**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 25, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

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| PECO Energy Company Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission’s Regulations with respect to the Plan | P-2016-2573023 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PECO Energy Company (PECO or the Company), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and the Joint Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al*.) (collectively CAUSE-PA/TURN *et al.*), filed on March 5, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Angela T. Jones, issued on February 12, 2018, in the above-captioned proceeding. Replies to Exceptions were filed by PECO, I&E, the OCA, CAUSE-PA/TURN *et al*., and the Retail Energy Supply Association (RESA) on March 15, 2018. For the reasons set forth in this Opinion and Order, we shall: (1) grant, in part, and deny, in part, the Exceptions of PECO, I&E, the OCA and CAUSE-PA/TURN *et al*.; (2) adopt, in part, and modify, in part, the ALJ’s Recommended Decision; and (3) grant, in part, and deny, in part, PECO’s Petition for Approval of an Advance Payments Program and the related Petition for Temporary Waiver of Commission Regulations, subject to PECO’s voluntarily filing of a compliance plan, within sixty days of the entry date of this Order, that contains a modified pilot program consistent with this Opinion and Order.

# History of the Proceeding

On October 26, 2016, PECO filed a Petition for Approval of an Advance Payments Program and a corresponding Petition for Temporary Waiver of Commission Regulations (collectively the Petition). The Petition serves as both PECO’s request to implement a two-year pilot program that will enable a select number of residential customers to pay for utility service in advance of usage and its request to waive certain impacted Regulations.[[1]](#footnote-2) PECO requested that its Petition be evaluated and resolved through a process of written comments and reply comments. Petition at ¶ 37.

On October 28, 2016, the Commission issued a Secretarial Letter that acknowledged its receipt of PECO’s Petition and set due dates of December 15, 2016, and January 16, 2017, for comments and reply comments, respectively. In accordance with the terms of the Secretarial Letter, notice of PECO’s Petition and the comment deadlines were published in the *Pennsylvania Bulletin* on November 12, 2016.

On November 15, 2016, the OCA filed a Notice of Intervention and Answer to PECO’s Petition. On the same date, CAUSE-PA and TURN *et al*. each filed separate Answers to PECO’s Petition, as well as an Intervention Petition filed by CAUSE-PA. TURN *et al*. filed its Petition to Intervene the following day, on November 16, 2016. In their Answers, the OCA, CAUSE-PA, and TURN *et al.* each requested that PECO’s Petition be referred to the Office of Administrative Law Judge (OALJ).

On December 15, 2016, the following Parties filed timely Comments in this proceeding: I&E, the OCA, CAUSE-PA, TURN *et al*., PPL Electric Utilities Corporation, RESA, NRG Energy, Inc., Direct Energy, AARP Pennsylvania, the AIDS Law Project of Pennsylvania, Montgomery County Community Action Development Commission (CADCOM), the Clean Air Council, the Natural Resources Defense Council, Earth Quaker Action Team, Neighborhood Energy Centers, Philadelphia Workers Benefit Council, and Duquesne Light Company.[[2]](#footnote-3), [[3]](#footnote-4)

The matter was assigned to the OALJ, where the proceeding was assigned to ALJ Angela T. Jones. Two public input hearings were held in Philadelphia, Pennsylvania, on April 24, 2017, at 10 a.m. and 6 p.m.[[4]](#footnote-5)

An evidentiary hearing was held on August 30, 2017. The Parties agreed to stipulate to the admission of the pre-filed testimony, which, along with various accompanying exhibits, were admitted into the record.

Main Briefs were filed by CAUSE-PA, I&E, the OCA, PECO, RESA and TURN *et al*. on October 17, 2017, and on November 8, 2017, Reply Briefs were filed by CAUSE-PA, I&E, the OCA, PECO, RESA and TURN *et al*.

The record in this proceeding, which consists of a 206-page transcript, closed upon the ALJ’s receipt of the Reply Briefs on November 8, 2017.

On February 12, 2018, the Commission served the Recommended Decision of ALJ Jones on the Parties. In her Recommended Decision, the ALJ recommended that the Commission deny the Petition based on her determination that the disadvantages of PECO’s Advance Payments Program outweigh the benefits to the public, culminating in the conclusion that it is not in the public interest. R.D. at 79.

As noted above, I&E, OCA, PECO, and CAUSE-PA/TURN *et al*. filed Exceptions to the Recommended Decision on March 5, 2018. I&E, OCA, PECO, RESA, and CAUSE-PA/TURN *et al*. filed Replies to Exceptions on March 15, 2018.

# Discussion

## Description of PECO’s Proposed Pilot Program

The primary purpose of PECO’s Petition is to request the Commission’s approval of PECO’s proposed advance payment pilot program. In connection with its request for approval of its proposed pilot program, PECO seeks Commission waiver of several provisions of Regulations. Petition at ¶31-35; PECO St. No. 1 at 8.

PECO is seeking the Commission’s approval to permit 2,000 residential shopping and default service customers and applicants for service to voluntarily participate in a pilot program in which the customers/applicants (collectively, participants) prepay for electric-only or dual-service (electric and gas).[[5]](#footnote-6), [[6]](#footnote-7)Participants must meet the following proposed eligibility requirements:

Possession of, or voluntarily agree to the installation of, a remote-capable electric Advanced Meter Infrastructure (AMI) Meter;[[7]](#footnote-8), [[8]](#footnote-9)

An annual household gross income above 150% of the Federal poverty income guidelines;[[9]](#footnote-10)

Access to the internet or a text-capable cell phone and agree to provide the Company with a valid email address and/or a text-capable phone number;[[10]](#footnote-11)

An existing delinquency not exceeding $1,500 at the time of enrollment;[[11]](#footnote-12),[[12]](#footnote-13)

Household may not be under the protection of an active medical certificate.[[13]](#footnote-14)

Participants of the pilot will be required to pay PECO in advance of receiving service, rather than receiving a bill at the end of a billing period and making a payment after service is delivered. PECO St. No. 1 at 4. Participants will be required to deposit an initial payment of $40 into their accounts in advance of receiving service, and thereafter, the participants must submit minimum payments of $15.[[14]](#footnote-15) Any existing deposit on the participant’s account will be transferred to his/her pilot account balance; therefore, participants with existing deposits will not be required to make the initial payment. Petition, Attachment 1 at ¶ 8. The account balance will be adjusted daily to account for both the credits loaded by the participant and the participants’ actual daily usage of electric or electric and gas service. The balance will also be adjusted by PECO’s monthly customer charge, which will be allocated on a daily basis. *Id*. at ¶ 6.

Participants will be provided with an estimated days of usage figure that is based upon their prepayment balance and historical and projected usage. *Id.* at ¶ 10. The participants will be able to access this information through a program website and mobile application which will also track historical usage and payment data. *Id.* at ¶ 12. PECO has retained an external vendor, PayGo, to develop the software module to calculate balances and to trigger customer notifications. I&E Exh. No. 1, Sch. 3 at 2.

PECO will communicate with participants electronically through either email or text messages, at set times, to provide their estimated days of usage remaining and the account balance. Notifications will be sent when the participant has five days, three days, and one day of remaining prepaid credit on their account. In addition, participants will also receive daily notifications during the emergency backup credit period.[[15]](#footnote-16)

Regarding notifications of declining balances that are returned as “undeliverable,” PECO has committed to adopting the following procedure:

Working e-channel communications are a requirement for program participation. Therefore, if the communications are returned as undeliverable, PECO will:

call the volunteer to obtain working contact information. If that communication is not successful, then PECO will

send the volunteer a paper letter seeking to obtain working contact information. If that communication is not successful, PECO will

revert the volunteer to standard service.

PECO St. No. 1R at 19.

In the event that participants fail to replenish their prepayment account, resulting in a zero balance, PECO proposed a five-day grace period in which it would provide them with five days of emergency backup credits. At the end of that grace period, PECO may remotely disconnect their service during its business hours, without providing any of the existing notices that are required prior to involuntary termination of service under the Commission’s Regulations.[[16]](#footnote-17) PECO St. No. 1 at 6.

PECO’s Petition indicates that once a participant’s service has been discontinued, it will not be reconnected until the participant has paid for their five days of backup credits and established an account balance of at least $15. Petition, Attachment 1 at ¶ 15. However, in rebuttal testimony PECO asserted that, if a participant’s service is off and he or she “decides that the pilot is not right for them, they can call PECO and ask to be reverted to standard services” at which point the customer would be returned to standard service and reconnected without having to make any payment. PECO St. No. 1R at 9.

PECO’s Petition identifies the following objective for the pilot program:

Within this pilot program, the Company will employ a “test and learn” approach to assess customer adoption, usage impacts, satisfaction, payment patterns, as well as frequency and duration of disconnections and the effect of marketing and educational strategies for its customers. PECO expects

that the lessons learned from the pilot will allow it to design a more successful program for broad-scale deployment throughout the Company’s service territory.

Petition at ¶ 5.

PECO identified three specific goals for its proposal in direct testimony: (1) to determine whether there is a substantial portion of its customers who would prefer to utilize an advance payment mechanism and whether that mechanism will increase customer satisfaction; (2) whether customers can use advance payments to reduce or avoid delinquencies; and (3) whether prepayments will assist customers in conserving energy. PECO St. No. 1 at 4. By further explanation, PECO indicated that “the overarching purpose of the pilot is to determine whether the stated goals can be achieved through a prepaid meter program that replaces the termination procedure with a discontinuance procedure.” I&E Exh. No. 1, Sch. 4 at 1. In rebuttal testimony, PECO suggested that another goal of the pilot is “reducing uncollectibles.” PECO St. No. 1R at 20.

