

COMMONWEALTH OF PENNSYLVANIA



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March 5, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions
in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

Lauren M. Burge
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Attachment

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO ENERGY COMPANY'S :
PILOT PLAN FOR AN ADVANCE :
PAYMENTS PROGRAM SUBMITTED :
PURSUANT TO 52 PA. CODE §56.17 :
AND : DOCKET NO. P-2016-2573023
PECO ENERGY COMPANY'S :
PETITION FOR TEMPORARY :
WAIVER OF PORTIONS OF THE :
COMMISSION'S REGULATIONS :
WITH RESPECT TO THAT PLAN :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Exceptions, 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:

Dated this 5th day of March 2018.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: March 5, 2018

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I. INTRODUCTION

On February 12, 2018, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge Angela T. Jones addressing PECO Energy Company's (PECO or the Company) Petition filed with the Pennsylvania Public Utility Commission (Commission) requesting approval of a pilot plan for an advance payment program and for temporary waiver of portions of the Commission's regulations related to the pilot plan. The ALJ recommended that PECO's Petition be denied because PECO "failed to sustain its burden of proof regarding the pilot plan because overall the pilot plan failed to meet the public interest standard..." R.D. at 1; see also R.D. at 79-80.

The Office of Consumer Advocate (OCA) commends ALJ Jones' Recommended Decision and strongly agrees with the result. The record in this proceeding clearly demonstrates that the significant harms associated with prepaid metering far outweigh any possible benefit to consumers. In fact, the OCA submits that PECO's Pilot Plan offers no discernible benefit to consumers. Further, many of the goals of PECO's Pilot Plan could be achieved without the threat of termination and the attendant public health and safety consequences associated with prepaid metering. See OCA M.B. at 17-20.

The process proposed under PECO's Pilot Plan would result in vulnerable customers falling through the cracks. Pennsylvania statutes and regulations have been carefully crafted to catch these customers when they need assistance by helping maintain utility service and connecting them with customer assistance programs, payment arrangements, and other programs intended to protect public health and safety. Prepaid metering would only serve to hide the problem and allow utilities to quickly and remotely disconnect customers without providing the protections and assistance that would normally be required under Chapter 14 of the Commission's regulations and

Chapter 56 of the Public Utility Code. As such, the OCA strongly supports the Recommended Decision's overall conclusion that PECO's Pilot Plan is not in the public interest and should be rejected in its entirety.

While the OCA agrees with the Recommended Decision's overall conclusion, the OCA excepts to ALJ Jones' conclusions on two specific issues as discussed in detail below. The OCA submits that its exceptions below will help to clarify the record and further explain why prepaid metering is not in the public interest and should not be implemented in Pennsylvania. Therefore, pursuant to 52 Pa. Code § 5.533, the OCA files the following exceptions for the Commission's consideration.

II. EXCEPTIONS

OCA Exception No. 1: Terminations under the Pilot Plan are Not Accurately Characterized as “Voluntary Discontinuances,” as Disconnection is Not Truly Voluntary and Poses a Heightened Risk to Health and Safety. R.D. at 47-54; OCA M.B. at 20-26; OCA R.B. at 12-15.

In her Recommended Decision, ALJ Jones found that the proposed Pilot Plan is in compliance with the applicable regulation at 52 Pa. Code § 56.17(3)(iii)(D) in characterizing terminations under the Pilot Plan as “voluntary discontinuances” rather than terminations due to failure to pay. R.D. at 51-53. In reaching this conclusion, the Recommended Decision improperly relied on an overly technical reading of an outdated regulation, and on a related but separate issue allowing customers to provide informed consent resulting from consumer education and disclosure materials. This conclusion about “voluntary discontinuances” does not properly reflect the ALJ’s other critical public interest findings and ignores significant evidence on the record demonstrating that terminations for inability to pay cannot truly be voluntary, as discussed in greater detail below. As such, the OCA submits that ALJ Jones erred in finding that terminations under the Pilot Plan are correctly characterized as “voluntary discontinuances.”

A. Disconnections Under Prepaid Metering Are Not The Same As “Voluntary Discontinuances.”

As discussed in the OCA’s Main Brief, it is inherent in PECO’s Pilot Plan that participants will lose access to basic consumer protections, particularly those related to termination procedures. OCA M.B. at 20. PECO stated in its testimony that by participating in the program, customers “agree that the cessation of service on Plan terms will be a *discontinuance*, not a termination – and that the protections offered under the Plan are thus the protections offered for discontinuance

only.” OCA M.B. at 20; PECO St. 1 at 7 (emphasis added).¹ Because many consumer protections apply specifically to terminations, and not to voluntary discontinuances, PECO argued that these consumer protections will not apply to program participants who experience a “disconnection.” For example, under PECO’s proposal this would exclude participants from receiving standard billing and disconnection notices required for customers receiving traditional service. This means that winter termination protections would not apply, termination notice requirements would not apply, and a variety of other protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations would not apply to customers enrolled in the Pilot. See OCA M.B. at 20. The ALJ properly found that these aspects of PECO’s proposal were not in the public interest.

