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March 15, 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 Reply 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 Reply

Exceptions of PECO Energy Company in the above matter, upon all interested parties via email

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Dated: March 15, 2018

A handwritten signature in dark ink, appearing to read 'Ward L. Smith', written over a horizontal line.

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Reply Exceptions of PECO Energy Company

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Introduction

On March 5, 2018, exceptions were filed in this docket by PECO Energy Company (“PECO”), the Office of Consumer Advocate (the “OCA”), the Bureau of Investigation & Enforcement (“I&E”), and CAUSE-PA and TURN et al., filing together as the “Joint Parties.” PECO hereby provides its Reply Exceptions to the exceptions of the other parties.

Reply Exception 1: The Recommended Decision Correctly Concluded That Service Disconnections Under PECO’s Plans Should Be Characterized as “Discontinuances” Rather Than “Terminations”

The Commission’s prepaid service regulations, 52 Pa. Code §56.17, state several conditions that must be included in all prepaid service programs. One of those conditions, found at 52 Pa. Code §56.17(3)(iii)(D), (emphasis added) is that: “(D) *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.”

PECO included this provision in its pilot proposal – and that provision of the pilot proposal engendered more negative commentary from the parties than any other provision of PECO’s Plan, with the other parties adamantly arguing that “termination,” not “discontinuance,” is the only proper term to refer to a service disconnection under PECO’s Plan.

Although this argument might appear to be simply a legalistic debate about regulatory definitions, the argument in fact goes to the heart of the differing views held by the parties with respect to PECO’s Plan. From PECO’s perspective, the regulation requires that service disconnections be treated as “discontinuances;” this takes the Plan outside of the realm of

“termination” protections. In its Plan, PECO proposes to implement consumer protections that go well beyond the protections that the regulations require for discontinuances, including:

- 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.

PECO nonetheless recognizes that its proposal steps outside of the traditional framework of the termination regulations, and offers a new service offering that takes a different approach to payment, using a different suite of protections, for a small group of volunteers. The other parties, however, found any use of the word “discontinuance” anathema, and attacked such use relentlessly in testimony and briefs.

The Recommended Decision (“R.D.”) (p. 52) properly concluded that “the Commission regulations at 52 Pa. Code §56.17(3)(iii)(D) uses the term ‘discontinuance’ and not ‘termination.’ This proposed provision of the Plan is in compliance with the Commission regulation.”

PECO finds that to be an obvious conclusion and sees no real basis to contest it – the Commission’s regulation in fact does use the term ‘discontinuance,’ and does require that participants in prepaid service agree, as a condition to entering the program, that service disconnections will be treated as a discontinuance.¹ The other parties, however, devoted the majority of their respective Exceptions to attacks on this conclusion. PECO responds to those arguments here.

Reply to the Claim that the Commission’s Regulations are “Outdated”

First, the other parties claim that the R.D. is incorrect on this issue because, they say, the Commission’s regulations are “outdated.” *See* OCA Exceptions, pp. 5-6; Joint Parties Exceptions, pp. 3-7.

PECO will begin with the most obvious response – no matter how old the regulations are, they still say what they say: *“The customer agrees that failure to renew the credits by making prepayment for additional service constitutes a request for discontinuance”* The age of the regulation does not affect its content, and the R.D. correctly articulated that PECO’s Plan follows the requirement of this regulation.

There is also a second obvious response – the age of a regulation does not affect its validity. Recall that the Commission’s prepaid service regulations were extended to electric service in 1995. TURN Statement No. 1, p. 6. Many of the Commission’s regulations are older than that, and their mere age does not affect their validity. Of course, there is a process by which the Commission can review its own regulations to determine whether they continue to have

¹ PECO recognizes that the other parties think that it is not in the public interest to treat a service disconnection as a discontinuance – and in fact they made many arguments going to that point. PECO demonstrated in its Exceptions that the public interest arguments made by the other parties (and the acceptance of those arguments by the R.D.), take an inappropriately conservative view of this opportunity to test non-traditional methods of providing utility service. PECO will not repeat those arguments here.

policy validity. That process is a new rulemaking that follows the required provisions of the Commonwealth Documents Law, 45 P.S. §§ 1102-1208, and the Regulatory Review Act, 71 P.S. §§ 245.1-745.15 -- and that process would include publication in the Pennsylvania Bulletin, public comments on any proposed changes to the regulation, and review of any proposed new regulations by the Independent Regulatory Review Counsel.² But since none of those steps have been taken, the Commission's regulations remain valid law, and this attempt to "nullify" the regulations as "outdated" is an impermissible collateral attack that should not be allowed.