In order to measure the pilot’s impact, should it be approved, PECO proposed to retain the services of a vendor to conduct an evaluation of the pilot program, and stated that the Company will then develop the “final measures” in coordination with that vendor. PECO St. No. 2 at 5. PECO further stated that within six months of the start of the pilot, its vendor will conduct a process evaluation to assess “effectiveness of outreach, participation uptake, customer interest (# of volunteers), [and] customer satisfaction with the intake process.”  *Id*. PECO further stated that “the impact evaluation occurs within two years of pilot start.” To evaluate customer program participation, PECO stated that it will segment participant demographic groups and track enrollments, dis-enrollments and length of time in the program. To determine the pilot’s impact on usage, the Company proposed to track pre- and post-enrollment consumption and consumption of pilot program participants relative to non-participants. PECO further proposed to track disconnects and reconnects and duration of disconnects by segmented customer groups for pilot program participants and non-participants. PECO also proposed to track the frequency, total, and average amount of payments made by participating customers segmented by those with an arrearage and those without an arrearage. PECO stated that it will track the payment methods used by participants, and that it will conduct analysis of arrearage reduction and bill coverage rates of pilot program participants compared to non-participants. Finally, PECO proposed to conduct comparative analysis collection, administrative, and bad debt costs for pilot program participants and non-participants. PECO St. No. 2 at 5-6.

PECO provided an initial estimate of costs for the pilot in direct testimony, including vendor costs and internal personnel, as less than $500,000 for the two-year life of the pilot. PECO St. No. 1 at 23. PECO prefaced its discussion on pilot program costs by indicating that imprecision and changeability are inherent in the process of estimating costs for a program that is still under development. PECO St. No. 1R at 25. Through the discovery process, PECO provided an updated estimate, reflecting an estimated cost of approximately $800,000 for the two-year pilot program. I&E St. No. 1 at 14; PECO St. No. 1R at 25.

PECO stated it is not seeking the recovery of any pilot costs at this time. PECO Statement No. 1 at 23. Pilot program costs will be accounted for as normal operating expenses and, to the extent that they are incurred in a test year or other applicable year for the determination of rate base expenses, PECO will include pilot costs in a future base rate claim. PECO is not requesting any determination at this time regarding the reasonableness or prudence of pilot expenditures.

PECO requests four temporary waivers of Commission Regulations related to its proposed pilot program. First, it requests a temporary waiver of 52 Pa. Code § 56.17(3), to allow new applicants to volunteer for the pilot. PECO St. No. 1 at 12. Second, PECO requests a temporary waiver of 52 Pa. Code § 56.17(3)(i), to allow customers without a delinquency to participate in the pilot. *Id.* at 13. Third, PECO requests a waiver of 52 Pa. Code §56.17(3)(iii)(B), which requires a customer to continue to purchase prepayment credits until the delinquency is retired. PECO requests that this provision be waived to allow participants the opportunity to revert back to standard service if they are dissatisfied with the pilot. *Id.* at 16. Finally, PECO requests a temporary waiver of 52 Pa. Code § 56.53 to the extent necessary to permit the transfer of deposits to fund a customer’s participation in the pilot. Section 56.53 requires that PECO return deposits to customers after certain conditions are met. PECO is proposing that a participant be permitted to use the deposit to fund the participant’s account on a prepayment basis.[[17]](#footnote-18) PECO St. No. 1 at 21. PECO suggested that this proposed use of the deposit is a “return” of the deposit to the customer. *Id.* (emphasis in original). However, PECO stated that if the treatment proposed by PECO is not in compliance with the Commission Regulations on deposits, then the Company requests a waiver of the Regulations. PECO St. No. 1 at 22.

## Legal Standards

As the petitioner or moving party, PECO has the burden of proof in this proceeding pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, PECO must show, by a preponderance of the evidence, that the relief sought is proper under the circumstances. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, PECO’s evidence must be more convincing, by even the smallest amount, than that presented by an opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*,489 Pa. 109, 413 A.2d 1037 (1980).

PECO’s proposed pilot program constitutes “service” as such term is broadly defined under Section 102 of the Code, in relevant part, as follows:

**“Service.”** Used in its broadest and most inclusive sense, includes all acts done, rendered, or performed, and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities. . .in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .

66 Pa. C.S. § 102.

As the party with the burden of proof, PECO must demonstrate by a preponderance of the evidence that its proposed pilot program as a utility “service” is adequate and reasonable pursuant to Section 1501 of the Code. Section 1501 of the Code requires PECO to furnish reasonable and adequate service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public, stating as follows in pertinent part:

**§ 1501. Character of service and facilities.**

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions

or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission . . .

66 Pa. C.S. § 1501.

PECO must demonstrate that its proposed pilot program is in compliance with applicable Regulations and statutes, including the Responsible Utility Customer Protection Act, as codified in Chapter 14 of the Code, at 66 Pa. C.S. §§ 1401 – 1419 (Chapter 14). PECO must also demonstrate that any temporary waivers of Regulations are in the public interest. See 52 Pa. Code § 5.43; 52 Pa. Code § 56.222(a)(emphasis added); *see also* *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works,* Docket Nos. P-00042090, R‑00049157, M-00021612, P-00032061 and P-00042117 (Order entered October 27, 2004) (*Investigation Order*), slip op. at 26-27. The Commission, in deciding of any waiver request, reviews the reasonableness of the request, whether it is in the public interest (the balancing of customer protection versus the financial integrity of the utility), and whether it is in compliance with relevant statutes. *See Investigation Order*, slip op.at 29-30, 38, 41-42.

As we proceed to review the various positions of the Parties and their Exceptions, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by the parties. *See* *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see als*o, *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ made 130 Findings of Fact and reached 21 Conclusions of Law in her Recommended Decision. R.D. at 9-27, 80-83. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

## Litigated Issues

### PECO’s Burden of Proof

#### Position of the Parties

While PECO asserts that its burden is limited to demonstrating compliance with the Commission’s Regulations, PECO also asserts that the record evidence in this proceeding demonstrates that its pilot is in the public interest. PECO M.B. at 53. PECO explains that the Commission itself decried an “unfortunate” lack of practical experience with prepaid service programs. *Id*. PECO asserts that it chose to propose a pilot, rather than a full-scale program, precisely so that it could gain practical experience and general data on that practical experience. *Id*. (citing PECO St. No. 1, at 5). PECO submits that it incorporated many customer protections into its pilot that are not required by the Commission’s Regulations. PECO M.B. at 53 (citing PECO St. No. 1R, at 7-10). Therefore, PECO argues that it has demonstrated that its pilot is a low-risk, low-cost method of obtaining practical experience on prepaid service. PECO M.B. at 53 (citing PECO St. No. 1, at 24). PECO concludes that these facts demonstrate that PECO’s Petition should be approved using the public interest standard.

The OCA, I&E, CAUSE-PA and TURN *et al*. oppose PECO’s pilot program. The core disagreement expressed by these Parties is over participants in the prepaid pilot program being able to maintain access to certain existing protections under Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations, including ten-day paper termination notices, winter moratorium on shut off, limited payment arrangements, and an increased difficulty in accessing medical certifications. In addition, RESA intervened and presented testimony and Briefs setting forth its position that prepay programs are good public policy, but only if implemented by competitive market participants, not by a utility. The Parties’ specific positions regarding the requested waivers of Regulations and operational provisions of the pilot, as well as the ALJ’s recommendation relating thereto, are addressed more fully below in the listed issues that follow.

Based on their challenges, the Parties’ argue that PECO has not met its burden of proof in demonstrating that the proposed pilot program is adequate and reasonable service and that the temporary waivers of Regulations are in the public interest. However, several Parties proposed revisions to PECO’s proposed pilot program should the Commission wish to approve a version of it, including: (1) customer incentives; (2) evaluations; (3) reporting requirements; and (4) pilot criteria changes. *See* I&E M.B. at 34-37; I&E R.B. at 18-25; OCA M.B. at 49‑51; CAUSE-PA M.B. at 37-40; RESA M.B. at 19-24.

#### ALJ’s Recommend Decision

The ALJ’s Recommended Decision ultimately denied PECO’s Petition based on her determination that the disadvantages of PECO’s pilot outweigh the benefits to the public, culminating in the conclusion that it is not in the public interest. R.D. at 79. The ALJ found that PECO did not carry its burden of proof regarding specific areas of the pilot program, which the ALJ found to be insufficient, including the procedures for electronic notification, for handling medical certificates and for protection against termination of service during winter months. The ALJ also found other areas insufficient, including a likely increase in disconnection rates and the omission of payment arrangement options. *Id*. The ALJ also identified a failure in PECO’s proposed pilot program to protect tenants dwelling with landlords and participants who may have protection from abuse orders. *Id*. Finally, the ALJ found the possible inhibition of the competitive market. *Id*.

The ALJ also identified certain provisions of the pilot program as favorable and in the public interest, particularly, the inclusion of applicants as eligible to participate, inclusion of persons without delinquencies as eligible to participate, that the duration of enrollment is not contingent on extinguishing delinquencies, that discontinuance was in compliance with Regulations, that there should be a stakeholder collaborative platform for the development of materials and a plan for education, instruction. *Id.*

Since the ALJ’s Recommended Decision ultimately denied PECO’s Petition, as a whole, the ALJ found it unnecessary to address the program modifications proposed by the Parties. R.D. at 78-79. In a similar manner, the ALJ noted that PECO’s request to temporarily waive the following impacted Regulations was rendered moot: (1) 52 Pa. Code § 56.17(3) to include applicants in the pilot; (2) 52 Pa. Code § 56.17(3)(i) to include persons without delinquencies in the pilot; (3) 52 Pa. Code § 56.17(3)(iii)(B) to permit duration of participation in the pilot to not be contingent upon any delinquency of a participant; and (4) 52 Pa. Code § 56.53.  *Id*. at 80.

