's proposed pilot, have presented substantial evidence that PECO's proposed pilot is inconsistent with Pennsylvania utility law,<sup>1</sup> deprives participants of consumer protections,<sup>2</sup> and creates a significant risk of harm for participants and the public.<sup>3</sup> As set forth more fully in the sections that follow, because PECO has failed to meet its burden, its proposed pilot must be rejected.

## II. PROCEDURAL HISTORY

On October 26, 2016, PECO Energy Company (PECO) filed its proposed Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the

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<sup>1</sup> See *infra* Section V(A).

<sup>2</sup> See *infra* Section V(A).

<sup>3</sup> See *infra* Section V(B).

Commission's Regulations with Respect to the Plan with the Pennsylvania Public Utility Commission. The filing outlined PECO's proposed plan to implement an Advance Payments pilot program pursuant to 52 Pa. Code § 56.17.

On November 15, 2016, TURN *et al.* submitted an Answer to PECO's proposed pilot plan. In its Answer, TURN *et al.* requested that the Commission submit PECO's proposed pilot plan to the Office of Administrative Law Judge for hearings and a determination of whether PECO's proposal is consistent with Pennsylvania law, adequately protects PECO's customers, and is in the public interest. TURN *et al.* submitted a Petition to Intervene in this proceeding on November 16, 2016.

On November 15, 2016, CAUSE-PA and the Office of Consumer Advocate (OCA) also submitted Answers and Petitions to Intervene.

On December 15, 2016, TURN *et al.* and seventeen other parties filed comments in response to PECO's proposed plan. On December 16, 2016, the Commission issued a notice of Prehearing Conference to be held on January 23, 2016 in front of Administrative Law Judge Angela T. Jones.

On December 21, 2016, ALJ Jones issued a Prehearing Order directing counsel to submit prehearing memorandum on January 20, 2017.

On January 13, 2017, TURN *et al.* submitted reply comments in response to PECO's proposed plan. Several other parties also submitted reply comments on January 13th and January 17, 2017.

On January 18, 2017, the Bureau of Investigation and Enforcement of the Public Utility Commission entered its appearance in this proceeding.

On January 19, 2017, the Retail Energy Supply Association (RESA) filed a Petition to Intervene.

On January 23, 2016 a Prehearing Conference was held and on January 24, 2016, ALJ Jones issued a Prehearing Order establishing a procedural schedule.

PECO submitted its direct testimony on March 9, 2017. The other parties submitted direct testimony on March 16, 2017.

Two public input hearings were held in Philadelphia on April 24, 2017.

The procedural schedule was subsequently revised by Prehearing Order dated May 9, 2017. In accordance with that Order the parties submitted rebuttal testimony on July 18, 2017 and surrebuttal testimony on August 15, 2017.

By email dated August 25, 2017, the parties agreed to mutual waiver of cross examination of all witnesses in this proceeding. A telephonic hearing was convened on August 30, 2017 during which the parties offered pre-filed testimony and exhibits into the record. All of the parties' testimony and exhibits were admitted without objection.

In the Prehearing Orders establishing a schedule for this proceeding, ALJ Jones directed parties to file Main Briefs by October 17, 2017 and Reply Briefs by November 8, 2017.

### III. BURDEN OF PROOF AND LEGAL STANDARDS

As the party seeking approval of a plan and petition, PECO carries the burden of proof in this proceeding. Pursuant to 66 Pa. C.S. § 332(a), the proponent of a rule or order has the burden of proof. In this proceeding, PECO is seeking approval of its plan to implement a first of its kind prepayment meter pilot in its service territory, and waivers of provisions of the Commission's regulations with respect to that plan. To carry its burden, PECO must prove by a preponderance

of the evidence that its proposed plan is reasonable and should be approved. Section 332 (a) of the Public Utility Code, 66 Pa. C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950), *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

If PECO satisfies its burden of proof, then it must be determined whether the opposing parties have submitted evidence of “co-equal” value or weight to refute PECO’s evidence. If this has occurred, the burden of proof has not been satisfied, unless PECO has presented additional evidence. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967).

The Commission's decision must be supported by substantial evidence 2 Pa. C.S. § 704, i.e., evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa.109, 413 A. 2d 1037 (1980); *Murphy v. Dept. of Public Welfare*, 85 Pa. Cmwlth. Ct. 23, 480 A.2d 382 (1984).

#### IV. SUMMARY OF THE ARGUMENT

TURN *et al.* submit that PECO has failed to meet its burden of proof in this proceeding. PECO’s proposed Advance Payments pilot plan conflicts with numerous of PECO’s statutory and regulatory obligations under the Pennsylvania Public Utility Code and the Commission’s regulations. PECO’s proposed pilot plan is inconsistent with the Public Utility Code, including provisions of the Responsible Utility Customer Protection Act or Chapter 14, the Discontinuance of Services to Leased Premises provisions, and the Electric Generation Customer Choice and Competition Act.

Further, The Commission has not evaluated its Advance Payments regulations in the context of a utility's proposal to implement an Advance Payments plan and, therefore, has not had an opportunity to determine whether its regulations are in need of revision. The Commission could decide to review its Advance Payments regulations in the context of its ongoing Chapter 56 rulemaking proceeding, where the Commission has been asked to consider eliminating or revising its Advance Payments regulations. In light of this ongoing proceeding it is imprudent for PECO to seek approval of its proposed pilot plan at this time.

PECO's proposed pilot plan is not in the public interest because it fails to provide a benefit to PECO's customers and is likely to result in increased terminations, added fees, and winter terminations for pilot participants. PECO's proposed pilot plan does not effectively exclude low income customers from participation, and is likely to target economically vulnerable customers. In addition, PECO's proposed pilot plan is opposed by every other party in this proceeding.

In failing to show that its proposed pilot plan is in the public interest, PECO has also failed to demonstrate that the utility should be granted waivers of Commission's regulations with respect to the proposed plan. Finally, the issues raised by RESA concerning electric generation supplier prepayment offerings are not relevant to this proceeding.

## V. ARGUMENT

PECO has failed to prove that its proposed pilot plan is reasonable, consistent with the Public Utility Code and the Commission's regulations, and is in the public interest. To the contrary, the other parties in this proceeding, all of whom oppose PECO's proposed pilot plan, have presented substantial evidence that PECO's proposed plan is inconsistent with



Pennsylvania utility law, deprives participants of consumer protections, and creates a significant risk of harm for participants and the public.

A. PECO's Advance Payments pilot proposal violates the Public Utility Code and the Commission's regulations.

1. Statutory changes since the enactment of the Commission's Advance Payments regulations have created obligations on public utilities that are directly inconsistent with PECO's proposed pilot plan.

