



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

March 5, 2018

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

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)  
**Exceptions to the Recommended Decision** 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/wsf  
Enclosure

cc: Certificate of Service  
ALJ Angela T. Jones  
Office of Special Assistants via email

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION & ENFORCEMENT**

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Gina L. Miller  
Prosecutor  
PA Attorney ID #313863

Erika L. McLain  
Prosecutor  
PA Attorney ID #320526

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: March 5, 2018

## I. INTRODUCTION

### A. Overview of PECO's Advance Payments Program

On October 26, 2016, PECO Energy Company ("PECO") filed a Petition for Approval of an Advance Payments Program and a corresponding Petition for Temporary Waiver of Commission Regulations (collectively the "Petition"). This Petition requests that the Pennsylvania Public Utility Commission ("Commission") approve its Advance Payments Program to use a "test and learn" approach to evaluate customer adoption, usage impacts, satisfaction, payment patterns, frequency and duration of disconnections, and the effect of marketing and education strategies for its customers.<sup>1</sup> In its Petition, PECO proposed to offer its Advance Payments Program on a pilot basis to 1,000 customer volunteers.<sup>2</sup> Volunteers will consist of existing residential customers and applicants (collectively, "participants") whose household income is at or above 150% of the federal poverty level.<sup>3</sup> Under PECO's proposal, program participation will be open to electric only or dual-service (electric and gas) customers, and it will also be open to both default service customers and to customers who participate in the retail shopping market.<sup>4</sup> Additionally, participation will be open to participants who either do not have a delinquency or have a delinquency that does not exceed \$1,500.<sup>5</sup>

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<sup>1</sup> PECO's Petition, ¶5.

<sup>2</sup> PECO's Petition, ¶5; PECO St. No. 1, pp. 4, 23. It should be noted that PECO is now seeking approval for a two-year pilot "of up to approximately 2,000 customers."

<sup>3</sup> PECO's Petition, ¶1, ¶5, ¶16.

<sup>4</sup> PECO's Petition, ¶6.

<sup>5</sup> Id.

Participants of PECO's Advance Payments Program, will be required to deposit an initial payment of \$40 into their accounts in advance of receiving service, and thereafter, the participants must submit minimum payments of \$15.<sup>6</sup> The account balance will be adjusted daily to account for credits loaded by the participant and the participants' actual daily usage of electric or electric and gas service. The balance will also be adjusted by PECO's monthly customer charge, which will be allocated on a daily basis.<sup>7</sup> If a participant has a delinquent balance, 75% of their prepayments will be applied towards their future utility service, and 25% will be applied to their arrearage.<sup>8</sup>

As part of PECO's proposal, participants will be provided with an estimated days of usage figure that is based upon their prepayment balance and historical and projected usage.<sup>9</sup> The participants will be able to access this information through a program website which will also track historical usage and payment data.<sup>10</sup> PECO has retained an external vendor, PayGo, to develop the software module to calculate balances and to trigger customer notifications.<sup>11</sup> To receive program notifications, participants will be required to provide an email address or a text-capable phone number to participate in the Advance Payments Plan.<sup>12</sup> Participants will receive notifications, either by email or by text message, at set times to provide their estimated days of usage remaining and the account balance. Notifications will be sent when the participant has five days, three days,

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<sup>6</sup> PECO's Petition, Attachment 1, p. 2, Section 7.

<sup>7</sup> PECO's Petition, Attachment 1, p. 2, Section 6.

<sup>8</sup> Id. at Section 9.

<sup>9</sup> Id. at Section 10.

<sup>10</sup> Id. at Section 12.

<sup>11</sup> I&E Exhibit No. 1, Sch. 3, p. 2.

