



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

Via e-filing

January 9, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. PECO Energy Company, Docket No. M-2018-2531404

Dear Secretary:

Enclosed please find the **Joint Comments of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (collectively the “Low Income Advocates”) in Response to the Proposed Settlement Agreement filed by the Commission’s Bureau of Investigation and Enforcement and PECO at Docket No.M-2018-2531404.**

Respectfully submitted,

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Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No. M-2018-2531404
Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	
	:	
PECO Energy Company	:	

Joint Comments of

**Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater
Philadelphia (TURN *et al.*)**

and

**The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)**

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I. INTRODUCTION

Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) together with the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), (collectively referred to herein as the Low Income Advocates), file these Comments in response to the Public Utility Commission's (Commission) December 20, 2018 Opinion and Order (Order) notifying interested parties of the opportunity to file comments regarding a Proposed Settlement Agreement (Proposed Settlement) filed on April 16, 2018 by the Commission's Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO). Order at 7. The Settlement follows I&E's investigation into allegations that PECO unlawfully terminated service of low income customers during the moratorium on service termination in winter months in 2015 and 2016. Order at 2.

The Low-Income Advocates urge the Commission to require PECO to file, at this docket, comprehensive details of its winter termination and income verification procedures and a copy of its proposed tariff supplement. The Low Income Advocates request that the Commission provide interested parties with an opportunity to review and comment on PECO's supplemental filing *before* the Commission determines whether the Proposed Settlement is in the public interest. Further, the Low Income Advocates request that the Commission modify the Proposed Settlement consistent with the recommendations set forth in these Comments to ensure that PECO enhances its winter termination procedures and provides sufficient protection and resources to the vulnerable low income customers who are protected by the winter moratorium.

The Tenant Union Representative Network (TURN) is a not-for-profit corporation with many low and lower income members. TURN's mission is to advance and defend the rights and interests of tenants and homeless people. TURN's goal is to guarantee that all Philadelphians

have equal access to safe, decent, accessible, and affordable housing. Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low and moderate income residential customers of public utilities in Philadelphia in proceedings before the PUC.

CAUSE-PA is a statewide unincorporated association of low income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income families maintain affordable access to utility services and achieve economic independence and family well-being.

II. COMMENTS

A. The Proposed Settlement is not in the Public Interest Because it Does not Contain Sufficient Information About PECO's Winter Termination Procedures and its Proposal to Enhance These Procedures.

The Proposed Settlement is insufficient because it does not contain detailed information about PECO's winter termination policies and income verification procedures or detail how changes in PECO's policies and procedures would have prevented the erroneous terminations that were the subject of this investigation. The Proposed Settlement fails to include a copy of the tariff supplement, which PECO has already drafted, and which purportedly enhances PECO's procedures. PECO does not intend to file its tariff supplement with the Commission until after the Proposed Settlement is approved.

As a result of its investigation in this matter, I&E determined that “PECO’s tariff and its policies and procedures regarding winter termination of low income customers and income verification are not sufficient to fully inform customers of PECO’s policies and procedures for winter months [*sic*] terminations and income verification.” Proposed Settlement at 6, Para. 21. During this investigation, PECO provided I&E with “comprehensive details outlining its winter termination policies and procedures, lists of terminated customers, and copies of income verification documents, policies, and procedures.” Proposed Settlement at 5, Para. 17. The Proposed Settlement states that PECO has drafted a tariff supplement that “enhances PECO’s current procedures.” Proposed Settlement at 9, Para 27(b). PECO plans to submit its tariff supplement to the Commission for approval after the Commission enters a final order approving the Proposed Settlement. Proposed Settlement at 9, Para 27(b).

