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November 8, 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 Reply 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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Cc: Service List

<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 **Reply 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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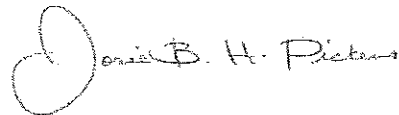
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Respectfully submitted,

A handwritten signature in dark ink, reading "Josie B. H. Pickens". The signature is written in a cursive style with a large, looped initial "J".

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November 8, 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	:	

REPLY BRIEF

ON BEHALF OF TURN *et al.*

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

November 8, 2017

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## I. INTRODUCTION AND PROCEDURAL HISTORY

The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) filed their Main Brief on October 17, 2017. TURN *et al.* incorporate by reference the background and procedural history set forth in their Main Brief. Main Briefs were also filed by PECO Energy Company (PECO), the Bureau of Investigation and Enforcement (BIE), the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Retail Energy Supply Association (RESA). This Reply Brief responds to the Main Briefs of PECO and RESA.

## II. BURDEN OF PROOF

TURN *et al.* incorporate by reference the statement concerning burden of proof set forth in their Main Brief.

## III. SUMMARY OF REPLY ARGUMENT

PECO has failed to understand its burden of proof in this proceeding and has failed to prove by a preponderance of substantial evidence that its proposed pilot plan and requests for waivers should be approved. PECO is incorrect in its view that the parties' arguments are primarily an attack on the general policy of allowing prepaid service in Pennsylvania. The parties have presented substantial evidence to show that PECO's proposed prepaid electric service pilot is inconsistent with state and law and is not in the public interest. RESA's argument, that if the proposed pilot is approved PECO should be required to make infrastructure changes to enable competitive prepay, is beyond the scope of this proceeding. RESA's recommendation that, if PECO's pilot is approved, PECO should incorporate retail choice messaging in communications with potential and actual pilot participants is likely to contribute to customer confusion and to exacerbate the harm that is likely to result from PECO's proposed pilot.

#### IV. REPLY ARGUMENT

- a. *PECO has incorrectly described the standard of review and has failed to meet its burden of proof in this proceeding.*

In its Main Brief PECO contends that in order to meet its burden of proof with respect to its proposed prepayment pilot program “all that PECO must prove is that PECO’s proposal in fact tracks the regulatory requirement” set forth at 52 Pa. Code § 56.17. PECO Main Brief at 51. PECO argues that if its proposed pilot plan tracks the regulations then no further “public interest evaluation” is required. PECO main Brief at 52. PECO reasons that it is sufficient for the proposed plan to track 52 Pa. Code § 56.17 of the regulations since the plan would then be presumptively in the public interest because “when the Commission promulgated its regulations allowing for prepaid meter plans, it already concluded that such plans are in the public interest and that utilities are authorized to proceed with such plans upon the 30-day submittal of a plan to the Commission.” PECO Main Brief at 52.

PECO has incorrectly characterized the standard of review, and what the utility is required to prove, in this proceeding. As the party seeking approval of its proposed plan PECO must prove by a preponderance of substantial evidence that the relief sought is proper and justified under the circumstances.<sup>1</sup> Moreover, even if PECO makes a *prima facie* case, PECO may still fail to satisfy its burden of proof if the Commission determines that the opposing parties have presented rebuttal evidence of co-equal value that has not been overcome by additional evidence from PECO. *Burleson v. Pennsylvania Public Utility Commission*, 443 A.2d 1373 (Pa. Cmwlth. 1982). It is not enough for PECO to show that its pilot proposal “tracks the regulatory

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<sup>1</sup> *Petition of Philadelphia Gas Works For Approval of Demand Side Management Plan for FY 2016-2020 and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016*, 52 Pa. Code s 62.4 - *Request for Waivers*, P-2014-2459362 (Order entered August 4, 2016) citing 66 Pa.C.S. § 332(a); *Motheral, Inc. v. Duquesne Light Co.*, Docket No. C-00003926 (Order entered March 23, 2001), 2001 Pa. PUC LEXIS 4 at 9 citing *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).



requirement.” PECO must prove that its proposed plan is proper and justified, and PECO must make this showing by a preponderance of the evidence.