The suggestion, however, that participation in the program allows for a “voluntary disconnection” of service is a misnomer. See OCA M.B. at 20-21. In no way has a customer voluntarily asked to have service turned off in a prepaid metering situation. As noted by OCA witness Howat:

PECO’s characterization of loss of service under its proposed pilot as a discontinuance under the rules erroneously implies that the customer has voluntarily *requested* that service be shut off, and that written notice of such loss of service is not required. However, loss of service, whether under prepayment metering in cases where the customer lacks funds to “load the meter,” or under post-paid service, is not a voluntary act. Rather, it is often due to the simple fact that the household losing service lacks sufficient funds to load the meter or pay the bill.

OCA M.B. at 21; OCA St. 1 at 24. OCA witness Howat also testified that “[d]espite characterization of the PECO pilot and other prepaid utility service programs as voluntary, financial pressure leads some households to agree to participate in a program that features more

¹ A voluntary discontinuance of service is one that a customer requests, such as when the customer moves out of a home. OCA M.B. at 20.

frequent loss of service.” OCA M.B. at 21; OCA St. 1-S at 2. Thus, customers may be willing to endure outages simply because they are unable to pay the bills, not because they “voluntarily” agreed to be disconnected. As such, regardless of language used in the regulation, prepaid customers are never truly being “voluntarily discontinued” as PECO suggests, and as the ALJ concluded.

B. The Recommended Decision Inappropriately Relies on an Outdated Regulation.

In finding that PECO has complied with the applicable regulations by characterizing terminations as “voluntary discontinuances,” the Recommended Decision relies on an overly technical reading of an outdated regulation. Section 56.17 of the Commission’s regulations, 52 Pa. Code § 56.17, which allows for advance payments for service, was first included in the regulations in 1978. Section 56.17 provides that advance payments may be required for four specific types of service, including “seasonal service,” “the construction of facilities and furnishing of special equipment,” “gas and electric rendered through prepayment meters,” and “temporary service for short-term use, including installation and removal, with credit for reasonable salvage.” 52 Pa. Code § 56.17(1)-(4). For “gas and electric rendered through prepayment meters,” Section 56.17(3) provides a number of limitations on this service, including requirements that the customer is non-low income, the service is being provided to an individually-metered residential dwelling, that the company provide emergency backup credits, and that a specific process is in place for evaluating the prepayment meter program. 52 Pa. Code § 56.17(3).

Since 1978, to the best of the OCA’s knowledge, no public utility in Pennsylvania has utilized this regulation to establish an advance payment program.² OCA M.B. at 3. The advanced

² PECO proposed a prepayment plan in 1996 (hereinafter, 1996 Prepay Plan). It appears, however, that the 1996 Prepay Plan was never implemented and PECO stated that it has no records of the 1996 Prepay Plan or any prepayment pilot program implemented after that time. See CAUSE-PA St. 1 at 10-14.

payment provisions contained in 52 Pa. Code Section 56.17 were enacted decades before the internet existed, before AMI was deployed, before text messages/smart phones, before remote disconnection was possible, and before the winter termination protections were enacted by statute into law. OCA M.B. at 26. The existing regulations in Section 56.17 clearly did not anticipate the current technological and legal landscape, and were not intended to be applied broadly as PECO is proposing. As such, the OCA submits that reliance on this regulation is misguided, and the Pilot Plan should not be implemented even if it is technically in compliance with Section 56.17.

C. The Recommended Decision Inappropriately Focused on the Development of Educational Materials and Disclosures.

The Recommended Decision comingles discussions of whether disconnections are truly voluntary in nature, and the lack of educational materials and disclosures included in PECO's proposal. R.D. at 52-54. While these items are related, they are distinct issues. The OCA submits that ALJ erred in focusing on the development of educational materials and disclosures in deciding whether terminations under the Pilot Plan can be characterized as "voluntary discontinuances."

As an initial matter, the OCA wishes to clarify its position regarding the development of education materials and disclosures. The OCA does not oppose the use of a collaborative process for developing these materials. However, PECO did not even provide an indication of what it would disclose or how it intended to educate customers. As OCA witness Howat explained:

PECO . . . has yet to provide any draft education and disclosure materials that would inform prospective participants about how the program would operate, the extent to which prepaid service presents heightened risk of loss of service, each right under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations that the customer is being asked to waive, the extent to which transaction fees add to the total cost of retaining service, and the loss of consumer protection by designating this a voluntary disconnection, procedures for reverting to traditional service, handling of security deposits upon entry into the pilot and reversion to traditional service, and allocation of payments between prepaid billing credits and any outstanding arrearage.