<sup>12</sup> PECO's Petition, Attachment 1, p. 2, Section 11.

and one day of remaining prepaid credit on their account. Participants may also choose to receive additional notifications.<sup>13</sup> Additionally, participants will have access to a website and mobile application in which they can view their historic usage and payment data, account balance and estimated days of usage remaining.<sup>14</sup>

In the event that participants fail to replenish their prepayment account, resulting in a zero balance, PECO will provide them with five days of emergency backup credits. Significantly, as a condition of the Advance Payments Program, participants must agree that if they exceed the five days of emergency backup credits, PECO may “disconnect” their service during its business hours.<sup>15</sup> PECO uses the term voluntary disconnection to describe the discontinuation of participants’ service resulting from their failure to replenish their prepayment accounts, and it indicates that it will treat that failure to operate as discontinuance as defined by the Commission’s regulations.<sup>16</sup> PECO’s Petition indicates that once a participant’s service has been discontinued, it will not be reconnected until the participant has paid for their five days of back-up credits and established an account balance of at least \$15.<sup>17</sup>

Despite this unprecedented “voluntary disconnection” term, PECO has not developed any educational materials or scripts that it proposes to use to educate participants about the reality of service loss that will automatically be triggered if they do not maintain specific back-up credits. At the outset of this case, PECO indicated only that

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<sup>13</sup> Id.

<sup>14</sup> Id. at Section 12.

<sup>15</sup> Id. at Sections 13-14.

<sup>16</sup> Id. at Section 14; 52 Pa. Code §56.72(1).

<sup>17</sup> Id.

it will provide “detailed information to all program applicants in a Welcome Packet.”<sup>18</sup> PECO made a general claim that the key elements of the Welcome Packet will include eligibility requirements, overview of the program, payment channel information, and frequently asked questions. Additionally, PECO indicated that it would provide materials to participants to “include information on the respective protections available in discontinuation vs. termination.”<sup>19</sup> However, PECO never provided a copy of the Welcome Packet or materials that explain the concepts of discontinuation and termination to participants as part of this proceeding. As a result, there are presently no materials or plan in place to educate potential participants. Instead of developing materials, PECO simply proposed that after its Petition is approved, the Commission should allow consumer education materials to be influenced by arguments made in the evidentiary proceeding, the Commission Order, and resulting from stakeholder feedback.<sup>20</sup>

## **B. Procedural History**

When PECO initially filed its Petition on October 26, 2016, it requested that the Petition be evaluated and resolved through a process of written comments and reply comments.<sup>21</sup> On October 28, 2016, the Commission issued a Secretarial Letter that acknowledged its receipt of PECO’s Petition and set due dates for Comments on December 15, 2016 and Reply Comments on January 16, 2017. On December 15, 2016, the Bureau of Investigation and Enforcement (“I&E”) filed timely Comments in this

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<sup>18</sup> PECO’s Petition, Appendix A, ¶5.

<sup>19</sup> PECO St. No. 2, p. 22.

<sup>20</sup> I&E Main Brief, p. 19.

<sup>21</sup> PECO’s Petition. ¶37.

proceeding. I&E's Comments included a request that the Petition be referred to the Office of Administrative Law Judge ("OALJ") for the scheduling of hearings to develop a full record. On January 13, 2017, I&E filed timely Reply Comments in this proceeding. After Comments were submitted, PECO's Petition was assigned to the OALJ for the development of an evidentiary record.

Pursuant to a Prehearing Conference Order, Administrative Law Judge Angela T. Jones ("ALJ"), was assigned to develop an evidentiary record culminating in a Recommended Decision ("RD") in this proceeding. The ALJ conducted a Prehearing Conference in this matter on January 23, 2017. At the Prehearing Conference, a procedural schedule and the procedures applicable to this proceeding were set forth and subsequently memorialized in the Second Prehearing Order. After the Prehearing Conference, on April 24, 2017, I&E attended the two public input hearings in this matter which were held in Philadelphia for purposes of taking public testimony regarding PECO's Advance Payments Program.

In accordance with the procedural schedule outlined in the Prehearing Order #4 dated May 9, 2017, the parties exchanged direct, rebuttal, and surrebuttal, and rejoinder testimony. I&E introduced the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of Brenton Grab, and its corresponding exhibit, I&E Exhibit No. 1;
- I&E Statement No. 1-R, the Rebuttal Testimony of Brenton Grab; and
- I&E Statement No. 1-SR, the Surrebuttal Testimony of Brenton Grab.

