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March 15, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: PECO Energy Company's Petition for Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17

PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to the Plan  
Docket No. P-2016-2573023

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Exceptions of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah C. Stoner".

Sarah C. Stoner

SCS/lww  
Enclosure

cc: Hon. Angela Jones w/enc.  
Certificate of Service w/enc.  
Office of Special Assistants w/enc. via email only [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Reply Exceptions to the Commission upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Sarah C. Stoner, Esq.

Dated: March 15, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

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## I. INTRODUCTION

Real value can be delivered to consumers by enabling competitive prepay options. Competitively offered products require that electric generation suppliers (“EGSs”) continuously evolve and innovate product offerings to meet consumer expectations and preferences. A competitive market where all market players are on equal footing to develop products and services that are desired by customers is the ideal way to incent market development and provide consumers choices. The granting of PECO Energy Company’s (“PECO”) proposed prepayment meter program (“Prepay Pilot Program”) would stifle the ability of EGSs to offer such programs in Pennsylvania and would contradict the Electricity Generation Customer Choice and Competition Act (“Competition Act”).<sup>1</sup>

As set forth in its comments, testimony and briefs in this proceeding (all of which are incorporated herein by reference), the Retail Energy Supply Association (“RESA”)<sup>2</sup> has consistently maintained that granting PECO’s Prepay Pilot Program violates the Competition Act, is anticompetitive, discriminatory and would negatively impact the ability of EGSs to offer their own prepay plans. Consistent with this view, Administrative Law Judge (“ALJ”) Angela T. Jones properly concluded that PECO’s Prepay Pilot Program is contrary to the Competition Act and should not be approved.<sup>3</sup> RESA fully supports the analysis and conclusion of the ALJ with regard to this issue and recommends that the Commission adopt it.

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<sup>1</sup> 66 Pa. C.S. § 2801, et seq.

<sup>2</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>3</sup> Recommended Decision (“RD”) at 78.

RESA submits these Reply Exceptions to respond to several issues raised by PECO in its Exception #3 to the January 30, 2018 Recommended Decision. PECO's Exception #3 claims that PECO's Prepay Pilot Program is not contrary to the Competition Act and that various provisions of the Competition Act were misinterpreted or erroneously relied upon by the ALJ.<sup>4</sup> PECO's position, as set forth in its Exception #3, must be rejected as PECO has failed to establish that its plan does not violate the language and clear intent of the Competition Act. To be clear, RESA does not share the view of the advocates in this proceeding that prepay products are dangerous and harmful to consumers.<sup>5</sup> However, these reply exceptions are limited to responding to PECO's claims that its proposed plan does not violate the public policy declarations of the Competition Act.<sup>6</sup>

As explained more fully below, PECO's Exception #3 should be denied and the ALJ's ultimate recommendation on this issue should be adopted.

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<sup>4</sup> PECO Exceptions at 11-14.

<sup>5</sup> See RESA Reply Brief at 2.

<sup>6</sup> RESA Main Brief at 10-25; RESA Reply Brief at 3-4.

## II. REPLY TO PECO'S EXCEPTION #3

### A. The ALJ Soundly Recommends That PECO's Prepay Pilot Program Be Denied As it is Contrary to the Competition Act

In properly recommending that PECO's Prepay Pilot Program be denied as it is discriminatory and in violation of the requirements of the Competition Act, the ALJ relied on three provisions of the Competition Act.<sup>7</sup> As discussed further below, all of these provisions (as well as others) support the ALJ's recommendation which the Commission should adopt.

#### 1. **The ALJ Properly Finds That PECO's Prepay Pilot Program Would Result in Barriers for EGSs to Have Direct Access to the Competitive Market**

The first provision relied upon by the ALJ to find that PECO's proposed plan is contrary to the Competition Act is Section 2804(6) which provides:

"A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system."

66 Pa. C.S. § 2804 (emphasis added). The ALJ rightly concluded that "the barriers to direct relationships with EGSs as stated by RESA are not specific to PECO or its Plan, but to EDCs in general. Nevertheless, these barriers cause access and conditions that are not comparable with PECO using its own system, which is contrary to the statutory provision found in 66 Pa.C.S. § 2804(6)."<sup>8</sup>

As explained more fully in RESA's briefs (and supported by the testimony of RESA witness Norman Levine), those barriers stem from the current infrastructure in Pennsylvania

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<sup>7</sup> RD at 77-78.

