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November 8, 2017

**Via Electronic Filing**

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

Re: PECO Energy Company's Petition for Plan for an Advance Payments Program Submitted  
Pursuant to 52 Pa. Code § 56.17

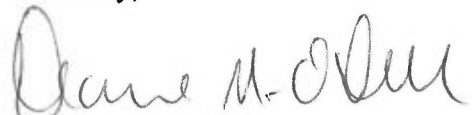
PECO Energy Company's Petition for Temporary Waiver of Portions of the  
Commission's Regulations with Respect to the Plan  
Docket No. P-2016-2573023

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Brief of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Angela Jones w/enc.  
Certificate of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Reply Brief to the Commission upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### Via Email and/or First Class Mail

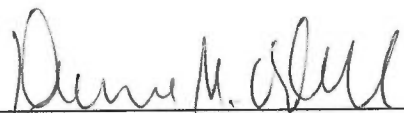
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Dated: November 8, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

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## **I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> urges the Commission to deny the petition filed by PECO Energy Company (“PECO”) seeking to implement a prepayment meter program (“Prepay Pilot Program”) on the basis that granting it would violate the Electricity Generation Customer Choice and Competition Act (“Competition Act”).<sup>2</sup> More specifically, granting PECO’s Petition would be anticompetitive and discriminatory and negatively impact the ability of electric generation suppliers (“EGSs”) participating in the competitive market to offer their own prepay plans because: (1) PECO would have the opportunity to leverage its right to full cost recovery to strengthen its historic relationship with consumers at the expense of competitive market development; and, (2) PECO would be leveraging its direct billing relationship and placing itself as the gatekeeper between EGSs and their customers.<sup>3</sup> Because RESA anticipated and fully addressed many of the arguments in opposition to its recommended outcome in its Main Brief (and incorporates those arguments herein), this Reply Brief focuses on addressing how the other parties’ efforts to essentially ignore the legal requirements and then diminish the negative competitive market impacts of granting PECO’s petition are in error and must be rejected.

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> 66 Pa.C.S. §§ 2801-2812. If the Commission elects to permit PECO to offer a Prepay Pilot Program (over RESA’s objections), then RESA recommends various conditions which should be a part of any such approval. RESA M.B. at 19-24.

<sup>3</sup> RESA M.B. at 9-15.

## II. REPLY TO MAIN BRIEFS

### A. EDC v. COMPETITIVE PREPAY OPTIONS

The advocates all essentially share the view that prepay products are “dangerous and harmful to consumers and this harm exists regardless of the entity that provides prepay service.”<sup>4</sup> According to CAUSE-PA, whether a prepay product is offered by the EDC or the EGSs is “an illusory distinction.”<sup>5</sup> Notwithstanding the misguided views about how the competitive market actually works to meet consumer preferences and demand, PECO’s status as an EDC is of paramount importance in assessing whether or not its petition can be approved as consistent with the Competition Act.<sup>6</sup> The unrefuted testimony of RESA witness Levine is filled with details about the competitive advantage that EDCs, like PECO, maintain and how allowing those entities to offer products that are best left to the competitive market stymie competitive market development.<sup>7</sup> By its clear terms and purposes, the Competition Act does not permit the Commission – as advocated by CAUSE-PA and others – to ignore the impact of an EDC prepay offering on competitive market development and such issues are squarely within the scope of this proceeding.<sup>8</sup> And, based on the record developed in this proceeding, there can be no serious dispute that approving PECO’s petition will chill competitive market development of prepay products such that PECO’s petition should not be approved.

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<sup>4</sup> See, e.g., CAUSE-PA M.B. at 40.

<sup>5</sup> CAUSE-PA M.B. at 40.

<sup>6</sup> As such, the Commission cannot – as I&E and TURN advocate – remove from this proceeding an analysis of how PECO’s petition would negatively impact the development of competitive market prepay products. I&E M.B. at 25, n. 71. TURN M.B. at 30.

<sup>7</sup> RESA M.B. at 9-19.

<sup>8</sup> CAUSE-PA M.B. at 41-42; I&E M.B. at 25, n. 71. TURN M.B. at 30.

