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March 15, 2018

Via Electronic Filing

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

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

Dear Secretary:

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

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

Please contact me with any questions.

Sincerely,

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

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Enclosures
Cc: Service List

PECO ENERGY COMPANY'S PILOT PLAN	:	Docket No. P- 2016-2573023
FOR AN ADVANCE PAYMENTS PROGRAM	:	
SUBMITTED PURSUANT TO 52 PA. CODE	:	
§ 56.17	:	
	:	
AND	:	
	:	
PECO ENERGY COMPANY'S PETITION FOR	:	
TEMPORARY WAIVER OF PORTIONS	:	
OF THE COMMISSION'S REGULATIONS WITH	:	
RESPECT TO THAT PLAN	:	

Certificate of Service

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

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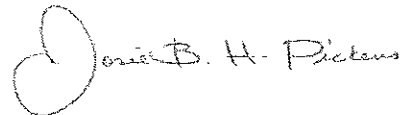
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Respectfully submitted,

A handwritten signature in dark ink, reading "Josie B. H. Pickens". The signature is written in a cursive style with a large, looping initial "J".

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I. INTRODUCTION

On February 12, 2018, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge Angela T. Jones, which denied PECO Energy Company's (PECO or the Company) Petition for approval of a pilot program to offer prepaid electric service and PECO's Petition for waiver of portions of the Commission's regulations with respect to the proposed pilot program. ALJ Jones correctly found that PECO failed to meet its burden to show that the pilot was in the public interest. RD at 1; RD at 79-80.

On March 5, 2018, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), along with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) (collectively referred to herein as the Joint Parties), filed an exception to ALJ Jones' Recommended Decision, arguing that termination of prepaid electricity service as a result of a customer's failure to prepay for service is not a "voluntary discontinuance." Notwithstanding that limited exception, the Joint Parties noted strong support and agreement with the ALJ's ultimate conclusion that PECO's prepay proposal is not in the public interest. The Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and PECO also filed exceptions to the Recommended Decision. Both the OCA and I&E also argued that the ALJ erred by characterizing a termination of service under the pilot as a voluntary discontinuance. The OCA further excepted to ALJ Jones's finding that increased transaction costs associated with PECO's Pilot were acceptable. OCA Exception at 10. I&E also excepted to the ALJ's conclusion that PECO's failure to provide any educational materials did not bar approval of PECO's Plan, asserting that this

“impermissibly shifts PECO’s burden of proof to ‘stakeholders’ by absolving PECO of it[s] obligation and burden to fully support ...its Petition.”¹ I&E Exception at 14-18.

For its part, PECO excepts to the ALJ’s decision to deny its prepay proposal, listing three specific exceptions. First, PECO excepts to the ALJ’s determination that its proposal is not in the public interest. PECO Exceptions at 3-7. Second, PECO excepts to the ALJ’s denial of a waiver of Commission regulations to allow participants to use a credit deposit they have with the company as a source of initial funding for their prepay account. PECO Exceptions at 8-10. Finally, PECO excepts to the ALJ’s determination that the Commission’s prepay regulations and PECO’s prepay proposal violate the Competition Act (66 Pa. C.S. § 2801 *et seq.*). PECO Exceptions at 11-14.

As noted in the Joint Parties’ Exception, the record in this case clearly shows the depth and breadth of likely harm associated with prepaid metering. The record further demonstrates that every conceivable benefit to the public can be achieved without the substantial threat of harm to consumers and the broader community that would result from implementation of PECO’s pilot plan. See, e.g. TURN *et al.* M.B. at 22-23; CAUSE-PA M.B. at 26-32; OCA M.B. at 17-20. As such, the ALJ was correct in her ultimate conclusion that PECO’s plan is simply not in the public interest.