The Commission cannot conclude that the Proposed Settlement is in the public interest, or that it satisfactorily resolves the issues that were the subject of this investigation, without an opportunity to review PECO’s proposed tariff supplement and to determine if it actually improves PECO’s existing winter termination and income verification procedures. The Proposed Settlement agreement should contain both the “comprehensive details outlining [PECO’s] winter termination policies and procedures” that were provided to I&E during this investigation and the draft tariff supplement. Without the opportunity to review PECO’s existing procedures, neither the public nor the Commission can conclusively identify the areas where PECO’s existing process fails to protect low income customers. And without an opportunity to review the draft tariff supplement, the Commission cannot determine if the revised tariff will improve PECO’s process. The Proposed Settlement cannot be said to be in the public interest until the Commission has determined that the proposal satisfactorily resolves the issues identified in this

proceeding.¹ The Low Income Advocates submit that the Commission cannot reach this determination before it has an opportunity to review any proposed enhancements. The Low Income Advocates urge the Commission to require PECO to file supplemental documentation of its policies and a copy of its planned tariff at this docket. The Commission should also provide interested parties with an opportunity to comment on any deficiencies in PECO's policies that may not have been identified and to propose enhancements to the tariff that may not have been contemplated by PECO and I&E.

B. PECO Should not Terminate Service During the Winter Moratorium if a Customer Verbally Reports Monthly Income at or Below 250% of the Federal Poverty Level.

The Proposed Settlement indicates that PECO terminated electric service to low income customers during the winter months in 2015 and 2016 despite knowledge that these customers were low income. Proposed Settlement at 3, Para. 10. PECO does not deny that it had knowledge of these customers income status but instead maintains that it “took reasonable steps to *verify* the customers’ income prior to termination” and that the “customers bore a duty to respond to PECO’s income *verification inquiries* in order to prevent their service from being terminated.” Proposed Settlement at 7, Para. 24. Emphasis added.

The Low Income Advocates believe that for purposes of protection from termination of service during winter months, it should be sufficient for customers to state their income without additional verification. That is, PECO’s verification process should be eliminated during the

¹ The Low Income Advocates are unable to fully assess the adequacy of the \$10,000 civil penalty and the \$20,000 MEAF contribution that PECO has agreed to pay if the Proposed Settlement is approved by the Commission. The Low Income Advocates are not aware of any comparable violations which were reviewed in determining these penalties, whether any assessment of the harm incurred by PECO customers was conducted, nor whether these payments are sufficient to deter future violations. In our view, assessing the financial adequacy of PECO’s \$30,000 penalty and contribution would (at a minimum) require a thorough understanding of how PECO’s conduct impacted its customers, requiring significantly more certainty regarding the number of customers impacted. Because it does not appear such analysis was performed, the Low Income Advocates are concerned that the apparently small penalty and contribution may be inadequate given the seriousness of the conduct alleged.

winter and instead PECO should not terminate service during the winter moratorium if a customer verbally reports monthly income at or below 250% of the Federal Poverty Level. PECO's policy of requiring income verification for purposes of the winter moratorium needlessly places low income households at risk. These terminations jeopardize the health and safety of low income households, and the communities in which they reside, during a period when outside temperatures can reach dangerous extremes. Many low-income customers, who work independently or at cash-only jobs lack the ability or means to obtain income documentation. Further, many low-income households are often unable to afford internet access. Thus, even when such information is readily available these customers may lack the means to transmit documents PECO may request. Customers should not face termination simply because they fail to respond, or to timely respond, to PECO's income verification request.

In our view, if PECO has received a verbal report that a household is low income within the twelve months preceding the winter moratorium, it should immediately cease termination procedures that threaten access to essential service during winter months. PECO should then seek to confirm whether the household is low income using a broad range of information sources set forth more fully in Section II.C of these Comments.

If no additional information is available, PECO should maintain service and work with the customer to obtain as much information as is available. In these situations, the most PECO should require is that the customer submit a signed verification in which the customer attests to low income status. In fact, PECO already accepts signed customer attestations for households with zero income. PECO's Zero Income Form allows customers to verify income for purposes of obtaining winter protections, as well as for enrolling in its CAP program. Accepting self-verification of zero income but not accepting customer verification of actual income makes little

sense when the protection in question is whether the household should be exempted from termination of service during the winter months. Thus, PECO should either develop a new simplified income verification form for winter moratorium purposes or amend its Zero Income Form to specifically allow customers to verify the amount and sources of customer income that are not readily available to the customers seeking winter protections.