The Commission's Advance Payments regulations became effective in June 1978 and have not been utilized by any Pennsylvania utility since that time.<sup>4</sup> PECO Petition at 3, Para. 3. Since 1978, the Commonwealth of Pennsylvania has enacted the Discontinuance of Services to Leased Premises provisions of the Public Utility Code (July 1978),<sup>5</sup> the Electric Generation Customer Choice and Competition Act (1996),<sup>6</sup> and the Responsible Utility Customer Protection Act or Chapter 14 of the Public Utility Code (2004).<sup>7</sup> All of these statutory changes have created obligations on public utilities that are directly inconsistent with PECO's proposed plan.<sup>8</sup>

In enacting Chapter 14 of the Public Utility Code, the Pennsylvania legislature indicated that "the addition of 66 Pa. C.S. Ch. 14 supersedes any inconsistent requirements imposed on public utilities [.]".<sup>9</sup> Further Chapter 14 abrogated "all other regulations [...] to the extent of any inconsistency with 66 Pa. C.S. Ch. 14."<sup>10</sup> As a threshold matter, the Commission must not permit any utility to take actions under regulations that may be inconsistent with the provisions of the Public Utility Code, including Chapter 14.

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<sup>4</sup> Although PECO sought authorization for an advance payments pilot program in 1996, PECO has no record of the 1996 pilot. PECO Response to TURN I-6 and PECO Response to TURN I- 7 (TURN *et al.* Hearing Exhibit No. 1, Pgs 1-2 of 12). Further, any program offered prior to 2004 would have predated the enactment of Chapter 14 of the Public Utility Code and many of the statutory consumer protections that are at issue in this proceeding.

<sup>5</sup> 66 Pa. C.S. § 1521 *et seq.*

<sup>6</sup> 66 Pa. C.S. § 2801 *et seq.*

<sup>7</sup> 66 Pa. C.S. § 1401 *et seq.*

<sup>8</sup> See *infra* Section V(A)(2)-(7).

<sup>9</sup> See "Historical and Statutory Notes" following 66 Pa. C.S. § 1401.

<sup>10</sup> *Id.*

In addition, since 1978 the Commission has expanded universal service programs and protections for low-income utility customers in Pennsylvania, including the universal service requirements accompanying the Electric and Natural Gas Choice Acts, which mandate that the Commission ensure universal service and energy conservation policies, activities and services for residential electric customers are appropriately funded and available in each Electric Distribution Company and Natural Gas Distribution Company's service territory. 52 Pa. Code §§ 54.71; 62.1. PECO's pilot should not be permitted to be structured and administered in such a way as to deprive the Commission of its ability to perform its duties under its regulations.

Although the Commission has amended its Advance Payments regulations since 1978,<sup>11</sup> the Commission has never reviewed whether a utility is permitted to dispense with its obligations under the Public Utility Code when it elects to create an Advance Payments program. In a 2011 rulemaking, the Commission considered, but rejected, a proposed change to a provision of its Advance Payments regulations, which if approved would have permitted low-income customers to participate in prepaid service programs. *TURN et al.* St. No. 1SR at 12-14.<sup>12</sup> At that time, the Commission did not review or evaluate whether its Advance Payments regulations are consistent with later enacted statutory changes. Nor did the Commission evaluate whether the Advance Payments regulations are in the public interest. In that proceeding, the Commission stated that "to date, *no utility has utilized these provisions* to offer prepayment metering, so unfortunately we have *no practical experience to rely upon when assessing the need to revise this section.*"<sup>13</sup> This history strongly supports a finding that the Commission has not thoroughly evaluated its

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<sup>11</sup> Amended April 8, 1983, effective April 9, 1983, 13 Pa.B. 1250; amended January 13, 1995, effective April 14, 1995, 25 Pa.B. 145; amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5473.

<sup>12</sup> Citing, *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations, Summary of Comments and Discussion, Revised Final Attachment One*, Page 57 (June 13, 2011), Docket No. L-00060182.

<sup>13</sup> *Id.* Emphasis Added.

Advance Payments regulations in light of later statutory changes because, in the absence of a utility proposal to implement a prepayment program, the Commission has not had reason to do so. With PECO's proposal, the Commission now has good reason to reject a petition brought under its Advance Payments regulations on the basis that such proposal is inconsistent with numerous statutory provisions.

2. PECO's proposed pilot plan eliminates winter termination protections for pilot participants.

Under PECO's proposed plan, pilot participants between 150-250% FPL can be subject to service termination for non-payment during the winter in violation of 66 Pa. C.S. § 1406(e).

The Public Utility Code provides, in relevant part, as follows:

Unless otherwise authorized by the commission, after November 30 and before April 1, an electric distribution utility or natural gas distribution utility shall not terminate service to customers with household incomes at or below 250% of the Federal poverty level except for customers whose actions conform to subsection (c)(1).

66 Pa. C.S. § 1406(e)(1). The Commission's regulations further provide:

Public utilities shall determine the eligibility of an account for termination during the period of December 1 through March 31 under the criteria in subsections (b) and (c) before terminating service. Public utilities are to use household income and size information they have on record provided by customers to identify accounts that are not to be terminated during the period of December 1 through March 31. Public utilities are expected to solicit from customers, who contact the utility in response to notices of termination, household size and income information and to use this information to determine eligibility for termination.

52 Pa. Code § 56.100. The Public Utility Code and regulations list the types of terminations that may occur irrespective of the time of year. 66 Pa. C.S. § 1406 (c)(1) states:

- 1) A public utility may immediately terminate service for any of the following actions by the customer:
  - (i) Unauthorized use of the service delivered on or about the affected dwelling.

- (ii) Fraud or material misrepresentation of the customer's identity for the purpose of obtaining service.
- (iii) Tampering with meters or other public utility's equipment.
- (iv) Violating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the public utility's delivery system.
- (v) Tendering payment for reconnection of service that is subsequently dishonored, revoked, canceled or otherwise not authorized under subsection (h) and which has not been cured or otherwise made full payment within three business days of the utility's notice to the customer, made in accordance with the notice provisions of subsection (b)(1)(ii), of the dishonored payment.

Notably, this list does not include termination due to the customer's failure to maintain a balance on an Advance Payments plan account. The Public Utility Code and regulations reflect a clear intent to protect customers below 250% FPL from termination for nonpayment during the winter. Utilities are directed to review their records for income data to determine which customers are protected from termination and to solicit income information from any customer who contacts the utility in response to a termination notice. 52 Pa. Code § 56.100.

Under PECO's proposal, participants will load funds onto their accounts prior to receiving service. PECO St. No. 1 at 5, ln. 12-13. As the participant uses utility service, the funds will decrease. PECO St. No. 1 at 5, ln. 13-23. If the customer's account balance goes to \$0, PECO will provide service for a five-day grace period. PECO St. No. 1 at 6, ln. 1-3. If the participant does not load additional funds prior to the expiration of the grace period, service will be remotely discontinued. PECO St. No. 1, at 6, ln. 3-4. PECO has indicated that it intends to follow this procedure during the winter for all plan participants, including those between 150-250% FPL. PECO St. No. 1R at 10, ln 23 through 12, ln. 12; PECO Response to I&E I-30. PECO has further stated that it will only provide the winter termination protections, set forth in the Public Utility Code and Commission regulations, if the participant reverts to standard service. PECO St. No. 1R at 11, ln. 9-16.