PECO has failed to demonstrate that its plan is proper and justified in light of its statutory and regulatory obligations to provide consumer protections that have been enacted since the promulgation of the Commission’s Advance Payments regulations. TURN *et al.* Main Brief at 6-20. In addition, PECO’s proposed plan is not in the public interest. TURN *et al.* Main Brief at 20-28. Pilot participants will not have access to winter termination protections, medical emergency protections and other protections available to them under the Public Utility Code. TURN *et al.* Main Brief at 6-20. PECO has not overcome the substantial evidence in this proceeding which demonstrates that PECO’s proposed plan will deprive pilot participants of consumer protections.<sup>2</sup> Instead PECO has acknowledged that pilot participants will not have these protections unless and until they revert to standard service. PECO Main Brief at 63-65.

PECO has not presented any evidence to show that pilot participants will retain the consumer protections set forth in the Public Utility Code. In effect, PECO contends that the Commission’s Advance Payments regulations permit it to deprive pilot participants of these protections. PECO Main Brief at 60-62. Yet, PECO has not presented any evidence to show that the Commission intended its Advance Payments regulations to release utilities from their responsibility to comply with the statutory and regulatory obligations that have been imposed upon the utilities over the past four decades. In comparison, in its Surrebuttal Testimony, TURN *et al.* presented evidence to show that the Commission has at least contemplated the need to revise its regulations in light of later additions to the Public Utility Code. As Mr. Geller indicated in his testimony:

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<sup>2</sup> TURN *et al.* Main Brief at 6-20; I&E Main Brief at 21-24; OCA Main Brief at 10-16; CAUSE-PA Main Brief at 12-26;

The Commission also discussed whether Chapter 14 indicated the General Assembly's intent to protect a broader category of low-income customers than are protected by the Commission's prepayment regulations. The Commission noted that:

In Chapter 14, the General Assembly indicates that the protected customers should be those at or below 250% of the federal poverty level. For example, the winter restrictions at Section 1406(e) apply to those at or below 250% of poverty, and the PUC payment agreement formulas at Section 1405(b) are more lenient for those at or below 250% of poverty. Based on these actions of the General Assembly, if anything, the income threshold for this section should be raised to 250% from 150%.

TURN *et al.* St. No. 1SR at 13, ln. 11-19.<sup>3</sup> PECO has failed to meet its burden of proof because the other parties in this proceeding have presented substantial evidence to show that the proposed plan is not proper or justified given PECO's obligations to comply with the Public Utility Code.

Further, even were the Commission to accept that PECO must merely prove that its proposed pilot "tracks the regulatory requirement" PECO's plan fails to do so. PECO's proposed plan does not except pilot participants who experience a medical emergency from the discontinuance policy as required by 52 Pa. Code § 56.17(3)(iii)(D). PECO's proposal to permit these pilot participants to access the medical certificate procedures only after they leave the pilot and revert to standard service (PECO Main Brief at 55) is not consistent with the Commission's Advance Payments regulations, which are clear in prohibiting a discontinuance during a period of medical emergency. TURN *et al.* Statement No. 1 at 19, ln. 3-19. Further, PECO's proposed plan does not track the regulatory requirements at 52 Pa. Code § 56.17(3)(i) because PECO seeks a waiver of this provision so that it can offer its proposed program to non-delinquent customers

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<sup>3</sup> Citing 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; General Review of Regulations, Summary of Comments and Discussion, Revised Final Attachment One, Page 57 (June 13, 2011).

and to applicants.<sup>4</sup> PECO Main Brief at 55-58. For these reasons, PECO has failed to demonstrate that its proposed plan tracks the regulatory requirements at 52 Pa. Code § 56.17.

