



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

IN REPLY PLEASE
REFER TO OUR FILE

March 15, 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 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 Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply
Exceptions** 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 :**

**REPLY EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: March 15, 2018

I. INTRODUCTION

A. Introduction

The Bureau of Investigation and Enforcement (“I&E”) incorporates the Introduction section of the Exceptions it filed in this matter on March 5, 2018. I&E notes that the introductory information included an overview of PECO Energy Company’s (“PECO”) Petition for Approval of an Advance Payments Program and a corresponding Petition for Temporary Waiver of Commission Regulations (collectively the “Petition”). As I&E previously explained, Administrative Law Judge (“ALJ”) Angela T. Jones recommended that the Pennsylvania Public Utility Commission (“Commission”) deny PECO’s Petition based 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.¹ In support of her recommendation, the ALJ provided an enumerated 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) 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.²

¹ RD at 79.

² RD at 79. I&E notes that despite her recommendation to deny PECO’s Petition, the ALJ also determined that some provisions of PECO’s Advance Payments Program were not problematic and promoted the public interest. I&E excepted to the ALJ’s determination regarding several of these provisions.

Aside from I&E, PECO and the Office of Consumer Advocate (“OCA”) filed exceptions to ALJ Jones’s Recommended Decision (“RD”). Additionally, the 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”) jointly excepted to the RD. On a general basis, I&E supports the exceptions filed by OCA, TURN et al. and CAUSE-PA, as the content of their collective exceptions are consistent with I&E’s overall position in this case and with its own exceptions to the RD. However, I&E now files this timely Reply Exception in response to PECO’s Exceptions.

B. PECO’s Exceptions

At the outset, it is important to recognize that, in its exceptions, PECO conceded several of the ALJ’s determinations that key components of the Advance Payments Program are contrary to the Commission’s statutes or regulations and do not promote the public interest. I&E reaches this conclusion on the basis that PECO’s exceptions failed to address the ALJ’s determinations that the following four provisions of the Advance Payments Program are contrary to the Commission’s statutes or regulations and do not promote the public interest: procedures of electronic notification,³ omission of payment arrangement options,⁴ failure to protect tenants dwelling with landlords,⁵ and failure to protect participants under [a protection from] abuse order.⁶ I&E submits that PECO’s

³ RD at 54-55; RD at 79.

⁴ RD at 66-69; RD at 79.

⁵ RD at 69-70; RD at 79.

⁶ RD at 70-71; RD at 79.

concession to any one of these four terms fully supports the ALJ's recommendation for the Commission to deny PECO's Petition. However, the combined weight of these concessions serves to conclusively affirm the soundness of the ALJ's conclusion that PECO's Petition is not in the public interest. Considering PECO's tacit concessions, I&E submits that a response to the limited exceptions that PECO has elected to raise is not procedurally necessary; however, for completeness of analysis and to aid the Commission in its determination, I&E has elected to file this Reply Exception.

Additionally, before addressing the substance of PECO's exceptions, it is necessary to acknowledge that PECO has grossly mischaracterized the RD. More specifically, PECO made the following baseless claim in its exceptions:

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.⁷

PECO previously made a similarly false claim regarding I&E's position in this proceeding, as well, by attempting to equate I&E's opposition to several terms of the Advance Payments Program with an argument that prepaid service in any form is dangerous.⁸ As I&E explained in its Reply Brief, PECO's claim was without merit;⁹ however, PECO appears to have been undeterred, as it chooses to again resurrect this

⁷ PECO Exceptions, p. 1 (emphasis added).

⁸ PECO Main Brief, p. 1; I&E Reply Brief, pp. 1-2.

⁹ I&E Reply Brief, pp. 1-2.

baseless claim and to direct it at the RD. I&E submits that the Commission must reject PECO's attempt to distract its attention from the evidentiary record by distorting the scope of this proceeding. As was the case with I&E's position, the RD is not at all premised on a conclusion that prepaid service in any form is "dangerous." Instead, and as fully supported in the RD, the ALJ's recommendation pertained solely and specifically to the only matter before her that was ripe for decision, PECO's Petition. Accordingly, the RD cannot possibly be construed to apply to all prepayment programs, and PECO's claim to the contrary must be rejected.