#### Exceptions and Replies

PECO’s first Exception excepts generally to the ALJ’s determination that PECO’s proposed pilot program is not in the public interest – specifically, that the disadvantages of the pilot outweigh the benefits to the public. PECO Exc. at 3. PECO asserts that it provided testimony that, when prepaid service was implemented in as many as fifty other jurisdictions, there was an increase in customer satisfaction, a decrease in delinquencies (that is, better payment behavior), and increased conservation. PECO Exc. at 3 (citing PECO St. No. 1, Direct Testimony of Jude Scarpello, at 4-5). PECO states there was little, or no testimony offered by the opposing Parties that denied PECO’s testimony that prepaid service increases customer satisfaction and results in a decrease in delinquencies. Instead there was some testimonial discussion of whether the observed decreased usage should be characterized as “conservation” or “deprivation” – and PECO agreed to study and collect data to address that question. Notwithstanding that, PECO asserts that it provided sufficient testimony to establish a *prima facie* case that the use of prepaid service has created real benefits in other jurisdiction 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 Exc. at 3. Moreover, PECO asserts that implementing a pilot and collecting data is in and of itself in the public interest. PECO Exc. at 3 (citing PECO M.B. at 52, n.4). PECO asserts that its pilot is a low-risk, low-cost method of obtaining practical experience and data on prepaid service. *Id*.

In its Reply Exceptions, I&E asserts that the ALJ correctly found that PECO’s proposed pilot program is not in the public interest and therefore should not be approved. I&E R. Exc. at 4. I&E commences its Reply Exceptions with the implication that PECO conceded several deficiencies of the pilot which the ALJ found to be contrary to the public interest. Gathered from PECO’s decision to only address medical certificates and winter termination protections in its Exceptions and not the remaining provisions which the ALJ found contrary to the public interest, I&E characterizes these omissions as “tacit concessions,” which “affirm the soundness of the ALJ’s conclusion that PECO’s Petition is not in the public interest.”[[18]](#footnote-19) *Id*. at 2-3. I&E explains that since PECO has tacitly conceded that several provisions are not in the public interest by failing to except to the ALJ’s determinations. *Id*. at 3‑4.

In its Reply Exceptions, the OCA asserts that PECO’s Exceptions do not provide justification for its proposed pilot program; therefore, the Recommended Decision correctly rejected PECO’s pilot, finding that “the Petitioner failed to sustain its burden of proof regarding the pilot plan because overall the pilot plan failed to meet the public interest standard . . .” OCA R. Exc. at 1, citing R.D. at 1. Additionally, the OCA maintains that PECO has not pointed to any benefit of prepaid programs that could not be offered without the threat of disconnection and the associated harm to health and safety that can result. OCA R. Exc. at 1.

In its Reply Exceptions, the OCA further asserts that PECO has mischaracterized the record by stating that other Parties in this case presented “little or no testimony that denied PECO’s [claims] (*sic*) that prepaid service increases customer satisfaction and results in a decrease in delinquencies.” OCA R. Exc. at 3 (citing PECO Exc. at 3). The OCA, explains that, to the contrary, it has presented evidence demonstrating that in other states prepay programs have resulted in high disconnection rates and customer deprivation which may be dangerous to individual and public health and safety. Conversely, PECO has cited no data or studies to support its contention that frequent disconnections associated with prepay service may be accompanied by “increased customer satisfaction, better payment behaviors, and/or improved energy conservation . . . ” OCA R. Exc. at 3-4, citing PECO M.B. at 62. In replying to PECO’s argument that its pilot program is a “low-risk, low-cost method of obtaining practical experience on prepaid service,” the OCA argues that the record in this proceeding demonstrates that the proposed pilot is not “low-risk,” but in fact, creates increased risks to households and communities, associated with increased disconnection rates and the de facto waiver of termination protections, which participation requires. *Id*. at 4-5. Therefore, the OCA submits that it is against the public interest for PECO to gain “experience” at the expense of vulnerable customers.  *Id*. at 5.

In their Reply Exceptions, CAUSE-PA/TURN *et al*. begin by asserting that the ALJ properly rejected PECO’s proposed pilot based on overwhelming record evidence showing that the pilot program is contrary to established law and prevailing public policy, and as such, is contrary to the public interest. CAUSE-PA/TURN *et al*. R. Exc. at 6-7. Similar to the argument presented by the OCA in its Reply Exceptions, CAUSE-PA/TURN *et al*. point to PECO’s misleading characterization of how prepaid service implemented in other jurisdictions has increased customer satisfaction, decreased delinquencies, and increased conservation. CAUSE-PA/TURN *et al*. argue that PECO has presented no evidence that its pilot will deliver the alleged increase in customer satisfaction. Further, PECO has disregarded record evidence demonstrating that prepaid programs in other jurisdictions target low- and moderate-income households, resulting in an increase in disconnects and fees. CAUSE-PA/TURN *et al*. highlight the ALJ’s finding that the pilot program is against the public interest, in part, based on the well-documented risks associated with prepay programs in other jurisdictions. As the ALJ concluded, “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. *Id*. at 7-8, citing R.D. at 65.

CAUSE-PA/TURN *et al*. further note “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, protection for tenants, and protection for victims of domestic violence.” *Id*. at 13.

CAUSE-PA/TURN *et al*.’s Replies focus on PECO’s claim that its proposed pilot is in the public interest simply because it is a “low-risk” means for the Commission to gain practical experience with prepayment programs. CAUSE-PA/TURN *et al*. note that PECO’s reliance on a partial quote from the Commission’s Chapter 56 Rulemaking Order is taken out of context and is misleading. CAUSE-PA/TURN *et al*. contend that while the Commission has noted a lack of prepaid service experience in Pennsylvania, the Commission also has rejected proposals in its Chapter 56 Rulemaking Order to allow utilities to offer prepaid service to low income customers (those at or below 250% of the federal poverty level), citing “public health and safety concerns.”[[19]](#footnote-20) CAUSE-PA/TURN *et al*. argue that the Commission’s comments, put in the proper context, reflect that the Commission 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(3) of the Regulations could circumvent essential, statutorily authorized consumer protections contained in Chapter 14 of the Code. CAUSE-PA/TURN *et al*. R. Exc. at 15-16.

Furthermore, CAUSE-PA/TURN *et al.* maintain that although PECO alleges that its pilot is a low-risk opportunity to gain practical experience, the conditions upon participation in the pilot program raise significant concerns. As explained at length throughout the record, economically vulnerable households prepaying for their electricity likely would experience more frequent disconnections, and thus be faced with additional transaction fees associated with frequent payments, compounding the impact on a consumer’s mental and physical health. Additionally, these disconnections create health and safety risks to both individual households and the public at large, as customers who are disconnected from essential utility service may turn to unsafe alternative sources of heat and light. *Id.* at 16-17. CAUSE-PA/TURN *et al*. opine that the alleged benefits for participants can be provided without depriving participants of the protections in place for service terminations. Therefore, they assert that if prepay is to be tested, there are alternate, less harmful ways to do so, and as such, PECO’s arguments that its pilot is in the public interest because it will allow for practical experience with prepaid meters must be rejected. *Id*. at 17-18.

### PECO’s Requested Waiver of 52 Pa. Code § 56.17(3)

#### Positions of the Parties

PECO requested that it be granted a temporary waiver of the requirement set forth in 52 Pa. Code § 56.17(3), that only customers are allowed to participate in a prepayment program. PECO contended that increased customer satisfaction and decreased usage, possibly resulting from the participation in prepayment programs, would be valuable for applicants, just as they would be for customers. PECO also argued that applicants could avoid being assessed a credit deposit to obtain service by participating in the pilot, which is a benefit to the applicant without harming the Company or its customers. Therefore, PECO asserted that because the inclusion of applicants is a benefit to those individuals, does not harm the Company and does not diminish any protection to the existing customers, it is in the public interest. PECO M.B. at 56-57.

Both I&E and TURN *et al*. opposed PECO’s requested waiver request, allowing applicants to participate in the pilot; TURN *et al*. in a general sense and I&E more specifically.

I&E asserted that PECO’s pilot program should not be available to applicants for two reasons: (1) allowing applicants would complicate the program; and (2) there may not be sufficient usage data for an applicant to use in providing a meaningful estimate of days of usage remaining, relied upon by participants to decide when to replenish their accounts. I&E St. No. 1 at 26; I&E St. No. 1-SR at 25-28. I&E asserted that the espoused goals of the pilot program, *i.e*., conservation of energy, preventing delinquency and reducing uncollectibles, cannot be evaluated effectively with this subset of participants because there is no history for comparison data. I&E M.B. at 33.

TURN *et al*. likewise advocated for the denial of this requested waiver via its inclusion in TURN *et al*.’s assertion that the Commission should reject all of PECO’s requests for waivers because the proposed pilot itself should be rejected on the basis that PECO has failed to show that its proposed pilot is in the public interest. TURN *et al*. M.B. at 28-29.

#### ALJ’s Recommended Decision

The ALJ found it reasonable and in the public interest to include applicants as participants in PECO’s proposed pilot program. R.D. at 40. The ALJ’s finding was based on the perception that the benefit identified by PECO to the applicants as a subset of the participants outweighs the harm identified by I&E, noting that an applicant can weigh the benefit of not having to provide a deposit on the account, if a deposit is assessed, with managing to provide sufficient funds for usage of utility service without historical data as a resource. *Id*. at 39-40.

