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March 5, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

PECO Energy Company's Exceptions are enclosed for filing.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/adz
Enclosures

c: 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 | : | |

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that I have this day served a copy of the Exceptions of
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Exceptions of PECO Energy Company

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Introduction

Although the Commission's regulations have allowed prepaid gas utility service since the 1970s, and prepaid electric utility service since the 1990s, no jurisdictional Pennsylvania utility has previously implemented a prepaid service program. In 2011, the Commission noted that this "unfortunate" lack of "practical experience" has hampered the Commission's ability to evaluate its own prepaid service regulations and policy.¹ PECO's proposed pilot squarely presents an opportunity to gain that desired practical experience and to collect data to assess the usefulness and safety of prepaid service in Pennsylvania, while providing prudent and proactive consumer protections to ensure that volunteer participants receive ample notice before their service is disconnected, and to ensure that they can return to standard service at any time. PECO's view is that, if the Commission wishes to develop practical experience with prepaid service, PECO's proposal provides an excellent opportunity to do so.

The other parties to this proceeding took a starkly contrasting view, and the Recommended Decision (R.D.) adopted the view espoused by the other parties. Consequently, the R.D. takes the view that any program that attempts to implement prepaid service -- even through the use of a small, time-limited pilot, comprised entirely of volunteers who can return to standard service at any time, and which contains numerous consumer protections not required by the regulations -- should be rejected as inherently dangerous because it will result, they claim, in additional and unsafe service terminations.

¹ "To date, no utility has utilized these provisions to offer prepayment metering, so unfortunately we have no practical experience to rely upon when assessing the need to revise this section." Docket No. L-00060182, Rulemaking to Amend the Provisions of 52 Pa Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14, Revised Final Attachment One (June 13, 2011) at 57, cited in TURN Statement No. 1SR, p. 13.

The thrust of these Exceptions is that the R.D. is too conservative in its assessment of the claimed termination risk and thus should not be adopted.² PECO crafted its pilot with the following consumer protections:

- Participation is completely voluntary;
- Volunteers can leave the pilot and return to standard service at any time, in any season, without penalty, by making a single phone call;
- Low-income customers (with incomes less than 150% of the Federal Poverty Level) are not eligible;
- Landlord/tenant accounts are not eligible;
- Any volunteer can revert to standard service and gain the full protections of the Commission's medical certificate protections by making a single phone call;
- Before electric service is disconnected, volunteers will receive a minimum of eight notices – three before their accounts reach a \$0 balance (five, three, and one days prior to expected \$0 balance), and daily notices for five days after the account reaches a \$0 balance;
- Service will continue for five days after the account reaches a \$0 balance; and
- The customer can request that they receive additional pre-disconnection notices – for example, they could request notices every day for 10 days before the account balance is expected to reach \$0.

In addition, for two years, PECO will collect data about the operation of the pilot and then present that information to the Commission with a future proposal to continue, modify, or cease the pilot.

PECO respectfully submits that this suite of protections is sufficiently robust that the Commission should allow PECO to proceed with its pilot as proposed.

² In its 2nd and 3rd Exceptions, PECO notes material errors of law on other issues.

Exception 1: PECO Demonstrated that its Proposed Prepaid Pilot is in the Public Interest

The primary finding of the R.D. is that PECO did not demonstrate that its pilot is in the public interest. This overarching conclusion forms the basis of the Ordering paragraphs at pages 83-84, and is stated at numerous places throughout the R.D. PECO excepts to this conclusion.

PECO provided testimony that, when prepaid service was implemented in as many as 50 other jurisdictions, there was an increase in customer satisfaction, a decrease in delinquencies (that is, better payment behavior), and increased conservation. *See, for example*, PECO Statement No. 1 (Direct Testimony of Jude Scarpello), pp. 4-5. There was little or no testimony that denied PECO's that prepaid service increases customer satisfaction and results in a decrease in delinquencies. There was some testimonial discussion of whether the observed decreased usage should be characterized as "conservation" or "deprivation" – and PECO agreed to study and collect data to address that question. Notwithstanding that, PECO provided sufficient testimony to establish a *prima facie* case that use of prepaid service has created real benefits in other jurisdictions, and therefore that it is in the public interest to run a pilot in Pennsylvania to see if the same benefits can be obtained.