PECO's argument that it must only prove that its requests for waivers of the Commission's regulations are in the public interest, and that PECO is not required to prove that its proposed plan is in the public interest, is illogical. PECO Main Brief at 51-52. PECO has indicated that it is requesting waivers of the Commission's regulations in order to make the proposed program available to more participants. PECO Main Brief at 56. The Commission cannot evaluate whether it is in the public interest to expand the reach of PECO's proposed program without evaluating whether the proposed program itself is in the public interest and warrants expansion. PECO has failed to show that its proposed plan is in the public interest.

*b. The parties have introduced substantial evidence to show that PECO's proposed pilot is inconsistent with Pennsylvania law and is not in the public interest.*

In its main brief, PECO argues that the parties' opposition to PECO's proposed pilot and request for waivers is only secondary to the parties' primary opposition to the introduction of prepaid electric service in Pennsylvania. In its main brief, PECO argues:

Four stakeholder groups – the Office of Consumer Advocate, the Commission's Bureau of Investigation and Enforcement, TURN *et al.*, and CAUSEP-PA – intervened and presented testimony that PECO's plan is not in the public interest and will be a danger to participants in the program. Although these stakeholder groups presented a substantial variety of arguments in support of their view, the common theme of their arguments is that prepaid service *in any form* will increase the rate of service disconnection for participants and is thus dangerous. PECO respectfully submits that these arguments should be understood as primarily an attack on the general Commission policy of allowing prepaid service, and only secondarily as an attack on PECO's specific program. That difference is significant. While the Commission may ultimately decide to revisit and revise its advance payments regulations, that hypothetical future review should not affect the evaluation of PECO's proposal.

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<sup>4</sup> PECO is also seeking to waive 52 Pa. Code § 56.17(3)(iii)(B), which requires participants to remain in an Advance Payments program until their delinquency is retired.

PECO Main Brief at 1-2.<sup>5</sup> In discussing its request for a waiver of the Commission's deposit regulation at 52 Pa. Code § 56.53, PECO argues that "the point made by the OCA and TURN is actually that, since they think prepaid service overall is dangerous anything that lowers an entry barrier is also dangerous. And that, in turn, is an attack on the policy of allowing prepaid programs, not an attack on PECO's specific program, or the requested waiver." PECO Main Brief at 59-60.

PECO's characterization of the parties' positions is incorrect. The parties have presented substantial evidence to show that PECO's proposal is inconsistent with the law and likely to result in harm for pilot participants. Mr. Geller testified about the loss of consumer protections for participating PECO customers and applicants with regard to pre-termination notice requirements (TURN *et al.* Statement No. 1 at 15); the use of customer deposits (TURN *et al.* Statement No. 1 at 19-20); the proposed medical certificate process for pilot participants (TURN *et al.* Statement No. 1 at 17-18); the protections for victims of domestic violence (TURN *et al.* Statement No. 1 at 18) , and the rights of tenants and occupants who do not have the electric bill in their name (TURN *et al.* Statement No. 1 at 22-25). Mr. Howat testified that PECO's pilot "raises a number of concerns as to whether the plan constitutes sound public policy, complies with applicable laws, and adequately protects public health." OCA Statement No. 1 at 23, lines 18-20). CAUSE-PA witness Mitchell Miller testified that PECO's prepay program would increase the likelihood of increased loss of service and provide nothing of value to participants or the public in return. CAUSE-PA Statement No. 1 at 30, line 11 through 31, line 4. Similarly, most of the witnesses at the two public input hearings that were held in this proceeding testified in opposition to PECO's proposed pilot, including specific opposition to the medical certificate

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<sup>5</sup> Internal footnote omitted.

procedure that PECO has proposed for pilot participants. TURN *et al.* St. No. 1SR at 10, ln. 17 through 12, ln. 9. Further, PECO has opposed recommendations offered by the parties that could improve the proposed pilot. Among others, PECO has opposed the following recommendations:

- automatically revert all participants to standard service at the conclusion of the emergency credit period (PECO Statement No. 1R at 27, lines 15-18).
- exclude applicants from the proposed pilot (PECO Statement No. 1R at 28).
- exclude customers between 150-300% FPL from participating in the proposed pilot (PECO Statement No. 1R at 29).
- exclude customers with arrearages from participating in the pilot (PECO Statement No. 1R at 29).