Finally, although PECO filed three exceptions, its first exception seeks a determination that the Advance Payments Program is in the public interest. As further explained in I&E's response below, the ALJ correctly determined that the Advance Payments Program is not in the public interest and therefore it should not be approved. In this case, the RD is supported by the underlying evidentiary record and PECO has not provided a valid basis to except to the ALJ's recommendation. Accordingly, because PECO's Advance Payments Program is not in the public interest, I&E submits that it is not necessary to evaluate PECO's second and third exceptions. By way of further explanation, PECO's second exception avers that the waivers sought in its Petition are in the public interest and its third exception avers that its Petition does not violate the Competition Act. As PECO's second and third exceptions are contingent on its first, they will only be ripe for consideration if its Petition is in the public interest; therefore, as PECO has failed to meet this standard, I&E has not addressed them. Instead, as reflected in the RD, and explained below, the ALJ properly recommended the denial of PECO's

Petition on the basis that it is contrary to the public interest and the Commission should deny PECO's exceptions.

II. REPLY EXCEPTION

A. Reply to PECO Exception No. 1: The ALJ Correctly Determined that PECO's Advance Payments Program is Not in the Public Interest (RD at 83)

In the RD, the ALJ denied PECO's Petition based on her determination that the disadvantages of PECO's Advance Payments Program outweighed the benefits to the public, culminating in the conclusion that it is not in the public interest.¹⁰ As mentioned above, the ALJ identified eight provisions of the Advance Payments Program that did not promote the public interest;¹¹ however, PECO's first exception has only selectively addressed two of those provisions in its public interest argument.¹² More specifically, although unstructured and difficult to follow, PECO's exceptions appear to only address the following: (1) the procedures for medical conditions and (2) protection against cessation of service in the winter.¹³ As demonstrated below, PECO's exceptions regarding these two provisions are without merit and they must be denied.

¹⁰ RD at 79.

¹¹ Id.

¹² I&E notes that PECO addressed a third provision regarding inhibition of the competitive market in its third exception.

¹³ PECO's exceptions do not address the remaining six provisions of the Advance Payments Program that the ALJ determined were contrary to the public interest: (1) procedures against cessation of service in the winter; (2) increases in the disconnection rate; (3) omission of payment arrangement option; (4) failure to protect tenants dwelling with landlords; and (5) failure to protect participants under a protection from abuse order. I&E avers that PECO has tacitly conceded that these terms are not in the public interest by failing to except to these determinations and by failing to provide any viable basis to except to these determinations.

1. Procedures for Medical Condition

In the RD, the ALJ determined that PECO's Advance Payments Program did not provide participants with the notice of availability of the medical certification process that is required by the Commission. Importantly, the ALJ acknowledged that under standard service, the Commission's medical certification process include multiple protections against termination:

Under the standard post-pay service, the party is afforded the medical certificate protections found at 52 Pa. Code § 56.111 *et seq.*, which include three-day confirmation of a medical situation and prohibition of termination for up to 30 days. The certification may be renewed for an indefinite number of times provided the customer meets obligations to pay current charges during the medical certification process. 52 Pa. Code § 56.114(2), TURN M.B. at 12-13, footnote 15, citing *PECO Universal Service and Energy Conservation Plan for 2016-2018*, Docket No. M-2015-2507139, (Order on Reconsideration entered December 8, 2016). Additionally, Section 1406(f) of the Code states, "a public utility shall not terminate service to a premises when a customer has submitted a medical certificate to the public utility." 66 Pa. C.S. § 1406(f).¹⁴

After acknowledging these protections, the ALJ reviewed the evidence of this proceeding, and determined that PECO's Advance Payments Program failed to provide notice of the availability of the medical certification process to participants.¹⁵

As the ALJ aptly stated, the notification is crucial because "a participant must know a right exists in order to exercise it."¹⁶ Additionally, the ALJ correctly noted the importance of the proximity of the timing between the notification and an emergency

¹⁴ RD at 56.

¹⁵ RD at 59.

¹⁶ Id.

situation: “[t]he presentation of the notice at the time it is relevant and can be effective is invaluable and the education prior to when it may be effective pales in comparison.”¹⁷

Additionally, the ALJ noted that the protection of medical certification availability was further eroded under PECO’s Advance Payments Program because it would require that participants take an additional step beyond just contacting PECO regarding a medical certificate.¹⁸ This is true because PECO does not permit customers with medical certificates to participate in the Advance Payments Program;¹⁹ therefore, if a medical emergency arose while a participant was enrolled in the program, the participant would have to be removed from the program before engaging in the medical certification process. As TURN et al. explained, an Advance Payments Program participant would face in additional obstacle to obtain protection when a medical situation arose, because PECO would require the customer to first revert back to standard service and to then request implementation of the medical certification process.²⁰ TURN et al. described the potential danger that could arise because of the additional hurdle imposed by the

Advance Payments Program:

This added step...could compromise the health and safety of some pilot participants, particularly... those customers who might be unable to timely schedule a follow up appointment with a medical provider to obtain a new certification after they have reverted to standard service and for those customers who have to pay a fee to obtain additional certification.²¹

¹⁷ Id.