In addition, in its Main Brief (p. 53, fn 4), PECO argued that implementing a pilot and collecting data is in and of itself in the public interest:

While PECO believes that its burden is limited to demonstrating compliance with the Commission's regulations, it notes that the record evidence in this proceeding also demonstrates that its proposal is in the public interest. The Commission itself has decried an "unfortunate" lack of practical experience with prepaid service programs. TURN Statement No. 1R, p. 13. PECO chose to propose a pilot, rather than a full-scale program, precisely so that it could gain practical experience and generate data on that practical experience. PECO Statement No. 1, p. 5. PECO incorporated many customer protections into its pilot that are not required by the Commission's regulations. PECO Statement No. 1R, pp. 7-10. PECO's pilot is therefore a low-risk, low-cost method of obtaining practical experience on prepaid service. PECO Statement No. 1, p. 24. . . . these facts

demonstrate that PECO's Petition should be approved . . . using the public interest standard.

The R.D. found that the following contested plan provisions were in the public interest:

(1) including applicants; (2) including persons without delinquencies; (3) not making the duration of enrollment contingent on extinguishing delinquency; (4) allowing the characterization of service disconnections as "discontinuances" rather than "terminations," in compliance with the Commission's regulations; and (5) use of a stakeholders collaborative platform for education, instruction, information for participants y service is beneficial.

However, the other parties argued that the Plan is overall not in the public interest because, they claim, it will result in increased and unsafe service terminations. The R.D. accepted this claim.

PECO's full response to the termination claims is set forth in its briefs, and will not be repeated here.³ In these Exceptions, PECO will focus on two arguments as exemplars of why it excepts to the overall conclusions of the R.D. If the Commission accepts PECO's arguments on these two examples, PECO believes that the Commission will also accept the similar arguments set forth in PECO's briefs.⁴

³ PECO's briefs are available at <http://www.puc.state.pa.us/pcdocs/1540418.pdf> and <http://www.puc.state.pa.us/pcdocs/1542709.pdf>.

⁴ One last preliminary point should be made before moving to the two examples. Most of PECO's testimony on the other parties' public interest arguments is in PECO Statement No. 1R (Rebuttal Testimony of Jude Scarpello), PECO Statement No 1Reg (Rejoinder Testimony of Jude Scarpello), and PECO Statement No. 3 (Rebuttal Testimony of Mark Kehl). Although the R.D. frequently cites PECO's Main Brief, it must nonetheless be noted that, in the 130 Findings of Fact set forth in the R.D., none of the noted pieces of testimony is cited even once. In order to get a full view of the testimony that was presented in this proceeding, PECO directs the Commission's attention to it Main Brief, pp. 6-47, where PECO provides a comprehensive set of Proposed Findings of Fact covering all 20 pieces of written testimony that were submitted in this proceeding.

The two examples that PECO wishes to address are medical certificates and winter termination.

In PECO's pilot, it proposes that all volunteers will have access to the Commission's medical certificate procedures on the same basis as if they were not in the pilot program. They will access these procedures by calling PECO, requesting that they be reverted to standard service, and in that same call requesting access to the medical certificate procedures.

Two witnesses -- Mr. Geller and Mr. Miller -- suggested that this procedure creates an extra bureaucratic step that will degrade access to the medical certificate procedures. TURN Statement No. 1, pp. 17-18; CAUSE-PA Statement No. 1, pp. 23-24.

In reply, Mr. Scarpello testified that virtually all customers who access the medical certificate procedures under traditional service begin that process with a single call to PECO, and a single call is all that will be required in PECO's pilot. Thus, there will be no degradation of access to the medical certificate procedures under PECO's pilot. PECO Statement No. 1R, pp. 11-14.

The R.D. states (p. 59) that: "TURN's argument that under the Plan a participant must exercise an additional step to contact the utility to retain [medical certificate] protections . . . is persuasive."

In order to access medical certificate protections under standard service, a customer must make a single call to PECO and, to access medical certificate protections under PECO's pilot, a customer must make a single call to PECO. Moreover, during the pilot intake process, PECO will educate the program volunteers that if they have a medical emergency, they can call PECO to obtain access to the medical certificate protections and that, if they face a medical emergency, they should call PECO, ask to revert to standard service and, *in that same call*, inquire about the

medical certificate protections. There is not really an extra bureaucratic step involved. PECO respectfully submits that, given this testimony, the approach taken by its opponents and adopted by the R.D. is simply too conservative.

