

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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March 15, 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 Reply  
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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PA Attorney I.D. 311570  
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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 Reply 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 15<sup>th</sup> day of March 2018.

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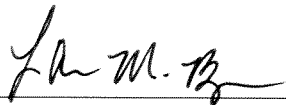
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

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REPLY EXCEPTIONS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: March 15, 2018

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## **I. INTRODUCTION**

The Office of Consumer Advocate (OCA) submits this Reply to the Exceptions of PECO Energy Company (PECO or the Company). The OCA urges the Commission to reject PECO's Exceptions, which argue that: (1) PECO's Pilot Plan is in the public interest; (2) PECO's requested waiver of the security deposit regulations is in the public interest; and (3) PECO's Pilot Plan does not violate the Competition Act. The OCA and other parties in this proceeding have clearly demonstrated that the Pilot Plan is not in the public interest and provides no benefit to consumers that could not be achieved through less harmful means. The Recommended Decision correctly rejected PECO's proposed Pilot Plan, finding that "the Petitioner 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. PECO's Exceptions do not provide justification for its proposal, and serve to reinforce the fact that PECO has not met its burden of proof and has not shown that the Pilot Plan and the requested waivers are in the public interest.

The OCA maintains that PECO has not pointed to any benefit of prepaid programs that could not be offered without the threat of disconnection and the associated harm to health and safety that can result. See OCA R.B. at 32. As OCA witness Howat noted in his direct testimony:

If the purpose of prepaid metering is to assist customers in budgeting and paying for utility service or reducing energy usage, there are many other means to achieve this end with the advanced metering and billing systems now in place. For example, in home devices (IHDs) can now be placed in the home that can show a customer the daily usage in the home, the cost of the usage, and the growing monthly bill as compared to a budgeted amount. Also, if more frequent, smaller payments would assist customers, consideration could be given to shorter billing periods, such as two weeks, for those customers that may wish such a payment plan. Finally, utilities should continually review and implement appropriate reminder and collection procedures so customers do not fall into significant arrears.

OCA R.B. at 32; OCA M.B. at 18; OCA St. 1 at 40, fn. 111. Thus, usage information can be provided in a context that is meaningful and can be applied by the customer to conserve energy

and provide a level of control over the customer's bill without the threat of service termination. Both electric distribution companies and competitive suppliers can and should make this type of information and functionality available to customers without creating the health and safety risks associated with prepaid service. OCA R.B. at 33.

Therefore, the OCA submits the following Replies to the Company's Exceptions.

## II. REPLIES TO EXCEPTIONS

OCA Reply to PECO Exception No. 1: The ALJ Correctly Found that PECO's Proposed Pilot Plan is Not in the Public Interest. R.D. at 36, 55-63, 79-80; OCA M.B. at 8, 12, 15-19, 22-26, 28-32, 37, 44; OCA R.B. at 6-9, 16, 18-20; PECO Exc. at 3-7.

The ALJ properly found that PECO's Pilot Plan is not in the public interest because "the disadvantages outweigh the benefits bestowed to the public," and therefore the Pilot Plan should be rejected in its entirety. R.D. at 79-80. In its Exceptions to this conclusion, PECO focused on a few specific items. In general, the OCA maintains that PECO has not met its burden of proof and the proposed Pilot Plan is not in the public interest for the reasons discussed in detail in the OCA's Main Brief, Reply Brief, and Exceptions, as well as in the Recommended Decision. In the discussion below, the OCA is only responding to the issues PECO raised in its Exception.

A. PECO Has Not Shown that its Proposed Pilot Plan Will Result in Increased Customer Satisfaction.

In its Exception, PECO states that other jurisdictions that have implemented prepaid service have experienced "an increase in customer satisfaction, a decrease in delinquencies...and increased conservation," and that the other parties in this case presented "little or no testimony that denied PECO's [claims] (sic) that prepaid service increases customer satisfaction and results in a decrease in delinquencies." PECO Exc. at 3. This is not a correct characterization of the record in this proceeding. PECO has cited no data or studies to support its contention that frequent disconnections associated with prepay service may be accompanied by "increased customer satisfaction, better payment behaviors, and/or improved energy conservation . . ." OCA R.B. at 16; PECO M.B. at 62. In fact, the OCA presented evidence demonstrating that in other states and countries where prepaid programs have been implemented, they tend to become concentrated among low- and moderate-income customers who may already struggle to make ends meet. See

R.D. at 22-24, Finding of Fact ¶¶ 91, 96, 103, 106; OCA M.B. at 28-30. This results in high disconnection rates, and indicates that enrollment in a prepaid program does not necessarily assist customers in affording and maintaining electric service, but rather results in deprivation which may be dangerous to individual and public health and safety. See R.D. at 21-24, Finding of Fact ¶¶ 86, 92, 97, 104, 105; OCA M.B. at 30-32; CAUSE-PA St. 1 at 33.