¹⁸ RD at 59.

¹⁹ CAUSE-PA St. No. 1, p. 23.

²⁰ TURN St. 1-SR at 8.

²¹ Id.

Accordingly, both the evidentiary record and the RD provide a viable basis for the ALJ's conclusion that the Advance Payments Program's procedure for medical conditions is problematic, contrary to Commission's regulations, and that it fails to promote the public interest.²²

Despite the clear evidence supporting the RD's determination that process that PECO proposes for participants to access medical certification protections is insufficient and presents an additional hurdle to access those protections,²³ PECO argues that the RD is "too conservative."²⁴ The crux of PECO's argument is its claim that Advance Payments Program participants will not face an extra hurdle in accessing the Commission's medical certificate procedures.²⁵ According to PECO, this is true because with one telephone call, the participants can exit the program by requesting that they be returned to standard service and then simultaneously "inquire[ing] about the medical certificate protections."²⁶ I&E submits the PECO's claim is an insufficient basis for exception for two reasons.

First, despite PECO's focus on the number of telephone calls that a participant must make, the number is irrelevant. What is relevant, and what PECO failed to address in its exceptions, is the fact that its Advance Payments Program fails to provide participants with the notice of availability of the medical certification process that is required by the Commission. PECO has not refuted the ALJ's determination of the

²² RD at 79.

²³ RD at 59-60.

²⁴ PECO Exceptions, p. 6.

²⁵ Id. at 5.

²⁶ Id. at 5-6.

insufficiency of the notification process, and that on its own is certainly a sufficient basis to support the RD. On this basis alone, I&E submits that PECO's first exception should be denied.

Yet, an additional basis for denial also exists. More specifically, PECO has failed to address the fact that customers who are experiencing a medical emergency may not be able to call PECO in time to prevent their service from being disconnected.²⁷ Additionally, as TURN et al. explained, PECO fails to account for the fact that, because participants cannot have an active medical certificate on file, even if they do revert to standard service due to a medical emergency, they might be unable to timely schedule a follow up appointment with a medical provider to obtain a certification.²⁸ The RD reveals that the ALJ considered these arguments, and she determined that PECO failed to identify any other case whereby the regulatory medical certification process was degraded simply for the purpose of offering payment options other than standard post-pay service.²⁹ Although PECO has failed to address this in its exceptions, the ALJ's rationale is supported in the record and PECO has again failed to provide a valid basis for exception.

2. Winter Termination

In the RD, the ALJ correctly determined that PECO's Advance Payments Program failed to maintain the statutory and regulatory protections against winter termination and

²⁷ OCA Main Brief, p. 37; RD at 59.

²⁸ TURN et al. St. No. 1-SR, p. 8.

²⁹ RD at 59.

was therefore not in the public interest.³⁰ More specifically, PECO failed to honor the terms of the “winter moratorium” that is codified in the following statute:

Unless otherwise authorized by the commission, after November 30 and before April 1, an electric distribution utility or natural gas distribution utility shall not terminate service to customers with household incomes at or below 250% of the Federal poverty level except for customer whose actions conform to subsection (c)(1). The commission shall not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance with this section to customer with household incomes exceeding 250% of the Federal poverty level.³¹

Additionally, the Commission’s regulations also adopt the winter moratorium:

Electric distribution and natural gas distribution utilities.
Unless otherwise authorized by the Commission, during the period of December 1 through March 31, an electric distribution utility or natural gas distribution utility may not terminate service to customers with household incomes at or below 250% of the Federal poverty level except as provided in this section or in § 56.98. The Commission will not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance with this section to customers with household incomes exceeding 250% of the Federal poverty level.³²

During the course of this proceeding, I&E and several other parties argued that PECO’s Advance Payments Program failed to honor the winter moratorium,³³ and these arguments were borne out in the RD.³⁴ As I&E witness Brenton Grab pointed out, the conditions of the Advance Payments Program outlined in PECO’s Petition permit PECO

³⁰ RD at 63.

³¹ 66 Pa. C.S. §1406(e)(1).

³² 52 Pa. Code § 56.100(b).

³³ I&E St. No. 1, pp. 10-11; I&E Main Brief, pp. 15-16; CAUSE-PA St. 1-SR; CAUSE-PA Main Brief, pp. 20-22; OCA St. No. 1, pp. 7-8, 27-28; TURN et al. Main Brief at 26.