PECO's proposal clearly violates 1406(e)(1). PECO does not intend to seek Commission authorization to terminate pilot participants with incomes between 150-250% FPL during the winter, as is required by the Public Utility Code. Rather, PECO's proposed plan to provide the protections only to standard service customers would violate the prohibition on winter terminations, which applies to all customers with household incomes at or below 250% of the Federal poverty level, except those customers who are subject to immediate termination pursuant to 66 Pa. C.S. § 1406 (c)(1).

3. PECO's proposed pilot plan eliminates the written pre-termination notice requirement and provides an inferior notification process to pilot participants.

Under PECO's proposed plan, pilot participants will not receive notice of termination as required by 66 Pa. C.S. § 1406(b) and the Commission's regulations. The Public Utility Code states:

(b) Notice of termination of service.--

Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

(C) by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.

(iii) During the months of December through March, unless personal contact has been made with the customer or responsible adult by personally visiting the customer's residence, the public utility shall, within 48 hours of the scheduled date of termination, post a notice of the proposed termination at the service location.

- (iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.
- (2) The public utility shall not be required by the commission to take any additional actions prior to termination.

66 Pa. C.S. § 1406(b). Section 1406 (b) entitles customers to written notice of termination at least ten days prior to termination. The utility is also required to attempt personal contact at least three days prior to the termination, and, in the winter months, if personal contact is not successful, the utility must post additional written notice at the service address. The utility must also attempt personal contact when service is terminated.

PECO intends to replace the more robust termination notification required by Section 1406(b) with a purely electronic notification process. PECO St. No. 1 at 5, ln. 19 through 6, ln. 4. PECO maintains that its pilot participants will receive notices that are “equivalent or superior to” the notices that customers receive under standard service. PECO St. No. 1R at 6-9. PECO reaches this conclusion because it plans to provide pilot participants with a series of *electronic* notifications as their funds and emergency credits are depleted, and because participants maintain the option to revert to standard service. PECO St. No. 1R at 8-9. Neither of these proposals is an adequate substitute for the process set forth in the Public Utility Code. As Mr. Geller explained in his testimony:

I do not agree that PECO’s proposed process provides a comparable or superior set of protections to the protections available to standard customers who must always receive written notification from the utility prior to termination and the additional pre-termination protections set forth in the Public Utility Code and Commission regulations. If PECO genuinely intended to provide comparable notice protections to pilot participants, PECO could automatically revert all participants to standard service at the conclusion of the emergency credit period as recommended by Mr. Howat. Under this scenario, all pilot participants would receive the statutorily mandated pre-termination protections. PECO expressly declined to adopt Mr. Howat’s recommendation. PECO Statement No. 1R at 26-27.

TURN *et al.* St. No. 1SR at 5, ln. 14-22.

PECO's proposal is inadequate and provides an inferior level of pre-termination notification to pilot participants.<sup>14</sup> At the outset, the termination provisions of the Public Utility Code require the utility to provide written notice in advance of termination, and then, only after the provision of written notice, is the utility authorized to make non-written efforts to notify the customer, including the electronic notification process described in Section 1406(b)(ii)(D). By eliminating the written pre-termination notice requirement and providing only electronic pre-termination notification to pilot participants, PECO's proposed plan violates the Public Utility Code and provides pilot participants with an unreasonable and inferior quality of service.

4. PECO's proposed pilot plan does not provide an adequate medical certificate process to pilot participants.

Under PECO's proposed plan, pilot participants will not have access to the medical certificate procedure set forth at 66 Pa. C.S. § 1406(f) and in the Commission's regulations. Section 1406(f) states that "a public utility shall not terminate service to a premises when a customer has submitted a medical certificate to the public utility." The Commission's regulations require the utility to delay termination for at least 3 days when the utility is "informed that an occupant is seriously ill or affected with a medical condition that which will be aggravated by a cessation of service and that a medical certification will be procured." 52 Pa. Code § 56.112. Once the utility has received the certificate, service may not be terminated for a period not to exceed 30 days. 52 Pa. Code § 56.114(1). The certifications may be renewed an indefinite number of times if the customer meets his or her obligation to pay current charges during the

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<sup>14</sup> PECO's proposed pilot will not provide participants with actual notice of a shut off because notices under the plan will be based upon historic and projected usage. PECO Response to TURN *et al.* I-16 (TURN *et al.* Hearing Exhibit No. 1, Pg. 8 of 12).

pendency of the medical certificate process. 52 Pa. Code § 56.114(2).<sup>15</sup> The Advance Payments regulations also contain protections for customers who experience a medical emergency. 52 Pa. Code § 56.17(3)((iii)(D) prohibits a utility from discontinuing service to an Advance Payments plan participant during a medical emergency.

PECO has proposed to provide the medical emergency protections described above only to pilot participants who call PECO and request to be removed from the pilot and reverted to standard service. PECO St. No. 1 at 20, ln. 13-17; PECO Response to I&E I-9. PECO witness Scarpello testified that “to access the procedures, the customer must contact PECO, ask to revert to standard service, and then take steps to implement the medical certificate procedures.” PECO St. No. 1R at 12, ln. 18-20. By denying access to the medical certificate process to pilot participants and then imposing an additional bureaucratic obstacle for participants to exit the pilot, PECO violates 66 Pa. C.S. § 1406(f) and 52 Pa. Code § 56.112; 56.114. PECO’s proposed plan violates the medical certification provisions for the reasons explained in Mr. Geller’s testimony:

*The pilot participant does not have a right to submit a medical certificate to preserve service, only a right to request to be reverted to standard service. Again, PECO seeks to downplay the deficiencies in customer protections in its prepay pilot by pointing to the more robust protections that exist for standard service customers. According to PECO, there are no deficiencies within its pilot, since the customer can leave the pilot. If a pilot participant can only get back to standard service then, voila, the participant has rights again. I find this to be circular reasoning and an inadequate and dangerous approach to providing essential utility service. While Mr. Scarpello seeks to demonstrate that in the event that a customer does successfully revert to standard service, the customer will have additional time to initiate the medical certificate process, I am concerned for those pilot participants who do not contact PECO to revert to standard service in time to prevent a shut off. 66 Pa.C.S. § 1406(f) provides that “a public utility shall not terminate service to*

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<sup>15</sup> See, *PECO Universal Service and Energy Conservation Plan for 2016-2018*, Order on Reconsideration Docket No. M-2015-2507139 (December 8, 2016).

Medical certificate may be renewed indefinitely if customer pays her/his current bills (or budget bill amount) on time and in full while subject to the medical certification.



a premises when a customer has submitted a medical certificate to the public utility.” Contrary to PECO’s contention, PECO’s proposed medical certificate process for pilot participants imposes an additional and improper layer of bureaucracy because it requires the participant to contact PECO prior to initiating the medical certificate process. This added step of having to first contact the company to change customer status could compromise the health and safety of some pilot participants, particularly for those customers who might be unable to timely schedule a follow up appointment with a medical provider to obtain a new certification after they have reverted to standard service and for those customers who have to pay a fee to obtain additional certifications.