OCA M.B. at 46; OCA St. 1 at 42. The customer education and disclosure materials necessary for this program have a significant amount of material that would need to be covered fully and clearly. PECO has not demonstrated that it will provide adequate information to customers to prevent possible harms associated with the program. If implemented, the Pilot Plan would represent a significant departure from traditional service with significant public health and safety implications that warrant extra effort to develop detailed materials explaining the program and disclosing various risks to customers. OCA M.B. at 45-46.

Whether disconnections under the Pilot Plan could be considered truly “voluntary” is an entirely separate issue. While education and clear disclosures regarding a consumer’s rights and the pros and cons of agreeing to participate in a prepaid metering program are important, the ALJ’s focus on this issue ignores the evidence presented by the OCA and other parties that disconnections under a prepaid metering program can never be truly voluntary, regardless of whether consumers are provided with education materials and disclosures. As discussed above, “loss of service, whether under prepayment metering in cases where the customer lacks funds to ‘load the meter,’ or under post-paid service, is not a voluntary act. Rather, it is often due to the simple fact that the household losing service lacks sufficient funds to load the meter or pay the bill.” OCA M.B. at 21; OCA St. 1 at 24. Prepaid metering programs tend to attract low- to moderate-income customers who already struggle to pay their bills. See, e.g., OCA M.B. at 27-30. Characterizing terminations under prepaid metering as “voluntary” when they are occurring because customers are simply unable to add funds to their prepaid account is a misnomer and only serves to streamline the process for utilities to terminate service to customers who are struggling to pay for basic utility services. The OCA submits that such an outcome is clearly not in the public interest and must be rejected.

D. The Recommended Decision's Conclusion Related to "Voluntary Discontinuances" Does Not Properly Reflect the ALJ's Other Findings.

The OCA submits that ALJ Jones' finding that terminations under the Pilot Plan are "voluntary discontinuances" results in an outcome that is out of step with other aspects of the Recommended Decision. If the characterization of the cessation of service under prepaid metering for non-payment is the same as a customer requesting service disconnection due to a move, many consumer protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations could be argued not to apply to program participants who experience this type of "disconnection." This will lead to many of the outcomes that ALJ Jones rejected as being against the public interest in her Recommended Decision, such as increased disconnection rates, lack of adequate notice procedures, and lack of protection against winter terminations for customers below 150% of Federal Poverty Level.

The record in this proceeding clearly demonstrates that the loss of consumer protections associated with PECO's proposal and the resulting increased risk of disconnection would pose a significant health and safety risk to both individual households and the public. See, e.g., OCA M.B. at 22-26. A member of the public testified at the Public Input Hearing as follows:

The entire reason why we have a winter moratorium is because when we did not, there was an increased number of fire deaths and social concerns and problems and greater expenses. That is why the Public Utility Commission, in its rulings, implemented a winter moratorium, so that nobody in the winter would be forced to use candles and burn down their home and their neighbors' home.

Tr. 71-72; OCA M.B. at 24-25. OCA witness Howat presented statistics on loss of property, injuries, and even tragic deaths resulting from the loss of essential electric service, due to families resorting to dangerous alternative sources of light or heat or being unable to adequately cool their homes in the summer. See OCA M.B. at 23-24. CAUSE-PA witness Miller explained PECO's proposal and its lack of winter terminations protections as follows:

At its core, PECO is requesting that the Commission sanction the fact that some households who would otherwise be protected by the winter termination rules will have their service terminated despite this protection, based on the premise that these households could reconnect easily. I don't accept this tradeoff. Termination of service in the winter is dangerous even for short periods of time and PECO's unwillingness to honor the winter termination rules in the context of this pilot is, in itself, demonstrative of the fact that the pilot as proposed violates long held public policy in Pennsylvania.

CAUSE-PA M.B. at 21; CAUSE-PA St. No. 1SR at 7.

Because characterizing terminations under the Pilot Plan as "voluntary discontinuances" could lead to outcomes that are clearly against the public interest, this incorrect characterization is also against the public interest. As such, the OCA submits that the ALJ erred in finding that "voluntary discontinuances" are acceptable under PECO's proposed Pilot Plan.

OCA Exception No. 2: The ALJ Erred in Finding that Increased Transaction Costs Associated with PECO's Pilot Plan are Acceptable. R.D. at 71-72; OCA M.B. at 32-34, 38-39; OCA R.B. at 3-4.

