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November 8, 2017

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

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

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Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Reply Brief of PECO Energy Company*.

Very truly yours,



Ward Smith  
Counsel for PECO Energy Company

WS/ab  
Enclosure

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

**PECO ENERGY COMPANY'S  
PILOT PLAN FOR AN ADVANCE  
PAYMENTS PROGRAM SUBMITTED  
PURSUANT TO 52 PA. CODE §56.17**

**AND**

**PECO ENERGY COMPANY'S  
PETITION FOR TEMPORARY  
WAIVER OF PORTIONS OF THE  
COMMISSION'S REGULATIONS  
WITH RESPECT TO THAT PLAN**

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**DOCKET NO. P-2016-2573023**

**CERTIFICATE OF SERVICE**

I, Ward Smith, hereby certify that I have this day served a copy of the Reply Brief of  
PECO Energy Company in the above matter, upon all interested parties via email to:

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Dated: November 8, 2017

A handwritten signature in black ink, appearing to read "Ward Smith", is positioned above a horizontal line.

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PECO ENERGY COMPANY'S :  
PILOT PLAN FOR AN ADVANCE :  
PAYMENTS PROGRAM SUBMITTED :  
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WITH RESPECT TO THAT PLAN :**

**Reply Brief of PECO Energy Company**

## **Reply Brief of PECO Energy Company**

As expected, the Main Briefs in this docket present a sharp contrast. PECO proposes a small prepaid service pilot, populated exclusively by volunteers. The volunteers will receive multiple notices of a declining account balance prior to any service disconnection. The volunteers can leave the pilot and return to standard service at any time by making a single phone call to PECO. Low-income customers will not be allowed to participate. Data will be collected and an evaluation presented to the Commission. PECO views this proposed pilot as a reasonable and valuable method to gain real-world experience with prepaid service in a Pennsylvania-specific context.

For their part, the other parties<sup>1</sup> paint the PECO pilot proposal as a dangerous anachronism that will seduce PECO's most vulnerable customers into volunteering for a program that will, it is claimed, result in death for some and a fate nearly as bad for the others. PECO's proposal is so dangerous, the other parties claim, that PECO should not even be allowed to run a small pilot program and collect data to determine whether the protections embedded in the PECO proposal work. Effectively, the other parties argue that any change from the *status quo* is so presumptively dangerous that any proposal to test a new approach should be immediately dismissed.

In its Main Brief, PECO demonstrated that its proposal complies with the Commission's regulations, that the limited waivers requested by it are in the public interest, and that the

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<sup>1</sup> The discussion in text refers to the positions taken by the Office of Consumer Advocate, the Bureau of Investigation & Enforcement, CAUSE-PA and TURN. A fifth interest group – RESA – intervened and presented testimony that prepay programs are good public policy, but only if implemented by competitive market participants, not by a utility. As to that position, PECO relies upon the arguments set forth in its Main Brief and the Main Briefs of the other stakeholders, and does not further address RESA's position in this Reply Brief.

arguments raised by the other parties do not provide a reason to disapprove the proposed pilot. In that discussion, PECO anticipated and addressed the constituent arguments that the other parties offer in their Main Briefs in support of their dire predictions; as to the individual constituent arguments PECO therefore will rely upon the arguments set forth in its Main Brief and will not repeat its arguments in this Reply Brief.

More broadly, this case presents the Commission with a straightforward decision. Although the Commission's regulations have allowed prepaid gas utility service since the 1970s, and prepaid electric utility service since the 1990s, no Pennsylvania utility has previously implemented a prepaid service program. In 2011 the Commission noted that this "unfortunate" lack of "practical experience" has hampered the Commission's ability to evaluate its own prepaid service regulations and policy.<sup>2</sup> PECO's proposed pilot squarely presents an opportunity to gain that desired practical experience and to create data to assess the usefulness and safety of prepaid service in Pennsylvania. Simply, if the Commission wishes to develop practical experience with prepaid service, PECO's proposal provides an excellent opportunity to do so.

There is one other argument that PECO would like to briefly address. Several of the other stakeholders take PECO to task because PECO's proposal evolved and developed during the course of this proceeding. *See, for example*, OCA Main Brief, p. 1 (PECO "failed to submit a fully-formed program for the Commission's consideration and has continued to make significant changes to the program through discovery and testimony in this case"); I&E Main Brief, p. 7 ("During the litigation of this protracted proceeding, the terms of PECO's Advance

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<sup>2</sup> Docket No. L-00060182, Rulemaking to Amend the Provisions of 52 Pa Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14, Revised Final Attachment One (June 13, 2011) at 57, cited in TURN Statement No. 1SR, p. 13.