TURN *et al.* St. No. 1SR at 8, ln. 27 through 9, ln. 12. PECO’s proposed pilot fails to extend the medical certification protections guaranteed by the Public Utility Code and regulations to pilot participants.

5. PECO’s proposed pilot plan reduces payment arrangement options for pilot participants.

Under PECO’s proposed plan, pilot participants will not have access to payment arrangements consistent with 66 Pa. C.S. § 1405 and 66 Pa. C.S. § 1407. Section 1405 authorizes the Commission to establish payment arrangements between utilities, customers and applicants. 66 Pa. C.S. § 1405(a). Section 1405(b) provides the maximum duration for these arrangements, which vary depending on the customer or applicant’s household income. 66 Pa. C.S. § 1407 sets forth payment terms for applicants and customers seeking to restore service. Finally, 66 Pa. C.S. § 1303 requires PECO to compute bills under the rate most advantageous to the patron. However, PECO has proposed one type of payment arrangement for any pilot participant who enters the pilot with a delinquent balance on the participant’s account. These pilot participants, regardless of their level of income, will receive an arrangement whereby “for each dollar loaded to the participant’s account, 25 cents will be allocated to the delinquency and 75 cents will be allocated to pay for future usage.” PECO St. No. 1 at 15, ln. 22 through 23, ln. 2. In his testimony, Mr. Geller opined that “for some customers, the rigid 25/75 payment arrangement

mandated by the prepayment program could be less generous than other payment arrangements that are available to the customer.” TURN *et al.* St. No. 1 at 16, ln. 19-21. Although PECO has stated that it will provide pilot participants with information about other payment arrangements for which the participants are eligible, PECO will not prevent participants from enrolling in the pilot if the pilot arrangement is the less advantageous option. PECO Response to TURN I-8.<sup>16</sup> In response to discovery PECO stated that:

If a volunteer has a delinquency and is otherwise eligible for a payment arrangement, then during the application process PECO will calculate the payment arrangement for which that volunteer is eligible and inform the volunteer. PECO will also inform the volunteer about the 25/75 payment arrangement through [the] pilot. However, PECO will not “ensure that the customer or applicant is enrolled in the most affordable payment arrangement available” – it will give the volunteer information on both options and allow the volunteer to choose.

PECO Response to TURN I-8.<sup>17</sup> PECO’s proposal deprives pilot participants of more favorable payment arrangement options that may be available under state law. PECO’s proposed plan to inform participants about other payment arrangement options without preventing participants from enrolling in the pilot if there are more beneficial payment options available is irresponsible, dangerous, and prohibited by 66 Pa. C.S. § 1303.<sup>18</sup>

6. PECO’s proposed pilot plan fails to account for PECO’s duty to provide pre-termination notification to tenants when an occupant landlord elects to participate in PECO’s pilot

Under PECO’s proposed plan, tenants residing in a property with pilot participants will not have access to pre-termination notices as required by 66 Pa. C.S. § 1523(a)(3).<sup>19</sup> The

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<sup>16</sup> TURN *et al.* Hearing Exhibit No. 1, Pg. 3 of 12.

<sup>17</sup> *Id.*

<sup>18</sup> Similarly, PECO’s proposal to refer eligible customers to MEAF, but to not require them to apply for MEAF as a condition of participating in the proposed pilot, unreasonably deprives customers of the most beneficial option to resolve arrears on their accounts. PECO Response to TURN *et al.* II-6 (TURN *et al.* Hearing Exhibit No. 1, Pgs. 11-12 of 12).

<sup>19</sup> PECO discovery responses indicate that in recent years the utility has provided only small numbers of notices pursuant to 66 Pa. C.S. § 1523(a)(3). PECO Response to TURN *et al.* I-10 (TURN *et al.* Hearing Exhibit No. 1, Pg. 4 of 12); PECO Response to TURN *et al.* I-11 (TURN *et al.* Hearing Exhibit No. 1, Pg. 5 of 12). Further, as of

Discontinuance of Service to Leased Premises provisions of the Public Utility Code provide the process by which PECO and other regulated utilities must notify tenants of their rights to continue service in the event of a termination due to a landlord nonpayment. Section 1523(a)(3) requires PECO and other utilities to:

Notify each dwelling unit reasonably likely to be occupied by an affected tenant of the proposed termination in writing as prescribed in section 1526 (relating to delivery and contents of first termination notice to tenants) at least seven days after notice to the landlord ratepayer pursuant to this section and at least 30 days before the termination of service.

Section 1521 defines the term landlord to include:

One or more individuals or an organization listed on a gas, electric, steam, sewage or water utility's records as the party responsible for payment of the gas, electric, steam, sewage or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park the party **is not the sole occupant**.

66 Pa. C.S. § 1521 (Emphasis added). The Discontinuance of Leased Services provisions apply in situations where the landlord resides in a residential property with his or her tenants. PECO plans to permit landlord ratepayers to enroll in its prepay pilot. PECO St. No. 1R at 15-16; PECO Response to TURN II-3.<sup>20</sup> Under its proposal, PECO will presumptively exclude accounts that are Public Utility Coded as landlord/tenant; however, PECO will allow landlords to re-establish eligibility for the pilot if the landlord is both the account holder and an occupant at the service address. PECO St. No. 1R at 15, ln. 13 through 16, ln. 3. Mr. Geller testified that PECO's pilot will not adequately safeguard the rights of tenants when a landlord enrolls in the pilot. TURN *et al.* St. No. 1 at 24, ln. 8-16; TURN *et al.* St. No. 1SR at 9, ln. 13 through, ln. 16. Mr. Geller

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March 2017, PECO had coded only 2,475 of its individually-metered residential properties as landlord accounts, PECO Response to TURN *et al.* I-13 (TURN *et al.* Hearing Exhibit No. 1, Pg. 7 of 12), a reduction from the number of accounts coded as of March 2016. PECO Response to TURN *et al.* I-12 (TURN *et al.* Hearing Exhibit No. 1, Pg. 6 of 12), TURN *et al.* believe that PECO may not be correctly interpreting its statutory duties under 66 Pa. C.S. § 1523(a)(3). PECO's proposal to include occupant landlords in its pilot represents a continued misunderstanding of the utility's obligations under this provision of the Public Utility Code.

<sup>20</sup> TURN *et al.* Hearing Exhibit No. 1, Pg. 9 of 12 and 10 of 12.

recommended that PECO exclude all tenant occupied properties from inclusion in its pilot. TURN *et al.* St. No. 1 at 24, ln. 12-14. PECO has declined to modify its proposal to exclude tenant occupied properties and instead plans to permit known landlords to enroll. PECO has incorrectly concluded that the protections provided by 66 Pa. C.S. § 1521 *et seq.* “are not implicated by the PECO plan because accounts where a non-tenant landlord is the account holder are not eligible for the plan.” PECO St. No. 1 at 15, ln. 8-13. However, this faulty reasoning fails to recognize that 66 Pa. C.S. § 1521 *et seq.* applies to both “non-tenant landlords” and occupant landlords, provided that the landlord is not the sole occupant of the property. Under PECO’s proposed electronic only notice system for pilot participants, the non-participating tenants will not receive the pre-termination notices required by 66 Pa. C.S. § 1523(a)(3). In addition, because PECO seeks to eliminate the pre-termination notification required by 66 Pa. C.S. § 1406(b) and the Commission’s regulations, these tenants will receive no written pre-termination notice or attempts at contact by the utility that might have alerted the tenants to an impending shut off. PECO’s proposed plan deprives tenants of pre-termination notice that PECO is required to provide pursuant to the Public Utility Code.