Perhaps less obvious, but nonetheless globally applicable to the arguments of the other parties, PECO notes that the regulations contain the "discontinuance" provision because, in 1992, the Commission's Bureau of Consumer Services recommended that disconnections under prepaid service should be treated as "discontinuances":

The BCS, however, believes that installation of these devices initially should be on a strictly voluntary basis and targeted for use by non-low income customers. The non-low income customer would enter into a settlement agreement with the company in which the customer would agree to purchase the required vouchers to maintain service until the past due balance is retired. An emergency backup card for additional usage would be provided to the customer in advance as a safeguard. When the usage of the prepayment card runs out, the customer could use the emergency card for several additional days of usage (no less than five days). *This backup card would serve as proper notification that service will be discontinued. Thus, if the customer fails to renew the card by making the required prepayment of additional service, the company, per an explicit agreement in the settlement*

² That process was followed in creating the prepaid service regulations. The online version of the Pennsylvania Code provides the following source information for the Commission's prepaid regulations found at 52 Pa. Code §56.17: "The provisions of this § 56.17 adopted June 16, 1978, effective June 17, 1978, 8 Pa.B. 1655; amended April 8, 1983, effective April 9, 1983, 13 Pa.B. 1250; amended January 13, 1995, effective April 14, 1995, 25 Pa.B. 145; amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5473. Immediately preceding text appears at serial pages (276016) and (337341)." TURN's witness Harry Geller made clear that, in 1995 when the Commission extended the prepaid service rules to include electric service, the rulemaking process was also followed on that occasion. ("In 1995, the Commission updated the advance payments regulations to 11 allow for electric service to be included. In that process, the Independent Regulatory 12 Review Commission (IRRC) commented on the advance payments regulations contained 13 in 52 Pa. Code § 56.17." Citing 25 Pa. Bull. 2, 145 (1995).)

agreement, would consider the subsequent cessation of service to be a “discontinuance of service”; that is, cessation of service with the consent of the ratepayer in accordance with §56.72. . . . A prepayment meter would enhance payment because the utility would not be in jeopardy of suffering further revenue loss while the customer retires his outstanding balance. Moreover, because the prepayment meter provides constant information on usage, it would encourage conservation, particularly if energy conservation counseling is a component of the program. Finally, a prepayment meter would serve as a reasonable alternative to termination for a non-low income customer with a high arrearage.

Final Report on the Investigation of Uncollectible Balances, Docket No. I-900002, by Bureau of Consumer Services, Division of Consumer Research, February 1992, pp. 105-06; introduced into the record in this proceeding as Exhibit JS-Rej2. PECO notes that this Report presents a balancing of the needs of both consumers and the utility, and concludes that use of the term “discontinuance” and the discontinuance regulations is an appropriate method to balance those rights. PECO’s Plan, in fact, gives customers far more protections than are required by the discontinuance regulations.

PECO understands that the other parties listed specific legal developments that, they claim, occurred after the prepaid service regulations were implemented and that, they claim, supercede the prepaid service regulations. The Joint Parties, for example, argue (p. 4) that: “Since 1978, the Pennsylvania General Assembly enacted the Discontinuance of Services to Leased Premises Act (July 1978), the Electric Generation Customer Choice and Competition Act (1996), and the Responsible Utility Consumer Protection Act (2004, 2014) . . . All of these statutory changes have created obligations on public utilities that are inconsistent with PECO’s Plan.”

Again, we can begin with an obvious conclusion related to the 1978 Leased Premises Act. As TURN’s witness Mr. Geller testified, the Commission did not extend its prepaid service regulations to electric service until 1995. TURN Statement No. 1, p. 6. It must be presumed

that, when the Commission extended prepaid service to the electric utility industry in 1995, it did so with full awareness that the Leased Premises Act had been in existence for nearly two decades. In addition, PECO's Plan does not allow participation by customers covered by the Leased Premises Act. *See* PECO Statement No. 1, p. 15.

As to the Competition Act, PECO explained in its Exceptions (pp. 11-14) that its Plan is not contrary to any provision of the Competition Act.