#### Exceptions and Replies

No Exceptions were filed on this issue.

### PECO’s Requested Waiver of 52 Pa. Code § 56.17(3)(i)

#### Positions of the Parties

PECO requested that it be granted a temporary waiver of the requirement set forth in 52 Pa. Code § 56.17(3)(i), that only customers with delinquencies are allowed to participate in a prepayment program. In the same vein as its argument advocating for the inclusion of applicants in the pilot, PECO contended that the increased satisfaction and decreased usage that may be attained through the pilot would be valuable for customers who do not have a delinquency, just as much as for customers who have a delinquency. Additionally, PECO argued that by accepting volunteers with no delinquencies as well as those having delinquencies up to $1,500, the Company would benefit from this modification because real-world experience would be gained by this subset of customers which the Company could evaluate. PECO M.B. at 56.

Both I&E and TURN *et al*. opposed PECO’s requested waiver request to allow participants to include persons without delinquencies.

I&E asserted that the regulation does not contemplate advance payment for persons without delinquency. A request to waive the regulation is to promote a service that is of a character different form that contemplated by the regulation, and therefore, not in compliance with the public interest of the regulation. I&E M.B. at 28-29.

TURN *et al*. likewise advocated for the denial of this requested waiver via its inclusion in TURN *et al*.’s assertion that the Commission should reject all of PECO’s requests for waivers because the proposed pilot itself should be rejected on the basis that PECO has failed to show that its proposed pilot is in the public interest. TURN *et al*. M.B. at 28-29. Furthermore, TURN *et al*. asserted that PECO’s request for a waiver of Section 56.17(3)(i) should be denied even if PECO’s proposed pilot is approved. Noting that PECO’s proposed pilot is an experiment, TURN *et al*. contented that PECO should not be permitted to expand the Advance Payments Regulations to include additional categories of participants until it is determined that PECO can provide benefits to customers who participate in its initial pilot. *Id*. at 29.

#### ALJ’s Recommended Decision

The ALJ concluded that the modification to add non-delinquent customers and applicants to obtain the option of advance payment service to be reasonable and in the public interest. The ALJ’s recommendation is based on the deficiencies in I&E’s argument, such as the absence of any dispute regarding the benefits to customers and the utility advocated by PECO and the absence of any statement that the waiver is not in the public interest or precedent as to why the waiver should not be granted. R.D. at 41.

#### Exceptions and Replies

No Exceptions were filed on this issue.

### PECO’s Requested Waiver of 52 Pa. Code § 56.17(3)(iii)(B)

#### Positions of the Parties

PECO requested that it be granted a temporary waiver of the requirement, set forth in 52 Pa. Code § 56.17(3)(iii)(B), that, as a condition of participation, customers with a delinquency must commit to staying in the program until their delinquency is retired. PECO advocated that a potential participant with a delinquency cannot predict all the financial and life events for his/her future. Therefore, PECO indicated that it does not want said uncertainty to be a barrier for participation in the pilot. PECO M.B. at 58.

Although no party specifically addressed this requested waiver, as previously indicated, TURN *et al*. asserted that the Commission should reject all of PECO’s requests for waivers because the proposed pilot program itself should be rejected on the basis that PECO has failed to show that its proposed pilot is in the public interest. TURN *et al*. M.B. at 28-29.

#### ALJ’s Recommended Decision

The ALJ concluded that the modification to the regulation as proposed by PECO to permit participants to opt out of the pilot at their discretion even if their delinquency is not retired is reasonable and in the public interest. R.D. at 42.

#### Exceptions and Replies

No Exceptions were filed on this issue.

### PECO’s Requested Waiver of 52 Pa. Code § 56.53 – Security Deposits

#### Positions of the Parties

PECO proposed to transfer existing deposits to fund customer participation in the program, which will allow customers who have a deposit to participate in the program without having to identify and provide additional funds. To the extent that such a transfer is not viewed as already allowable under 52 Pa. Code §56.53, PECO requested that it be granted a temporary waiver of that Regulation to the extent necessary to allow the transfer of deposits to fund a customer’s participation in the program. Section 56.53 pertains to the deposit hold period and refunds of deposits and states specifically:

§ 56.53. Deposit hold period and refund.

(a)  A public utility may hold a deposit until a timely payment history is established or for a maximum period of 24 months.

 (b)  A timely payment history is established when a customer has paid in full and on time for 12 consecutive months.

 (c)  At the end of the deposit holding period as established in subsection (a), the public utility shall deduct the outstanding balance from the deposit and return or credit any positive difference to the customer. At the option of the utility, a cash deposit, including accrued interest, may be refunded in whole or in part, at any time earlier than the time stated in this section.

 (d)  If service is terminated before the end of the deposit holding period as established in subsection (a), the public utility shall deduct the outstanding balance from the deposit and return any positive difference to the customer within 60 days of the termination.

 (e)  If a customer becomes delinquent before the end of the deposit holding period as established in subsection (a), the public utility may deduct the outstanding balance from the deposit.

52 Pa. Code § 56.53. PECO averred that this transfer of existing deposits is in the public interest because it will reduce the overall case funding needs for volunteer’s utility service, thus lowering barriers to participate in the pilot. PECO M.B. at 58-60.

The Parties in opposition to PECO’s waiver request to use security deposits to fund prepayment service include the OCA, CAUSE-PA, and TURN *et al*. The OCA averred that requiring participants to apply their deposit to their prepaid account may have the effect of attracting lower-income households to the program, and the possibility of needing to post a new deposit when exiting the program may keep payment troubled customers in the program, leading to more frequent disconnections and the associated public health and safety risks for families struggling to make ends meet. OCA M.B. at 41-42. TURN *et al.* supplemented the OCA’s concerns, noting that “PECO’s proposal is entirely self-serving and inappropriately deprives customers of their choice to utilize their returned deposits as they see fit.” TURN *et al.* M.B. at 30. TURN *et al*. concluded that because there is no benefit in the operation of the security deposit to the customer, the requested waiver of the Regulation as proposed is not in the public interest. *Id.* at 28‑29. CAUSE-PA echoed TURN *et al*.’s concerns and supports TURN *et al*.’s main point that customers should be allowed to use their refunded deposits however they like, given limited or inconsistent financial resources. CAUSE-PA R.B. at 16.

#### ALJ’s Recommended Decision

In the Recommended Decision, ALJ Jones agreed with the OCA, CAUSE-PA and TURN *et al.* that PECO’s requested waiver of the security deposit Regulations found at Section 56.53 is not in the public interest. R.D. at 42-47. The ALJ noted that PECO’s proposed use of the security deposit can prove to be a double-edged sword, stating that “[i]t is plausible that a service that does not impose the outlay of additional funds is attractive to this subset of customers and applicants. However, it is also plausible that just because they receive said benefit that waives the outlay of funds initially, that benefit does not address the issue of why they are payment-troubled, and therefore, does not deter the behavior that caused them to be payment-troubled.” *Id.* at 46. The ALJ therefore concluded that the waiver of the security deposit has a probability of causing increased delinquencies, which flies in the face of the policy declaration of Section 1404(2) of the Code, which states:

The General Assembly believes that it is now time to revisit these rules and provide protections against rate increases for timely paying customers resulting from other customers’ delinquencies. The General Assembly seeks to achieve

greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.

*Id.* at 46-47, citing 66 Pa. C.S. § 1402(2).

Moreover, the ALJ noted that PECO had not rebutted the possibility that a waiver of the security deposit has a probability of causing increased delinquencies. R.D. at 47.

#### Exceptions and Replies

In its Exception No. 2, PECO maintains its argument that requiring customers to apply any security deposit credit to fund their prepaid account would be in the public interest because it will reduce the overall cash funding needs for a volunteer’s utility service. PECO Exc. at 9. PECO’s second Exception highlights the following passage of the OCA’s surrebuttal testimony:

Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations allow PECO to require a security deposit from existing customers that have been delinquent on two consecutive payments or there or more bills over 12 months. If a customer is reverted to standard service and continues to experience payment difficulties, they may have to come up with a security deposit again, which may be challenging for a customer who is already struggling to pay the bills. In cases of a customer wishing to revert to standard service and potentially being required to re-post a security

deposit, the deposit may serve as both the bait that attracts lower-income households, and the hook that impedes the retention of traditional service.

OCA Statement No. 1-S at 12-13 (citations omitted).

PECO’s main argument in excepting to the ALJ’s conclusion on this issue is that the possible harm to utility customers, as suggested by the OCA, is not based on any data or experience and there is little record evidence that this harm will occur. PECO argues that because this problem “may” or will “potentially” affect customers, that the OCA has not “proved” that this problem has “a probability of occurring.” PECO Exc. at 9‑10. PECO further explains that through the pilot it can track the rate of delinquencies and obtain insight into any potential payment difficulties, as contemplated by the OCA. *Id*. at 10.

In its Reply Exceptions, the OCA retorts that the ALJ correctly found that PECO’s requested waiver of the security deposit Regulations is not in the public interest and thus was properly rejected by the ALJ in light of the substantial risk of harm to customers. OCA R. Exc. at 10-11. The OCA highlights its assertion that PECO is the party with the burden of proof to show that its pilot and requested waivers are in the public interest and reiterates its concerns regarding customers who use their security deposit towards a prepay account and subsequently return to standard service, possibly requiring them to pay another security deposit as a condition of service.