7. PECO’s proposed pilot plan fails to adequately protect pilot participants who are under a Protection from Abuse order or similar court order.

PECO has failed to provide information on whether pilot participants who are under a Protection from Abuse order or similar court order will have access to additional payment and restoration options as authorized by 66 Pa. C.S. § 1417. Section 1417 states that Chapter 14 of the Public Utility Code “shall not apply to victims under a Protection from Abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer.” Utilities have relied on

this provision of the Public Utility Code to provide additional payment arrangement options to restore and preserve service. PECO has not stated how it intends to extend these protections to pilot participants. Under PECO's proposed plan, participants will only be eligible for a payment arrangement whereby "for each dollar loaded to the participant's account, 25 cents will be allocated to the delinquency and 75 cents will be allocated to pay for future usage." PECO St. No. 1 at 15, ln. 22 through 23, ln. 2. Participants who have service terminated will be required to pay for the portion of the five day emergency credit that they have used and establish a balance on the account of at least \$15. PECO Petition at 4, Para 15. PECO's inflexible standards for payment arrangements and payment to restore service fail to account for its participants who may be under a Protection from Abuse order or similar order. As Mr. Geller testified "PECO has not stated any exception to these strict restoration terms for victims under a protection from abuse order. Nor has PECO provided an exception for victims of domestic violence to its rigid 25/75 payment agreement rules under this plan." TURN *et al.* St. No. 1 at 18, ln. 18-21.

**8. PECO's proposed pilot plan violates the Electricity Generation Customer Choice and Competition Act.**

Pennsylvania's Electricity Generation Customer Choice and Competition Act declares that electric service should be available to all customers on reasonable terms and conditions. 66 Pa. C.S. § 2802(9). In addition, the Choice Act affirmed the Commonwealth's obligation to continue at a minimum "the protections, policies and services that now assist customers who are low-income to afford electric service." 66 Pa. C.S. § 2802(10). PECO's prepay pilot fails to satisfy the mandates of the Electric Choice Act. Under PECO's proposal, prepay pilot participants are required to surrender significant consumer protections in exchange for the receipt of electric service. PECO's proposal imposes unreasonable and impermissible terms and

conditions on prepay customers. Unlike their post-pay counterparts, PECO's prepay participants between 150-250% FPL will not be protected from termination for non-payment during the winter. *TURN et al.* St. 1 at 17. In contrast to all other residential customers, PECO's prepay participants will not be able utilize the medical certification process to stay termination or restore service when someone in the customer's household has a serious illness or medical condition. *TURN et al.* St. 1 at 17-18; will not receive written termination notices, *TURN et al.* St. 1 at 15-16; and will have fewer payment arrangement options. *TURN et al.* St. 1 a 16-17. Further, PECO has failed to demonstrate that tenants and individuals under a Protection from Abuse order or similar order will have their rights safeguarded, as required by the Public Utility Code, should they or someone in their household enroll in the prepay pilot. *TURN et al.* St. 1 at 18-19; 22-24.<sup>21</sup> PECO's prepay participants will be prohibited from utilizing the protections that are provided to them under the Public Utility Code and the Commission's regulations. These protections establish basic rules for the provision of reasonable utility service and PECO's failure to provide them to all customers would be *per se* unreasonable, in violation of the Choice Act.

Further, PECO's proposed pilot plan is inconsistent with Section 2802(10), which prohibits a reduction of consumer protections for low income customers, because PECO's proposed plan does not effectively exclude customers at or below 150% FPL from participating in the pilot, as described in more detail in Section V(B)(3) below. In failing to propose a robust process for excluding low-income participants, PECO has failed to ensure that universal service programs will remain available to all of its low-income customers.

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<sup>21</sup>Citing protections under 66 Pa. C.S. § 1523 for tenants and 66 Pa. C.S. § 1417 for individuals under a protection from abuse order.

B. PECO's Advance Payments pilot proposal is not in the public interest.

PECO is seeking to implement a first of its kind prepayment program in the Commonwealth of Pennsylvania. As the party seeking approval of its plan and petition to implement this program, PECO bears the burden of proving that the plan is lawful and in the public interest.

1. PECO's proposed pilot plan does not provide any benefit to PECO's customers.

PECO's pilot fails to provide any benefit to participants that could not be achieved without the introduction of prepaid meter service in PECO's service territory. The risk of harm that is likely to result from the pilot far outweighs PECO's interest in testing a prepayment offering. PECO has stated that it has three goals for its pilot, namely:

1. To determine whether there is a substantial portion of PECO customers who would prefer and utilize a prepayment mechanism, and whether it will increase their customer satisfaction;
2. Whether PECO customers can use a prepayment mechanism to reduce existing delinquencies or to avoid delinquencies; and,
3. Whether a prepayment program can assist PECO customers to conserve energy.

PECO St. No. 1 at 4. Although PECO asserts that "early reports suggest that, for some populations, [PECO's] goals can be achieved,"<sup>22</sup> PECO has not presented comparative data to show that its pilot proposal is designed to replicate alleged positive results achieved in other

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<sup>22</sup> *Id.*

jurisdictions.<sup>23</sup> Nor has PECO provided any details on which specific customer populations, if any, benefitted from participation in other state's prepaid programs, and specifically whether economically vulnerable households between 150-300% FPL have benefited.

PECO can achieve its stated goals without introducing prepaid meter service in its service territory. TURN *et al.* St. No. 1 at 10; CAUSE-PA St. No. 1 at 34. PECO has acknowledged that “there are other utility programs that seek to obtain the stated goals of the prepaid program” and that “some of the functionality of such existing programs (...) may overlap with functionality that is offered in the Advance Payments pilot.” PECO St. No. 1R at 20, ln. 13-23; PECO Response to I&E I-2. However, PECO goes on to state that it should be permitted to deploy its pilot because prepaid service is a “unique approach” and “the Commission should encourage utilities to develop multiple programs to accomplish important goals.” PECO St. No. 1R at 21, ln. 7-13. PECO's proposed pilot is indeed a “unique” approach. Thankfully, it stands uniquely alone and has not been previously proposed in Pennsylvania. The prepayment approach that is proposed by PECO exposes its customers to unnecessary and significant risks. Unlike other utility programs that are intended to obtain customer satisfaction, reduce uncollectibles, and increase conservation, PECO's pilot requires participants to waive consumer protections and exposes them to increased risks of termination. The pilot is not comparable to other utility offerings that achieve PECO's stated goals without requiring customers to expose themselves to harm.