Although the parties could not reach a resolution of this matter, on August 25, 2017, the parties informed ALJ Jones that they had reached an agreement to waive cross-examination of all witnesses. On August 30, 2017, at the time and place set for the evidentiary hearing, ALJ Jones presided telephonically and the parties moved for the admission of their evidence into the record. At that time, I&E moved into evidence the pieces of I&E testimony and exhibit identified above. On October 17, 2017, Main Briefs were filed by PECO, I&E, the Office of Consumer Advocate (“OCA”), the Retail Energy Supply Association (“RESA”), Tenant Union Representative Network (“TURN”), Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) (collectively “TURN et al.”), and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”). On November 8, 2017, Reply Briefs were filed by PECO, I&E, the OCA, RESA, TURN et al., and CAUSE-PA.

### **C. The ALJ’s Recommended Decision**

On February 12, 2018, the ALJ issued a Recommended Decision (“RD”) denying PECO’s Petition. ALJ Jones based this denial on her determination that the disadvantages of PECO’s Advance Payments Programs outweigh the benefits to the public, culminating in the conclusion that it is not in the public interest.<sup>22</sup> In her RD, the ALJ enumerated a listing of the proposed terms of the Advance Payments Program which she determined to be contrary to the Commission’s statute or regulations and which do not promote the public interest, as follows: (1) procedures of electronic notification; (2)

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<sup>22</sup> RD at 79.



procedures for medical condition; (3) protection against cessation of service in winter; (4) increases in the disconnection rate; (5) omission payment arrangement options; (6) failure to protect tenants dwelling with landlords; (7) failure to protect participants under abuse order; and (8) inhibits competitive market.<sup>23</sup>

Despite her recommendation to deny PECO's Petition, the ALJ also indicated that "some provisions [of the Advance Payments Program] are not problematic and promote the public interest. . . ."<sup>24</sup> According to the ALJ, these provisions include the following terms: (1) include applicants; (2) include persons without delinquencies; (3) duration of enrollment not contingent on extinguishing delinquency; (4) discontinuance in compliance with regulations; (5) stakeholders collaborative platform for education, instruction, information for participants; (6) costlier prepay versus post-pay service is beneficial; and (7) change in estimated cost not fatal to Plan.

While I&E certainly agrees with the ALJ's conclusion that PECO's Advance Payments Program is not in public interest and therefore it should be denied, I&E avers the ALJ erred in her determinations that PECO's discontinuance term and the stakeholder collaborative term are not problematic. As discussed below, these terms are not in the public interest and are further grounds to deny PECO's pilot program.<sup>25</sup> Accordingly, on those bases, I&E now files these timely Exceptions to the RD.

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<sup>23</sup> RD at 79.

<sup>24</sup> Id.

<sup>25</sup> Id.

## II. EXCEPTIONS

### A. **The ALJ's determination that PECO's voluntary discontinuance term is not problematic and that it promotes the public interest relies upon an incorrect standard of review and is unsupported by the record (RD at 79)**

As explained above, as a condition of participation in PECO's Advance Payments Program, "volunteers must agree that a service disconnect is a 'discontinuance' rather than a 'termination.'"<sup>26</sup> In her RD, the ALJ concludes that PECO's voluntary disconnection term is not problematic and that it promotes the public interest.<sup>27</sup> I&E submits that the ALJ's determination is inconsistent with the standard of review espoused in the RD and is contrary to the evidentiary record in this matter.

#### 1. **The ALJ Departed from Her Articulated Standard of Review**

In this proceeding, PECO asked the ALJ to adopt a two standards of review, one to be applied to portions of its Advance Payments Program that comply with existing commission regulations, and a second standard that applies only to the portions for which it is seeking a waiver of the Commission's regulations.<sup>28</sup> According to PECO, for the portions of the Advance Payments Program that comply with existing regulations, the standard of review "and all that PECO must prove -- is that PECO's proposal in fact tracks the regulatory requirement."<sup>29</sup> For any portions of its Advance Payments Program that deviate from the Commission's regulations and would therefore require a waiver,

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<sup>26</sup> RD at 47.