The self-ascribed “thrust” of PECO’s Exceptions “is that the RD is too conservative in its assessment of the claimed termination risk and thus should not be adopted.” PECO Exceptions at 2. PECO’s brazen disregard for the substantial evidence of harm presented in this proceeding should not be tolerated. Indeed, the ALJ’s conclusion was founded on the substantial evidence on the record that overwhelmingly shows that the risk of dangerous terminations under PECO’s

¹ While not addressed in these Reply Exceptions, the Joint Parties note for the record that they are in agreement with the additional exceptions of the OCA and I&E.

proposal is not just “claimed” – increased termination is, in fact, a highly probable consequence of PECO’s proposal, along with a substantial number of other likely harms. The potential harm inherent with PECO’s prepay service proposal not only led the parties to the proceeding to vehemently oppose the proposal, it also resulted in an outpouring of opposition and concern from a broad range of community groups, local officials, and individual consumers in PECO’s service territory.² Not a single individual, organization (other than PECO), or local official is on the record in support of PECO’s proposal.

² Nineteen individuals testified in opposition to PECO’s dangerous prepay proposal, including:

- Glen Forster, on behalf of Philadelphia City Councilwoman Helen Gym
- Tyrone Williams, Strawberry Neighborhood Action Center
- Markita Morris-Louis, Clarifi
- Amanda Solch, Center for Advocacy for the Rights and Interests of the Elderly (CARIE)
- Miguel Angel Torres, Rising Sun Health Center
- Logan Welde, Clean Air Council
- Paulette Adams, on behalf of Philadelphia City Councilwoman Blackwell
- 12 Individual PECO Customers, appearing on their own behalf

RD at 5; CAUSE-PA MB at 2 n.2.

In addition to this strong opposition, there were also twenty organizations and governmental bodies which expressed their opposition to PECO’s dangerous proposal in Comments to the Commission before the litigated proceeding began, including:

- AARP Pennsylvania
- The AIDS Law Project of Pennsylvania
- The Bureau of Investigation and Enforcement
- The Earth Quaker Action Team
- The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
- The Office of Consumer Advocate
- Tenant Union Representative Network
- Action Alliance of Senior Citizens of Greater Philadelphia
- Clean Air Council
- The Natural Resources Defense Council
- The Philadelphia Workers Benefit Council
- Neighborhood Energy Centers
- Community Action Development Commission of Montgomery County
- Health, Education and Legal Assistance Project: A Medical-Legal Partnership (HELP:MLP)
- Friends Rehabilitation Program
- Drexel Community Lawyering Clinic
- Media Mobilizing Project
- Lutheran Settlement House
- Philadelphia Association of Community Development Corporations
- Habitat for Humanity Philadelphia

CAUSE-PA MB at 1-2.

In its Exceptions, as in its Main Brief, PECO attempts to subvert the power and authority of Pennsylvania's General Assembly, asserting that its prepay plan proposes a "suite of protections" that are "sufficiently robust" to protect consumers from involuntary and/or dangerous loss of electric service. PECO Exceptions at 2. But the General Assembly already prescribed the applicable consumer protections in 2004, and again in 2014, by passing and then reauthorizing the Responsible Utility Consumer Protection Act, codified in Chapter 14 of the Public Utility Code. 66 Pa. C.S. § 1401 *et seq.* If granted, PECO's prepay proposal would rewrite or otherwise weaken the consumer protections contained in Chapter 14. The sole legal authority on which PECO relies to support its circumvention of current law is a Commission regulation passed in 1978, which has never been used by a utility in the 40 years since its passage. See PECO Exceptions at 6 (citing 52 Pa. Code § 56.17).

The Joint Parties hereby submit these Reply Exceptions to PECO's Exceptions and assert that ALJ Jones' ultimate conclusion in this proceeding to deny PECO's Plan was correct, and should be upheld as a matter of law and policy.

II. REPLY EXCEPTIONS

A. Reply to PECO Exception 1: The Recommended Decision correctly concluded that PECO's proposal is not in the public interest based on prevailing law, sound public policy, and substantial evidence.

PECO's first exception is to the ALJ's determination that PECO's proposal is not in the public interest – specifically, that the disadvantages of the Plan outweigh any benefits to the public. PECO Exceptions at 3; RD at 79. PECO argues, by contrast, that the Plan is in the public interest, asserting that implementation of the Plan will allow for the collection of data to obtain practical experience on prepaid electricity. PECO Exceptions at 3-4. As explained more thoroughly below, and in the Joint Parties' respective Main and Reply Briefs, PECO's proposal

was properly rejected by ALJ Jones based on overwhelming record evidence showing that PECO's Plan is contrary to established law and prevailing public policy and, as such, is contrary to the public interest and must be rejected.

i. Data from jurisdictions that offer prepaid electric service does not support the implementation of prepaid electric service in Pennsylvania.