If PECO is attempting to address a problem with high uncollectibles, this issue should be addressed directly rather than obscuring the problem behind prepaid meters. OCA M.B. at 19; OCA R.B. at 16. This goal can be achieved without subjecting vulnerable customers to the threat of losing access to essential utility service. Id.

B. “Experience” with Prepaid Metering Should Not Be Gained at the Expense of Vulnerable Customers.

PECO also argues in its Exception that there is a “lack of practical experience” with prepaid metering in Pennsylvania, and presents its Pilot Plan as “a low-risk, low-cost method of obtaining practical experience on prepaid service.” PECO Exc. at 1, 3-4; PECO M.B. at 53, fn. 4. The OCA strongly disagrees with this characterization of the Pilot Plan. PECO’s proposal is anything but “low-risk.” In fact, the record in this case clearly demonstrates that the plan would attract many customers that may already struggle to pay their bills and would put them at risk of losing utility service, which could lead to significant harm and even death. See R.D. at 21, 25-26, Finding of Fact ¶¶ 81-82, 112-115; OCA R.B. at 6-9. Increased disconnections resulting from prepaid service would pose a risk to households and communities. OCA M.B. at 22, 30-32. Those who are disconnected from essential utility service will turn to alternative sources of heat and light, such as solid fuel space heaters and candles, creating a danger to both the household and the community. See R.D. at 21, 25-26, Finding of Fact ¶¶ 81-82, 112-115; OCA M.B. at 22. OCA witness Howat testified as follows:

According to a report by the National Fire Protection Association, heating equipment fires accounted for 16% of all reported home fires in 2009-2013 and 19% of home fire deaths. Space heaters are the type of heating equipment most often involved in home heating fires, figuring in two of every five of these fires and accounting for 84% of associated civilian deaths, 75% of civilian injuries, and 52% of direct property damage. Solid fuel space heaters (no electricity required) accounted for annual averages between 2009 and 2013 of 7,050 fires, 90 civilian deaths, 100 civilian injuries, and \$124,000,000 in direct property damage.

R.D. at 25-26, Finding of Fact ¶¶ 114-115; OCA M.B. at 22; OCA St. 1 at 36-37.<sup>1</sup> These dangers are a critical underpinning of the termination protections contained in Chapter 14 and Chapter 56. OCA M.B. at 22.

The OCA submits that it is clearly against the public interest for PECO to gain “experience” with prepaid metering when its Pilot Plan may lead to the significant harms to health and safety of Pennsylvania households and communities described throughout the record in this case and in the Recommended Decision. Fundamentally, programs such as PECO’s Pilot Plan bypass or eliminate vital consumer protections, and reduce or eliminate the utility’s incentive to negotiate effective, reasonable payment arrangements with consumers and to implement effective bill payment assistance and arrearage management. OCA M.B. at 17; OCA R.B. at 7. Therefore, the OCA submits that it is inappropriate and contrary to Pennsylvania law and policy to gain “experience” at the expense of vulnerable customers.

C. PECO’s Proposed Medical Certificate Procedures are Inadequate and Not in the Public Interest.

In its Exception, PECO repeats its argument that Pilot Plan participants with medical certificates should call PECO and request to be reverted to standard service. PECO Exc. at 5-6. ALJ Jones was not persuaded by this argument and correctly found that PECO’s proposal for handling medical certificates is not in the public interest. R.D. at 55-60. As discussed in the

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<sup>1</sup> Citing Campbell, National Fire Protection Association, “Home Fires Involving Heating Equipment” March 2016, at 1.

OCA's Main Brief, PECO's argument ignores the fact that, if a customer is experiencing a medical emergency, they may not be capable of calling PECO within the five day emergency credit period to prevent their service from being disconnected. The Recommended Decision agreed with the OCA, finding that "the circumstances of the emergency may not provide the participant with the ability to call the Company." R.D. at 59. PECO also did not provide information as to how customers will be educated about the procedures for preventing disconnection in such a situation. The short time periods for action as well as the novel nature of the program raise significant concerns about possible public health impacts of customers being disconnected when even a relatively minor medical issue or other life event prevents them from contacting PECO within five days to return to standard service. OCA M.B. at 37.