As to the Responsible Utility Consumer Protection Act, *a.k.a.* Chapter 14, PECO notes that the specific issues that were discussed in testimony are the medical certificate provisions and the winter termination provisions – and, again, PECO demonstrated in its Exceptions (pp.3-7) that the other parties' concerns with respect to those protections are unfounded. But it should also be noted that, when the Commission extended the prepaid service regulations to include electric service in 1995, its medical certificate regulations and winter termination regulations were already in place. The only change made by Chapter 14 was to take winter termination regulations that had been in place for decades and “enshrine” them in statutory language. CAUSE-PA Statement No. 1, p. 18. But the winter termination protections existed, in regulatory form, at the time that the Commission extended prepaid service to include electric service. Those protections did not come later and “outdate” the prepaid service regulations.

Reply to the Claim that Discontinuances are Not “Voluntary”

The second major argument that the other parties make with respect to “discontinuance” vs. “termination” is that service disconnections under PECO's Plan are not truly “voluntary” and thus cannot be considered to be “discontinuances” because, they say, all discontinuances must be voluntary. *See* OCA Exceptions, pp. 3-5; I&E Exceptions, pp. 10-13; Joint Party Exception, pp. 7-9.

As noted previously, the regulations require that any participant in a prepaid service program must agree, as a condition of participation, that service disconnections will be treated as “discontinuances.” PECO’s Plan will be populated only by volunteer participants, each of whom will be required to enter into the stated agreement as a condition of being allowed to volunteer for the program. PECO’s position is that, when a customer or applicant *volunteers* to participate in its pilot, is then *fully informed* that any service disconnections in the pilot will be treated as “discontinuances,” rather than “terminations” and is *fully informed* through consumer education about the differences in protections offered under discontinuance versus termination,³ and then *voluntarily agrees* to operate under the discontinuance rules, then that agreement, and service disconnections under it are, by definition, “*voluntary*.”

The other parties take the view that, since service disconnections are only likely to occur sometime later when a volunteer is short of funds, the service disconnection cannot be considered “voluntary” because the customer will be under financial duress at the moment of disconnection.

The first difficulty that PECO has with this argument is that it is largely based on the assumption that PECO’s program will be populated in material part by low-income customers. *See, for example*, I&E Exceptions, p. 8: “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.” But PECO’s program excludes low-income customers. Consequently, while there was record evidence regarding the financial status of disconnected customers *in other prepaid programs* that allow, or even encourage, participation by low-income customers, *there was no similar evidence for a program such as the*

³ There is further discussion of consumer education later in these Reply Exceptions.

PECO Plan, which excludes low-income customers. *See* PECO Statement 1R, pp. 5-6; OCA Statement No. 1S, p. 5 (“[OCA] did not provide evidence of other programs’ income disaggregated disconnection rates because, to my knowledge, such evidence does not exist.”) Simply, it may be true that low-income customers in the programs in Arizona, Great Britain, and elsewhere were under financial duress when disconnected, but that information is not transferable to the PECO program because PECO excludes low-income customers. Simply, *what the other parties’ testimony showed is that prepaid programs that were adopted in other jurisdictions, which included and in some cases targeted low-income customers, resulted in some of those low-income customers feeling duress and lack of voluntariness. Because PECO’s program excludes low-income customers, none of that testimony is relevant to the PECO program.* The discontinuances in PECO’s program, which will cannot occur for low-income customers and which will occur only for people who volunteered to be in the program and who will have made a fully informed agreement that disconnections will be treated as discontinuances, should thus be understood to be voluntary.

Both the OCA (pp. 6-7) and I&E (pp. 13-19) argue that the initial voluntary agreement to treat disconnections as discontinuances should also not be treated as “voluntary” because, they say, it will not be possible to properly educate the volunteers on this issue. I&E, for example, argues (pp. 13-14) that “PECO has failed to produce any consumer educational materials or disclosures PECO fails to respect the Commission’s longstanding commitment to ensuring that customers are fully and properly educated about their utility programs. . . . “

The R.D. (pp. 53-54) properly recognized that such educational materials are best developed through a collaborative, and that PECO’s proposal to use a collaborative to develop

the educational materials is reasonable.⁴ Given that the other parties have asked the Commission to make rulings on important operational aspects of the Plan, it would have been premature and wasteful for PECO to develop educational materials as part of its filing package, as the other parties now contend.