<sup>27</sup> RD at 79.

<sup>28</sup> PECO Main Brief, pp. 51-52.

<sup>29</sup> Id. at 51. I&E will hereinafter refer to this standard as the "strict compliance" standard.

PECO would bear the burden of proving that the requested waivers are in the public interest.<sup>30</sup>

In evaluating the two-pronged standard of review advocated by PECO, the ALJ noted that PECO failed to provide any support for its position that compliance with the Commission's regulation is the sole standard of review for proposals that comply with Commission regulations. Ultimately, the ALJ rejected PECO's strict compliance standard as insufficient:

[r]eview as proposed by the Petitioner [only addressing the portions of the advance payments program that vary from Commission regulations] would do a disservice to the public where those portions of the Plan comply with the regulations but do not comply with Commission statutes by operation or where the regulations are silent on such operation but policy declarations are expressed in Commission statutes that may be contrary to the proposed operation.

I find that the review as proposed by the Petitioner would be short-sighted and problematic. If the Commission is to approve the Plan, the Commission should express how the Plan is adequate, reasonable and in the public interest as a whole, for those provisions that are in compliance with the regulations and for those provisions that vary from the regulations. I cannot conclude that the standard of review as proposed by the Petitioner is adequate and reasonable.<sup>31</sup>

As illustrated above, the ALJ's rejection of the strict compliance standard hinged, in part, on the fact that it would be inadequate in light of the Commission's duty to ensure that PECO's Advance Payments Program is adequate, reasonable, and in the public interest.

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<sup>30</sup> Id. at 52.

<sup>31</sup> RD at 37-38.

Accordingly, the ALJ determined that the correct standard to apply is to review whether PECO's Petition is adequate, reasonable, and in the public interest.<sup>32</sup> Under the public interest standard, "the Commission should express how the Plan is adequate, reasonable and in the public interest as a whole, for those provisions that are in compliance with the regulations and for those provisions that vary from the regulations."<sup>33</sup> I&E agrees that the public interest standard of review advocated by the ALJ is correct.

Yet, despite the fact that the ALJ determined that the public interest standard of review must apply to PECO's entire Advance Payments Program, she nonetheless appears to have applied the strict compliance standard of review when evaluating PECO's voluntary disconnection term. I&E reaches this conclusion because in her limited analysis of that term, the ALJ noted only that it is in compliance with the following provision of the Commission's advance payment regulation:

The customer agrees that failure to renew the credits by making prepayment for additional service constitutes a request for discontinuance under § 56.72(1) (relating to discontinuance of service), except during a medical emergency, and that discontinuance will occur when the additional usage on the emergency backup credits runs out.<sup>34</sup>

Accordingly, the ALJ appears to rely solely upon her conclusion that PECO's voluntary disconnection provision complies with the Commission's advance payment regulation,<sup>35</sup> to support her determination that this provision promotes the public interest.<sup>36</sup>

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<sup>32</sup> Id.

<sup>33</sup> Id. I&E will hereinafter refer to this standard as the "public interest standard."

<sup>34</sup> RD at 52, citing 52 Pa. Code §56.17(iii)(D).

<sup>35</sup> 52 Pa. Code §56.17 ("advance payment regulation").

<sup>36</sup> RD at 79.

Importantly, despite her adoption of the public interest standard of review, the ALJ fails to provide any analyses or rationale explaining how the voluntary disconnection provision of PECO's Advance Payments Program is adequate, reasonable, or in the public interest. I&E submits that this type of analysis would not be possible because PECO failed to provide any evidence to support such an analysis. Accordingly, the ALJ erred by applying the incorrect standard of review in reaching her determination that the voluntary disconnection term is not problematic and that it is in the public interest.