Payments Program have continually evolved and now differ from what PECO originally proposed in its Petition”); CAUSE-PA Main Brief, p. 4 (“Over the course of its testimony in this proceeding, PECO made several changes to its proposal”).<sup>3</sup>

The Commission’s regulations require that a Petition, such as filed by PECO in this proceeding, be “concise.” 52 Pa. Code §§ 5.41(a) and 5.42(a). In writing its Petition, PECO attempted to anticipate the most important issues, including those which had been identified by stakeholders in pre-filing briefings, but PECO freely admits that its Petition could not and did not provide a detailed discussion of every project detail. Indeed, it is hard to imagine how one could meet the requirement to be “concise” while also addressing every project detail.

One of the primary virtues of the iterative litigation processes used by the Commission is that it allows other stakeholders to raise issues that were not addressed in detail in the initial filing, which in turn allows the Petitioner to provide additional information, in the form of discovery responses and responsive testimony – or to alter its proposal to address valid concerns raised by other stakeholders. PECO believes that it did that through its discovery answers and responsive testimony, which were detailed and thoughtful expositions about and reactions to the issues raised by the other parties. In doing so, PECO absolutely provided additional information that was not included in PECO’s initial Petition, and its proposal evolved to respond to the concerns raised by the other parties.

But that is not a reason to disallow PECO’s proposal. To the contrary, the Commission is well-served when the Petitioner listens carefully to the questions and positions raised by the

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<sup>3</sup> PECO addressed the substance of the specific examples of its “evolving Plan” in its Main Brief. The discussion in text goes to the larger question of whether the other parties are being reasonable in demanding that PECO’s entire proposal be set forth in its initial filing.

other parties, and then provides additional information – and, if appropriate, a changed or evolved position -- to respond to those questions and positions.

Moreover, PECO's proposal should be evaluated on the record evidence as a whole, including the later rounds of testimony and such discovery answers as were admitted into the record, not merely upon its initial Petition. For example, even though PECO did not include a discussion *in its Petition* of how it would handle failed electronic communications to volunteers, when the other parties raised that question in discovery, PECO provided a detailed discovery answer and then restated and adopted that answer, *in its Rebuttal Testimony*. See PECO Statement No. 1R (Rebuttal Testimony of Jude Scarpello), pp. 18-19. That information cannot be ignored merely because it was not in PECO initial filing. Indeed, that information, as contained in Mr. Scarpello's Rebuttal Testimony, is part of the record evidence in this proceeding<sup>4</sup> -- and thus can and must be used by Your Honor and the Commission in determining whether to approve PECO's Petition.

This is the normal procedure in all major Commission proceedings, where positions are developed through the put-and-take of the discovery process and the exchange of written testimony. No utility is required to have its initial filing cover every question and contingency that could arise, and there is no requirement that proposals cannot evolve as the other parties raise questions during the proceeding.<sup>5</sup> (And none of the parties who made this argument provided any citation to demonstrate that such a standard exists.) Moreover, the other parties were not prejudiced by utilizing this normal procedure in the instant proceeding because they all

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<sup>4</sup> The record did not close until the hearing was complete. 52 Pa. Code §5.431. PECO's written testimony was admitted into the record without objection.

<sup>5</sup> Indeed, if a utility were to take the position that Commission law or practice prohibits it from varying from its original Petition, no matter what issues were to be raised in litigation, the other parties (and the Commission) would excoriate the utility for being inflexible.



had the opportunity, nearly one month after PECO's Rebuttal Testimony, to submit written Surrebuttal Testimony – and they all took that opportunity to file extensive responsive testimony.<sup>6</sup>

On the other hand, if one accepts the view that PECO cannot develop or evolve its program after its initial filing, such an approach would cause substantial prejudice to PECO and to the Commission's normal decision-making process in which the Commission evaluates whether the record evidence, *taken as a whole*, supports adoption of the utility proposal. The other parties have provided no reason to vary from that standard approach in the instant proceeding.

### **Conclusion**

For the reasons set forth above and in PECO's Main Brief, PECO respectfully submits that its proposed prepaid service pilot complies with the Commission's regulations and that the requested waivers are in the public interest. PECO therefore requests that the Commission approve its Petition and the requested waivers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ward L. Smith', is written over a horizontal line.

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November 8, 2017

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<sup>6</sup> The parties also had the opportunity to cross-examine PECO's witnesses, but waived that opportunity.