



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
REFER TO OUR FILE

November 8, 2017

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

Gina L. Miller

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

GLM/sea
Enclosure

cc: Certificate of Service
ALJ Angela T. Jones

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: November 8, 2017

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I. INTRODUCTION

A. Procedural History and Overview of the PECO's Proposed Advance Payment Program

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Introduction and Overview of sections contained in its Main Brief of October 17, 2017.¹ By way of supplemental information, alongside I&E, PECO Energy Company (“PECO”), the Office of Consumer Advocate (“OCA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) the Tenant Union Representative Network (“TURN”) and Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) (collectively “TURN et al.”), and the Retail Energy Supply Association (“RESA”) also filed their Main Briefs on October 17, 2017. Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502² of the Pennsylvania Public Utility Commission (“Commission”) regulations, I&E submits this Reply Brief.

II. SUMMARY OF THE ARGUMENT

Contrary to the baseless and misleading claims made in PECO's Main Brief,³ I&E's opposition to PECO's proposed Advance Payment Program⁴ is not at all premised on an argument that prepaid service in any form is “dangerous.” Instead, and as fully developed in the record, I&E's opposition in this case pertains solely and specifically to

¹ I&E Main Brief, pp. 1-6.

² 52 Pa. Code §§ 5.501-5.502.

³ PECO Main Brief, p. 1.

⁴ On October 26, 2016, PECO filed a Petition for Approval of an Advance Payments Program and a corresponding Petition for Temporary Waiver of Commission Regulations (collectively the “Petition”). I&E will refer to the proposed programming as the “Advance Payment Program.”

the Advance Payment Program that PECO proposes in this case. This is an important distinction because PECO's Advance Payment Program strays so far beyond the bounds of the programming envisioned under the Commission's advance payment regulation,⁵ that there is no real basis for comparison between that programming and what PECO is asking the Commission to approve in this case.⁶ Therefore, I&E's recommendations in this matter cannot possibly be construed to apply to advance payment programs in general, and PECO's argument to the contrary is baseless and it must be rejected.

As I&E explained in its Main Brief, PECO has failed to prove that its Petition should be granted and the Commission should deny it for several reasons. First, PECO's Advance Payment Program is too insufficiently developed to warrant approval, as evidenced by the fact that it has continually evolved during this proceeding to the extent that it now substantially differs from what PECO originally proposed in its Petition. I&E highlighted no less than five inconsistencies between the Advance Payment Program proposed in PECO's Petition and the contradictory programming terms that emerged during the litigation process.⁷ I&E notes that these inconsistencies remain unresolved, and that if the Commission approves PECO's Petition, it will be unclear which terms govern. On this basis alone, I&E submits that PECO's Petition should be denied.

However, aside from the uncertainty of the programming terms, the Commission should also deny PECO's Petition because PECO has failed to provide any disclosures or educational materials that customers would receive before "volunteering" to participate in

⁵ 52 Pa. Code § 56.17, *Advance payments* ("advance payment regulation).

⁶ I&E Main Brief, pp. 28-29, 37-38.

⁷ I&E Main Brief, pp. 12-18.

the Advance Payment Program. As I&E previously explained, the lack of these materials is fatal, especially in light of the unprecedented condition that PECO seeks to impose upon participants. Specifically, in order to participate, customers must agree that if their prepaid account balance drops to zero, and they completely use five days of emergency backup credit, PECO may disconnect their service.⁸ Under this condition, in order to participate, PECO customers must waive termination protections that they would otherwise have under Chapter 14⁹ of the Public Utility Code (“Code”). Yet, despite this condition, PECO opines that developing those materials for this proceeding, before the Commission approves its Petition, would be “premature.”¹⁰ I&E submits that the converse is true here: it would be premature for the Commission to approve PECO’s Petition to without ensuring that participants will be adequately informed about the practical realities of the Advance Payment Program and the rights that they must forfeit to participate. Absent a comprehensive disclosure process that fully informs participants about these details, participants cannot make an informed decision; therefore, they cannot truly “volunteer” to enter the Advance Payment Program.

Additionally, PECO’s Advance Payment Program fails to comport with the Pennsylvania General Assembly’s determination that all customers should be able to obtain service on reasonable terms and conditions.¹¹ Here, participants’ access to utility service is jeopardized because under PECO’s Advance Payment Program, they must

⁸ PECO’s Petition, Appendix A, ¶14.

⁹ 66 Pa. C.S. § 1401 et seq.

¹⁰ PECO’s Main Brief, p. 67.