In its Reply Exceptions, CAUSE-PA/TURN *et al*. echoes the OCA’s response, asserting that the risk of harm is not merely speculative, but indeed 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. CAUSE-PA/TURN *et al.* R. Exc. at 18-19, citing R.D. at 47. CAUSE-PA/TURN *et al*. additionally objects to participants being harmed in the pursuit of data and experience. *Id*. at 19.

### Discontinuance vs. Termination of Service

#### Positions of the Parties

According to PECO, characterizing a disconnection under its pilot as a “voluntary discontinuance” as opposed to a “termination” is required by Section 56.17(3)(iii)(D) of the Commission Regulations. PECO M.B. at 60. PECO argued that the reason that the Commission’s Regulations characterize a prepaid disconnection as a voluntary discontinuance and not as a termination is “so that a utility will be able to disconnect prepaid service without following all of the pre-termination procedures.” *Id*. PECO admitted that a volunteer will have a different set of protections and rights under a discontinuance and therefore the decision to participate in the pilot must be an informed decision regarding treatment of disconnection of service under the pilot. PECO St. No. 1 at 19.

PECO acknowledged that the notices under the pilot may be viewed as problematic because they will be communicated electronically rather than through written form. PECO responded to this perceived issue by noting that 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. PECO M.B. at 60-61, citing PECO St. No. 1 at 7.

The OCA submitted that all consumer protections currently provided by Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s Regulations must be maintained. This includes written notices of termination, as well as additional contact by the utility prior to termination.[[20]](#footnote-21) The OCA averred that PECO’s pilot unseats the balance of notice requirements that have been developed in Pennsylvania law to ensure that customers receive notice of an impending termination and receive sufficient information to understand the reasons for termination, how to address the situation, the contact information for the utility and the Commission, the medical certification procedures if there is a serious illness, and information about special protections for certain customer groups. OCA M.B. at 12-13.

In addition, the OCA indicated that the use of limited notices such as text messages or emails to inform customers concerning the balance in the account and the number of days remaining does not respect the circumstances that customers may be facing. The OCA’s concern is the possibility that participants will not receive notice of disconnection of service due to circumstances such as an out-of-service internet connection or cell phone service due to unaffordability or other intermittent financial or technological problems. OCA M.B. at 20-21.

The OCA contended that PECO’s characterization of the operation of a disconnect under the pilot as a discontinuance is inaccurate. *Id*. at 20. The OCA noted that “[a] voluntary discontinuance of service is one that a customer requests, such as when the customer moves out of a home.” *Id*. Per Section 56.2 of the Commission’s Regulations, “discontinuance of service” is defined as “[t]he cessation of service with the consent of the customer and otherwise in accordance with § 56.72 (relating to discontinuance of service)” and “termination of service” is defined as “[t]he cessation of service, whether temporary or permanent, without the consent of the customer. R.D. at 50, citing 52 Pa. Code § 56.2. Therefore, the OCA asserted that a disconnection through the proposed pilot is not voluntary and is not at the discretion of the customer.

Furthermore, in its Main Brief, the OCA submitted that the consumer protections contained in Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations, which protect individual rights, as well as public health and safety, from the dangers and societal ills associated with a lack of basic utility service, should not, and cannot legally be waived as PECO’s pilot would require. OCA M.B. at 15-16. Noting that it has been found that a statutory right cannot be waived by courts in other states, the OCA provided a finding of the Connecticut Supreme Court:

[A]lthough it is generally true that privately held statutory and constitutional rights are waivable, not every mandatory statutory provision can be waived, even by the party who benefits or is protected under the statute . . . The public interest may not be waived. [When] a law seeks to protect the

public as well as the individual, such protection to the state cannot, at will, be waived by an individual.

OCA M.B. at 15, citing *Pereira v. State Bd. Of Educ.*, 37 A.3d 625, 653-54 (2012) (internal quotations omitted) (quoting *In re Application for Petition for Writ of Habeas Corpus by Dan Ross*,866 A.2d 554 (2005)).

The OCA added that, “[s]imilarly, the U.S. Supreme Court has stated that ‘[i]t has been held in this court and other courts that a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such a waiver or release contravenes the statutory policy.’” OCA M.B. at 16, citing *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 704 (1945).

I&E supported the OCA’s assertion that the terms of the proposed pilot appear to contravene service termination protections arising under Chapter 14 of the Code. In addition, to the extent that PECO is legally able to impose such conditions upon participants, which requires them to waive many of the protections under Chapter 14, I&E asserted that it is incumbent on PECO to provide adequate disclosures and educational materials to participants regarding what types of termination protections they are waiving. Absent this type of disclosure, participants cannot knowingly and voluntarily waive the protections contained in the Code. I&E noted PECO’s failure to provide tangible educational materials that potentially will be used by participants, rejected PECO’s assertion that the stakeholders can collaborate over what materials should be presented to the volunteers once the pilot is approved, and rebutted that PECO failed to sustain its burden of proof since it is indeterminate through the record evidence that the Company efforts through the pilot will afford the participant with the knowledge that the volunteer may relinquish protections that they have under standard, post-pay service. I&E M.B. at 18-21.

CAUSE-PA concurred with the OCA and I&E that PECO’s proposal is not in the public interest because it would eliminate critical consumer protections, such as an advanced written notice of termination, as required by Chapter 14 of the Code. CAUSE-PA M.B. at 17. As explained at length in CAUSE-PA’s Main Brief, quantity of notice, such as the series of eight or more electronic notices provided for in PECO’s pilot program, is not equivalent to quality of notice. *Id*. at 18. CAUSE-PA further noted that the method of notice PECO proposes is particularly concerning – text message and email, as opposed to the written form of termination required under standard service – because notice through electronic means is unreliable, resulting in participants never receiving a notice.  *Id*.

In addition, CAUSE-PA echoed I&E’s concern about what type of disclosures PECO will make to pilot participants. CAUSE-PA cited to I&E’s Main Brief, which states “it would be irresponsible to require customers to give up their rights in order to participate without knowing if customers are being properly informed about their loss of rights.” CAUSE-PA R.B. at 18, citing I&E M.B. at 19-20. Noting, PECO’s contention that it is a common approach to develop consumer education materials after the fact, CAUSE-PA asserted its concurrence with I&E that “this is not a typical proceeding.” *Id.,* citing I&E M.B. at 19. Therefore, CAUSE-PA contended that given the directives of the Choice Act, requiring the Commission to ensure continuation of “safe and reliable electric service,”[[21]](#footnote-22)and Chapter 14 of the Code, setting forth specific responsibilities and protections, “the Commission must take special care to ensure that consumers are not unknowingly waiving statutorily enshrined protections.” *Id*.

TURN *et al.* echoed the sentiments of the Parties delineated *supra*. in its Main Brief, regarding the elimination of statutory customer protections, such as written pre-termination notifications, resulting from participation in the pilot. TURN *et al*. M.B. at 10-12. TURN *et al*. contended that PECO should not be permitted to sidestep its statutory obligation to provide the notices required by Chapter 14 of the Code on the basis of a regulation which may comport with the requirements of the Code. Therefore, by eliminating the written pre-termination notice requirement and providing only electronic pre-termination notification to pilot participants, TURN *et al*. averred that PECO’s proposed pilot violates the Code and provides participants with an unreasonable and inferior quality of service. TURN *et al.* M.B. at 11-12.

#### ALJ’s Recommended Decision

The ALJ found that the Parties’ arguments, delineated above, tendered two main questions: (1) whether the operation of the pilot to disconnect a participant that has failed to load appropriate funds to the account should yield to protections of a discontinuance or protections of termination, and (2) whether the procedures of notifications to the participant as proposed under the pilot as a consequence to the unloaded account are adequate. R.D. at 51. Pages fifty-one through fifty-five of the ALJ’s Recommended Decision contain her discussion and findings concerning these two issues.

In her Recommended Decision, ALJ Jones found that, notwithstanding her finding that PECO’s pilot program is contrary to the public interest, PECO’s pilot would be in compliance with 52 Pa. Code. § 56.17(3)(iii)(D), which seemingly authorizes utilities to require advance payments if the consumer “agrees that failure to renew credits by making prepayment for additional service constitutes a request for discontinuance under Section 56.72(1) (relating to discontinuance of service).” 52 Pa. Code § 56.17(3)(iii)(D). Specifically, the ALJ concluded that termination of a prepaid electricity customer would constitute a “voluntary discontinuance,” as opposed to an involuntary termination, because the consumer “agreed to or ‘consented’ to cessation of service” as a condition of participating in the pilot. R.D. at 51-53.

The ALJ supplemented her discussion of this issue by acknowledging the concerns presented by I&E and supported by CAUSE-PA regarding PECO’s failure to develop educational materials and to present them as part of this proceeding. The ALJ concluded that PECO could not implement the pilot until educational materials were developed and reviewed. R.D. at 53. The ALJ determined that the lack of materials operated only as a barrier to implementation of the pilot, but not to its approval. Therefore, the ALJ found that it is not unreasonable for stakeholders to “collaborate over what instruction, information, and education should be minimally required for a potential participant to provide consent of discontinuance under the pilot.” R.D. at 54.

Although ALJ Jones found that termination of service to a prepaid electric customer should be treated as a voluntary discontinuance of service, her Recommended Decision highlights her concerns with the pilot’s proposed method of participant notification, noting that standard, post-pay service written notices are more effective than electronic means because they are more personal and actively engage the customer rather than electronic means which passively engage the customer. R.D. at 54-55. The ALJ concluded that the procedure of notification through solely electronic means is not in the public interest. *Id*. at 55.