D. The Lack of Winter Termination Protections for Customers Below 250% of Federal Poverty Level is Not in the Public Interest and Would Harm Public Health and Safety.

The Recommended Decision also found that the lack of winter termination protections under the Pilot Plan for customers below 250% of Federal Poverty Level is not in the public interest. R.D. at 60-63. PECO's Exception responds to this finding by arguing that customers can call to revert to standard service and have access to winter termination protections at any time. PECO Exc. at 6-7. According to PECO, "[a]ny pilot participant with income below 250% FPL will continue to have access the (sic) winter termination protections – all they have to do to access them is to call PECO and ask to revert to standard service." PECO M.B. at 63-64; OCA M.B. at 18. This, however, is not equivalent to the winter termination protections applicable as part of traditional postpay service. In other words, as long as a pilot participant remains a pilot participant, they will not be protected by the winter termination procedures in 66 Pa. C.S. § 1406(e)(1) and 52 Pa. Code § 56.100. Only when the pilot participant affirmatively calls PECO and requests to be

reverted to standard service will the consumer protections apply. Thus, prepaid volunteers will, in fact, not be covered by the winter termination procedures as long as they remain prepaid volunteers. OCA R.B. at 18.

The lack of winter termination protections under the Pilot Plan would create a public health and safety risk. PECO's Pilot Plan would result in winter terminations for customers between 150% and 250% of Federal Poverty Level in violation of 66 Pa. C.S. § 1406(e)(1) and 52 Pa. Code § 56.100.<sup>2</sup> OCA M.B. at 12; OCA R.B. at 19. The General Assembly has carefully established this critical protection for these customers who are most vulnerable to payment difficulties. As the OCA's Main Brief, Reply Brief, and the record in this case shows, prepaid metering increases the risk of disconnection, including during winter months. See OCA M.B. at 12, 30-32; OCA R.B. at 19. Without essential utility service, and particularly during cold winter months, customers may turn to unsafe lighting and heating sources which has led to many tragic outcomes including the loss of life. OCA M.B. at 22-26; OCA R.B. at 19. PECO's proposal would upset these protections which recognize the heightened risk that consumers face when having electric service terminated during the winter. OCA M.B. at 12; OCA R.B. at 19. Additionally, requiring customers to affirmatively request to return to traditional service is not adequate, and the record shows that low-to moderate-income customers may instead choose to endure frequent disconnections when they are struggling to pay the bills. See OCA M.B. at 44; OCA R.B. at 19; OCA St. 1 at 24-27.

At the public input hearings, customers raised significant concerns about the lack of winter termination protections. One individual testified that:

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,

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<sup>2</sup> It should be noted that even though customers above 250% of Federal Poverty Level are not subject to the winter termination protections under Chapter 14 and Chapter 56, these customers could also be disconnected during winter months without receiving adequate notice under PECO's Pilot Plan. See R.D. at 54-55; OCA M.B. at 39-41.

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. Additionally, AARP testified at the Public Input Hearing as follows:

AARP has strongly supported consumer protections available to consumers that help ensure that no customer has their electric service shut off unnecessarily. Rules prohibiting winter shutoffs and opportunities for consumers to enroll in payment plans before their electric service is shut off, are critical to those living on relatively fixed incomes or who may have encountered a health or family crises.

Tr. at 87-88; OCA R.B. at 19-20. The record in this case clearly shows that requiring a participant to take affirmative steps to return to service and gain access to important consumer protections such as protection from winter termination for customers below 250% of Federal Poverty Level is not adequate and will fail to protect both vulnerable individuals and families, as well as entire communities. The ALJ correctly found this result to be against the public interest.

E. Consumer Protections Affecting Public Health and Safety Cannot be Waived by Individual Consumers.

More broadly, PECO also argues that “[t]he 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 Exc. at 7. The OCA submits that Pennsylvania law has developed a carefully balanced set of consumer and utility protections that respects the essential nature of utility service while providing the utility a reasonable opportunity to manage its revenues. Prepaid metering would disrupt this careful balance that has been achieved with no discernible benefit but with a great potential for harm. OCA M.B. at 8. Prepaid metering at its core is dependent upon consumers giving up the many consumer protections that are intended to assist them in maintaining essential utility service. These protections, however, exist not only for the safety of customers but for the safety of communities

as well. As discussed in the OCA's Main Brief, significant questions are raised as to not only whether these protections *should* be waived, but also whether they can legally be waived by individual customers given their impact on public health and safety. OCA M.B. at 15.