¹¹ 66 Pa. C.S. § 2802(9); 66. Pa. C.S. § 1402.

forfeit consumer and termination protections that exist under Chapter 14 of the Code. As I&E explained, PECO's attempt to circumvent Chapter 14 is contrary to the legislative policy that underscores the important protections contained in that chapter.

Finally, while I&E strongly opposes PECO's Petition, I&E reasserts its recommendation that if the Commission determines that PECO's Petition should be approved, it should impose certain conditions to protect both participants and the remainder of PECO's ratepayers. These conditions consist of the following terms, which are more fully explained in I&E's Main Brief: (1) the Commission should mandate that PECO strike the requirement that participants must agree to voluntary disconnection of their service as a condition of participation;¹² (2) new applicants should not be permitted to participate in the Advance Payment Program;¹³ (3) PECO must be required to provide quarterly program report to the Commission and to all parties to this proceeding;¹⁴ and (4) the Commission should make it explicitly clear that PECO is not granted preapproval to recover programming costs.¹⁵

III. QUESTIONS INVOLVED

1. Has PECO Failed to Prove that its Advance Payment Program Should be Approved?

Suggested Answer: Yes.

¹² I&E Main Brief, pp. 27-32.

¹³ I&E Main Brief, pp. 32-34.

¹⁴ I&E Main Brief, pp. 34-38.

¹⁵ I&E Main Brief, p. 39.

2. If the Commission Approves PECO's Advance Payment Program, Should it Impose Certain Conditions to Protect Ratepayers?

Suggested Answer: Yes.

IV. LEGAL STANDARDS AND BURDEN OF PROOF

In this proceeding, PECO, as the proponent of the Advance Payments Plan, has the burden of proof to establish that it should be approved.¹⁶ PECO can only satisfy its burden of proof by establishing “a preponderance of evidence which is substantial and legally credible.”¹⁷ To meet its burden of proof, PECO must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”¹⁸ In this case, PECO has failed to meet its burden of proving that its Advance Payment Program should be approved. Instead, I&E and other parties have provided evidence that PECO's Advance Payment Program is insufficiently developed and that, if implemented, it will unnecessarily jeopardize ratepayers' continued access to utility service.

V. ARGUMENT

A. PECO Has Failed to Prove that the Advance Payment Program Should be Approved

1. PECO's Faulty Reliance Upon the Commission's Advance Payments Regulation¹⁹

In its Main Brief, PECO argues that to the extent that its Advance Payment Program “follow[s] the Commission's regulations, the review standard should be limited to a determination of whether the plan provisions in fact track the Commission's

¹⁶ 66 Pa. C.S. § 332(a).

¹⁷ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

¹⁸ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹⁹ 52 Pa. Code. § 56.17.

regulations.”²⁰ According to PECO, if the Advance Payment Program tracks the regulations,²¹ then a “presumption of public interest is inherent” and no further public interest evaluation is required, eliminating the need for a debate on whether prepaid meter plans are in the public interest.²² Thus, PECO appears to be attempting to mitigate its burden in this case by claiming that only its requested waivers are subject to a public interest determination.²³ However, PECO’s argument is flawed because the entire character and operation of its program is predicated on receiving waivers of the Commission’s regulations.

The fact that PECO’s Advance Payment Program relies completely upon waivers of the Commission’s advance payment regulation in order to function is apparent in the specific terms that PECO seeks to waive. Specifically, these are the terms of the regulation that target receipt of advance payments only from a utility’s existing customers who are payment troubled, already likely already facing service termination, and seeking payment arrangements to cure an existing delinquency. As an example, Section 56.17(3)(i) of the Commission’s advance payment regulation requires that an advance payment plan be made available only to existing customers who have an existing delinquency. However, PECO is seeking a waiver of that requirement in order to extend the programming to applicants and to those without any delinquencies. Additionally, Section 56.17(3)(iii) of the regulation states that, as a requirement to participate in the

²⁰ PECO Main Brief, p. 52.

²¹ The applicable regulation here is 52 Pa. Code § 56.17, *Advance payments* (“advance payment regulation”).

²² *Id.*

²³ PECO Main Brief, p. 2.