#### Exceptions and Replies

I&E, the OCA, CAUSE-PA, and TURN *et al.* each except to the portion of the ALJ’s Recommended Decision which characterized the cessation of prepaid electric service for nonpayment as a voluntary “discontinuance,” as opposed to an involuntary “termination.” The Parties excepting to this characterization offer the following arguments in support of their assertion that a disconnection of service based on a consumer’s failure to make an adequate payment under PECO’s pilot cannot be considered a voluntary relinquishment of service: (i) the ALJ improperly relied on an overly technical reading of an outdated Regulation that contradicts more recently enacted statutory provisions; (ii) the ALJ’s determination regarding the voluntary “discontinuance” term contradicts her evidentiary analysis and is inconsistent with her other public interest findings; (iii) cessation of prepaid electricity service due to nonpayment cannot qualify as a voluntary discontinuance of service; and (iv) the Recommended Decision inappropriately focused on the development of education materials and disclosures.

First, the Parties argue that the ALJ improperly relied on an overly technical reading of an outdated Regulation that contradicts more recently enacted statutory provisions. I&E questions the ALJ’s standard of review applied in reaching her determination that the voluntary discontinuance term is not problematic and in the public interest. I&E notes the ALJ’s lack of analysis or rationale for why the voluntary discontinuance provision of the pilot is adequate, reasonable or in the public interest, but that she simply relied upon her conclusion that the voluntary discontinuance provision complies with the Commission’s advance payment Regulations at 52 Pa. Code § 56.17(3)(iii)(D). Therefore, I&E contends that the ALJ erred by applying this strict compliance standard of review when evaluating PECO’s voluntary discontinuance term because it contradicts the ALJs determination that “the Commission should express how the pilot is adequate, reasonable and in the public interest as a whole, for those provisions that are in compliance with the regulations and for those provisions that vary from the regulations.” I&E Exc. at 8-11, citing R.D. at 38.

The Exceptions of the OCA and CAUSE-PA/TURN *et al.* on this issue note that, in Pennsylvania, advanced payments for service was originally included in the Commission’s Regulations in 1978 at 52 Pa. Code § 56.17, and that to the best of their knowledge, no public utility in Pennsylvania has utilized this regulation to establish an advanced payment program. Furthermore, the OCA and CAUSE-PA/TURN *et al.* aver that since the Regulation’s inception in 1978, there have been many changes in Pennsylvania statutes, Regulations and policies regarding the rules for provision of electric service.[[22]](#footnote-23)Additionally, they point to the advent of significant technological advancements since Section 56.17 was enacted and which the Regulation could not have anticipated, such as the advanced meter infrastructure that PECO has not deployed throughout its service territory. OCA Exc. at 5-6; CAUSE-PA/TURN *et al*. Exc. at 3-4.

Next, the Parties’ Exceptions contend that the ALJ’s determination, regarding the voluntary “discontinuance” term, result in an outcome that is out of step with other aspects of the Recommended Decision. CAUSE-PA/TURN *et al*. note the ALJ’s recognition that Regulations, such as Section 56.17, cannot be enforced if such enforcement conflicts with subsequently-authorized statutory law, such as those protections afforded to consumers under Chapter 14 of the Code. The ALJ’s conclusion that, as a matter of law, statutory rights cannot be waived if waiver would negatively affect the public interest is also noted. CAUSE-PA/TURN *et al*. Exc. at 5, citing R.D. at 35-36, 82. Therefore, CAUSE-PA/TURN *et al*. argue that the ALJ’s conclusion that a participant in the pilot program could agree to waive their Chapter 14 rights as a condition of participating in the pilot, pursuant to Commission Regulations, contradicts the ALJ’s own findings and conclusions of law. CAUSE-PA/TURN *et al*. Exc. at 6.

Both the OCA and CAUSE-PA/TURN *et al.* submit that the ALJ’s analysis which she performed in some areas to determine whether PECO’s pilot program maintains consumer protections afforded to customers under Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations and whether those protections can be waived, was not performed in her determination of whether a customer volunteering in PECO’s proposed pilot could waive the provisions of Chapter 14 relating to the termination of service. They contend that should a participant’s consent to cessation of service whenever he or she is unable to fund an account balance be characterized as a voluntary discontinuance, it will lead to many of the same outcomes that the ALJ rejected as being against the public interest in her Recommended Decision, such as increased disconnection rates, lack of adequate notice procedures, and lack of protection against winter terminations for customers below 150% of the federal poverty level. CAUSE-PA/TURN *et al*. Exc. at 5-6; OCA Exc. at 8-9.

In a similar manner, I&E argues that the ALJ’s determination that the voluntary discontinuance term is in the public interest directly contradicts to her finding that an increase in the disconnection rate, likely to result from operation of the pilot program, will result in increased risks to health and safety, and is therefore, not in the public interest. I&E Exc. at 12-13.

Third, the Parties in their Exceptions argue that the Recommended Decision improperly ignore record evidence demonstrating that disconnections for inability to pay cannot truly be voluntary. The OCA and CAUSE-PA/TURN *et al*. contend that a customer’s inability to prepay for electric service cannot be characterized as a voluntary request to discontinue service, even if he or she agreed when they initially enter the program. OCA Exc. at 3-5; CAUSE-PA/TURN *et al*. Exc. at 7-8. They assert that customers may be willing to participate in the pilot based on the financial pressure that economically vulnerable households face. Noting the increased frequency of disconnections for customers under prepay service as opposed to traditional post-pay service, the Parties submit that the failure to make sufficient payments on a prepaid electric account and endure frequent outages is not a voluntary choice or act by the consumer, but a circumstance they are willing to endure because of their inability to pay, not because they voluntarily agreed to be disconnected. As such, the Parties assert that the disconnection of service for failure to pay, regardless of whether that failure was for pre- or post-pay service, constitutes an involuntary termination of service, and the associated statutory protections must apply. *Id.*

Finally, the Parties assert in their Exceptions that the Recommended Decision inappropriately focused on the development of education materials and disclosures. Both I&E and the OCA maintain that, regardless of whether consumers are provided with education materials and disclosures, disconnections under prepaid service can never truly be voluntary. However, they each emphasize the importance of education and disclosure materials that would be needed to inform prospective participants about the operation of the pilot program, the extent to which prepaid service presents heightened risk of loss of service, each right under Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations that the customer is being asked to waive, the extent to which transaction fees add to the total cost of retaining service, and the loss of consumer protections by designating this a voluntary “discontinuance,” procedures for reverting to traditional service, handling of security deposits upon entry into the pilot and reversion to traditional service, and allocation of payments between prepaid billing credits and any outstanding arrearage. I&E Exc. at 13-18; OCA Exc. at 6-7.

I&E notes that despite the ALJ’s acknowledgement of its concerns regarding PECO’s failure to develop education materials that would provide volunteers the ability to consent to the terms of the pilot and to present them as part of this proceeding, the ALJ determined that the lack of these materials only operates as a barrier to implementation of the pilot, not to its approval. I&E Exc. at 14-15, citing R.D. at 53.

Both I&E and the OCA assert their disapproval with the ALJ’s analysis of this issue. The OCA submits that PECO has not demonstrated that it will provide adequate information to customers to prevent possible harms associated with the pilot, but however, argues in a more general sense that the ALJ’s analysis regarding the development of educational materials and disclosures inappropriately comingles with her analysis of whether a disconnection under the proposed pilot can be characterized as a voluntary “discontinuance.” OCA Exc. at 6-7.

I&E more specifically objects to the ALJ’s determination that PECO’s failure to adequately support its proposed pilot can be cured through a collaborative process with stakeholders, after the pilot is approved, to determine what instruction, information, and education should be minimally required for a potential participant to provide consent of discontinuance under the pilot program. I&E Exc. at 16-17. I&E argues that PECO should have created, at least on a preliminary basis, the educational materials prior to filing the Petition, not only because this is an atypical proceeding, but because PECO is in the best position to determine what it believes to be cost-effective, which is beyond stakeholders’ scope of knowledge. *Id*. at 17-18. Furthermore, in its Exceptions, I&E submits that the ALJ correctly stated that PECO bears the burden of persuading the Commission, by a preponderance of the evidence, that the relief sought is proper and justified under the circumstances. *Id*. at 16, citing R.D. at 28. However, I&E contends that the ALJ failed to apply that standard by inappropriately shifting at least some of PECO’s burden of designing education materials for PECO’s pilot to stakeholders, whom PECO is directed to collaborate with. *Id.* at 16.

In its Reply Exceptions, PECO contends that neither the content nor the validity of a Commission Regulation is affected by its age. PECO R. Exc. at 3. PECO notes the process by which the Commission can review its own Regulations and submits that such a process has not been undertaken, regarding the advance payments Regulations, since 1995. PECO notes that in a rulemaking process in 1995, the Commission extended the prepaid service rules to include electric service. PECO R. Exc. at 4. Further, PECO avers that the Commission’s Bureau of Consumer Services addressed the difference between “discontinuance” and “termination” in the context of prepaid meters in its 1992 Investigation of Uncollectible Account Balances at Docket No. I-900002, and recommended that disconnections under prepaid service should be treated as “discontinuances.” *Id* at 4-5.

In response to CAUSE-PA/TURN *et al*.’s argument regarding specific legal developments since the advance payments Regulation’s inception in 1978, PECO notes first that the Commission did not extend its prepaid service Regulations to electric service until 1995, at which point the Commission was fully aware of the Discontinuance of Service to Leased Premises Act. *Id*. at 5-6. PECO simply refers to its Exceptions, where it responds to the public interest arguments and opines that its pilot program is not contrary to any provision of the Competition Act or Chapter 14 of the Code. PECO further contends that the Commission’s winter termination and medical certificate Regulations were already in place when the Commission extended the prepaid service Regulations to include electric service in 1995. *Id.* at 6.