C. The Settlement Should Include PECO's Commitment in its 2018 Base Rate Case Partial Settlement to Add Specific Provisions Regarding the Determination of Low income Status to its Tariff.

In the Proposed Settlement PECO has agreed to file a supplement to its electric tariff that “more comprehensively outlines its revised winter termination procedures.” Settlement at 11, Para. 32. As discussed above in Section II.A, although the Proposed Settlement states that the tariff supplement “enhances” PECO’s current procedure and succeeds the current tariff language, the Proposed Settlement does not detail the proposed tariff language or specifically state how PECO will enhance its current procedure. Proposed Settlement at 9, Para. 27(b). Further, the Proposed Settlement does not reference or include PECO’s Commitment in its 2018 base rate case partial settlement to add specific provisions concerning the determination of low income status to the tariff supplement. These provisions permit PECO to rely on a broad range of information sources in its efforts to verify the low income status of its customers. PECO and I&E’s failure to reference and include a term of the 2018 base rate case settlement is of serious concern to the Low Income Advocates. Approval of this Proposed Settlement without recognizing and affirming the tariff commitments made by and between the eleven parties entering into the 2018 base rate case partial settlement could disturb or override their carefully negotiated and PUC-approved agreements without even affording them the ability to fully and

formally participate in this investigation and proceeding.² The Commission should not approve the Proposed Settlement unless it is modified to include PECO's settlement commitment.

On December 20, 2018 the Commission issued an Opinion and Order approving the Joint Petition for Partial Settlement of Rate Investigation filed on August 28, 2018, by PECO Energy Company – Electric Division, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Community Action Association of Pennsylvania, ChargePoint, Inc., the Philadelphia Area Industrial Energy Users Group, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, Tesla, Inc. and Wal-Mart Stores East, LP and Sam's East, Inc.³ The Low Income Advocates were parties to PECO's 2018 base rate proceeding and supported the Joint Petition for Partial Settlement. During the base rate proceeding, PECO informed the parties that it had reached a settlement with I&E with respect to winter termination issues. As a condition of the partial settlement of the base rate proceeding, PECO agreed to include in its planned tariff supplement several specific provisions concerning the determination of low income status for the purpose of winter terminations. The partial settlement states, in relevant part:

PECO has informed the Parties that it reached a Settlement with the prosecutorial division of I&E in Docket No. M-2018-2531404 addressing winter termination issues. As part of that Settlement, PECO has agreed to make tariff modifications to its winter termination provisions within 60 days of approval of that Settlement.

In this proceeding the OCA has raised issues concerning the determination of low income status for the purpose of winter terminations. As resolution of the issues in this proceeding, PECO agrees to:

(a) include in its planned Tariff filing in Docket No. M-2018-2531404 **at least** the following provisions:

² Moreover, it is not clear to the Low Income Advocates that all parties to the 2018 base rate case settlement have been notified of this Proposed Settlement.

³ R-2018-3000164.

- Adopt language that mirrors the language of Columbia Gas and/or the FirstEnergy companies providing greater flexibility in the documentation that will be accepted to establish income eligibility
- Allow income verification from CBOs
- Adopt language providing that any customer identified as confirmed low income in the Company's records in the prior four years shall not be required to re-certify or re-verify income to gain the protections of the winter shutoff protections
- Adopt language providing that any customer having established income eligibility for cold weather protections within at least the 12 months preceding the start of the cold weather season shall not be required to re-certify or re-verify their income for that heating season
- Adopt language providing that income eligibility for the cold weather protections may be established using 30-day annualized income rather than being based solely on an annual income.⁴

The Proposed Settlement does not reference or include PECO's commitment to add these terms to the tariff supplement that PECO intends to file if the Commission approves the Proposed Settlement. Nor does the Proposed Settlement discuss whether PECO will provide protections beyond those identified in the partial settlement of the base rate case. In the base rate case, PECO agreed that its tariff supplement would include "at least" the procedures listed above. PECO could, and should, elect to include additional procedures to adequately protect low income customers from erroneous termination during the winter. The Proposed Settlement must include PECO's agreement to add the specific procedures set forth in the base rate case partial settlement to the tariff supplement. In addition, PECO should now indicate whether it intends to add additional procedures beyond those identified in the rate case partial settlement and to describe those procedures so that the Commission can determine whether the Proposed Settlement is in the public interest.