Plan, a customer must enter into a payment arrangement for their delinquency, but PECO asks for waiver of this requirement, since no payment arrangement would be required under its proposal. Finally, Section 56.17(3)(iii)(B) of the advance payment regulation requires that as a condition of enrollment, customers must agree to purchase prepayment credits to maintain service in the program until their delinquency is completely gone, but PECO is asking the Commission to waive this requirement, too.²⁴

I&E submits that when viewed together, the sum of the waivers that PECO would be required to implement its Advance Payment Program make the result completely outside of the character of the programming contemplated in the advance payment regulation. Taking this into account, it is axiomatic that PECO should not be permitted to request waivers of the Commission's advance payments regulation and thereafter argue that its own resulting and distinguishable Advance Payment Program should be evaluated by the exact same criteria that exists under the regulatory scheme. Accordingly, PECO's entire proposed Advance Payment Program should be evaluated under the public interest standard, and PECO has failed to meet that standard in this case.

2. The Record Evinces Unresolved Defects in PECO's Advance Payment Program

As I&E explained in its Main Brief, over the course of the last year, PECO has continually and substantially added or revised the terms of its as-filed Advance Payment program, and it is now unclear which terms govern critical components of PECO's proposal. Specifically, I&E highlighted no less than five inconsistencies between the

²⁴ PECO's Petition, pp. 10-13.

Advance Payment Program proposed in PECO's Petition and the contradictory programming terms that emerged during the litigation process.²⁵ The inconsistencies existed in the following areas: (1) the process for handling undeliverable electronic notifications to participants; (2) the programming costs; (3) the number of participants; (4) restoration of service to certain customers; and (5) the goals of the Advance Payment Program. To date, these inconsistencies remain unresolved.

First, when PECO initially filed its Petition, the electronic notification procedure regarding declining balances and proceeding disconnection did not account for reverting customers back to standard service if electronic communications were not received.²⁶ Therefore, PECO's Petition does not contemplate such action. However, during the discovery process, PECO indicated that if the electronic communications were not successful, it would revert the participant back to standard service in lieu of disconnection.²⁷ This ambiguity has not been resolved. Additionally, PECO's Petition failed to provide even an estimate of the cost of the Advance Payment Program. In direct testimony, for the first time, PECO witness Scarpello estimated that the total costs for the Advance Payment Program, including vendor costs and internal personnel, would be less than \$500,000 for the two-year life of the program.²⁸ However, PECO's initial estimate was based on a mathematical error and that is also failed to include the \$250,000 cost of an evaluation vendor.²⁹ As a result, a more accurate range of estimated program costs is

²⁵ I&E Main Brief, pp. 12-18.

²⁶ PECO's Petition, p. 5.

²⁷ I&E Exhibit No. 1, Schedule 9, p. 3.

²⁸ PECO St. No. 1, p. 23.

²⁹ I&E Exhibit No. 1, Schedules 6-8.

\$759,275 to \$809,275, or approximately \$400 per participant.³⁰ Although I&E concurs with PECO that it may not be possible for PECO to provide exact cost information at this time, the information that has been provided is contradictory and PECO has not acknowledged the issue.

Furthermore, there is a very substantial disparity between the number of Advance Payment Program participants that PECO's Petition requested and the number it proposed during the litigation process. Specifically, PECO's Petition indicated an intention to limit participation to only 1,000 volunteers,³¹ but it doubled the number of participants to 2,000 in its direct testimony.³² Therefore, if PECO's Petition is approved as filed, it is unclear how many customers may actually be approved to participate in the Advance Payments Program. Yet another disparity between PECO's Petition and the testimony that it offered later in this proceeding focuses on how customers with incomes below 250% of the federal poverty level will be treated during the winter. As I&E witness Brenton Grab pointed out, the conditions of the Advance Payment Program outlined in PECO's Petition permit PECO to disconnect service to customers with incomes at or below 250% of the federal poverty level³³ during the winter months even though termination procedures that are contained in the Code and within Commission Regulations would prohibit such loss of service.³⁴ However, through his rebuttal

³⁰ I&E St. No. 1, p. 14.

³¹ PECO's Petition, ¶15.

³² PECO St. No. 1, p. 4.

³³ I&E notes that customers with incomes below 150% of the federal poverty level are ineligible to participate in the Advance Payment Program. PECO's Petition, Attachment 1, p. 1, Section 3.

³⁴ I&E St. No. 1, pp. 10-11.

testimony, PECO witness Scarpello claimed that PECO will immediately restore service to participants with income below 250% of the federal poverty level during the winter months without payment of any kind.³⁵ This lack of consistency creates confusion about exactly which of these terms govern PECO's Advance Payment Program.