³⁴ RD at 60-63.

to disconnect the service of customers with incomes at or below 250% of the federal poverty level³⁵ during the winter months, even though termination procedures that are contained in the Code and within Commission Regulations would prohibit such loss of service.³⁶ Both I&E and TURN et al. offered evidence that eliminating these customers' termination protections would increase the safety risks to those customers and the public and decrease the benefits for customers.³⁷ OCA agreed with I&E and TURN et al, but also included evidence that the winter moratorium protections existed not just for specific households, but for the benefit of public safety as well, since households that are without service are likely to use alternative sources of light and heat that pose a safety to the entire community.³⁸ CAUSE-PA explained the importance of the winter moratorium protections, and noted that the General Assembly specifically recognized that non-payment during the winter months is targeted to the inability to pay: "the General Assembly specifically recognizes the vulnerability of these ... low income households and that their non-payment in the winter time is not indicative of an unwillingness to pay, but rather an inability to pay." Moreover, OCA asserted that the winter moratorium protections could not be waived,³⁹ and the ALJ agreed with this assertion in the RD.⁴⁰

In its exceptions, PECO did not present any evidence to rebut I&E or the other parties' positions, nor did it address the ALJ's determination that the Advance Payments

³⁵ I&E notes that customers with incomes below 150% of the federal poverty level are ineligible to participate in the Advance Payments Program. PECO's Petition, Attachment 1, p. 1, Section 3.

³⁶ I&E St. No. 1, pp. 10-11

³⁷ I&E St. 1, p. 11; TURN St. 1, pp. 9-10.

³⁸ OCA St. 1, pp. 36-37.

³⁹ OCA Main Brief, p. 16.

⁴⁰ RD at 63.

Program failed to honor the winter moratorium protections, which cannot be waived. Instead, PECO readily admitted that there will be participants with incomes between 151% and 250% of the federal poverty level who would have winter termination protections as standard service customers but will be subject to disconnection in the winter as Advance Payments Program Participants.⁴¹ However, PECO averred that the loss of winter termination protection for impacted participants is not an issue because participants could avoid this fate by leaving the Advance Payments Program at any time and reverting back to standard service before disconnection occurs.⁴² Additionally, PECO argued that “although legalistic” the termination protections would not apply because participants would be deemed to have consented to a voluntary disconnection for failure to replenish their prepayment accounts, not termination.⁴³

I&E submits that PECO’s arguments are without merit and they do not present a viable basis for exception. Regardless of whether a participant may be free to revert to standard service at any time, the Advance Payments Program, by the nature of its operation, would require participants to waive the winter moratorium protection as a condition of participation. This is true because participants must forfeit termination protections that they would otherwise have under standard prepay service. PECO has acknowledged this reality through its direct testimony in this case:

PECO recognizes that a volunteer who agrees that cessation of service under the Plan [Advance Payments Program] constitutes “discontinuance” will have a different set of protections and rights than if they had remained a standard

⁴¹ PECO Exceptions, p. 6.

⁴² Id. at 7.

⁴³ PECO Exceptions, p. 6.

service customer. The decision to volunteer for the Plan will therefore need to be a fully-informed decision. PECO will include information in its application materials and related program documents to provide full detail on the differences in protections and rights for discontinuance vs. termination.⁴⁴

Therefore, at a minimum, by simply agreeing to participate, Advance Payments Program participants have agreed to a de facto waiver of termination protections, including the winter moratorium. This point is determinative, because ALJ correctly found that such a waiver is not valid, as public protections cannot be waived.⁴⁵ Notably, PECO did not except to this determination. Furthermore, as I&E explained earlier in this proceeding, the Pennsylvania legislature did not intend for any utility company, including PECO, to circumvent the winter moratorium or other protections by simply relying upon the semantical differences between “disconnection” and “termination,”⁴⁶ and the Commission must reject PECO’s attempt to do so in this proceeding. Accordingly, I&E respectfully requests that the Commission deny PECO’s exception.

⁴⁴ PECO St. No 1, p. 19.

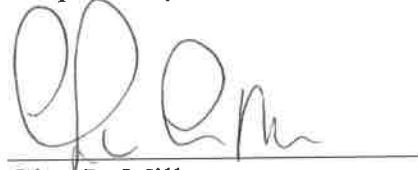
⁴⁵ RD at 62.

⁴⁶ I&E Main Brief, p. 24.

III. CONCLUSION

For the reasons stated herein, I&E respectfully requests that the Commission deny PECO's first exception, which eliminates the need to address its remaining exceptions. Instead, the Commission should adopt the Recommended Decision of the Administrative Law Judge with the following modifications that I&E proposed in its Exceptions. Specifically, the Commission should conclude that two additional grounds for denial of PECO's Petition exist because the following two provisions of the Advance Payments Program are contrary to the public interest: (1) the discontinuance component of the Advance Payment Program and (2) the stakeholder collaborative.

Respectfully submitted,



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that Plan	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated March 15, 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):

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