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March 5, 2018

Via Electronic Filing

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

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

Dear Secretary:

Enclosed please find the Joint Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, in the above captioned proceeding.

Copies of this filing have been served in accordance with the attached Certificate of Service.

Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Josie B. H. Pickens'.

Josie B. H. Pickens, Esquire
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Enclosures
Cc: Service List

PECO ENERGY COMPANY'S PILOT PLAN	:	Docket No. P- 2016-2573023
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	:	

Certificate of Service

I hereby certify that I have this day served copies of the **Joint Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia** upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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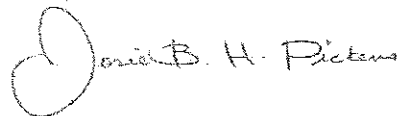
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Respectfully submitted,



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March 5, 2018

**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	:	

JOINT EXCEPTIONS OF

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY
IN PENNSYLVANIA (CAUSE-PA)**

AND

**TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF SENIOR
CITIZENS OF GREATER PHILADELPHIA (TURN ET AL)**

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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, which denied PECO Energy Company's (PECO or the Company) Petition for approval of a pilot program to offer prepaid electric service and PECO's Petition for waiver of portions of the Commission's regulations with respect to the proposed pilot program. ALJ Jones correctly found that PECO failed to meet its burden to show that the pilot was in the public interest. RD at 1; RD at 79-80.

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), along with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) (collectively referred to herein as the Joint Parties) strongly support and agree with ALJ Jones' ultimate conclusion in this proceeding. The record in this case clearly shows the depth and breadth of likely harm associated with prepaid metering. The record demonstrates that every conceivable benefit to the public can be achieved without the substantial threat of harm to consumers and the broader community that would result from implementation of PECO's pilot plan. See TURN *et al.* M.B. at 22-23; CAUSE-PA M.B. at 26-32; OCA M.B. at 17-20.

Pennsylvania's Public Utility Code sets forth a number of critical billing, collections, and termination standards to protect public health and safety and to ensure that all Pennsylvanians are able to access and maintain affordable utility service. PECO's prepaid electricity program would only circumvent these important protections, allowing the utility to quickly and remotely disconnect customers without providing the protections and assistance that is normally required under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. As ALJ Jones properly concluded, the statutory protections in Chapter 14 "supersede"

inconsistent regulations, and cannot be waived if waiver will affect the public interest. RD at 82, COL ¶ 14-16. This includes section 56.17 of the Commission's regulations, in so far as that section permits utilities to terminate service to a household outside of the process and procedures required in Chapter 14. As such, the Joint Parties strongly support ALJ Jones' ultimate conclusion that PECO's request for permission to implement a prepaid electricity pilot program must be rejected.

While the Joint Parties agree with the Recommended Decision's overall conclusion, the Joint Parties except to ALJ Jones' conclusion that termination of service to a prepaid electric customer should be treated as a voluntary discontinuance of service. Indeed, there is nothing voluntary about the loss of electric service which results from a lack of available funds. To hold otherwise is against the record evidence and in direct contravention of Chapter 14. Therefore, pursuant to 52 Pa. Code § 5.533, the Joint Parties file the following exception for the Commission's consideration.

II. BACKGROUND

The Joint Parties incorporate by reference the background set forth in the main briefs of CAUSE-PA and TURN *et al.*

III. EXCEPTION

Termination of prepaid electricity service as a result of a customer's failure to prepay for service is not a "voluntary discontinuance," and in fact poses a heightened risk to health and safety in direct contravention of the Public Utility Code. R.D. at 47-54; CAUSE-PA M.B. at 26-32; TURN *et al.* M.B. at 22-27. OCA R.B. at 12-15.

In her Recommended Decision, ALJ Jones found that notwithstanding her finding that PECO's Plan is contrary to the public interest, PECO's Plan would be in compliance with 52 Pa. Code § 56.17(3)(iii)(D), which ostensibly authorizes utilities to require advance payments if the consumer "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).” 52 Pa. Code § 56.17(3)(iii)(D). Specifically, ALJ Jones concluded that termination of a prepaid electricity customer would constitute a “voluntary discontinuance” – as opposed to an involuntary termination – because the consumer “agreed to or ‘consented’ to cessation of service” as a condition of participating in the program. RD at 51-53.