Finally, the inconsistencies extend to the goals that PECO seeks to accomplish through its Advance Payment Program. As I&E explained in greater detail in its Main Brief, the stated goals have evolved from the customer-focused goals referenced in PECO's Petition. The goals identified in PECO's Petition were (1) to determine whether there is a substantial portion of its customers who would prefer to utilize an advance payment mechanism and whether that mechanism will increase customer satisfaction; (2) whether customers can use advance payments to reduce or avoid delinquencies; and (3) whether the Advance Payment Program will assist customers in conserving energy.³⁶ However, after the metamorphoses that occurred during the litigation process,³⁷ PECO finally identified the reduction of uncollectibles as a key goal of the Advance Payment Program.³⁸ With several changes in programming goals, there is no real certainty about what PECO truly hopes to accomplish with this unprecedented programming.

In its Main Brief, PECO failed to add any clarity to these ambiguous terms. Instead, PECO's Main Brief exemplifies the problem with the continually evolving Advance Payment Program because its prayer for relief simply requests that

³⁵ PECO St. No. 1R, p. 11. However, on pages 63-64 of its Main Brief, PECO does not reiterate Mr. Scarpello's claim when discussing winter termination, further compounding the lack of clarity on this issue.

³⁶ PECO St. No. 1, p. 4.

³⁷ I&E Main Brief, pp. 17-18.

³⁸ PECO St. No. 1, p. 6.

thCommission issue an order granting PECO's Petition.³⁹ If the Commission were to grant PECO's request, it would culminate in the approval of an Advance Payment Program that differs from the one that PECO advanced during this proceeding. Accordingly, PECO has failed to prove that its Petition should be granted.

3. PECO's Fatal Failure to Produce Disclosures and Educational Materials for Participants

Although I&E reasserts that PECO's Petition is unsupported and it should be denied on that basis alone, it is also important to note that PECO's claim that the voluntary nature of the Advance Payment Program will "mitigate or avoid the negative consequences raised by the other parties" in this proceeding is without merit and it must be rejected.⁴⁰ PECO's claim is unsupported because the Advance Payments Program that it is asking the Commission to approve provides no disclosures or educational materials to explain the terms of the programming to tentative participants. Here, the absence of these materials deprives participants of the ability to truly "volunteer" for the Advance Payments Program because there is no guarantee that participants will receive a comprehensive explanation of the conditions and terms of enrollment before they agree to participate. I&E submits that under these circumstances, participants would not be in a position to make an informed and voluntary decision as to whether to participate in the Advance Payments Program. Accordingly, PECO's reliance upon the voluntary nature of enrollment in the Advance Payments Program is misplaced and unsupported.

³⁹ PECO Main Brief, p. 71.

⁴⁰ PECO Main Brief, p. 2.

In the same vein, I&E fundamentally rejects PECO's dismissive argument that developing and providing disclosures and educational materials for its Advance Payments Program as part of this litigated proceeding would be "premature."⁴¹ Instead, PECO claims that it will develop "detailed disclosures and consumer education materials for review and input by the parties before the program is implemented."⁴² In I&E's view, PECO's Petition treats the fundamental principles of customer education and full disclosure as an inconvenient afterthought, when, considering the terms of the programming it intends to offer, those principles are the most important part of this case. As I&E previously explained, PECO's Advance Payments Program is unprecedented in that in order to participate, customers must agree that if their account balance drops to zero, and they completely use the five day emergency backup credit, PECO may disconnect their service.⁴³ As I&E explained in its Main Brief, this condition will deprive participants of the litany of protections that exist under the Chapter 14 of the Code.⁴⁴ Despite this, PECO has deemed it "premature" to produce any consumer educational materials or disclosures that it intends to provide to participants as part of the record of this proceeding.

I&E submits that PECO's position fails to respect the Commission's longstanding commitment to ensuring that customers are fully and properly educated about their utility options. Additionally, PECO's position requires the Commission to approve the

⁴¹ PECO Main Brief, p. 67.

⁴² Id.

⁴³ PECO Petition, Appendix A, ¶14.

⁴⁴ I&E Main Brief, pp. 22-24.

Advance Payments Program without ever ensuring that the public interest will be protected. This is true because to the extent that PECO contemplates developing educational materials for participants, PECO indicates an intention only to allow “parties” to review these materials and provide input.⁴⁵ The degree of input permitted and recognition of any input offered by parties through the vague process that PECO describes is unclear. Most importantly, the process described raises public interest concerns because it appears to position PECO as the sole and final arbiter of the adequacy of the materials it intends to provide. Notably, PECO’s tentative plan has not established any role for the Commission and it does not appear to envision a process for Commission approval of any materials. Accordingly, to the extent that PECO intends to educate consumers about the terms and conditions of the Advance Payments Program, its vague plan to do so is untimely and underdeveloped.