Regarding the argument that the Recommended Decision improperly ignore record evidence demonstrating that disconnections for inability to pay cannot truly be voluntary, PECO in its Reply Exceptions, states that “when a customer or applicant *volunteers* to participate in the 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 protection offered under discontinuance versus termination, and then *voluntarily agrees* to operate under the discontinuance rules, then that agreement, and service disconnections under it are, by definition, ‘*voluntary*.’” PECO R. Exc. at 7.

Moreover, PECO maintains that it designed its proposed pilot with the following consumer protections, which it contends go well beyond the protections that the Regulations require for discontinuances:

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 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 R. Exc. at 2.

PECO argues that the Parties’ assertion that a customer’s inability to prepay for service cannot be characterized as a voluntary request to discontinue service assumes that PECO’s pilot will be populated in material part by low-income customers that may be under financial duress at the moment of disconnection. *Id*. PECO refutes this assumption, claiming that its pilot explicitly excludes low-income customers from participating. Therefore, PECO asserts that the evaluation of similar prepayment programs implemented in other jurisdictions, and the finding that such programs have led to more frequent disconnections and the associated public health and safety risks, is irrelevant to PECO’s pilot program. PECO claims that the information is not transferable to its pilot because, unlike the aforementioned programs, such as those in Arizona and Great Britain, PECO’s pilot excludes low-income customers. *Id*.

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Finally, regarding the customer education materials, PECO expresses its trepidation with the contentiousness of its proposal to use a stakeholder collaborative to develop education materials. PECO submits that, given the Commission’s longstanding commitment to encourage the use of collaboration, the ALJ correctly concluded that the educational materials and disclosures can be developed later with the assistance of a collaborative process. Further, PECO argues that it would have been premature for PECO to develop educational materials as part of the Petition, given that other Parties have asked the Commission to make rulings on operation aspects of the pilot, but not one party came forward with ideas of how the education materials could be fashioned when PECO initiated the collaborative discussion in its direct testimony. PECO R. Exc. at 9‑10.

### Medical Certificates

#### Position of the Parties

Under PECO’s pilot, participants must revert to standard service prior to using a medical certificate. Petition at ¶ 25. PECO has stated that requests to revert to standard billing will be processed “by the next business day.” Petition, Attachment at ¶ 16. PECO’s witness, Mr. Scarpello, testified that virtually all customers who access the medical certificate procedures under traditional service begin that process with a single call to PECO, and a single call is all that will be required under PECO’s pilot program. Thus, PECO argues there will be no degradation of access to the medical certificate procedures under PECO’s proposed pilot. PECO St. No. 1-R at 11-14.

CAUSE-PA and TURN *et al*. contended that under PECO’s proposal, a participant in the pilot program will revert back to standard service before PECO will honor the participant’s medical certificate. The Parties assert that this procedure creates an extra bureaucratic step that will degrade access to the medical certificate procedures.

CAUSE-PA averred that the provisions of PECO’s proposed pilot ignore the plain reading of 52 Pa. Code § 56.17 (3)(iii)(D), noting that the term “medical emergency” is not the same term as and should not be conflated with the medical certificate process which is defined by Commission Regulations. CAUSE M.B. at 23; see 52 Pa. Code §§ 56.112 to 56.118.[[23]](#footnote-24) Subsequently, CAUSE-PA submitted that a medical emergency applies to other situations, including but not limited to the winter moratorium contained in Chapter 14, and should not be limited by PECO or the Commission to only those criteria in which a medical certificate is appropriate. CAUSE-PA M.B. at 24.

CAUSE-PA recognized that PECO’s response to several of the consumer protection concerns raised by the Parties, such as medical certificate availability and, as discussed *infra*., payment arrangement terms and winter termination protections, had been that participants can just call to revert to standard service. CAUSE-PA asserted, however, that requiring a participant to affirmatively request a switch to standard service while they are experiencing medical issues is not sufficient to meet the “medical emergency” exception in the Regulation, especially in consideration of the additional obstacle which the pilot creates of failing to provide participants with the notice of availability of the medical certification process in conjunction with a termination for failure to prepay. *Id*. In comparison, CAUSE-PA noted that termination under standard, traditional, post-pay service includes written notice that expresses the availability of medical certificates. *Id*. at 24-25, citing CAUSE-PA St. No. 1 at 23-24.

TURN *et al*. echoed the concerns of CAUSE-PA that PECO’s proposed pilot imposes a requirement on participants who seek to exercise their right to a medical certification that is not imposed on customers who receive standard service, requiring participants to take an additional step of reverting back to standard service before PECO will honor the participant’s medical certificate. Under PECO’s pilot, TURN *et al*. contended that a participant could face the involuntary loss of service after having obtained a medical certification, if the customer cannot revert to standard service in time to avoid the automatic termination that will occur under the pilot. TURN *et al.* added that this inequity is compounded by the risk of serious health consequences that could result for PECO’s participants who may not be able to access a medical certificate until the next business day. TURN *et al.* M.B. at 13-14.

The OCA averred that PECO’s argument ignores the fact that, if a participant is experiencing a medical emergency, they may not be capable of calling PECO within the five-day emergency credit period to prevent their service from being disconnected. OCA M.B. at 37.

#### ALJ’s Recommended Decision

ALJ Jones found that the process that PECO proposed for participants to access medical certification protections is insufficient, presents an additional hurdle to access those protections, and therefore, is not reasonable and in the public interest. R.D. at 58-59. The ALJ acknowledged that under standard service, the Commission’s medical certification process include multiple protections against termination:

Under the standard post-pay service, the party is afforded the medical certificate protections found at 52 Pa. Code § 56.111 *et seq.,* which include three-day confirmation of a medical situation and prohibition of termination for up to 30 days. The certification may be renewed for an indefinite number of times provided the customer meets obligations to pay current charges during the medical certification process. 52 Pa. Code § 56.114(2), TURN M.B. at 12-13, footnote 15, citing *PECO Universal Service and Energy Conservation Plan for 2016­2018,* Docket No. M-2015-2507139, (Order on Reconsider-ation entered December 8, 2016). Additionally, Section 1406(f) of the Code states, “a public utility shall not terminate

service to a premises when a customer has submitted a medical certificate to the public utility.” 66 Pa. C.S. § 1406(f).

*Id*. at 56.

After acknowledging these protections, the ALJ determined that PECO’s proposed pilot failed to provide notice of the availability of the medical certification process to participants. *Id*. at 59. The ALJ further determined that notification is crucial because “a participant must know a right exists in order to exercise it.” Additionally, the ALJ noted the importance of the proximity of the timing between the notification and an emergency situation: “[t]he presentation of the notice at the time it is relevant and can be effective is invaluable and the education prior to when it may be effective pales in comparison.” *Id*.

Lastly, the ALJ found that the protection of medical certification availability was further eroded under PECO’s pilot because it would require that participants take an additional step beyond just contacting PECO regarding a medical certificate. *Id*.

#### Exceptions and Replies

PECO maintains its argument that participants will have access to medical certificates if they revert to standard service and affirmatively assert the protections. PECO Exc. at 5-7. As described by PECO, should a participant “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.”[[24]](#footnote-25) PECO Exc. at 5-6. PECO justifies the service disconnection procedure under its proposed pilot based on the Commission’s Regulations on advance payments at 52 Pa. Code § 56.17(3)(iii)(D), contending that the “volunteer is not waiving [its customer protections]; the volunteer is agreeing, as the Commission’s regulations require, that [their] account will be handled under the discontinuance rules,” as opposed to those which are imposed under a “termination.” *Id*. at 6-7.

In its Reply Exceptions, I&E defends the ALJ’s analysis upon which she based her conclusion that the pilot program’s procedure for medical conditions is problematic, contrary to Commission’s Regulations, and that it fails to promote the public interest. I&E R. Exc. at 3, 5-13. I&E’s review of the ALJ’s analysis includes: (1) the pilot’s failure to provide adequate notice of the availability of the medical certificate process to participants, which is available within the protections afforded to standard service customers under 52 Pa. Code §56.111 *et seq*. and Chapter 14 of the Code, (2) lack of notification of a participant’s right to submit a medical certificate in conjunction with the pilot’s notification procedures for failure to prepay,[[25]](#footnote-26) and (3) the introduction of an additional obstacle to obtain protection when a medical situation arises, because a participant would be required to first revert back to standard service and then request implementation of the medical certification process. I&E R. Exc. at 6-7, citing R.D. at 59.

I&E refutes PECO’s argument that participants will not face an additional hurdle in accessing the Commission’s medical certificate procedures because all that will be required is a single phone call, during which the participant can exit the program and then inquire about the medical certificate protections. I&E asserts that the number of phone calls is irrelevant, but what is problematic and what PECO failed to address is (1) the insufficiency of the notification process and (2) the possibility that, due to a participant’s circumstances at the time they are experiencing a medical emergency, they may be unable to call PECO in time to prevent their service from being disconnected. I&E R. Exc. at 8-9 (citing R.D. at 59).