The Joint Parties strongly disagree with this conclusion, and reiterate that the record is replete with evidence showing that termination of service based on a consumer’s failure to make an adequate payment cannot be considered a voluntary relinquishment of service. As explained more thoroughly below, ALJ Jones’ finding ignores the fact that subsequently-enacted statutory law conflicts with section 56.17, and ignores undisputed record evidence which demonstrates that the cessation of service for nonpayment does not equate to a voluntary relinquishment of service. As such, we urge the Commission to clarify this limited portion of the ALJ’s Recommended Decision, and – consistent with existing statutory law and strong public policy – conclude that the disconnection of service to a prepaid electric customer as a result of his or her failure to make adequate payment is, indisputably, a termination of service.

A. ALJ Jones’ determination inappropriately relies on an outdated regulation that contradicts more recently enacted statutory provisions.

In finding that the cessation of prepaid service for insufficient payment may be categorized as a “voluntary discontinuance,” ALJ Jones relies on a provision within section 56.17, which was superseded by the statutory protections in Chapter 14 (primarily, section 1406 regarding termination of service for nonpayment). See RD at 52 (citing 52 Pa. Code § 56.17(3)(iii)(D)).

Section 56.17, which in relevant part allows utilities to require advance payment for service rendered through prepayment meters, was enacted in 1978, when the technology for

prepaid meters was akin to a coin-operated parking meter controlled by the user as opposed to a technologically advanced smart meter controlled remotely by a utility. See TURN *et al.* St.1 at 13. In the forty (40) years since section 56.17 was promulgated, no public utility in Pennsylvania has utilized this regulation to establish an advance payment program.¹ TURN *et al.* M.B. at 6.

Since 1978, the Pennsylvania General Assembly enacted the Discontinuance of Services to Leased Premises Act (July 1978),² the Electric Generation Customer Choice and Competition Act (1996),³ and the Responsible Utility Customer Protection Act (2004, 2014), codified at Chapter 14 of the Public Utility Code.⁴ All of these statutory changes have created obligations on public utilities that are inconsistent with PECO's Plan. As noted in CAUSE-PA's Main Brief

The Commission's regulations must expand or clarify statutory guidance, and cannot be inconsistent with the statutes under which they are promulgated. Indeed, the Public Utility Code only allows the Commission to promulgate regulations that are consistent with law. 66 Pa. C.S. § 501(b) ("The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.") That is, to the extent the Commission's regulations are inconsistent with statutory authority, the Commission cannot act to enforce them. The Commission's authority is limited to "mak[ing] such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or performance of its duties."

In addition, Pennsylvania courts have explained that "[a] legislative regulation is valid if A) it was adopted within the ambit of an agency's authority as granted by the legislature, B) it was issued pursuant to proper procedure, and C) it is reasonable." Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Review, 983 A.2d 1231, 1239 (Pa. 2009). As such, when statutory guidance changes, regulations may become unenforceable.

CAUSE-PA M.B. at 6-7.

¹ PECO proposed a prepayment plan in 1996 (hereinafter, 1996 Prepay Plan). But PECO's 1996 Prepay Plan was never implemented and PECO stated in this proceeding 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.