PECO's proposed Pilot Plan includes a variety of transaction fees associated with different forms of payment. In addressing this issue, the Recommended Decision finds that this aspect of the plan is not against the public interest. ALJ Jones states that "participants will incur more costs electing to participate in the Plan than incurred through post-pay service. However, I find that this is a trade-off that the participant needs to make, whether it is more convenient to use this method of payment versus the post-pay method." R.D. at 72. The OCA submits that this conclusion ignores evidence on the record demonstrating that these transaction fees will add up to significant additional cost to those participating in prepaid metering, many of whom already struggle to afford basic utility service.

As an initial matter, the OCA notes that the ALJ stated that CAUSE-PA was the only party that addressed the issue of high transaction fees associated with the Pilot Plan. R.D. at 72. But, the OCA also discussed this issue in detail in both testimony and briefs. See OCA M.B. at 32-34, 38-39; OCA R.B. at 3-4.

As discussed in the OCA's Main Brief, the rates charged for prepaid service generally are not cheaper than traditional postpay service; in fact, when various transaction fees and service charges are taken into account, prepaid service often results in higher rates for customers. PECO proposes to charge the same rates to prepaid customers as charged to traditional service customers and charge additional transaction fees. In exchange, the customer receives no affordability benefit for the risk assumed by enrolling in the program. From an affordability perspective, PECO's prepaid program is simply a more expensive form of service than traditional electric service when comparing two customers utilizing the same amount of electricity. OCA M.B. at 32.

PECO identified the following transaction fees associated with its proposed Pilot Plan:

Payment Method	Transaction Fee
Mobile/My Account credit or debit payment	\$2.35
Mobile/My Account ACH (e-check)	No fee
Internet/My Account credit or debit payment	\$2.35
Internet/My Account scheduled ACH (e-check)	No fee
IVR ACH (e-check)	\$2.35
IVR credit/debit	\$2.35
Live representative ACH (e-check)	\$2.35
Live representative credit/debit	\$2.35
Mail – check or money order	No fee
Walk up, district office – cash or check	No fee
Walkup cash payment at an authorized payment location	\$1.50

OCA M.B. at 34. Prepaid service customers tend to make several payments each month in order to retain access to service. Id. PECO has estimated that the average customer will load funds to their account 3-4 times per month, with a range of 1-7 loads for most participants. Id. These transaction fees will quickly add up for a customer making multiple payments per month:

[U]nder the Company’s estimate, if a customer adds funds four times per month using a credit or debit card online or on a mobile app, they will incur an additional \$9.40 in transaction fees each month. At the upper end of the range, a customer who loads funds seven times per month using the same methods **incurs an extra \$16.45 just in transaction fees.**

OCA M.B. at 34, 38; OCA St. 1 at 9 (emphasis added). Additionally, even though some payment methods do not include a fee, such as online ACH payments or payment by mail or in person with a check, these methods require that the customer have a bank account. Many customers in PECO’s service territory, however, are either unbanked or underbanked and as such could not utilize most of these payment options.

Percent of Households who are “unbanked” ³	Percent of Households who are “underbanked” ⁴
Philadelphia County: 13.9%	Philadelphia County: 23.3%
Philadelphia Metro: 7%	Philadelphia Metro: 21.7%

See R.D. at 20, Finding of Fact ¶ 79; CAUSE-PA St. 1 at 29, Appendix H. Thus, prepaid service is often more expensive than postpay service, making it even less likely that customers will be able to maintain essential utility service.

Importantly, the OCA and other parties presented significant evidence demonstrating that prepaid metering programs tend to attract low- to moderate-income customers who already struggle to pay their bills. See, e.g., OCA M.B. at 27-30. These high transaction fees would make it even more difficult for these customers to maintain essential utility service. In addition, any benefit associated with smaller, more frequent payments could be made without the high transaction fees and threat of disconnection associated with prepaid metering. For example, utilities could bill customers every one to two weeks rather than using only the traditional monthly bill. OCA M.B. at 18. As proposed, PECO’s Pilot Plan will harm customers by imposing significant additional fees. Therefore, the ALJ erred in finding that this element of the program is acceptable, as it is clearly against the public interest.

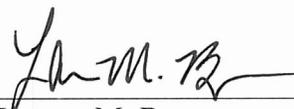
³ The term “unbanked” means that the household has neither a savings nor checking account. See R.D. at 20, Finding of Fact ¶ 79; CAUSE-PA St. 1, Appendix H.

⁴ The term “underbanked” means that the household has a checking and/or savings account and has used alternative financial services (payday lenders, etc.) in the past 12 months. Id.

III. CONCLUSION

For the foregoing reasons, the OCA respectfully excepts to the portions of Administrative Law Judge Angela T. Jones' Recommended Decision addressed above. The OCA strongly supports the Recommended Decision's result and submits that it correctly rejects the Pilot Plan as being against the public interest. As discussed above, the OCA's limited exceptions seek to address and clarify specific elements of the Recommended Decision.

Respectfully Submitted,



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