## B. CURRENT REGULATORY STRUCTURE

PECO takes the position that “the Commission’s current regulations do not allow an EGS to provide prepaid service;” therefore, granting (or not granting) PECO’s petition will have no impact on competitive market development because “it is the absence of regulations, not PECO’s proposal, that stands in the way of the EGSs.”<sup>9</sup> This viewpoint, however, is nothing more than an effort to mask the reality that the current market structure in which the EDCs issue the bills to EGS mass market customers is the true barrier to competitive prepay options. As explained more fully in RESA’s Main Brief, the way EDCs have structured their Purchase of Receivables (“POR”) program and the fact that EGSs do not have reasonable and timely access to their customer’s real-time usage data are the real barriers preventing EGSs from establishing direct relationships with their customers and offering them non-commodity based value-added products or service such as prepay options.<sup>10</sup>

While addressing these structural issues in a useful manner will require Commission assistance and a collaborative effort from all stakeholders, these issues are neither insurmountable nor do they necessarily require Commission regulations to enable the competitive market to offer prepay products. Importantly, this process will not get started if the EDC is permitted to offer a prepay product because doing so will have a chilling effect on the desire and ability of EGSs to provide competitive prepay products.<sup>11</sup> Thus, adopting PECO’s logic would, in the end, result in: (1) perpetuating PECO’s role as the historical monopoly

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<sup>9</sup> PECO M.B. at 69.

<sup>10</sup> This includes the fact that PECO requires EGSs wishing to utilize POR to utilize utility consolidated billing (“UCB”) for all EGS residential customers and EGSs are not able to disconnect service to a nonpaying customers. RESA M.B. at 20-21.

<sup>11</sup> RESA M.B. at 9-12.

provider; (2) further solidifying PECO's current position as the exclusive billing entity for EGS mass market customers; and, (3) decisively block one pathway (both by distracting stakeholder resources and time and by dampening any desire of EGSs to develop products) that needs to be opened up in order to deliver on the promise of a competitive and innovative market for Pennsylvania consumers.

### **C. COMPETITIVE PREPAY OPTIONS**

RESA strenuously disagrees with the view that prepay products are "inherently dangerous" or that prepay products offered by the competitive market are "worse" than those offered by an EDC or that the appropriate way to measure the "value" of a prepay option is by ensuring that it is priced lower than traditional postpay service.<sup>12</sup> For the reasons already fully discussed in its Main Brief and herein, PECO's petition must be rejected because PECO (leveraging its advantages as the EDC) should not be permitted to embark down a ratepayer funded "trial and error" path to develop a utility-specific product that will stifle competitive market innovation and – in the end – not offer consumers maximum benefit.

Real value, however, can be delivered to consumers by enabling competitive prepay options. As explained by RESA Witness Levine, "competitively offered products and services are superior because EGSs must constantly reform and refine product offerings to meet consumer expectations or else they will not maintain customers and acquire new customers. . . a competitive market where all market players are on equal footing to develop products and services that are desired by customers is the optimal way in which to incent market development [and] in a competitive market consumers have choices."<sup>13</sup> Competitive prepay products

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<sup>12</sup> CAUSE-PA M.B. at 41-42; OCA M.B. at 32-34.

<sup>13</sup> RESA St. 1-SR at 8-9.

designed for the purpose of meeting consumer preferences and desires may or may not include pricing that is lower than postpay products but there is nothing inherently “wrong” with this outcome and, in a competitive market, consumers are not forced to take any particular competitive offering.<sup>14</sup> Moreover, as explained by RESA Witness Levine, consumer concerns can be addressed by developing consumer protections requirements appropriate to the prepay nature of the product as has already been done in Texas.<sup>15</sup> Many EGSs (including ones with operations in Pennsylvania) have already successfully developed prepay plans without reliance on ratepayer funding and consumer adoption of these plans has been steadily increasing as part of an intensifying mega-trend for consumers adopting all types of prepayment options.<sup>16</sup> These (and other) EGSs can bring the full value of prepay offerings to consumers but not if PECO’s petition here is approved.

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<sup>14</sup> RESA St. 1-SR at 10-11.

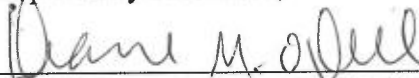
<sup>15</sup> RESA St. 1 at 13-17; RESA St. No. 1-SR at 12-14.

<sup>16</sup> RESA M.B. at 15-18.

### III. CONCLUSION

PECO's petition must be denied because it is anticompetitive and discriminatory in violation of the requirements of the Competition Act and will stifle the ability of EGSs to offer such programs in Pennsylvania despite the fact that they have already been developed, tested and implemented by EGSs in Texas.

Respectfully submitted,



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