<sup>8</sup> RD at 77.

today. Utility consolidated billing is the only viable billing option available for EGSs which ultimately prevents EGSs from establishing direct relationships with their customers or offering them non-commodity based value-added products and services. Even if an EGS were to directly bill a residential customer, it cannot disconnect service to a nonpaying customer. The inability to disconnect service to a nonpaying customer is another barrier to EGSs providing prepay products. EGSs lack reasonable and timely access to real-time usage data which presents another barrier to EGSs seeking to provide prepay services.<sup>9</sup>

PECO objects to the ALJ's conclusion that those barriers result in access and conditions that are contrary to the Competition Act. PECO claims that the aforementioned statutory provision and the Commission's implementing regulations permit an EDC-specific service without violating the Competition Act.<sup>10</sup> RESA submits that this argument is unpersuasive because it ignores the whole purpose of the Competition Act which is to give customers direct access to the competitive market and by making sure that the EDC does not intervene with the ability of EGSs to do this or use its competitive advantage to offer something that it denies EGSs the ability to offer. In previously evaluating RESA's claims of unlawful discrimination in another context, the Commission looked for "evidence of record to indicate that the 'rates, terms of access and conditions' under which the EGSs would incur certain charges are comparable to those under which an EDC incurs them."<sup>11</sup> In that case, the PUC found that EGSs and EDCs

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<sup>9</sup> RESA Main Brief at 17, 22; RESA Reply Brief at 3.

<sup>10</sup> PECO Exceptions at 12-13.

<sup>11</sup> *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2417907, Opinion and Order entered January 15, 2015 at 64.



both incurred PJM charges and there was nothing unique about this to support a claim that the EDCs were illegally denying EGSs equal access to their systems.<sup>12</sup>

Here, because of the aforementioned barriers, EGSs cannot provide prepay products and permitting the EDC to do so creates conditions not comparable to PECO's use of its own system. The terms of access and conditions under which EGSs could provide prepaid products is drastically different than those that an EDC such as PECO would encounter. Those barriers are exacerbated by the misperception by some consumers that the EDC-provided default service is superior and that an EDC's products and services are superior based on the historical position of the EDC as the monopoly provider.<sup>13</sup> Permitting PECO's Prepay Pilot Program to move forward would perpetuate PECO's role as the historical monopoly, solidify its current position as the exclusive billing entity for EGS mass market customers and discourage EGSs from developing prepaid products that would deliver on the Competition Act's ultimate goal of a competitive and innovative market for Pennsylvania consumers. Significantly, PECO has not denied that its Prepay Pilot Program would result in barriers for EGSs "that cause access and conditions that are not comparable with PECO using its own system."<sup>14</sup> Thus, PECO has failed to support its Exception #3 which should be denied and the ALJ's recommendation on this point should be adopted.

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<sup>12</sup> *Id.* at 63-65.

<sup>13</sup> See RESA's M.B. at 12 ("As the Commission has rightly concluded in other contexts, endorsement of default service over competitive EGS supply products 'would not be commensurate with the intent of the Competition Act and [the Commission's] duty to promote and assist in the development of the retail electric supply market.'" *Petition of Duquesne Light Company For A Waiver Of The Three Business Day Switching Requirements Under 52 Pa. Code § 57.174*, Docket No. P-2014-2448863, Order entered December 4, 2014 at 11).

<sup>14</sup> RD at 77.

## **2. The ALJ Aptly Concludes That PECO's Prepay Pilot Program Would Have An Anticompetitive and Discriminatory Effect on EGSs**

Next, the ALJ relied on the provision in the Competition Act that empowers the Commission to investigate and take steps to prevent anticompetitive or discriminatory conduct affecting the retail distribution of electricity - Section 2811(a).<sup>15</sup> The ALJ referenced this provision in responding to PECO's argument that it is the Commission's regulations (and not its Prepay Pilot Program) that differentiate between EDCs and EGSs and create a barrier.<sup>16</sup> The ALJ found that "if the differential treatment exists because the Commission's regulation authorized the difference, that does not mean the regulation is right or is promoting sound policy."<sup>17</sup> The ALJ further provided that the "policy declarations in the Electric Competition Act, specifically Sections 2804(6) and 2811(a) do not promote differentiation but commonality."<sup>18</sup> The ALJ's reasoning is sound and her recommendation should be adopted.

PECO objects to the ALJ's reliance on this provision and claims that: (1) Section 2811 is completely unrelated to the provision of prepaid service; and (2) if the Commission believes there is anticompetitive or discriminatory conduct, its only remedy is to refer the matter to other agencies for further action.<sup>19</sup> PECO's argument neglects to directly respond to the logical point made by the ALJ – that the policy directives of the Competition Act promote commonality and not differentiation (i.e., allowing the EDC to have exclusive ability to do something while preventing EGSs from doing it). Moreover, PECO's narrow view of Section 2811(a) is inconsistent with the Commission's reliance on this provision to ensure development of a

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<sup>15</sup> RD at 78.

<sup>16</sup> RD at 78.

<sup>17</sup> RD at 78.

<sup>18</sup> RD at 78.

<sup>19</sup> PECO Exceptions at 14.

functioning competitive market. For example, the Commission has adopted regulations to impose reporting requirements on EDCs and EGSs consistent with its statutory duty to monitor the electric generation market in Pennsylvania pursuant to Sections 2804(12) and 2811(a).<sup>20</sup> Moreover, citing “its obligation to ensure a properly functioning and workable competitive retail electricity market pursuant to Section 2811(c),” the Commission opened its in-depth investigation into Pennsylvania’s retail electricity market (referred to as the Retail Markets Investigation or “RMI”).<sup>21</sup> These examples make clear that the Commission does not narrowly interpret its obligations pursuant to Section 2811 as advanced by PECO. Rather and consistent with RESA’s advocacy in this proceeding, when an EDC proposes to undertake an action that will impact ability of consumers to choose a competitive option, the Commission must consider whether the proposal is anticompetitive or discriminatory and whether or not it will have a negative impact on competition.<sup>22</sup>

In sum, PECO continues to fail to establish how its proposed plan is consistent with the Competition Act’s aim to counteract anticompetitive and discriminatory conduct. As such its Exception #3 must be rejected and the ALJ’s view on this point should be adopted by the Commission.