Finally, PECO’s lack of a comprehensive disclosure and education plan for the Advance Payments Program, which requires participants to waive Chapter 14 termination protections, is directly at odds with the robust education plan that the Commission envisioned with it implemented Chapter 14. Specifically, at the outset of implementing Chapter 14, the Commission acknowledged the importance of educating customers about their rights under Chapter 14:

An underlying theme of comments by the OCA, PULP, and CLS is that customers need additional information to fully understand the effects of Chapter 14 on utility collection practices, particularly during the winter period.

⁴⁵ PECO Main Brief, p. 67; PECO St. No. 1R, p. 24.

We agree that there needs to be ongoing consumer education to help ensure that residential customers understand the new rules of the road. Utilities should begin the education process at the time of application by securing additional information about all of the adult occupants and explaining why this information is needed. Furthermore, revised winter termination notices should contain information to help customers determine whether they fall under the low-income protected categories. Utilities also will be conveying appropriate information about the new law when applying §56.97 to contacts it receives from customers under threat of termination. Additionally, the Commission's Office of Communications will design material to continue the process of educating consumers about Chapter 14.

It is incumbent upon the Commission and the utilities to work together with consumer advocates and community based organizations to develop appropriate consumer education outreach programs to ensure that customers are fully aware of their rights under Chapter 14.⁴⁶

The above language illustrates the importance that the Commission placed upon educating customers about their rights under Chapter 14, and, in particular, those rights as they pertain to service termination and utility collection practices.

I&E submits that if PECO seeks to advance programming that would require participants to forfeit these important rights, it has an obligation to first ensure that participants understand those rights and then to educate participants about exactly how the Advance Payments Program would impact them. It is axiomatic that when such a robust effort is needed to educate customers about the benefits of Chapter 14, as evidenced in the Commission's comments above, a commensurate effort is needed to

⁴⁶ *In Re Chapter 14 Implementation*, Second Implementation Order, Docket No. M-00041802F0002, p. 30, 100 Pa. PUC. 241 (Order entered Sept. 12, 2005).

educate Advance Payments Program participants about the realities of the loss of those benefits as a condition of enrollment. PECO not only fails to meet this standard, but it completely rejects it by dismissing the importance of such education and relegating it to an afterthought. Accordingly, PECO's claim that the voluntary nature of the Advance Payments Program should mitigate any concerns is without merit, as it relies upon the unsupported assumption that participants will somehow be educated enough about the programming terms to make an informed decision to volunteer.

4. PECO's Advance Payment Program Unnecessarily Compromises Participants' Continued Access to Electric and/or Gas Service

In its Main Brief, I&E explained that the voluntary discontinuance condition of PECO's Advance Payments Program offends key components of Pennsylvania law.⁴⁷ Specifically, PECO's Advance Payments Program does not comport with the Electricity Generation Customer Choice and Competition Act's ("Choice Act") determinations that electric service is "essential to the health and well-being of residents, to public safety and to orderly economic development" and that all customers should be able to obtain service on reasonable terms and conditions.⁴⁸ Additionally, PECO's Advance Payments Program does not comport with the General Assembly's intent to ensure that public utility service, which includes natural gas service, remains available to all customers on reasonable terms and conditions.⁴⁹ Instead, the evidence offered in this proceeding reveals that participants of PECO's Advance Payments Program "will in fact have reduced options

⁴⁷ I&E Main Brief, pp. 21-24.

⁴⁸ I&E Main Brief, p. 21; 66 Pa. C.S. § 2802(9).

⁴⁹ I&E Main Brief, p. 21; 66 Pa. C.S. § 1402.

for avoiding loss of service while being denied access to the basic consumer protections.”⁵⁰ These lost protections include the termination process prescribed under Chapter 14 of the Code, which includes the following:

Under Chapter 14, Prior to terminating service under subsection (a), a public utility: (i) Shall attempt to contact the customer or occupant, either in person or by telephone, to provide notice of the proposed termination at least three days prior to the scheduled termination. (ii) Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 7 a.m. and 9 p.m. if the calls were made at various times each day. (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.⁵¹

As I&E explained in more detail in its Main Brief,⁵² this Chapter 14 termination process actively engages the customer and targets the service residence, making notification more personal and more effective than the passive notification process primarily via text message or email that PECO proposes under its Advance Payment Program.