⁴ R-2018-3000164, Joint Petition for Partial Settlement Appendix C, Section 4 at pages iii-iv. Emphasis added.

D. PECO Should Agree to an Outright Contribution to its Hardship Fund.

PECO has agreed to “increase the amount available for matching contributions to its Matching Energy Assistance Fund (“MEAF”) in the amount of twenty thousand dollars (\$20,000).” Proposed Settlement at 8, Para. 27(a). The Low Income Advocates believe that PECO should simply increase its Hardship Fund by \$20,000 and not require the funds to be matched before they are made available. PECO’s MEAF is funded by contributions from customers and interested parties.⁵ These contributions are then matched by PECO dollar for dollar. As the Proposed Settlement is currently structured, it is unclear whether PECO will contribute an additional \$20,000 outright or whether the contribution would be contingent upon PECO’s receiving a matching amount from donors. If the contribution is contingent on matching funds, this is insufficient resolution of the matter because PECO may never be required to actually make any contribution. If the contribution is to be made outright, then this point should be clarified in the settlement.

These additional funds, coupled with PECO’s payment of a civil penalty, are intended to resolve “all allegations of improper termination and to fully and finally settle all possible liability and claims [...] arising from and related to the conduct investigated.” PECO must firmly commit additional resources to its Hardship Fund because of the serious nature of the allegations that were the subject of this investigation and because the Proposed Settlement precludes the award of additional relief in this form if new claims are identified. Further, PECO’s MEAF contributions have remained flat for several years and could benefit from an influx of funds.⁶ On

⁵ PECO USECP 2016-2018, M-2015-2507139 at 16 of 54.

⁶ Reported by PECO at November 29, 2018 PECO Universal Services Advisory Committee Meeting. MEAF contributions dollars have hovered at approximately \$200,000 annually since 2012 and have been below \$200,000 since 2016.

average, PECO's MEAF has historically provided grants to only 1,000 customers a year.⁷ By comparison, as of October 2018 PECO had 20,414 year-to-date low income customer terminations, which is up from 20,005 terminations in 2017.⁸ Thus, there is a demonstrated unmet need for increased MEAF funding in PECO's service territory and the \$20,000 ordered in this case should not be subject to the requirement that all PECO funds be matched by customer contributions.

E. PECO Should Agree to Annual Training of its Employees Regarding Winter Termination Procedures.

PECO has agreed to "continue to ensure that its employees are reminded of the Commission's regulations regarding winter termination procedures, with an emphasis on income verification and protections for low income customers." Proposed Settlement at 9, Para. 27(c). This term of the Proposed Settlement does not commit PECO to enhance its training on winter termination and income verification procedures or to conduct such training on a recurring basis. Given the serious nature of the alleged errors that were the subject of this investigation, PECO should be required to provide robust training on its improved procedures. This training should take place on an annual basis and should coincide with the onset of the winter moratorium.

III. CONCLUSION

The Low Income Advocates respectfully request that the Commission direct PECO to file at this docket comprehensive details outlining its winter termination policies and procedures that were provided to I&E during this investigation and the draft tariff supplement that enhances

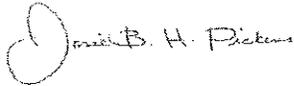
⁷ PECO USECP 2016-2018, M-2015-2507139 at 17 of 54.

⁸ Reported by PECO at November 29, 2018 PECO Universal Services Advisory Committee Meeting.

these procedures. The Low Income Advocates further request that the Commission modify the Proposed Settlement as follows:

- i. PECO will allow its customers to verbally report low income status within the twelve months preceding the winter moratorium for purposes of the winter moratorium protection;
- ii. PECO's tariff supplement must include the specific provisions regarding the determination of low income status that PECO agreed to include as part of the partial settlement of its 2018 base rate case;
- iii. PECO will contribute an additional \$20,000 to its Hardship Fund (MEAF);
- iv. PECO will annually train its staff on its improved winter termination and income verification procedures.

Respectfully Submitted,



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