## **2. The ALJ's Conclusion is Contradicted by the Record Evidence**

Contrary to the ALJ's determination, the record evidence in this case supports the conclusion that the voluntary disconnection provision of the Advance Payments Program is inadequate, unreasonable, and it would compromise the public interest. Under PECO's Advance Payment Program, participants' access to utility service is jeopardized because they must forfeit consumer and termination protections that exist under Chapter 14 of the Public Utility Code. PECO should not be permitted to circumvent Chapter 14 protections simply by relying upon the semantical differences between "disconnection" and "termination." TURN et al. witness Harry Geller provided compelling testimony that PECO's attempt to label a loss of essential utility service resulting from non-payment as a discontinuance instead of a termination would nonetheless result in an involuntary loss of service to many economically vulnerable households, including seniors and the disabled.<sup>37</sup> Additionally, the record contains evidence that under the terms of PECO's

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<sup>37</sup> TURN et. Al. St. No. 1, p. 9.

Advance Payments Program, disconnections would likely increase.<sup>38</sup> Furthermore, parties, including I&E, also produced evidence that disconnections, regardless of the length of time, present a risk not only to the individuals directly impacted by the disconnection, but to public safety.<sup>39</sup>

Instead of refuting this evidence, PECO simply denied that an increase in the disconnection rate is unacceptable.<sup>40</sup> According to PECO, a series of short disconnections occurring under prepaid service is preferable to having one lengthy disconnection under standard service.<sup>41</sup> I&E pointed out that 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 Payments Program participants would face lengthy disconnections absent enrollment.<sup>42</sup> Furthermore, I&E rejected the notion that any increase in customers' loss of service is acceptable or in the public interest.<sup>43</sup>

The ALJ appears to agree with I&E that an increase in disconnections is not in the public interest, as this conclusion served, in part, as a basis for her recommendation that the Commission deny PECO's Petition. More specifically, the ALJ indicated as follows:

I find that the evidence of record supports a conclusion that an increase in the disconnection rate will be realized from the operation of the Plan [Advance Payments Program] and the increased disconnection rate will result in increased risks to health and safety. This result is not in the public interest.<sup>44</sup>

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<sup>38</sup> CAUSE-PA St. 1, pp. 25-28; OCA St. 1, p. 27.

<sup>39</sup> I&E St. No. 1, p. 11; CAUSE-PA St. 1-SR, p. 7; OCA St. No. 1, pp. 37-38.

<sup>40</sup> PECO Main Brief, p. 62.

<sup>41</sup> Id.

<sup>42</sup> I&E Reply Brief, p. 17.

<sup>43</sup> Id.

<sup>44</sup> RD at 66.

Accordingly, the ALJ has identified the detriments associated with the increased disconnections that will result from PECO's Advanced Payments Program and she has determined that this result is problematic and not in the public interest.

I&E agrees with the ALJ's above determination, which is based upon the record. However, it is the direct antithesis of the ALJ's determination that the voluntary disconnection term is in the public interest, which was not based upon record evidence. Aside from the fact that it lacks any evidentiary support in the record, the ALJ's determination regarding the voluntary disconnection term completely contradicts her evidentiary analyses of the health and safety risks imposed by increased disconnection rates. These inconsistencies cannot be reconciled, and a consistent resolution of this issue is warranted. Accordingly, the ALJ erred by determining that the voluntary disconnection term of the Advance Payments Program is not problematic and that it promotes the public interest.

**B. The ALJ erred by concluding that PECO's stakeholders collaborative platform for education, instruction, and informational for participants is not problematic and that it is in the public interest (RD at 79)**

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.<sup>45</sup> Yet, despite this condition, PECO has failed to produce any consumer educational materials or disclosures that will be provided to

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<sup>45</sup> PECO's Petition, Appendix A, ¶14.