PECO notes that, in its Direct Testimony, it highlighted this issue and attempted to initiate the collaborative discussion at that time. In that testimony, which was served on March 9, 2017, Mr. Scarpello stated (p. 19):

As I discussed earlier in my testimony, the distinction between "termination" and "discontinuance" is one of the key elements that the Plan implements and will test. PECO therefore makes this agreement a specific requirement to volunteer in the Plan.

PECO recognizes that a volunteer who agrees that cessation of service under the Plan constitutes "discontinuance" will have a different set of protections and rights than if they had remained a standard 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. PECO assumes the other parties to this proceeding will have ideas on what information should be included in such materials, and we look forward to reviewing those suggestions when presented in Rebuttal Testimony.

Not one party came forward with even one idea of how the consumer education materials could be fashioned (and to this day, over a year later, have still not offered one idea). Instead, the other parties who discussed consumer education monolithically took the view that, because PECO made the above-noted offer, its proposal is fatally and irretrievably flawed. Given the Commission's longstanding commitment to encouraging the use of collaboration, that is simply

⁴ It is also noteworthy that, in 1992, the BCS concluded that the provision of a five-day emergency backup card during the sign-up process would constitute sufficient notice that later disconnections would be treated as "discontinuances"; PECO proposes to use educational materials that say more than a backup card does.

not a plausible position, and the R.D. correctly concluded that these materials can be developed later with the assistance of a collaborative process. And, frankly, given the fact that all of the other parties have a long history of demanding the use of collaborative processes to develop consumer education materials, PECO doesn't understand why this is even a controversial proposal.

In sum, the R.D. was correct in its conclusion that PECO's plan properly refers to "discontinuances." That language is required by the regulations, which were based on a BCS recommendation specific to this issue. The Commission's regulations are not "outdated," and the consent to treat discontinuance is "voluntary" because the PECO Plan will be populated exclusively with non-low income volunteers, who will be educated on this issue using materials that are developed in a stakeholder collaborative.

Reply Exception 2: The Recommended Decision Correctly Concluded That The Potential for Increased Transaction Costs is Acceptable

PECO's Plan will allow volunteers to "load" funds to their prepaid account through a number of means (online, at banks, using credit cards, etc.), some of which are free, and some of which have fees. The other parties claimed that these fees would be unduly burdensome on program participants. The R.D. concluded (pp. 72) that, while a participant might experience an increase in transaction fees, "I find that this is a trade-off that the participant needs to make, whether it is more convenient to use this method of payment [prepaid service] versus the post-pay method."

The OCA excepted to this conclusion on the view that Plan volunteers will be trapped into paying higher transaction fees and will thus pay an inordinate percentage of their income to

participate in the Plan. OCA Exceptions, pp. 10-13. The OCA argues that, if a customer loads their account at the extreme high of the range of expected loadings (seven), and does so each time using the most expensive loading options, then the customer will end up paying an additional \$16.45 per month. The OCA states that this is a problem because, it points out, \$16.45 month is a lot of money to a low-income customer, and many low-income customers are “unbanked” and thus cannot use the free loading options.

Since PECO’s Plan excludes low-income customers, what this argument is really suggesting is this: There will be *moderate or high income* customers who volunteer for this program, and who will then load their accounts at an extremely high monthly periodicity (seven times per month), always using the most expensive loading method – and will continue to engage in that behavior month after month after month, without ever taking advantage of the standing opportunity to revert to standard service and avoid those fees. It is simply not plausible to believe that program volunteers will engage in this behavior unless the payment of such fees is acceptable to them – as the R.D. says, “a trade-off that the participant needs to make.” And, in PECO’s view, it is appropriate to allow informed volunteers to make that decision for themselves, given their personal circumstances.

If this was a mandatory program, or if it allowed participation by low-income customers, PECO could see the point of delving more deeply into this argument. But since PECO’s program is voluntary and excludes low-income customers, this argument is hyperbolic as applied to PECO’s plan. The R.D. is correct that, in the actual PECO Plan, the volunteers can make a choice of whether to use a free or a fee-based loading system or, if a free option is not available to them giving their banking circumstances, to choose to return to standard service. This argument is not a reason to reject PECO’s pilot.

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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