Accordingly, PECO's Advance Payment Program operates in a manner that deprives participants of Chapter 14 protections. In effect, PECO's Advance Payments Program inserts a barrier to participants' access to utility service which would not exist

⁵⁰ OCA St. No. 1, p. 26.

⁵¹ OCA St. No. 1, p. 28, referencing 66 Pa. C.S § 1406(b)(1).

⁵² I&E Main Brief, pp. 22-24.

outside of participation. Because of this barrier, it directly conflicts with General Assembly's explicitly expressed intentions in both Chapter 14 and the Choice Act, that jurisdictional utility service should remain available to all customers on reasonable terms and conditions. I&E reasserts that the legislature did not intend for utility companies to circumvent Chapter 14 protections simply by relying upon the semantical differences between "disconnection" and "termination." Finally, and as I&E explained above, PECO's attempt to circumvent Chapter 14 further is further compounded by the lack of any comprehensive disclosures and education materials for customers to review before they "volunteer" to participate in the Advance Payments Program. Together, these defects produce a result that compromises customers' access to utility service on reasonable terms and conditions, and that is also contrary to the public interest.

Instead of addressing parties' arguments regarding the increased likelihood of service termination that participants will face under the Advance Payment Program, PECO simply denies that any increase in the disconnection rate is unacceptable.⁵³ According to PECO, a series of short disconnections occurring under prepaid service is preferable to having one lengthy disconnection under standard service.⁵⁴ The flaw in PECO's argument is that it is based on a false choice that is not supported in the record, as there is no evidence that Advance Payment Program participants would face lengthy disconnections absent enrollment. Furthermore, I&E rejects the notion that any increase in customers' loss of service is acceptable, and especially when that loss of service occurs

⁵³ PECO Main Brief, p. 62.

⁵⁴ Id.

in a manner that deprives utility customers of the access to service protections that the General Assembly provided to them under Chapter 14. For these reasons, PECO has failed to prove that its Advance Payments Program should be approved and it should be rejected.

B. If the Commission Approves PECO's Advance Payments Program, the Record Supports the Need to Impose Certain Conditions to Protect Ratepayers

1. Participants Must Not be Required to Waive Termination Protections to Participate

Although I&E strongly opposes any approval of PECO's Petition, if the Commission nonetheless grants it, then I&E recommends that it strike the requirement that participants be required to agree to voluntary disconnection of their service as a condition of participation.⁵⁵ As an alternative to disconnecting service, I&E recommends that if a participant in the Advance Payments Plan fails to replenish their account balance within the five-day grace period, then PECO should automatically switch that participant back to the standard service.⁵⁶ I&E recognizes that by adopting this recommendation, the Commission can preserve any benefits that participants may hope to enjoy under PECO's Advance Payment Program, but in a manner that does not jeopardize those participants' continued access to utility service.⁵⁷

In response, PECO simply continues to allege that the disconnection provision is required under the Commission's advance payment regulation and therefore it must also

⁵⁵ I&E Main Brief, p. 27.

⁵⁶ I&E St. No. 1, p. 25.

⁵⁷ I&E Main Brief, pp. 27-28.

apply to the Advance Payment Program.⁵⁸ PECO also, for the first time, makes the following argument:

[I]t should be understood that the position of the other parties, [including I&E], reduced to its core, is that standard termination notices and procedures, and *only* standard termination notices and procedures, can ever be sufficient in a prepaid service program.⁵⁹

I&E submits that for each of these arguments, PECO is incorrect and its claims are without merit.

First, as I&E already explained above and in its Main Brief, PECO's reliance upon the disconnection provisions contained in the Commission's advance payment regulation is misplaced because the character of its Advance Payment Program is too far removed from the program contemplated in the advance payments regulation.⁶⁰ When viewed together, the sum of PECO's waiver requests to implement its Advance Payment Program make the result completely outside of the character of the plan contemplated in the advance payments regulation. Taking this into account, it is completely disingenuous for PECO to now rely upon the advance payments regulation as the authority that requires its voluntary disconnection term.

Furthermore, PECO's claim regarding the parties' alleged position that standard termination notices and procedures can ever be sufficient in a prepaid service program is false and it is contrary to the record. Specifically, I&E has never espoused this position, and the record is devoid of any evidence of I&E advancing this position. Instead, the

⁵⁸ PECO Main Brief, p. 60.

⁵⁹ PECO Main Brief, p. 61.