participants as part of the record of this proceeding. Instead of developing these materials, PECO asked the Commission to approve its Petition first.<sup>46</sup> According to PECO, after the Petition is approved, the Commission should allow consumer education materials to be influenced by arguments made in the evidentiary proceeding, the Commission Order, and resulting from stakeholder feedback.<sup>47</sup> PECO averred that this process is the typical approach used by the Commission.<sup>48</sup> I&E fundamentally rejected PECO's plan as being untimely and insufficient to protect participants.<sup>49</sup> Additionally, I&E noted that PECO fails to respect the Commission's longstanding commitment to ensuring that customers are fully and properly educated about their utility options, which is paramount here given the potential loss of electric service.<sup>50</sup>

In her RD, the ALJ acknowledged I&E's concerns regarding PECO's failure to develop education materials and to present them as part of this proceeding. As indicated below, she concluded that PECO could not implement the Advance Payments Program until educational materials were developed and reviewed:

I agree that the **implementation** of the Plan does not occur until there is Commission approval of whether the materials for consent by potential participants are submitted with the Plan as advocated by I&E. The public input hearing revealed this concern of sufficient public education for implementation of the Plan. Tr. 159-61. I also agree that implementation of the Plan does not occur until materials for education of potential participants are submitted. Indeed, there is no dispute from PECO that the participant should have obtained knowledge of what he or she may be relinquishing when

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<sup>46</sup> PECO St. No. 3R, p. 13.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> I&E Reply Brief, p. 13.

<sup>50</sup> I&E Main Brief, p. 20; I&E Reply Brief, p. 12-13.



consenting to a disconnect in the Plan as a discontinuance. I also agree that it cannot be determined whether the participant can reasonably provide consent based upon what has been submitted on the record.<sup>51</sup>

Despite the ALJ's acknowledgment that the lack of educational materials operates as a barrier to PECO customers' ability to consent to the Advance Payments Program, she nonetheless determined that the lack of these materials operated only as a barrier to implementation of the Advance Payments Program, but not to its approval.

Instead, the ALJ opined that it is not unreasonable for stakeholders to "collaborate over what instruction, information, and education should be minimally required for a potential participant to provide consent of discontinuance under the Plan."<sup>52</sup> In support of her conclusion, the ALJ noted that neither I&E nor PECO cited to any precedent whereby the Commission requested educational materials as part of the litigation process or allowed the educational materials to be detailed and finalized by the stakeholders to the litigation and approved by the Commission prior to project implementation.<sup>53</sup> On the other hand, the ALJ explained that she was aware that the Commission has used a stakeholders' collaborative process to determine what is presented to consumers to make determinations for electric competition deregulation.<sup>54</sup> Accordingly, instead of directing PECO to develop and propose educational materials, the ALJ directed PECO to collaborate with stakeholders over the education, information, and instruction that will be provided to potential Advance Payments Program participants.

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<sup>51</sup> RD at 53.

<sup>52</sup> RD at 54.

<sup>53</sup> RD at 53.

<sup>54</sup> RD at 54.

I&E respectfully avers that the ALJ's directive is made in error and I&E excepts to the ALJ's conclusion that the stakeholder collaborative for education, instruction, and information for participants is not problematic and that it is in the public interest. First, the ALJ's directive impermissibly shifts PECO's burden of proof to "stakeholders" by absolving PECO of its obligation and burden to fully support the Advance Payments Program proposed in its Petition. Additionally, the ALJ's conclusion is based on faulty rationale.

First, as noted in the RD, as the Petitioner, PECO has the burden of proof in this matter; therefore, it bears the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances."<sup>55</sup> Although the RD articulates the correct standard for the burden of proof, it fails to apply that standard. More specifically, instead of denying PECO's Petition on the basis of insufficiency for failure to propose any materials, the ALJ inappropriately shifted at least some the burden of designing educational materials for PECO's Advance Payments Program to "stakeholders," with whom PECO is directed to collaborate to develop the education, information, and instruction provided to potential participants. Importantly, the RD does not contain any directive for PECO to develop materials prior to the collaborative session; instead, the RD contemplates a process whereby stakeholders identify the minimal requirements and consider the cost effectiveness of them:

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<sup>55</sup>

RD at 28.