PECO begins its first exception by making selective use of data from other jurisdictions, while ignoring evidence from those same jurisdictions – and its own consumers – that prepaid service increases terminations and costs to vulnerable consumers. PECO claims that it presented testimony to show that when prepaid service was implemented in other jurisdictions, “there was an increase in customer satisfaction, a decrease in delinquencies (that is, better payment behavior), and increased conservation.” PECO Exceptions at 3. PECO argues that this limited evidence is sufficient “to establish a *prima facie* case that use of prepaid service has created real benefits in other jurisdictions, and therefore that it is in the public interest to run a pilot in Pennsylvania to see if the same benefits can be obtained.” PECO Exceptions at 3-4. This selective use of record evidence is misleading.

First, as TURN *et al.* addressed in its Main Brief, PECO failed to show that its Proposal will deliver increased customer satisfaction:

PECO has not presented comparative data to show that its pilot proposal is designed to replicate alleged positive results achieved in other jurisdictions. Nor has PECO provided any details on which specific customer populations, if any, benefitted from participation in other state's prepaid programs, and specifically whether economically vulnerable households between 150-300% FPL have benefited.

TURN *et al.* MB at 20-21 (citing PECO Response to I&E I-22, in which PECO responded that it “does not claim that it has proof that a prepayment program in PECO's service territory will have the noted effect [of helping ratepayers recover from being delinquent]. One purpose of the pilot is to generate data on that and other issues”).

While PECO contends that its testimony established a *prima facie* case (PECO Exceptions at 3), PECO provided no substantive counter to record evidence demonstrating that prepaid programs in other jurisdictions have targeted low and moderate income households. Similarly, PECO disregards entirely the record evidence demonstrating that prepaid participants in other jurisdictions have nonetheless experienced more frequent terminations and increased fees under a prepaid service paradigm. TURN *et al.* Main Brief at 22; CAUSE-PA MB at 26-32. Highlights of that extensive record evidence include:

- Prepay electric customers in New Zealand “were more likely than the general population to experience financial hardship, low household income, and high levels of ‘bill stress’.”

CAUSE-PA MB at 26, citing OCA St. 1 at 22-23.

- The Salt River Project’s M-Power Program in Arizona was shown to concentrate on young, low-income households who have low or new credit ratings. These vulnerable households paid an average of \$20 at a time, and made an average of 4 monthly payments in the winter and 7 monthly payments in summer, adding significant transaction fees and costs to the normal cost of electricity. The disconnection rate for the M-Power Program was approximately 16.8% across all participants, compared to PECO’s post-pay termination rate of just 6%. An alarming 51% M-Power participants were disconnected more than 2 times over a 14-month period, and 30% experienced 5 or more terminations during the same period.

CAUSE-PA MB at 26, 29, citing CAUSE-PA St. 1 at 28, OCA St. 1 at 15-16; see also CAUSE-PA St. 1 at 26.

- “[A] vast majority of prepayment meter users in Great Britain have been low-income customers.” Implementing utilities in Great Britain are not required to track and report on rates and service disconnections.

CAUSE-PA MB at 26, 30, citing OCA St. 1 at 20-21.

Based on this evidence, the ALJ appropriately concluded that, in other jurisdictions, “existing prepay service programs yield an increase in disconnects which increases the risk of public health and safety not only to participants but to the public at large.” RD at 65.

Contrary to PECO's claims, the ALJ gave appropriate weight to the experience of prepaid participants in other jurisdictions. RD at 65-66. After finding that customers in other jurisdictions offering prepay service have experienced an increase in terminations, ALJ Jones in turn concluded that PECO failed to present any data from existing prepay service programs to show that purported benefits will be realized. RD at 65. Weighing the evidentiary record evidence, the Recommended Decision correctly determined that PECO's Plan is not in the public interest because the record evidence "supports a conclusion that an increase in the disconnection rate will be realized from the operation of the Plan and the increased disconnection rate will result in increased risks to health and safety." RD at 66.