Courts in other states have found that a statutory right cannot be waived if the provision is intended to benefit the public. For example, the Connecticut Supreme Court stated that:

[A]lthough it is generally true that privately held statutory and constitutional rights are waivable, not every mandatory statutory provision can be waived, even by the party who benefits or is protected under the statute. . . . The public interest may not be waived. [When] a law seeks to protect the public as well as the individual, such protection to the state cannot, at will, be waived by any individual.<sup>3</sup>

OCA M.B. at 15. Similarly, the U.S. Supreme Court has stated that “[i]t has been held in this court and other courts 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.”<sup>4</sup> OCA M.B. at 16. In this instance, 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. As such, the OCA submits that these protections should not, and cannot legally be waived as PECO's Pilot Program would require. R.D. at 36; OCA M.B. at 15-16. PECO's Pilot Plan is inconsistent with Pennsylvania law in that it would undermine important consumer protections and impermissibly requires participants to waive protections that are intended to protect both individuals and public health and safety.

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<sup>3</sup> *Pereira v. State Bd. Of Educ.*, 37 A.3d 625, 653-54 (2012) (internal quotations omitted) (quoting *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*, 866 A.2d 554 (2005)).

<sup>4</sup> *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 704 (1945).

OCA Reply to PECO Exception No. 2: The ALJ Correctly Found that PECO's Requested Waiver of the Security Deposit Regulations is Not in the Public Interest. R.D. at 42-47; OCA M.B. at 41-42; PECO Exc. at 8-10.

In the Recommended Decision, ALJ Jones agreed with the OCA that PECO's requested waiver of the security deposit regulations is not in the public interest. R.D. at 42-47. In its Exception, PECO argues that requiring customers to apply any security deposit credit to fund their prepaid account would "be in the public interest because it will reduce the overall cash funding needs for a volunteer's utility service." PECO Exc. at 9. The OCA submits, and ALJ Jones agreed, that this approach raises significant concerns for payment troubled customers returning to standard service. R.D. at 42-47.

OCA witness Howat explained the problem with PECO's proposal regarding the use of security deposits:

...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.

OCA M.B. at 42; OCA St. 1-S at 12-13 (citations omitted). PECO's Exception highlights this passage of Mr. Howat's testimony, and seems to argue that because this problem "may" or will "potentially" affect customers, that the OCA has not "proved" that this problem has "a probability of occurring." PECO Exc. at 9-10. PECO fails to recognize that it is not the OCA, but rather PECO, that has the burden of proof to show that its Pilot Plan and the requested waivers are in the public interest. R.D. at 28-29, 34-38; OCA M.B. at 5-7. The OCA has raised a concern that would

apply to some, but not all customers; this concern will primarily affect low- to moderate-income customers that have been required to post a security deposit and for whom PECO's proposal would raise barriers to returning to standard service if an additional security deposit is required. PECO's security deposit proposal may lead to frequent disconnections and the associated public health and safety risks for families already struggling to make ends meet, and thus is not in the public interest.

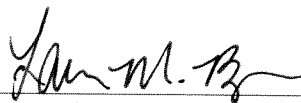
OCA Reply to PECO Exception No. 3: Prepaid Service Should Not be Implemented in Pennsylvania, Whether Offered by an Electric Distribution Company or by an Electric Generation Supplier. R.D. at 74-78; OCA R.B. at 31-33; PECO Exc. at 11-14.

The OCA does not take a position on whether PECO's proposed Pilot Plan is contrary to the public policy declarations of the Electric Competition Act. See R.D. at 74-78; PECO Exc. at 11-14. The OCA maintains its position, however, that prepaid metering should not be implemented in Pennsylvania, whether offered by electric distribution companies (EDCs) or electric generation suppliers (EGSs), because these programs suffer from the same negative effects and lack of consumer protections regardless of the entity offering the program. OCA R.B. at 31-33. Additionally, the OCA submits that both EGSs and EDCs could offer a wide range of information and enhanced functionalities utilizing advanced metering infrastructure (AMI) technology without the threat of disconnection associated with prepaid programs. OCA M.B. at 18-19; OCA R.B. at 31. For these reasons, the OCA continues to oppose implementation of prepaid service in Pennsylvania, whether offered by PECO or by competitive suppliers.

### III. CONCLUSION

For the reasons set forth above and in its Main Brief, Reply Brief, and Exceptions, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of PECO Energy Company and reject PECO's Petition in its entirety.

Respectfully Submitted,



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