2. PECO's proposed pilot plan is likely to result in increased terminations and added costs for pilot participants.

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<sup>23</sup> See PECO Response to I&E I-22 “PECO does not claim that it has proof that a prepayment program in PECO's service territory will have the noted effect [of helping ratepayers recover from being delinquent]. One purpose of the pilot is to generate data on that and other issues.”



PECO's proposed plan is likely to expose pilot participants to a significant risk of harm in the form of increased risks of termination due to non-payment and payment of added and unnecessary fees simply to preserve their electric service. TURN *et al.* St. No. 1 at 12. In other jurisdictions that have implemented prepayment programs, participants have experienced frequent terminations due to the inability to fund a balance on their account. OCA St. No. 1 at 15-23.<sup>24</sup> PECO's pilot participants are also likely to encounter fees simply to fund a balance on their accounts. PECO estimates that prepay customers will load funds onto their accounts 3-4 times per month on average, with a range of up to 7 loads per month. PECO Response to CAUSE-PA I-45. Many of the methods for loading funds carry a fee, which ranges from \$1.35 to \$2.35. PECO Response to CAUSE-PA I-45. PECO's proposed plan is not in the public interest because it needlessly exposes pilot participants to increased likelihood of termination and added costs simply to maintain service.

3. PECO's proposed pilot plan does not effectively exclude customers at or below 150% FPL from participating in the pilot.

PECO has not proposed adequate safeguards to ensure that customers at or below 150% FPL will be excluded from participation in the pilot. As a result, PECO cannot guarantee that its pilot complies with 52 Pa. Code § 56.17 (3)(i), which requires Advance Payments participants to be non-low income. PECO has not sufficiently explained how its pilot will exclude customers who become low income during participation in the pilot. TURN *et al.* St. 1 at 21-22. Nor has PECO provided the educational or application material that it intends to provide to program

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<sup>24</sup> In the Salt River Project prepayment pilot, participants experienced an average of 1 disconnection per month. OCA St. No. 1 at 17, ln. 9-11. In the Arizona Public Service Company prepayment pilot, participants experienced an average of .8 disconnections per month. OCA St. No. 1 at 17, ln. 8-9. In Great Britain, a 2010 survey found that 16% of prepayment participants had experienced disconnection for non-payment during the previous 12 months. OCA St. No. 1 at 22, ln. 5-6. In New Zealand, a 2010 survey found that over 50% of prepayment participants had experienced a service disconnection during the previous 12 months. OCA St. No. 1 at 22, ln. 10-12.

participants. OCA St. No. 1S at 11, ln. 13-19. PECO has merely asserted that should it become aware that a participant is low income during the application process or through a voluntary communication from the participant, then PECO will return the customer to standard service. PECO St. No. 1R at 14, ln. 15 through 15, ln. 4. PECO also intends to return participants to standard service if PECO records indicate that a customer has received a LIHEAP grant, enrolled in CAP, or otherwise demonstrated low income status. *Id.* PECO's process depends on the participant taking an action that communicates to PECO that the customer is low income. PECO has not stated its intent to periodically follow up with pilot participants to determine if there has been a decrease in household income that would make the participant ineligible to continue in the pilot. PECO's proposal is unreasonable. Not only are customers at or below 150% specifically excluded from participation in an Advance Payments program pursuant to Section 56.17 (3)(i), but, in addition, the Commission has a duty to ensure that universal service programs remain available to low-income customers, including those who are enrolled in a utility's prepayment program. 52 Pa. Code §§ 54.71; 62.1. PECO does not propose to proactively, methodically, or scrupulously screen-out low-income customers from participating in its pilot. The Commission will have no way of ensuring that universal service programs are available to these customers. Although PECO maintains that it has proposed a robust and detailed process, PECO St. No. 1R at 15, ln. 5, PECO's proposal is functionally inadequate because it is not a proactive effort to monitor participants to ensure that low income customers are removed from the pilot. PECO should be required to adopt a proactive and "systematic process to identify whether participants have become low income during the course of participation in the pilot" TURN *et al.* St. 1 at 22, ln. 13-14.

PECO's failure to adequately design and propose a process to effectively monitor its pilot participants for low income status is potentially injurious to the public interest. Low income customers are vulnerable customers who the Commission has, by regulation, intentionally and specifically excluded from participation in any Advance Payments program.

4. PECO's proposed pilot plan will target economically vulnerable customers above 150% FPL.

PECO's pilot exposes economically vulnerable households to a significant risk of harm from increased terminations of service. Multiple witnesses in this proceeding have testified that PECO's pilot will target households that, although not within the Commission's definition of low income, are economically vulnerable and likely to be harmed by participation in the pilot. *TURN et al.* witness Geller testified that "there are many households with income above [150% FPL] who struggle to pay their utility bills and [who] are also intended to benefit from consumer protections. Consumer protections under Chapters 14 and 56 provide various protections for customers with income up to 300% of the federal poverty level." *TURN et al.* St. No. 1 at 7, ln. 13-16. OCA witness Howat testified that Pennsylvania households above 150% FPL and below the state median income experience utility bill payment struggles and health and safety threats from unaffordable bills. OCA St. No. 1 at 34-36. CAUSE-PA witness Mitchell testified that there are a significant number of households in PECO's service territory who are not considered low income, but who have income below the self-sufficiency standard, and who are economically vulnerable because they do not possess sufficient income to meet their most critical costs of living, including housing, food, childcare, transportation, health care, and taxes. CAUSE-PA St. No. 1 at 6-8.

In response to claims that PECO's pilot exposes economically vulnerable households to harm, PECO claimed that the witnesses did not provide data to show that the pilot will result in higher disconnection rates and other harm to customers between 151-300% FPL. PECO St. No. 1R at 6, ln. 7-10. PECO is incorrect. PECO does not contest record evidence presented by OCA witness Howat which shows very high disconnection rates in prepaid programs. PECO St. No. 1R at 5-6. PECO states only that this data "cannot be used to meaningfully predict anything about PECO's pilot program" because PECO excludes low income participants and the other programs do not. PECO St. No. 1R at 5, ln. 22 through 6, ln. 3. From 2013 through 2015 statewide data shows that PECO electric residential customers suffer termination at rates higher than any other electric utility in the state. TURN *et al.* St. No. 1SR at 4, ln. 6-14. Data suggesting that a prepaid offering will exacerbate PECO's high termination rates should not be discounted simply because programs demonstrating the likelihood of increased disconnection permit enrollment of low income customers. The customers that PECO will allow to enroll in its pilot may have income only marginally above that of customers considered to be low income. TURN *et al.* St. No. 1SR at 4, ln. 4-6. Contrary to PECO's suggestion, increased disconnection rates attributed to other states' prepayment programs are likely to be replicated in PECO's territory, resulting in loss of service by lower income customers who cannot always afford to keep a credit balance with PECO to maintain service.

5. PECO's proposed pilot plan exposes participants from 150% -250% FPL to increased risk of termination for non-payment during the winter.