² 66 Pa. C.S. § 1521 *et seq.*

³ 66 Pa. C.S. § 2801 *et seq.*

⁴ 66 Pa. C.S. § 1401 *et seq.*

In other parts of her Recommended Decision, ALJ Jones appropriately recognizes that section 56.17 is ineffective if it conflicts with subsequently-authorized statutory law. RD at 35-36 (citing CAUSE-PA MB at 16; Act 201 of 2004, 2003 Pa. SB 677). ALJ Jones also correctly concludes elsewhere that, *as a matter of law*, statutory rights cannot be waived if waiver would negatively affect the public interest. RD at 36, 82 ¶ 14-16 (Conclusions of Law). In some sections of the Recommended Decision, the ALJ considers whether PECO's Plan maintains the protections afforded to consumers under Chapter 14 and Chapter 56 and whether those protections can be waived. RD at 63 (finding that PECO's Plan does not maintain the winter moratorium protections afforded to consumers and that PECO's proposal to allow consumers to revert to standard service is not adequate because it "degrades the quality of protection afforded under the Commission statute."). Yet with regard to her determination of whether a prepay participant consents to cessation of service whenever she or he is unable to fund an account balance, the ALJ does not perform a similar assessment. RD at 51-53. The ALJ merely refers to the definitions of discontinuance of service versus termination of service and concludes that some consumer protections do not apply to PECO's plan. *Id.* The ALJ reached this conclusion without a thorough review of the record evidence and the consumer protections that would be waived as a result of her conclusion.

At issue here, Chapter 14 delineates specific responsibilities of customers and provides customers with explicit protection from the loss of service, which cannot be waived by operation of a regulation. Specifically, Chapter 14 allows utilities to terminate service for "nonpayment of an undisputed delinquent account" or for "failure to comply with the material terms of a payment arrangement" – but only under certain terms and conditions, including written advanced notice of termination and winter termination protections. 66 Pa. C.S. § 1406. As ALJ Jones properly

found in her Recommended Decision, “[t]he discontinuance of service in the Plan here is **not** initiated by the customer.” RD at 52 (emphasis added). Rather, the cessation of service is initiated by PECO, based on the consumer’s delinquent prepay account. As such, the cessation of service based on a consumer’s lack of pre-payment must comply with the clear and unambiguous statutory provisions of section 1406 for termination of service based on nonpayment of an undisputed delinquent account, and cannot be characterized as a voluntary discontinuance of service.

In turn, ALJ Jones’ conclusion that a participant in PECO’s prepaid electricity program could agree or consent to waive their Chapter 14 rights as a condition of participating in the program, consistent with section 56.17(3)(iii)(D), contradicts established law and policy – as well as the ALJ’s own conclusions of law. In her Conclusions of Law, ALJ Jones expressly found: “A statutory right affecting public interest cannot be waived.” RD at 82, ¶ 15 (citing Brooklyn Savings Bank v. O’Neil, 324 US 697, 704 (1954)). Indeed, the United States Supreme Court has held “that a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy.” Brooklyn Savings Bank, 324 US at 704; see also OCA MB at 16. As OCA explained in its Main Brief, “the consumer protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations protect individual rights, as well as public health and safety, from the dangers and societal ills associated with a lack of basic utility service.” OCA MB at 16. Thus, the ALJ incorrectly concluded that a participant in PECO’s prepaid electricity program could waive the provisions of Chapter 14 relating to the termination of service.

ALJ Jones’ determination that the cessation of service for nonpayment of prepaid electricity constitutes a “voluntary discontinuance”, consistent with section 56.17(3)(iii)(D), is

unsupported as a matter of law. The Joint Parties respectfully request that the Commission clarify that a termination of service based on a consumer's failure to make an adequate payment under PECO's Plan cannot be considered a voluntary relinquishment of service.

B. Disconnecting service to a prepaid electric customer for failure to make a payment constitutes an involuntary termination, not a voluntary discontinuance of service.

The record in this proceeding demonstrates that, as a matter of sound public policy and consistent with the laws of the Commonwealth, a customer's inability to prepay for electric service cannot be characterized as a voluntary request to discontinue service, even if she or he "agreed" when they initially enter the program.

OCA's expert witness, John Howat, explained in Direct Testimony:

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 St. 1 at 24 (emphasis added).