As to winter termination, there will be a small group of potential volunteers –those with income between 151% and 250% of the Federal Poverty Level – who in standard service have winter termination protections, but who as pilot volunteers will be subject to service disconnection in winter if they use all of their prepaid amounts and also use their five days of emergency credits. Importantly, however, PECO’s Plan allows these volunteers to revert to standard service at any time, for any reason and in any season, simply by calling PECO and requesting reversion. They will suffer no penalties for doing so, and will immediately have the full winter season protections that would otherwise be available to them. *Effectively, they can avoid winter termination by calling PECO and asking not to be terminated.*

The R.D. held (p. 63) that if a volunteer agreed to the regime stated above, such agreement would constitute an impermissible waiver of the customer’s winter season protections, and that PECO’s plan is therefore not in the public interest.

The Commission’s prepaid regulations, 52 Pa. Code §56.17(3)(iii)(D), specifically requires that, in order to participate in a prepaid program, “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.” The winter season protections address “termination,” not “discontinuance.” While that distinction is legalistic, it is nonetheless embedded in the Commission’s regulations and thus *is the law*. The volunteer is not waiving winter termination

protections; the volunteer is agreeing, as the Commission's regulations require, that his account will be handled under the discontinuance rules.

More importantly, however, is the fact that the volunteers haven't actually waived anything. They still have complete access to the winter termination protections – all they have to do is call PECO and request that they be returned to standard service.

Both the medical certificate example and the winter termination example are best understood by taking a step back from the details. The other parties, and the R.D., essentially conclude that, if service is ever rendered without having every consumer protection in place precisely as they exist for standard service, then the public interest is violated. PECO strongly believes that this proceeding demonstrated that, because of the many protections built into PECO's program (as set forth in the introduction to these Exceptions) it is in the public interest to allow prepaid service to be tested.

In 2011, the Commission expressed frustration about an "unfortunate" lack of "practical experience" with prepaid meters that has hampered the Commission's ability to evaluate its own prepaid service regulations and policy. PECO's briefs establish that its proposed pilot offers a carefully constructed opportunity to gain such practical experience in a limited pilot populated only by volunteers who can return to standard service at any time, and who will receive many notices before their service is discontinued. If the Commission wishes to gain that practical experience, it is difficult to think of a better opportunity.

Exception 2: PECO Demonstrated that its Requested Waiver of the Commission's Deposit Regulations is in the Public Interest

In its Petition, PECO requested waivers of four parts of the Commission's regulations: (1) it wishes to allow applicants to participate in the pilot; (2) it wishes to allow persons without a delinquency to participate in the pilot; (3) it wishes to allow volunteers to leave the pilot and return to standard service whether or not they have extinguished their delinquency; and (4) it wishes to allow volunteers who have a credit deposit with the Company to use that credit as a source of initial funding for their prepaid account.

The R.D. held that the first three waivers are in the public interest. *See* R.D., pp. 38-41.⁵ As to the requested waiver of the deposit regulations, however, the R.D. (pp. 42-47) concluded that the requested deposit waiver is not in the public interest. PECO excepts to that conclusion.

The Commission's regulations, 52 Pa. Code §56.53, allow PECO to assess deposits in certain situations, and require that PECO return the deposits to customers once certain conditions are met. In its prepaid pilot, PECO proposes to transfer existing deposits to fund volunteers' participation. This will allow customers who have a deposit to participate in the program without having to identify and provide additional funds.

Of course, allowing customers to use deposits to fund their prepaid account could easily be characterized as a return of funds to the customer. If viewed in that way, a waiver is not

⁵ In the Ordering Paragraphs at pages 83-84, the R.D. recommends denial of the requested waivers for applicants, non-delinquent customers, and extinguishment of delinquency. The text of the R.D. (pp. 38-41) carefully explains why each of those requested waivers is in the public interest. It is unclear whether the discontinuity between text and ordering paragraphs is a typo, or whether in the Ordering paragraphs the ALJ was simply noting her overall view that the program should be denied. In either event, since the R.D. found the requested waivers to be in the public interest, PECO requests that the Ordering paragraphs be revised to state that those requests are approved.

needed, because the return of deposits to customers is allowable under the Commission's regulations. In its Petition, testimony, and briefs, PECO stated that position, but also stated that, to the extent that such a transfer is not viewed as already allowable under 52 Pa. Code §56.53, it requests that it be granted a temporary waiver of that regulation to the extent necessary to allow the transfer of deposits to fund a customer's participation in the program.