It should be noted that, in making its claim that its Plan is in the public interest, PECO disregards the mountain of opposition on the record from consumers within its service territory. Indeed, as mentioned previously, not a single consumer came forward in support of PECO's proposal – yet nearly 40 individuals, organizations, and local elected officials are on the record opposing or expressing concern over PECO's proposal.

In light of the substantial record evidence in this proceeding, including the well-documented risk of harm occurring to ratepayers in other jurisdictions, ALJ Jones correctly determined, based on the evidentiary record before her, that PECO's plan must fail because it is contrary to existing law and the public interest at large.

ii. PECO's Proposal improperly circumvents statutorily imposed medical and winter termination protections.

A core aspect of PECO's first exception is its assertion that its Plan is in the public interest because participants will have access to medical certificates and be protected from termination by the winter moratorium if they revert to standard service and affirmatively assert

the protections. The Recommended Decision correctly rejected PECO's arguments, and properly concluded that the protections offered by PECO in its Plan are not sufficient to comply with the statutory protections of Chapters 14 and 56. RD at 59, 63.

PECO argues that prepay participants will be able to adequately access medical and winter termination protections,³ even though it fails to comply with the requirements of Chapters 14 and 56. PECO Exceptions at 5. As PECO describes it, accessing a medical certificate while participating in prepay would require two steps: "[I]f [participants] face a medical emergency, they should call PECO, ask to revert to standard service, and, *in that same call*, inquire about medical certificate protections." PECO Exceptions at 5-6. In other words, a participant (1) must know to call and ask to be returned to standard service, and (2) must know they have the right to assert the medical protections. PECO noted (without providing details) that customers will be informed of the medical protections, and the two-step process for exercising the protections, upon enrollment in the prepay pilot. PECO Exceptions at 5.⁴ PECO proposes a similar practice for prepaid participants to access winter protections. PECO Exceptions at 6. However, PECO does not intend to provide any notice of medical or winter protections in proximity to the

³ See Section A.iii below. PECO argues that the loss of service for nonpayment under PECO's prepay pilot constitutes a voluntary disconnection of service, and not a termination for nonpayment pursuant to 66 Pa. C.S. §1406. PECO Exceptions at 6. The Joint Parties – along with OCA and I&E -- vehemently disagree. See CAUSE-PA and TURN *et al.* Joint Exception; OCA Exceptions at 3-8; I&E Exceptions at 8-12. PECO acknowledges that its reliance on the subtle difference in terminology between a termination and a voluntary discontinuance is "legalistic" – nevertheless, it "is the law" because it is embedded within the Commission's regulations. PECO Exceptions at 6. The Joint Parties addressed the fundamental error of law PECO makes in relying on this distinction, explaining that the Commission's outdated regulation – passed in 1978 and never utilized by a public utility – was squarely superseded by the General Assembly. CAUSE-PA & TURN *et al.* Joint Exception at 3-9.

⁴ PECO provides scant details about how it will inform consumers of their rights, stating only that "during the pilot intake process, PECO will educate the program volunteers that if they have a medical emergency, they can call PECO to obtain access to the medical certificate protections and that, if they face a medical emergency, they should call PECO, ask to revert to standard service and, in that same call, inquire about the medical certificate protections." PECO Exceptions at 5-6. Indeed, **this notice is anticipated to be just one component to a complex and detailed intake process**, which will presumably disclose all of the program terms, including new and complex payment information, customer waivers, and other critical program terms. In other words, these critical disclosures will likely be buried in the fine print, at a time when the consumer is not immediately impacted by the potential future loss of service.

consumer's loss of service to remind consumers that they may withdraw from prepaid service and, in turn, that they can prevent a potentially dangerous loss of service in the winter or while treating a serious illness or medical condition. PECO justifies its two-step process based on the Commission's 1978 prepay regulation, which predates the statutorily imposed winter termination protections and medical certification process in Chapter 14 by over three decades. PECO Exceptions at 6.