However, I do not find it unreasonable for the stakeholders to collaborate over what instruction, information, and education should be minimally required for a potential participant to provide consent of discontinuance under the Plan. Even if the Petitioner had provided such information, instruction, and education, I would find it prudent to direct the stakeholders to collaborate on what is cost effective to present to potential participants prior to implementing the Plan.<sup>56</sup>

I&E avers that PECO is in the best position to develop, at least on a preliminary basis, educational materials regarding the programming that it plans to implement. Moreover, PECO certainly is in the best position to determine what it believes to be cost-effective, which is beyond stakeholders' scope of knowledge.<sup>57</sup>

To be clear, I&E does not except to the use of a collaborative process to allow stakeholders to provide input regarding the materials that PECO develops, which is consistent with many of the proceedings in which I&E has participated. However, I&E does except to the ALJ's determination that PECO's failure to adequately support its proposed programming can be cured through a collaborative process after the programming is approved. The deficiency of this process is further exemplified by the fact that no clear plan has been established for the Commission to approve of any materials that might ultimately be developed during the collaborative session.<sup>58</sup> Although the RD contemplates that the Commission must ultimately approve of the "results" of the collaborative,<sup>59</sup> it is unclear what process would be used to gain such approval and what role stakeholders could hope to play in that process. I&E submits that this lack of clarity

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<sup>56</sup> RD at 53-54.

<sup>57</sup> I&E St. No. 1-Sr, p. 18.

<sup>58</sup> I&E Main Brief, p. 13.

<sup>59</sup> RD at 54.

only serves to highlight the fact that the stakeholder collaborative directed in this proceeding is problematic and that it is not in the public interest.

Additionally, the rationale that the ALJ relied upon is faulty. First, the ALJ's rationale regarding other collaborative processes fails to account for the unprecedented voluntary disconnection term contained in the Advance Payments Program. Although the ALJ is correct that the Commission has used collaborative processes in other proceedings regarding consumer education, there is no nexus of connection between those proceedings and the programming that PECO proposes here. As I&E witness Grab explained, PECO should have created the educational materials prior to filing the Petition because this is not a typical proceeding. Instead, "[t]his proceeding is the 'poster child' for the need to educate customers, since customers would need to waive termination protections to participate in the Advance Payments Plan."<sup>60</sup> Furthermore, it is of no moment that I&E did not provide the ALJ with any precedent regarding the Commission mandating educational materials during the litigation process, as there is no precedential equivalent of the proposal that PECO offers in this case to inform the ALJ. Accordingly, the ALJ erred in determining the PECO's stakeholders collaborative platform for education, instruction, and informational for participants is not problematic and that it is in the public interest

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<sup>60</sup> I&E St. No. 1-SR, p. 18.

### III. CONCLUSION

The Bureau of Investigation and Enforcement ultimately agrees with the ALJ and does not except to the recommendation that PECO's Petition should be denied as it is not in the public interest. However, for the reasons stated herein, I&E respectfully requests that the Commission find that the ALJ erred in by finding that the discontinuance component of the Advance Payment Plan is in compliance with Commission regulations and the stakeholder collaborative promotes the public interest. Those components of the Advance Payments Plan are not in the public interest and are additional grounds to deny PECO's Petition.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Gina L. Miller', is written over a horizontal line.

Gina L. Miller

Prosecutor

PA Attorney ID #313863

Erika L. McLain

Prosecutor

PA Attorney ID #320526

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-8754

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 **Exceptions to the Recommended Decision** dated March 5, 2018, 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):

**Served via First Class and Electronic Mail**

Ward L. Smith, Esquire  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Patrick M. Cicero, Esquire  
Elizabeth R. Marx, Esquire  
Kadeem G. Morris, Esquire  
PA Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Deanne M. O'Dell, Esquire  
Sarah C. Stoner, Esquire  
Karen O. Moury, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101

Lauren M. Burge, Esquire  
Harrison W. Breitman, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101-1923

Lydia R. Gottesfeld, Esquire  
Robert W. Ballenger, Esquire  
Josie B. Pickens, Esquire  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102



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