⁶⁰ I&E Main Brief, pp. 28-30, 37-38.

evidence that I&E offered in this case pertained solely to PECO's proposed Advance Payment Program, which completely departs from the terms of and the purpose of the advance payment scheme contemplated in the Commission's regulations. Accordingly, I&E submits that PECO's false claim to the contrary misrepresents the facts of this case, and it should be rejected. Instead, as I&E explained in its Main Brief,⁶¹ the facts of this case prove that the voluntary disconnection condition of PECO's Advance Payment Program is unwarranted, unsupported, and that it should not be approved.

2. Applicants Should Not Be Permitted to Participate in PECO's Advance Payment Program

In its Main Brief, I&E summarized, and explained in detail, three reasons that applicants should not be permitted to participate in PECO's Advance Payment Program.⁶² These reasons included the following: (1) PECO will not have any available historical usage data for applicants to sufficiently establish average usage and estimated days remaining, which would make management of the account balance significantly more challenging for these customers;⁶³ (2) one of PECO's stated programming goals, conservation of energy, could not be accurately evaluated for applicants because there would be no historic data available for comparison;⁶⁴ and (3) PECO's stated goals of preventing delinquencies/reducing uncollectibles and increasing customer satisfaction cannot be evaluated for applicants because there will be no applicant payment history or satisfaction level available for comparison. Put another way, there is no yardstick

⁶¹ I&E Main Brief, pp. 27-28.

⁶² I&E Main Brief, pp. 32-34.

⁶³ I&E St. No. 1, pp. 25-26.

⁶⁴ I&E St. No. 1-SR, p. 27.

available to measure the true impact of the Advance Payment Program upon applicants or upon the stated programming goals for applicants.

In response to I&E's argument, PECO claims that its request to waive Section 56.17(3)(i) of the Commission's advance payment regulation in order to allow applicants to participate in the Advance Payment Program is in the public interest.⁶⁵ In support of this claim, PECO makes the vague assertion that "applicants also would benefit from the opportunity to have increased customer satisfaction and decreased usage."⁶⁶ I&E notes that the benefits that PECO has identified are speculative in nature and unsupported in the record. On the other hand, the detriments associated with including applicants as participants in the Advance Payment Program have been established. Therefore, PECO's expectation of tentative benefits for applicants does not overcome the noted defects of allowing applicants to be part of the participant pool.

Additionally, PECO opines that applicants may be able to avoid the use of credit deposits by enrolling in the Advance Payment Program.⁶⁷ According to PECO, applicants who may ordinarily be subject to paying a deposit for service under the Commission's regulations⁶⁸ may be relieved of that obligation through participation in the Advance Payment program. Instead, PECO seeks a waiver of the pertinent regulation and instead proposes to apply the impacted participants' deposits to their prepayment

⁶⁵ PECO Main Brief, p. 55.

⁶⁶ Id. at 56.

⁶⁷ Id. at 57.

⁶⁸ 52 Pa. Code §56.53.

accounts.⁶⁹ To the extent that this practice would initially make service more accessible to impacted applicants, I&E recognizes the value of that access.

However, I&E shares the concerns that several other parties to this proceeding have identified with enticing applicant participation in the Advance Payment Program by applying their deposits to prepayment accounts. Both OCA and TURN et al. offered evidence that applying deposits to prepaid service accounts would make prepaid service more attractive to economically vulnerable customers.⁷⁰ In light of the conditions of participation, which I&E explained would require participants to forfeit certain Chapter 14 protections, I&E has substantial concerns about the real impact of enticing payment troubled or financially vulnerable applicants to participate in the Advance Payment Program. The result may be that applicants' access to continued service is ultimately compromised under the prepayment deposit scheme. From I&E's perspective, this concern is only further exacerbated by the fact that the record is devoid of information explaining how participants, including applicants, would be informed of the conditions of participation, or provided with an explanation of exactly how the Advance Payment Program operates. Accordingly, for these reasons, PECO's proposal to include applicants as participants in the Advance Payment Program should be rejected.

3. PECO Should be Required to Provide Quarterly Program Reports

As a condition of any approval of PECO's Petition, I&E recommended that PECO

⁶⁹ Id.; PECO Main Brief, p. 58.