By contrast, under standard medical certificate and winter procedures, a customer facing the loss of service receives written notice of the medical and winter termination protections 10 days before service is terminated. 66 Pa. C.S. §§ 1406(e)-(f); 52 Pa. Code §§ 56.91(b)(8), (10). To exercise the medical protection, a consumer is informed on the written 10-day notice that they can call PECO to report that they are pursuing a medical certificate, triggering a 3 day hold on termination to allow the customer to obtain a medical certificate from their physician, physician assistant, or nurse practitioner. 66 Pa. C.S. § 1406(f); 52 Pa. Code §§ 56.91(b)(8), 56.113; see also 52 Pa. Code Ch. 56, Appendix A&B. With regard to winter protections, consumers are informed of the winter moratorium on the written 10-day notice, and are provided with information about the federal poverty guidelines and a list of required documentation or information necessary to assert the protection.⁵ 66 Pa. C.S. § 1406(e); 52 Pa. Code §§ 56.91(b)(10), 56.100.

PECO's proposal requires an additional step for consumers to exercise the medical and winter protections, and fails to provide adequate notice of the procedure to exercise protections before service is terminated. As recognized by the ALJ, PECO's proposed practice degrades

⁵ It should be noted that in the context of winter termination protections, the onus is on the utility, not the customer, to ensure that it does not terminate customers under 250% of the Federal Poverty Level. 66 Pa. C.S. § 1406 (e) ("an electric distribution utility . . . shall not terminate service to customers with household incomes at or below 250% of the Federal poverty level . . .").

critical protections available to the public. RD at 59. The ALJ also recognized that Commission regulations specifically operate such that customers receive notice of the availability of medical certificate “when the Company is close to exercising termination.” RD at 59. But as mentioned above, PECO’s proposal would only provide information about the protections during program intake, which could be months or years before the protection is needed. ALJ Jones unequivocally found that PECO’s proposal would inadequately educate participants about their medical and winter termination protections. RD at 59, 63. As noted by CAUSE-PA Witness Mitchell Miller, informing consumers of medical and winter protections at the time they face termination will have “a far greater likelihood of allowing a household to notify PECO that they are facing a . . . emergency.” CAUSE-PA St. 1 at 23-24. Thus, ALJ Jones properly found that the additional step required to access a medical certificate and winter termination protections – coupled with a lack of adequate notice close in time to the loss of service – impermissibly erodes the protections contained in Chapters 14 and 56, and was therefore not reasonable or in the public interest. RD at 59, 63.

In arguing that its proposal is either absolved from or otherwise adequately complies with the medical and winter protections in Chapters 14 and 56, PECO insists that the Commission should “tak[e] a step back from the details,” and argues that the provision of electric service should not always have to strictly comply with consumer protections to be in the public interest. PECO Exceptions at 7. But, as is most often the case, *the devil is in the details*. Here, specifically, the details show that PECO’s Plan does not comply with statutory rights prescribed by the General Assembly. As the ALJ found, a statutory right cannot be waived if it is intended to benefit the public. RD at 36. Thus, while PECO requests that the Commission ignore the details, the ALJ properly paid attention to them and correctly concluded that PECO’s Plan

violates the public interest due to, among other things, its lack of compliance with medical and winter protections. This conclusion was well-founded and amply supported by the record and should be upheld.

The Joint Parties note that PECO's first Exception addresses only medical certificates and winter termination protections, and not the myriad of other protections required by statute and which are undermined by its Plan — including, for example, the right to written notification, payment arrangement options, protections for tenants, and protections for victims of domestic violence. PECO refers the Commission back to its briefs on those topics. The Joint Parties similarly refer the Commission to the Joint Parties' respective Main Briefs, as well as ALJ Jones' Recommended Decision denying PECO's arguments. RD at 55-71; CAUSE-PA MB at 12-26; TURN *et al.* MB at 6-19.

iii. The loss of prepaid electric service as a result of a customer's failure to pay for service is a termination, not a "voluntary discontinuance" of service.

To support its argument that the protections of its proposal are sufficient, PECO relies on a legal fiction that failure to prepay for service is a "voluntary discontinuance" and not termination of service because the participant purportedly agrees to this distinction when they enter the program. PECO Exceptions at 6. As such, PECO asserts that termination protections do not apply. *Id.* As PECO notes, this concept is found in the Commission's Regulations. 52 Pa. Code § 56.17(3)(iii)(D).⁶ ALJ Jones agreed with PECO that a customer could, theoretically, "agree" to discontinuance, at least insofar as PECO's Plan complies with the aforementioned regulation. RD at 52-53.