The consequences of service termination are discussed throughout the Joint Parties' Main Briefs, and help to illustrate why, as a matter of public policy, the loss of service cannot be considered a "voluntary act" by the consumer. Indeed, the loss of electric service – even for a short period of time – can exacerbate health problems and expose consumers to volatile and dangerous temperatures in the winter and the summer. See CAUSE-PA St. 1 at 24-28, CAUSE-PA St. 1SR at 7-8; CAUSE-PA MB at 31-32. Loss of electric service can also cause the household to lose the contents of their refrigerator and freezer, leading to food-borne illnesses and/or compounding the household's financial hardship. See id. The risks of prepaid metering

were widely discussed at public input hearings. As one example, Glen Forster, on behalf of Philadelphia City Councilwoman Helen Gym, testified that “having a livable and stable home is a key component in ensuring that our residents, particularly our children, are healthy and able to succeed.” See CAUSE-PA MB at 10 (citing Public Input Hearing Transcript at 60:7-19).

As the unrefuted record evidence shows, prepaid metering programs tend to attract low- to moderate-income customers who already struggle to pay their bills, are credit challenged, or are unbanked. See CAUSE-PA MB at 26-28, TURN *et al.* MB at 22-25, OCA MB at 27-30. Those who participate in prepaid service programs make frequent, small payments – often racking up significant fees as a result. CAUSE-PA MB at 28-29; TURN *et al.* MB at 21. In turn, the termination rate for prepaid electric service programs is significantly higher than the termination rate for traditional post-pay service. CAUSE-PA MB at 30-31; TURN *et al.* MB at 25-27; see also CAUSE-PA St. 1 at 25-26 (explaining that the termination rate in the Salt River Project’s prepay pilot was 16.8%, compared to PECO’s current residential customer termination rate of 6%). All of this evidence leads to the conclusion that failure to make sufficient payments on a pre-paid electric account is not a volitional choice or act by the consumer, *but an economic reality based on the consumer’s inability to pay*. As such, the termination of service for failure to pay – regardless of whether that failure was for pre- or post-pay service – constitutes an involuntary termination of service, and the attendant statutory protections must apply.

Importantly, the characterization of the loss of electric service based on a consumer’s failure to pay as a “voluntary” act by the consumer flies in the face of the General Assembly’s policy determinations inherent in Chapter 14, which protect consumers from the cessation of service as a result of the household’s inability to pay. The winter moratorium, medical certification requirements, protections for victims of domestic violence, payment arrangements,

security deposit waivers, and other critical provisions are each embedded within Chapter 14 to ensure that a household's financial circumstances will not prevent their ability to access and maintain stable utility service.

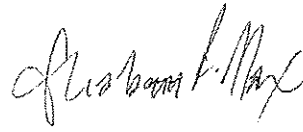
ALJ Jones recognized the critical nature of these Chapter 14 rights, properly finding that the waiver of these protections is not in the public interest. RD at 79. Although ALJ Jones is correct in that assessment, she erred to the extent she found that cessation of prepaid electricity service due to nonpayment can qualify as a voluntary disconnection. RD at 51-52. That conclusion is directly contradicted by the current statutory scheme of the Public Utility Code. Indeed, if the Commission were to uphold ALJ Jones' conclusion that the loss of prepaid electric service is a voluntary discontinuance, the result would be to circumvent the applicability of other critical protections from termination contained in Chapter 14.

IV. CONCLUSION

For the foregoing reasons, the Joint Parties respectfully except to the portion of Administrative Law Judge Angela T. Jones' Recommended Decision which characterizes the cessation of prepaid electric service for nonpayment as a voluntary disconnection of service. To the contrary, the cessation of prepaid electric service as a result of a consumer's nonpayment constitutes an involuntary termination of service, and must be treated accordingly and afforded the protections which attach thereto pursuant to the Public Utility Code.

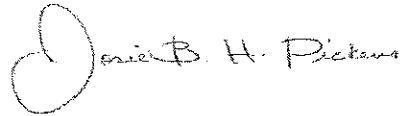
That said, the Joint Parties reiterate their strong support for the ultimate result of the Recommended Decision, and submit that it correctly rejects the Pilot Plan as being against the public interest. As discussed above, the Joint Parties' exception seeks to address and clarify a specific element of the Recommended Decision.

Respectfully Submitted,



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