Under PECO's pilot proposal, participants can have service terminated for nonpayment during the winter. TURN *et al.* St. No. 1 at 17, ln. 3-11. The possibility of these terminations poses a significant health and safety risk for pilot participants and their communities because

terminated customers may rely on unsafe heating sources to heat their homes during the cold weather season. Further, a pilot participant may experience hours or days without service during December 1<sup>st</sup> - March 31<sup>st</sup>, that would not have been permitted and would not have taken place had the participant been receiving post-pay service. The Public Utility Code prohibits an electric distribution utility or natural gas distribution utility from terminating service to customers with household incomes at or below 250% of the Federal poverty level from after November 30 and before April 1, unless otherwise authorized by the Commission. 66 Pa. C.S. § 1406(e)(1). PECO's proposal undermines the public policy underlying the winter termination provision of the Public Utility Code, i.e., to prevent terminations based on inability to pay during the winter.

As part of its annual *Prepare Now* campaign, the Commission routinely encourages the utilities to be flexible in making allowances for payment-troubled customers during the winter.<sup>25</sup> PECO's pilot undercuts that public policy by exposing a segment of its customers who are between 151-250% FPL to the possibility of termination during the winter. If these customers are unable to fund their prepay accounts, they will be unable to preserve service unless and until they revert to standard service. PECO St. No. 1R at 11-12. While PECO has indicated that it will permit a participant from 151-250% FPL to restore service without payment if the participant contacts PECO to revert to standard service following termination, PECO St. No. 1R at 11, ln. 13-16, PECO's proposal is inadequate because it needlessly exposes participants to winter terminations. PECO's proposal would permit it to terminate service in the winter to a participant that PECO knows to have income between 151-250% FPL. PECO has indicated that it will not automatically revert customers to standard service and utilize normal termination procedures upon depletion of the emergency back-up credits. PECO St. No. 1R at 26-27. While PECO

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<sup>25</sup> The PUC's 2016 Prepare Now letter to the utilities is available at:  
[http://www.puc.pa.gov/NaturalGas/pdf/PrepareNow/2016\\_Prepere\\_Now\\_Letter.pdf](http://www.puc.pa.gov/NaturalGas/pdf/PrepareNow/2016_Prepere_Now_Letter.pdf)

believes its pilot will incent positive payment behavior, PECO St. No. 1R at 27, ln. 13-18, the utility does not adequately safeguard pilot participants between 151-250% FPL who cannot be incented to pay because they simply lack the financial resources and cannot afford their energy costs during the winter.

6. PECO's proposed pilot plan is opposed by every other party in this proceeding and by the majority of participants who offered testimony at the public input hearings.

In assessing whether PECO's pilot is in the public interest, the Commission should note that the pilot has been opposed by every other party and by a majority of participants who offered testimony at the two public input hearings that were held in this proceeding.<sup>26</sup> PECO's pilot is opposed by the statutory advocates, low income and consumer advocates, electric generation suppliers, and the general public. While not every party opposes the concept of prepaid meter service, RESA St. No. 1, all of the parties oppose PECO's specific pilot. All of the parties, other than PECO, believe that PECO's pilot is not in the public interest, either because it deprives participants of consumer protections, exposes them to increased risk of termination, or because of the perceived negative effect that the pilot will have on the competitive electric generation market. TURN *et al.* St. No. 1R at 9, ln. 3-9. Public input hearing participants, most of whom indicated that they were PECO customers, strongly opposed PECO's pilot, citing their concerns about the consequences for vulnerable households and lack of consumer protections. TURN *et al.* St. No. 1SR at 10-12.

- C. The Commission is currently completing a rulemaking to amend Chapter 56, which could result in changes to the Advance Payments regulations.

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<sup>26</sup> None of the witnesses at the public input hearings expressed support for PECO's pilot.

In February 2017, the Commission initiated a rulemaking to amend its existing regulations at 52 Pa. Code § 56.1 *et seq.* In that proceeding, low income and consumer advocates have requested that the Commission eliminate or substantially revise its Advance Payments regulations because they are inconsistent with statutory consumer protections.<sup>27</sup> The Commission's rulemaking is ongoing and it is possible that the Advance Payments regulations may be evaluated in the context of that proceeding. Granting PECO's proposal at this time, when the Commission is undertaking a more thorough review of its customer service regulations and is potentially poised to alter its Advance Payments regulations, is inappropriate and creates an ongoing risk of confusion among customers, PECO, and other stakeholders as to the rules and protections applicable to potential prepayment participants.

D. PECO's requests for waivers of the Commission's regulations are not in the public interest.

In addition to its request for approval of its pilot plan, PECO has requested that the Commission waive the following regulations:

- 52 Pa. Code § 56.17(3)(i). PECO has requested that non-delinquent customers be permitted to participate in a prepayment meter program;
- 52 Pa. Code § 56.17(3)(i). PECO has requested an additional waiver of this provision to permit applicants to participate in a prepayment meter program;
- 52 Pa. Code § 56.17(3)(iii)(B). PECO has requested that participants be permitted to exit the pilot prior to their delinquencies being retired.
- 52 Pa. Code § 56.53. PECO has requested that it be permitted to use customer deposits to fund customer participation in the prepayment pilot.

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<sup>27</sup> *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14*, Docket No. L-2015-2508421. Joint Comments of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania. In its comments the Office of Consumer Advocates submitted that the Commission should update its regulations regarding advance payments at the conclusion of the PECO proceeding in light of legal and policy changes that have occurred since the enactment of the regulations.

In reviewing a request for waiver of its regulations, the Commission must determine that the request is in the public interest.<sup>28</sup> PECO has failed to show that its proposed Advance Payments plan is in the public interest and therefore PECO cannot demonstrate that waiver of Commission regulations with respect to that plan is in the public interest. Further, PECO's requests for waivers of 56.17(3)(i) and 56.53 should be denied even if PECO's proposed plan is approved. PECO should not be permitted to expand Advance Payments offerings to non-delinquent customers and applicants unless and until it is determined that PECO can provide benefits to customers who participate in its initial pilot. As PECO indicated in its plan, PECO is employing a "test and learn" approach with respect to its pilot.<sup>29</sup> Stated more simply, PECO's pilot is an experiment, which should be limited in scope and duration to mitigate the impact of any potential harm. Without knowing whether the pilot will result in significant harm to participants, PECO should not be permitted to expand the Advance Payments regulations to include additional categories of participants.<sup>30</sup>

PECO's request for a waiver of the Commission's deposit regulation at Section 56.53 should be denied because PECO's use of deposits to fund prepayment service is against the intent of the regulation. *TURN et al.* St. No. 1 at 20, ln. 1-19. PECO has stated that pilot participants will be required to use their deposits to fund prepayment service. PECO Response to OCA I-31. Under the existing regulation, PECO is required to hold and return a deposit when a timely payment history is established or for a maximum of 24 months. 52 Pa. Code § 56.53(a).

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<sup>28</sup> See *Petition of PECO Energy Company for Temporary Waiver of Regulations Related to the Required Days in a Billing Period* (Order entered December 8, 2016), Docket No. P-2014-2446292. "The Commission may grant a petition for waiver that is in the public interest under the Commission's statutory authority to rescind or modify regulations or orders. See 66 Pa. C.S. § 501(a)."