⁶ PECO rather ironically insists that the language of Section 56.17 must be followed because "it is the law," but glosses over the existence of Chapter 14 in its entirety and fails to address that Chapter 14 superseded Section 56.17. PECO Exceptions at 6.

As discussed at length in the Joint Parties' exception, reliance on the decades-old regulation at Section 56.17 is misplaced, given the regulation contradicts subsequently-enacted statutory provisions and in light of substantial record evidence showing that failure to reload funds is not a voluntary act for most prepay customers. See generally Joint Parties' exception.

As noted by CAUSE-PA in its Main Brief, and reiterated in the Joint Parties' exception, the Commission's regulations are only enforceable to the extent they are consistent with statutory authority. See CAUSE-PA MB at 6-7. The distinction made in Section 56.17 between a request for discontinuance and a termination remains valid only if it is consistent with Chapter 14. Specifically, Chapter 14 delineates responsibilities of customers and provides customers with explicit protection from the loss of service. Chapter 14 allows utilities to terminate service for "nonpayment of an undisputed delinquent account" or for "failure to comply with the material terms of a payment arrangement" – but only under certain terms and conditions, including written advance notice of termination and winter termination protections. 66 Pa. C.S. § 1406. PECO's Plan does not extend these terms and conditions to prepaid participants and so must fail.⁷

iv. PECO's pilot is neither low-risk nor low-cost: A pilot program is not a carte blanche to conduct a harmful experiment at ratepayers' expense.

PECO makes much of the fact that the Commission has, in the past, noted a lack of practical experience with prepaid meters. PECO Exceptions at 7. From PECO's perspective, the sheer fact that its program is a pilot, capable of gathering information, is enough to meet the public interest standard, regardless of whether the proposal is likely to cause physical and financial harm to consumers and the surrounding community. Id. The Joint Parties unequivocally

⁷ The Joint Parties' position has been more fully set forth in its exceptions, as well as the similar exceptions of OCA and I&E.

assert that gathering data is not an adequate reason for causing real harm to participants and the broader public. If it were, irreversible harm could be done to the public under the guise of experimentation.

PECO's reliance upon the Commission's noted lack of practical experience with prepaid electricity in the past is misleading. PECO quotes only partial language from the Commission's Chapter 56 Rulemaking Order, arguing that the Commission "expressed frustration" with the lack of prepaid service experience in Pennsylvania. PECO Exceptions at 1, 7 (quoting Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14, Pa. PUC Docket No. L-00060182, Revised Final Attachment One at 57 (June 13, 2011) (hereinafter Chapter 56 Rulemaking Order)).

Before imputing "frustration" on the Commission, the quoted language must be placed in proper context. As explained in CAUSE-PA's Main Brief, the Commission rejected proposals in its Chapter 56 Rulemaking Order to allow utilities to offer prepaid service to low income consumers, citing "public health and safety concerns." Ch. 56 Rulemaking Order; CAUSE-PA MB at 21-22; CAUSE-PA St. 1SR at 11. Tellingly, the Commission recognized that through Chapter 14, the General Assembly evidenced an intention to protect a broader category of economically vulnerable customers from prepayment meter service:

In Chapter 14, the General Assembly indicates that the protected customers should be those at or below 250% of the federal poverty level. For example, the winter restrictions at Section 1406(e) apply to those at or below 250% of poverty, and the PUC payment agreement formulas at Section 1405(b) are more lenient for those at or below 250% of poverty. Based on these actions of the General Assembly, if anything, the income threshold for this section should be raised to 250% from 150%.

CAUSE-PA MB at 21-22 (quoting Ch. 56 Rulemaking Order). While the Commission ultimately decided not to amend Section 56.17, it was clearly cognizant of the public health and safety issues inherent in the delivery of prepaid electric service, and was concerned that programs authorized under Section 56.17 could circumvent essential, statutorily authorized consumer protections contained in Chapter 14.