PECO's presented testimony that such a waiver would be in the public interest because it will reduce the overall cash funding needs for the volunteer's utility service. PECO Statement No. 1, pp. 21-22.

The R.D. found that this waiver (if needed) would not be in the public interest, based upon testimony from the OCA's witness John Howat. The R.D. states (p. 47) (emphasis added):

The Petitioner has not rebutted the waiver of the security deposit has *a probability of causing increased delinquencies* and is not in keeping with the policy declarations of the Commission statute. Based on this analysis I cannot find that the waiver of the security deposit as proposed by the Plan is in the public interest.

Here is what Mr. Howat said on this issue (OCA Statement No. 1S, pp. 12-13) (emphasis added):

This [allowing the customer to return to fund their pilot participation using a deposit, and then later allowing them to return to standard service without the need to pay an additional deposit] *raises other concerns*. While this will allow the customer to get back on post-paid service, Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations allow PECO to require a security deposit from existing customers that have been delinquent on two consecutive payments or three or more bills over 12 months. *If a customer is reverted to standard service and continues to experience payment difficulties, they may have to come up with a security deposit again, which may be challenging for a customer who is already struggling to pay the bills. In cases of a customer wishing to revert to standard service and potentially being required to re-post a security deposit, the deposit may serve as both the bait that attracts lower-income households, and the hook that impedes the retention of traditional service.*

This testimony is not based on data or experience, and even read on its own terms it stops far short of asserting that there is “a probability” that customers who fund their prepaid account with a deposit and then revert back to standard service will have any more payment difficulties than they would have had if they had never participated in the pilot. Mr. Howat is nowhere near that conclusive – he states that he is raising a “concern” that a “potential” sequence of events “may” happen “if” a predicate series of unknowns also happens. That is not sufficient record evidence to establish that these events will occur, or have a probability of occurring.

Moreover, this issue can be tracked during the pilot, data can be collected on it, and PECO can report the results of that data collection to the Commission in its two-year program evaluation. If the Commission allows PECO to take that approach, then there will be no need to speculate about “concerns” that “potential” events “may” happen “if” they do. There will be data to know whether this is an issue or not and, if it is, PECO can either propose to change post-pilot iterations of the program to disallow use of deposits, or it can propose some other solution that allows use of deposits but that also mitigates the potential payment difficulties contemplated (but not proved) by Mr. Howat. Simply, that kind of testing and data collection is what pilot programs are for. PECO is proposing a pilot so that it can collect data and gain experience that both it and the Commission can use to evaluate whether to allow a larger version of prepaid service and, if so, whether the protections in PECO’s pilot are sufficient. It is not appropriate to reject the pilot (or in this case, a necessary programmatic detail) based on speculative concerns.

PECO therefore requests that the Commission either (1) hold that allowing a customer to use their deposit to fund a prepaid account constitutes return of that deposit to the customer and that no waiver is required; or (2) grant PECO a temporary waiver of the deposit regulations so that pilot participants may use their deposit to fund their prepaid account.

Exception 3: Neither the Commission's Prepaid Service Regulations, Nor the PECO Proposal Pursuant to those Regulations, Violates the Competition Act

The Retail Electricity Suppliers Association ("RESA") participated in this proceeding and argued that PECO's pilot should be disapproved because allowing an incumbent to enter the field of prepaid services will "stymie" the opportunity for others to enter that market. RESA Statement No. 1, p. 7, 9-12,

The parties other than PECO took the position that prepaid service, if offered through the competitive marketplace, would be "incredibly harmful" because, unlike PECO's proposal, the activities of the Electricity Generation Supplier ("EGS") offering such services would not be regulated by the Commission. *See, for example*, CAUSE-PA Statement No. 1SR, p. 14.

PECO simply noted that the Commission's current regulations do not allow an EGS to provide prepaid service. PECO Statement No. 3R, pp. 15-17. Thus, even if no utility ever enters the field of prepaid service, there will still be a complete regulatory barrier to EGSs entering that field. Conversely, if PECO enters the field, there remains a complete regulatory barrier to EGSs entering the field. It is the absence of regulations, not PECO's proposal, that stands in the way of the EGSs.