The parties have not only cited to specific problems raised by PECO's proposed pilot but have offered suggestions for improvement of the pilot. PECO insists on rejecting these recommendations and moving forward with a fundamentally flawed proposal that deprives customers of their rights and needlessly exposes them to increased risk of service termination. The record in this proceeding supports a finding that PECO's proposed pilot is inconsistent with Pennsylvania law and is not in the public interest.

- c. RESA's recommendation regarding retail choice messaging should be rejected because it will contribute to customer confusion and increase the harm that is likely to result if PECO's proposed pilot is approved.*

In its main brief, RESA argues that if the Commission grants PECO's petition "such approval must be conditional on requiring PECO to start making the necessary infrastructure changes to enable competitive prepay." RESA Main Brief at 21. TURN *et al.* strongly disagree. RESA's attempt to use this proceeding to create a pathway for providing EGS prepay in Pennsylvania should be rejected. TURN *et al.* St. No. 1SR AT 2-3; TURN *et al.* Main Brief at

30-31. RESA's assertions dovetail with assertions made by NRG in an ongoing proceeding regarding supplier consolidated billing (SCB).<sup>6</sup> RESA M.B. at 18. Without reiterating all of the compelling arguments against SCB,<sup>7</sup> it is worthwhile to note one significant barrier to SCB and supplier prepay service: the clear language of the Electricity Generation Customer Choice and Competition Act (Choice Act). Under the Choice Act, the legal obligation to provide customer service rests on the Electric Distribution Company (EDC). 66 Pa. C.S. 2807(d). Contrary to this clear statutory requirement, proponents of SCB argue for a shifting of this responsibility, including the responsibility for handling complaints and collections, away from EDCs. Such proposals are simply irreconcilable with the Choice Act and must fail. Accordingly, TURN *et al.* submit that the Commission should reject RESA proposals to advance SCB in Pennsylvania.

Further, some of RESA's recommendations are likely to contribute to customer confusion concerning the nature of PECO's proposed program. TURN *et al.* St. No. 1SR at 3. RESA has proposed that, in the event that PECO's proposed plan is approved, PECO must incorporate messaging about retail choice in its communications with potential and actual future prepay customers and undertake a direct mailing of EGS offers to these customers. RESA Main Brief at 23-24. This proposal would needlessly complicate PECO's proposed program. PECO will already be tasked with creating comprehensive and easy to understand information about this first of its kind program. In addition, PECO will need to provide detailed information explaining the difference between standard service and prepaid service. The requirement that PECO also include messaging about retail choice is likely to result in confusion for PECO's customers who

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<sup>6</sup> Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249

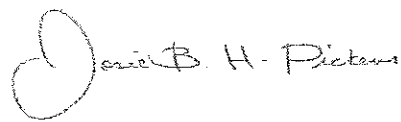
<sup>7</sup> See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Comments of TURN *et al.* (January 23, 2017) and Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Reply Comments of TURN *et al.* (February 22, 2017).

may not be able to understand the nature and potential risks of PECO's proposed program if they are inundated with unrelated information about retail choice. If PECO's proposed pilot is approved, PECO should be required to make every effort to effectively communicate with potential and actual pilot participants about the nature and risks of the proposed program. PECO should not dilute this messaging by directing unrelated and unnecessary information about retail choice to prospective and actual future pilot participants. RESA's recommendation should be rejected.

## V. CONCLUSION

For the reasons set forth in its Main Brief and Reply Brief, 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 requests to waive provisions of the Commission's regulations with respect to PECO's proposed pilot plan.

Respectfully Submitted,



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