The risk of harm to consumers created by PECO's prepay proposal is not merely speculative or trivial, as PECO argues in its Exceptions. As the Joint Parties have maintained throughout this proceeding, and supported with substantial record evidence, prepaid electricity attracts economically vulnerable customers. CAUSE-PA MB at 26-27; TURN *et al.* MB at 24. These customers already struggle to keep up with regular payments sufficient to maintain electric service. But as the record shows, those who enroll in prepaid service make more frequent payments, which forces them to incur additional transaction fees for each payment. CAUSE-PA MB at 27-29; TURN *et al.* MB at 22-23. In turn, customers enrolled in prepaid service experience more frequent interruptions of service – impacting both physical and mental health. CAUSE-PA MB at 29 - 31; TURN *et al.* MB at 26-27.

The risk of harm caused by prepaid electric service extends to the public at large. As CAUSE-PA Witness Mitchell Miller explained:

The loss of electric service for any period of time is more than a mere inconvenience, but this is particularly true in the middle of winter or the heart of the summer. Heating and cooling are essential to health and, in addition to heating and cooling, many households rely on electricity to cook food for their families and to heat water to bathe their children. Without service, many households resort to unsafe alternatives such as candles for light, or portable space heaters, camp stoves, and generators – which imperil not only the health and wellbeing of the household member, but also the community at large. This is not mere hyperbole. It was exactly such an event – when an elderly woman froze to death in her home — that enshrined the establishment of a winter termination protections. Indeed, if

prepay were approved to move forward in Pennsylvania – even in pilot form – it would not be long before we will again be seeing tragic headlines about avoidable deaths.

CAUSE-PA St. 1 at 30.

Further, as noted in TURN *et al.*'s Main Brief:

PECO's proposed plan is likely to expose pilot participants to a significant risk of harm in the form of increased risks of termination due to non-payment and payment of added and unnecessary fees simply to preserve their electric service. In other jurisdictions that have implemented prepayment programs, participants have experienced frequent terminations due to the inability to fund a balance on their account. PECO's pilot participants are also likely to encounter fees simply to fund a balance on their accounts. PECO estimates that prepay customers will load funds onto their accounts 3-4 times per month on average, with a range of up to 7 loads per month. Many of the methods for loading funds carry a fee, which ranges from \$1.35 to \$2.35. PECO's proposed plan is not in the public interest because it needlessly exposes pilot participants to increased likelihood of termination and added costs simply to maintain service.

TURN *et al.* MB at 22-23.

PECO attempts to dismiss these concerns, describing its pilot as “a carefully constructed opportunity . . . populated only by volunteers who can return to standard service at any time, and who will receive many notices before their service is discontinued.” PECO Exceptions at 7. However, the ALJ rightly determined in her Recommended Decision that PECO's proposed protections were not sufficient to shield against likely harm. See RD at 55, 59, 63, 65-66

While PECO claims in its Exceptions that “it is difficult to think of a better opportunity[,]” to test the concept of prepaid electricity (PECO Exceptions at 7) there is ample evidence in this proceeding that the benefits of a prepaid electricity pilot can be accomplished through less harmful means; namely, without the threat of immediate termination. See CAUSE-PA MB at 32 – 34; TURN *et al.* MB at 20-22; OCA MB at 17-20; I&E MB at 25-28. Multiple experts testified to how a prepaid electricity program could be structured without the harm inherent to PECO's Proposal. OCA Witness Howat and I&E Witness Grab both suggested that

this can be done by reverting participants back to standard service automatically when they run out of funds, placing them in the standard termination process. OCA St. 1 at 48; I&E St. 1 at 23. This would give participants access to the termination process of Chapter 14, including written notice, negotiation of payment arrangements and eligibility for Hardship Funds. In addition, once participants have been returned to standard service, they will receive all winter terminations protections as well – preventing harm to the participants and the public of loss of heat in the winter.

The ALJ, in her Recommended Decision, declined to consider alternatives to PECO's proposal, stating that "the Petitioner has the discretion to propose its Plan . . . [and] the task is to address what has been proposed." RD at 30. The Joint Parties agree with this prudent decision. Nevertheless, we note that the evidence on the record shows that if prepay is to be tested, there are alternate, less harmful ways to do so – and as such, PECO's arguments that its Proposal is in the Public interest because it will allow for practical experience with prepaid meters must be rejected.