The R.D. (pp. 74-78) essentially accepts PECO's analysis – concluding that it is the regulations that create the barrier -- but takes it one step further to suggest that, because the regulations currently allow an EDC, but not an EGS, to provide prepaid service, the regulations violate statutory provisions that are designed to protect the competitive marketplace. On this issue, the R.D. concludes (p. 78):

I find that the regulation promotes a differentiation between EDCs and EGSs. PECO's argument simply shows that the regulation is problematic. It does not show that the Plan should be approved. I agree with RESA that the proposed Plan is contrary to the public policy declarations of the Electric Competition Act, and therefore, should not be approved.

PECO excepts to this conclusion because the Commission's regulation, and PECO's plan proposed consistent with those regulations, are not contrary to the public policy declarations of the Electric Competition Act.

The R.D. identifies three sections of the Competition Act that form the basis of the R.D.s conclusions the Commission's regulations, and PECO's Plan, are at odds with the Competition Act: 66 Pa. C.S. §§2804(6), 2811(a), and 2802(12).

Section 2804(6) states that:

Consistent with the provisions of section 2806, the Commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

The R.D. concludes (p. 77) that the Commission's regulations, and PECO's pilot, violate this section of the regulations because, since the prepaid regulations do not enable EGS provision of prepaid service, "those barriers cause access and conditions that are not comparable to the utility's own use of its system."

Section 2804(6) is the open access portion of the statute that requires utilities to provide a level playing field for all customers and market participants. The Commission has enacted regulations, 52 Pa. Code §54.121 *et seq.* (Competitive Safeguards) to implement this portion of the Competition Act. There is nothing in this portion of the statute or the implementing regulations that says that a utility may not provide a service unless the market also provides a service. To the contrary, this portion of the statute, along with the cross-referenced section 2806, identifies certain portions of utility service that *may only be provided* by EDCs, and not by any

market participant, and describes the terms and conditions under which such monopoly service must be provided so as to avoid unfair discrimination. This clearly demonstrates that a service may be EDC-specific without violating the Competition Act.

If RESA's position, as adopted by the R.D., was correct, then PECO would not be allowed to provide any distribution service at all unless it also allowed RESA to provide the exact same distribution service, because if PECO provides distribution service while not allowing RESA to provide distribution service that would "cause access and conditions that are not comparable to the utility's own use of its system." That is not and cannot be what this statute means; as noted, it is simply an open access statute. The Commission's prepaid regulations do not violate it simply because EGSs are not approved to provide that service.

The Commission's regulations also do not violate section 2811(a) of the Competition Act. Section 2811(a) states that the Commission shall *monitor* the market for the supply and distribution of electricity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. The remainder of Section 2811 states that, if the Commission believes that an abuse of market power may exist, it may initiate an investigation "of the impact of the proper functioning of a fully competitive retail electricity market," and that if the Commission determines that such an effect exists, it will refer the matter to the Attorney General, the United States Department of Justice, the Securities and Exchange Commission or the Federal Energy Regulatory Commission for further proceedings.

This is a market power/antitrust provision to ensure that, as the markets matured after passage of the Competition Act in 1996, no entity gained sufficient control of the competitive retail electricity market so as to unlawfully exercise market power. That has nothing to do with whether a utility may propose a pilot plan under existing Commission regulations, and it

certainly does not make the regulations illegal. Indeed, under section 2811, if the Commission believes that a market abuse exists, its sole remedy is to refer the matter to other agencies for further action. It would make no sense for the Commission to refer its own prepaid regulations to another agency for further action; this demonstrates that section 2811 is completely unrelated to the provision of prepaid service.

As the R.D. states (p. 78), section 2802(12) does note in passing that the purpose of the Competition Act is to provide direct access to retail customers – although it should be noted that the main subject matter of 2802(12) is that, in moving to direct access, the legislature found that it is important to maintain system reliability. The “direct access” referred to in this section is discussed throughout the Competition Act – this is an open access statute that sets up a structure by which EGSs can sell generation to customers on a non-discriminatory basis. That section does not mention or implicate the provision of prepaid service.

In sum, RESA’s arguments, as accepted by the R.D., do not establish that either the Commission’s regulations or PECO’s proposal are contrary to the Competition Act.

Conclusion

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

Respectfully submitted,



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March 5, 2018