⁷⁰ OCA St. No. 1, pp. 33-34; TURN St. No. 1, p. 11.

be required to provide quarterly programming reports to the Commission and to all parties involved in this proceeding.⁷¹ In its Main Brief, I&E provided a listing of the information that should be provided in the quarterly reports in order to inform PECO, parties, and the Commission of the true impact of the Advance Payment Program.⁷² In support of the need for this type of reporting, I&E pointed out that PECO's Advance Payment Program will be the first time that programming of this type has ever been implemented by a jurisdictional Pennsylvania public utility.⁷³ Additionally, the Commission must have an opportunity to review the impact of this programming, including complaints, delinquency statuses, negative account balances, and disconnections, to determine whether it should be permitted to expand beyond the pilot stage.⁷⁴

In its Main Brief, PECO failed to substantively address I&E's recommendation that it be required to submit quarterly reports for its Advance Payment Plan. In fact, PECO only mentioned I&E's recommendation in the context of a suggested finding of fact that it proposed in its Main Brief, which stated as follows:

183. The periodicity for evaluation and reporting is set forth in the Commission's regulations, and PECO's Plan meets those regulations. Mr. Grab did not provide any rationale for his recommendation to increase the periodicity to quarterly reporting, and such a change would significantly increase the cost of the evaluation and reporting effort. PECO Statement No. I R, p. 30.⁷⁵

⁷¹ I&E St. No. 1, pp. 24-25; I&E Main Brief, pp. 34-38.

⁷² I&E Main Brief, p. 34.

⁷³ I&E St. No. 1-SR, p. 30.

⁷⁴ Id. at pp. 35-37.

⁷⁵ PECO Main Brief, p. 34.

PECO's finding of fact appears to be premised on the rebuttal testimony of its witness Mr. Scarpello, but I&E witness Grab previously addressed Mr. Scarpello's comments and explained why they were unwarranted.

As Mr. Grab explained, the evaluation and reporting criteria set forth in the Commission's regulations would be insufficient criteria for the Advance Payment Program because it substantially differs from the programs envisioned in the Commission's regulations.⁷⁶ Additionally, PECO's claim that I&E's recommended reporting requirement would significantly increase the cost of evaluation and reporting efforts⁷⁷ has no support in the record.⁷⁸ As I&E pointed out in its Main Brief, while PECO is in the best position to indicate how I&E's recommendation would escalate its cost, it has not provided any quantified estimates of the impact and instead it relies solely upon unsupported assertions. Additionally, PECO's unprecedented proposal in this matter requires that stakeholders and the Commission be fully informed of the pilot's impact. Despite this, PECO has offered and continues to offer no evidence in this case to prove that stakeholders should be deprived of this information on this basis of costs. Accordingly, PECO's argument on this basis has no merit and it should be rejected.

4. It Must be Clear that PECO is not Granted Preapproval to Recovery Programming Costs

In its Reply Brief, PECO acknowledged that it was not seeking any cost recovery related to the Advance Payment Program at this time.⁷⁹ Additionally, PECO indicated

⁷⁶ I&E St. No. 1-SR, p. 30.

⁷⁷ PECO St. No. 1R, p. 30.

⁷⁸ I&E St. No. 1-SR, p. 30.

⁷⁹ PECO Main Brief, p. 68.

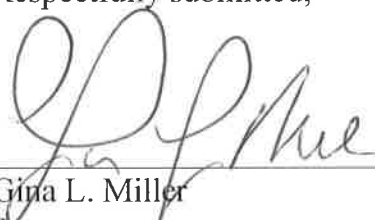
that it is not requesting any determination at this time as to the reasonableness or prudence of Advance Payment Program expenditures.⁸⁰ As both PECO and I&E agree that review of the prudence and reasonableness of Advance Payment Program costs will be appropriately reviewed in the context of a future PECO rate case, it appears that these parties have reached a consensus on this issue. To memorialize this agreement, I&E recommends that the Commission's Final Order in this proceeding memorialize the fact that no costs associated with PECO's Advance Payment Program are being approved as part of this proceeding. Additionally, I&E requests that Commission indicate that such costs will be evaluated for reasonableness and prudence in the PECO base rate case in which they are being claimed.

⁸⁰ Id.

VI. CONCLUSION

For the reasons outlined in both I&E's Main Brief and in this Reply Brief, I&E respectfully requests that Administrative Law Judge Angela T. Jones recommend, and the Commission subsequently uphold, the denial of PECO's Petition. In the alternative, if the Commission approves PECO's Petition, then I&E recommends that it condition such approval upon the following terms: (1) participants will not be required to agree to voluntary disconnection of their service as a condition of participation in PECO's Advance Payment Program; (2) Applicants are not eligible to participate in PECO's Advance Payment Program; (3) PECO is required to provide quarterly programming reports with the information specified in I&E's testimony to the Commission and to all parties involved in this proceeding; and (4) any approval of PECO's Petition must not be construed to operate as preapproval for recovery of programming costs.

Respectfully submitted,



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Dated: November 8, 2017

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated November 8, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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