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<sup>20</sup> *Petition for Reconsideration of the Retail Energy Supply Association: Re: Final Rulemaking on Retail Electricity Choice Activity Reports*, Docket No. L-00070184, Final Rulemaking Reconsideration and Order entered December 4, 2008 at 17.

<sup>21</sup> *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520, A-2010-2176732, Opinion and Order entered March 8, 2011 at 46; *Investigation of Pennsylvania’s Retail Electric Market*, Docket No. I-2011-2237952, Order entered April 29, 2011 at 2.

<sup>22</sup> RESA M.B. at 4-5.

### **3. ALJ Jones Appropriately Finds That PECO's Prepay Pilot Program Would Impede EGSs From Having Direct Access to Retail Customers**

Lastly, ALJ Jones utilizes Section 2802(12) of the Competition Act to support her conclusion that PECO's Prepay Pilot Program is contrary to the Competition Act and should not be approved.<sup>23</sup> Section 2802(12), in pertinent part, states that "The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties."<sup>24</sup> ALJ Jones surmised that if PECO's Prepay Pilot Program "presents an impediment for generation suppliers to have direct access to retail customers, then it cannot be found to uphold this policy statute...."<sup>25</sup> This conclusion is sound and should be adopted by the Commission.

In Exception #3, PECO notes that the primary crux of Section 2802(12) is that system reliability should be maintained in moving to direct access. It claims that the section does not mention or implicate the provision of prepaid service.<sup>26</sup> PECO's challenge to the ALJ's reliance on this provision is unpersuasive. Direct access is the primary purpose of the Competition Act and other issues do not render this primary purpose inconsequential. RESA submits that the absence of a specific reference to prepaid service does not mean that Competition Act provisions can be ignored. Section 2802(12) and Section 2804(2) make clear the legislature's policy goals and objectives relating to the restructuring of the electricity market. The Competition Act

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<sup>23</sup> RD at 78.

<sup>24</sup> 66 Pa.C.S. § 2802(12) (emphasis added).

<sup>25</sup> RD at 78.

<sup>26</sup> PECO Exceptions at 14.

requires the Commission to “allow customers to choose among electric generation suppliers in a competitive generation market through direct access.”<sup>27</sup>

PECO admits that the Competition Act “is an open access statute that sets up a structure by which EGSs can sell generation to customers on a non-discriminatory basis.”<sup>28</sup> However, it fails to dispute that its proposed plan will be an impediment to the ability of EGSs to have direct access to retail customers and offer their competitive prepaid plans. RESA submits that PECO’s Prepay Pilot Program would impede the ability of the EGS to develop a relationship with its customer because the EGS does not have a direct billing relationship and the prepay offering terms are dictated by PECO giving EGSs no ability to change them. This does not give customers direct access to EGS competitive prepay plans. PECO offers nothing in its exception to support rejecting the ALJ’s reasoning that its proposed plan conflicts with the public policy directives of Section 2802(12) and Section 2804(2) – to provide EGSs direct access to retail customers.

PECO’s various arguments challenging the ALJ’s analysis are fully devoid of any record evidence that its proposed plan is in the public interest and not contrary to the language and clear intent of the Competition Act. For all of the reasons discussed above, the ALJ properly concluded that PECO’s petition should be denied and PECO’s exception fails to offer any reason to reject the ALJ’s recommendation on this issue. Moreover, the RD correctly recommends that the petition be denied for its failure as a whole to be in the public interest. PECO has not provided any legal justification nor record support for any other outcome and, therefore, the Commission must deny PECO’s Exception #3.

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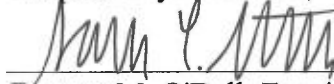
<sup>27</sup> 66 Pa.C.S. § 2804(2).

<sup>28</sup> PECO Exceptions at 14 (emphasis added).

### III. CONCLUSION

Granting PECO's petition would result in a discriminatory and anticompetitive outcome in violation of the requirements of the Competition Act. PECO's Prepay Pilot Program would permit PECO to deepen its existing relationships with EGS customers and stifle the ability of EGSs to offer prepay programs in Pennsylvania. RESA encourages the Commission to establish an even playing field to incent the competitive market development of prepay services by enabling EGSs the option to build and maintain direct billing relationships with their customers. For the reasons expressed herein, RESA respectfully requests that the Commission deny Exception #3 of PECO Energy Company and adopt ALJ Jones' conclusion that PECO's Prepay Pilot Program is contrary to the Competition Act, and therefore, should not be approved.

Respectfully submitted,



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