B. Reply to PECO Exception 2: PECO's requested waiver of security deposit regulations was properly rejected in light of the substantial risk of harm to consumers.

PECO's second Exception addresses its requested waiver of security deposit regulations found at Section 56.53. PECO Exceptions at 10. The ALJ found that such a waiver was not in the public interest, as "timely paying customers may be affected by increased rates if the volume of delinquencies increases." RD at 47. PECO's main argument in excepting to this conclusion is that the possible harm to utility customers is not based on any data or experience and there is little record evidence that this harm will occur. PECO Exceptions at 10.

The ALJ properly decided that allowing the use of security deposits to load prepayment accounts could increase delinquencies overall – and without any rebuttal to that proposition by PECO, the waiver would have to be denied. RD at 46-47.

The risk of harm is not merely speculative. A customer who uses their security deposit towards a prepay account and subsequently returns to standard service may have to pay another security deposit as a condition of service. RD at 46. As stated by OCA Witness John Howat, “the deposit may serve as both the bait that attracts lower-income households, and the hook that impedes retention of traditional service.” OCA St. 1SR at 13. ALJ Jones rightly concluded that this result could “exacerbate the volume of delinquencies” – increasing the risk that households may “resort to more risky methods to obtain heat and light which increases the risk of health and safety to the public.” RD at 47.

In its closing argument for its second exception, PECO reiterates the flawed logic from its first exception, explaining that it does not matter if the pilot increases delinquencies because PECO can track this issue during the pilot and collect data. As discussed in detail above, the Joint Parties strongly object to participants being harmed in the pursuit of data and experience.

C. Reply to PECO Exception 3: The record unambiguously demonstrates that prepaid electricity is harmful to residential consumers, and allowing it to be offered by a third party supplier would only serve to exacerbate that harm.

PECO’s third exception is to the ALJ’s conclusion that PECO’s Proposal would violate the Competition Act. PECO Exceptions at 11; RD at 74-78. Specifically, the ALJ found that PECO’s proposal was “contrary to the public policy declarations of the Electric Competition Act, and therefore, should not be approved.” RD at 78 (citing 66 Pa. C.S. §§ 2802(12), 2804(6), 2811(a)).

The record in this proceeding demonstrates that prepaid electricity is harmful to residential electric consumers, regardless of who offers it. Allowing prepay programs from a third party supplier would only serve to increase the harm associated with prepay. CAUSE-PA Witness Mitchell Miller addressed this potential for harm in his rebuttal testimony:

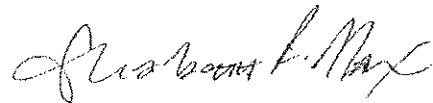
Mr. Levine asserts that, because EGS' "are not required to undertake a lengthy regulatory review and approval process," they are able to "quickly respond to changing customer preferences and desires." However, it is exactly this lack of regulation that makes prepay service offerings by competitive generation suppliers particularly harmful to low-income and economically vulnerable consumers. Prepay offerings in the competitive market could be layered on top of other pricing schemes, such as variable rates or time of use pricing. The more complicated the pricing of electricity becomes, the more heightened my concerns of potential harm become.

CAUSE-PA St. 1R at 3:16 - 4:5. Thus, the Joint Parties unequivocally assert that neither EDCs nor EGSs should be allowed to offer prepaid electric service in Pennsylvania. As ALJ Jones found in her Recommended Decision, doing so would increase disconnection rates which, in turn "increases the risk of public health and safety not only to the participants but to the public at large." RD at 65. This holds true regardless of whether the EDC or the EGS is administering the prepaid service scheme.

III. CONCLUSION

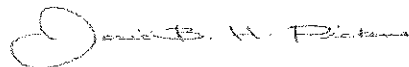
For the foregoing reasons, the Joint Parties respectfully request that the Commission reject PECO's Exceptions, and adopt the Recommended Decision as modified by the Joint Parties' previously filed Exception. As asserted herein, as well as in our Joint Exception and respective Main and Reply Briefs, the Joint Parties strongly support the ultimate result of the Recommended Decision, and submit that it correctly rejects PECO's Plan as contrary to existing law and the public interest.

Respectfully Submitted,



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