<sup>29</sup> Pilot Plan at Pg. 4, Para 5. "The Company will employ a 'test and learn' approach to assess customer adoption, usage impacts, satisfaction, payment patterns, as well as frequency and duration of disconnections and the effect of marketing and educational strategies for its customers."

<sup>30</sup> For the same reasons, *TURN et al.* agree with the recommendation of Mr. Levine that, if approved, the pilot be limited to one year in duration. *TURN et al.* St. 1R at 4, ln. 26.



Under PECO's proposal, the customer must use the deposit to pay for PECO service. PECO's proposal is entirely self-serving and inappropriately deprives customers of their choice to utilize their returned deposits as they see fit. Given that at least some of PECO's pilot participants are likely to have limited or inconsistent financial resources, and may need to utilize returned deposits to cover other costs of living, the Commission should not authorize the requested waiver of its deposit regulations.

E. Issues raised by RESA are beyond the scope of this proceeding

In this proceeding RESA has requested that the Commission reject PECO's prepay pilot and instead focus on making changes that would open up a pathway for EGS prepay billing options in Pennsylvania. RESA St. 1 at 3, ln. 4-11. In surrebuttal testimony Mr. Levine clarified that he "did not suggest that the Commission direct EGS prepay products in this proceeding." RESA St. No. 1SR at 5, ln. 20-22. However, he goes on to state that should the Commission approve PECO's petition, it should address the competitive market concerns raised in his testimony and consider his recommendations. RESA St. N. 1SR at 5, ln. 24 through 6, ln. 10. The Commission should reject RESA's recommendations should it elect to approve PECO's pilot. TURN *et al.* St. No. 1R.<sup>31</sup> All of RESA's recommendations are aimed at laying a foundation for EGSs to offer prepay products in Pennsylvania. TURN *et al.* St. No. 1R at 4-5. The scope of this proceeding is limited to whether PECO's pilot plan should be approved. The Commission should not explore options for creating a pathway to providing EGSs prepay offerings in this proceeding, either by expressly authorizing such offerings or through adopting Mr. Levine's recommendations.

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<sup>31</sup> With the exception of Mr. Levine's recommendation that, if approved, PECO's pilot be limited to one year in duration.

## VI. CONCLUSION

For the reasons set forth above, TURN *et al.* respectfully request that the Commission deny PECO's petition to implement an Advance Payments pilot in its service territory. TURN *et al.* also respectfully request that the Commission deny PECO's request to waive provisions of the Commission's regulations with respect to PECO's proposed pilot plan.

Respectfully Submitted,

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## APPENDIX A

### Proposing Findings of Fact

1. The Commission's Advance Payments regulations became effective in June 1978 and have not been utilized by any Pennsylvania utility since that time. PECO Petition at 3, Para. 3.
2. Under PECO's proposed pilot plan, unless they revert to standard service, participants from 150% - 250% FPL will have service terminated for non-payment during the winter months if they fail to fund a balance on their prepayment accounts and exhaust emergency credits. PECO St. No. 1R at 11, ln. 9-16.
3. Under PECO's proposed pilot plan, participants will receive only electronic pre-termination notice, unless electronic messages to the participant are returned to PECO as undeliverable or the participant reverts to standard service. PECO St. No. 1R at 6-9.
4. Under PECO's proposed pilot plan, participants cannot utilize the medical certificate process unless they revert to standard service. PECO St. No. 1R at 12, ln. 18-20.
5. PECO will not prevent a participant from enrolling in the pilot if the payment arrangement that the participant would receive under the pilot is less beneficial than a payment arrangement that the participant could get from the Commission. PECO Response to TURN I-8.
6. PECO will permit landlords who reside in properties with their tenants to enroll in the proposed pilot. PECO St. No. 1R at 15, ln. 13 through 16, ln. 3
7. PECO will not provide pre-termination notification to tenants who reside in a property with an occupant landlord who has elected to enroll in the pilot. PECO St. No. 1 at 15, ln. 8-13.
8. PECO has not indicated in its proposed plan how it intends to treat customers who are under a Protection from Abuse order or similar order.

9. In other jurisdictions that have implemented prepayment programs, participants have experienced frequent terminations due to the inability to fund a balance on their account. OCA St. No. 1 at 15-23.
10. PECO estimates that prepay customers will load funds onto their accounts 3-4 times per month on average, with a range of up to 7 loads per month. PECO Response to CAUSE-PA I-45.
11. Many of the methods for loading funds onto a pilot participants account will carry a fee, which ranges from \$1.35 to \$2.35. PECO Response to CAUSE-PA I-45.
12. Under PECO's proposed pilot plan, participants may become low income during participation in the pilot. TURN *et al.* St. 1 at 21-22.
13. Consumer protections contained in the Public Utility Code apply to customers with income up to 300% of the federal poverty level. TURN *et al.* St. No. 1 at 7, ln. 13-16
14. Pennsylvania households above 150% FPL and below the state median income experience utility bill payment struggles and health and safety threats from unaffordable bills. OCA St. No. 1 at 34-36.
15. There are a significant number of households in PECO's service territory who are not considered low income, but who have income below the self sufficiency standard, and who are economically vulnerable. CAUSE-PA St. No. 1 at 6-8.
16. The majority of witnesses at the public input hearings that were held in this matter opposed PECO's pilot plan proposal. TURN *et al.* St. No. 1SR at 10-12

## APPENDIX B

### Proposed Conclusions of Law

1. PECO has not met its burden of proof in this proceeding and has not established that its proposed plan is reasonable, lawful, and in the public interest.
2. PECO's proposed plan is inconsistent with 66 Pa. C.S. § 1406(e) because it permits participants between 150-250% FPL to be subject to service termination for non-payment during the winter.
3. PECO's proposed plan is inconsistent with 66 Pa. C.S. § 1406(b) and the Commission's regulations because it fails to provide participants with adequate pre-termination notice.
4. PECO's proposed plan is inconsistent with 66 Pa. C.S. § 1406(f) and in the Commission's regulations because pilot participants will not have access to the medical certificate process.
5. PECO's proposed plan is inconsistent with 66 Pa. C.S. §§ 1405 and 1407 and 66 Pa. C.S. § 1303 because it fails to ensure that pilot participants are enrolled in the most beneficial payment arrangement available.
6. PECO's proposed plan is inconsistent with 66 Pa. C.S. § 1523(a)(3) because tenants residing in properties with landlords who are also pilot participants will not have access to pre-termination notification.
7. PECO's proposed pilot plan is inconsistent with the mandates of the Electric Competition Act. 66 Pa. C.S. § 2802.
8. PECO's proposed pilot plan is not in the public interest.
9. PECO's requests for waivers of Commission regulations are not in the public interest.

## APPENDIX C

### Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. PECO's request to implement an Advance Payments pilot program pursuant to 52 Pa. Code § 56.17 is denied.
2. PECO's petition for temporary waiver of portions of the Commission's regulations with respect to its proposed Advance Payments pilot program is denied.