In its Reply Exceptions, the OCA avers that the ALJ correctly found that PECO’s prescribed procedure to revert to standard service in order to access medical certificates is unreasonable, degrades the benefits participants would otherwise incur under standard service, and is therefore, against the public interest. OCA R. Exc*.* at 5-9. Specifically, the OCA highlights the ALJ’s concurrence with arguments in its Main Brief, finding that “the circumstances of the emergency may not provide the participant with the ability to call the Company” in order to prevent disconnection. *Id*. at 6 (citing R.D. at 59). Additionally, the OCA maintains that requiring customers to affirmatively request to return to traditional service is not adequate, noting that the record shows that low- to moderate-income customers may instead choose to endure frequent disconnections when they are struggling to pay the bills. OCA R. Exc*.* at 6. Furthermore, similar to the Reply Exceptions of I&E, the OCA asserts that participation in the proposed pilot is dependent upon consumers waiving many consumer protections that are intended to protect both individuals and public health and safety. Therefore, the OCA submits that these protections should not, and cannot legally be waived as PECO’s pilot would require. *Id.* at 8-9.

CAUSE-PA/TURN *et al*. echo those sentiments of I&E and the OCA concerning PECO’s “two-step process” for accessing medical certificates under its proposed pilot. CAUSE-PA/TURN *et al*. R. Exc. at 9‑13. CAUSE-PA/TURN *et al*. explain that the process to access medical certificates under PECO’s Plan is, in fact, a two-step process – A participant must (1) know to call and ask to be returned to standard service, and must (2) know they have the right to assert the medical protection. As they further note, this two-step process will only be explained to volunteers during the pilot intake process, which could be months or years before the protection is needed. *Id.* at 10, 12 (citing PECO M.B. at 5-6). CAUSE-PA/TURN *et al*. contrast these protections offered under PECO’s proposed pilot to those which exist under Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations.[[26]](#footnote-27) *Id*. at 11. CAUSE-PA/TURN *et al.* then cite to the Recommended Decision in which the ALJ 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 Chapter 14 of the Code and Chapter 56 of the Regulations, and is therefore not reasonable or in the public interest. *Id.* at 12 (citing R.D. at 59, 63).

### Winter Termination Protections

#### Positions of the Parties

PECO argued that concerns about winter terminations is addressed by a reversion back to standard service, in a similar fashion as it addressed concerns regarding access to medical certification protections. PECO stated that “[a]ny pilot participant with income below 250% of the Federal Poverty Level will continue to have access [to] the winter termination protections” – so long as they call PECO and request to revert to standard service. PECO M.B. at 63-64. PECO disagreed that the procedure to revert to standard service is unreasonable and degrades the benefits the participant would otherwise incur under standard service, stating that “[i]t is not reasonable to expect that volunteers in this program, having been so informed [of the right to revert to standard service when enrolling], will then fail to call and request reversion if they find that they are having trouble paying their bills in the winter.” *Id*. at 64.

CAUSE-PA asserted that PECO’s proposed policy is insufficient to protect households from loss of service in winter months, submitting that the Commission cannot act to implement PECO’s request pursuant to 52 Pa. Code § 56.72(1) without violating the winter termination protections found in Section 1406(e) of the Code. CAUSE-PA contended that implying that households who do not reload credits onto an account are asking that their service be discontinued flies in the face of the General Assembly’s policy determination in Chapter 14, which prohibits PECO (and all other electric distribution companies under the Commission’s jurisdiction) from terminating service during the winter for customers at or below 250% of the federal poverty level, unless the utility has Commission approval. 66 Pa. C.S. §1406(e). CAUSE-PA explained the importance of the winter moratorium protections, and noted that the General Assembly specifically recognized that nonpayment during the winter months is targeted to the inability to pay: “the General Assembly specifically recognizes the vulnerability of these . . . low income households and that their non-payment in the winter time is not indicative of an unwillingness to pay, but rather an inability to pay.” CAUSE-PA M.B. at 20-22.

I&E explained that the conditions of the PECO’s proposed pilot permit PECO to disconnect service to participants with incomes at or below 250% of the federal poverty level during the winter months even though termination procedures that are contained in the Code and within Commission Regulations would prohibit such loss of service. I&E M.B. at 15. I&E further noted that, through PECO’s rebuttal testimony, it claimed that should a participant’s service be disconnected in the winter, “the customer can still call PECO and revert to standard service. If they do so and their income is below 250% of the federal poverty level, their service will be restored immediately without payment of any kind.” *Id.* at 15-16, citing PECO St. No. 1R at 11. However, I&E stated that this claim is not memorialized in PECO’s pilot. *Id*. at 16.

The OCA contended that PECO’s pilot conflicts with winter moratorium protections contained in 66 Pa. C.S. § 1406(e)(1) and 52 Pa. Code § 56.100 because such protections only apply to “terminations” and do not cover “voluntary discontinuances.” OCA M.B. at 23. The OCA additionally notes that the procedure proposed by the pilot affords no notice to ensure that the customers are aware of options to maintain service. *Id*. at 12-13. The OCA contended that protections, such as winter moratorium, exist not only for the specific households, but also the communities where the households exist because alternative means of heat and light yield a greater risk to safety and health of not only the household, but its community. *Id*. at 15-16, 22-24. The OCA questioned whether protections, such as winter moratorium, can legally be waived by individual customers given their impact on health and safety. *Id*. at 15. The OCA submitted that these public protections should not and cannot legally be waived as PECO’s pilot would require. *Id.* at 15-16.

TURN *et al*. echoed the other Parties, noting its concern with PECO only providing winter termination protections, set forth in the Code and Commission Regulations, if a participant reverts to standard service, and stated that PECO’s pilot clearly violates Section 1406(e)(1) of the Code. TURN *et al*. M.B. at 8-10. TURN *et al*. noted that Pennsylvania’s winter termination protections, implemented for customers with income up to 250% of the federal poverty level, were adopted to prevent harm to health and safety caused by lack of utilities during cold winter months. TURN *et al.* contended that this pilot provision is not in the public interest because customers with incomes between 150% and 250% of the federal poverty level who are unable to make sufficient payments under the pilot program will lose this customer protection and face shut off during the winter when service is needed most for health and safety reasons. *Id*. at 26. TURN *et al.* further argued that the pilot violates 66 Pa. C.S. § 2802(10), which prohibits reduction of consumer protections for low income customers at 150% of the federal poverty level and below. *Id.* at 19.

#### ALJ’s Recommended Decision

The ALJ found that PECO’s pilot program failed to maintain the statutory and regulatory protections against winter terminations and therefore is not in the public interest. R.D. at 63. More specifically, the ALJ determined that PECO failed to honor the winter moratorium protections, which cannot be waived. The terms of which are codified in the following statute:

Unless otherwise authorized by the commission, after November 30 and before April 1, an electric distribution utility or natural gas distribution utility shall not terminate service to customers with household incomes at or below 250% of the Federal poverty level except for customer whose actions conform to subsection (c)(1). The commission shall not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance with this section to customer with household incomes exceeding 250% of the Federal poverty leve1.

66 Pa. C.S. § 1406(e)(1). The Commission’s Regulations also adopt the winter moratorium:

*Electric distribution and natural gas distribution utilities.*

Unless otherwise authorized by the Commission, during the period of December 1 through March 31, an electric

distribution utility or natural gas distribution utility may not terminate service to customers with household incomes at or below 250% of the Federal poverty level except as provided in this section or in § 56.98. The Commission will not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance

with this section to customers with household incomes exceeding 250% of the Federal poverty level.

52 Pa. Code § 56.100(b).

Similar to the ALJ’s finding concerning participants’ access to medical certificates, she found that the additional step required to access winter termination protections is not adequate because it degrades the quality of protection afforded under the Commission statute. R.D. at 63.

#### Exceptions and Replies

PECO’s first Exception maintains its argument that participants will be protected from termination by the winter moratorium if they revert to standard service and affirmatively assert the protections. PECO Exc. at 5-7. As described by PECO, should a participant face a termination in the winter months, they should call PECO, ask to revert to standard service and, *in that same call*, inquire about the protections.[[27]](#footnote-28) PECO Exc. at 5-6. PECO justifies the service disconnection procedure under its proposed pilot based on the Commission’s Regulations on advance payments at 52 Pa. Code § 56.17(3)(iii)(D), contending that the “volunteer is not waiving [its customer protections]; the volunteer is agreeing, as the Commission’s regulations require, that [their] account will be handled under the discontinuance rules,” as opposed to those which are imposed under a “termination.” *Id*. at 6-7.

In its Replies, I&E notes that the ALJ’s findings on this issue acknowledge the failure of PECO’s pilot to honor the terms of the winter moratorium, codified in the statute and adopted in the Commission’s Regulations. *Id*. at 10. I&E points out that PECO’s Exceptions admit that there will be participants with incomes between 151% and 250% of the federal poverty level who would have winter termination protections as standard service customers but will be subject to disconnection in the winter as participants of the pilot. I&E R. Exc. at 12, citing PECO Exc. at 6. I&E reiterates the importance of the winter moratorium protections, citing to the arguments of TURN *et al*., CAUSE-PA, and the OCA that elimination of such protections increases the safety risks to not just individual households but to the public as well. I&E refutes PECO’s argument, asserting that regardless of whether a participant may be free to revert to standard service at any time, the pilot, by the nature of its operation, would require participants to waive the winter moratorium protection as a condition of participation. I&E R. Exc. at 12. I&E emphasizes the ALJ’s determination that such a waiver is not valid, as public protections cannot be waived. *Id.* at 13, citing R.D. at 62. Additionally, I&E notes that PECO has not rebutted the ALJ’s determination that winter moratorium protections cannot be waived and thus its arguments are without merit and present no viable basis for exception. I&E R. Exc. at 11-13.

The OCA avers that the ALJ correctly found that PECO’s prescribed procedure to revert to standard service in order to access winter termination protections is unreasonable, degrades the benefits participants would otherwise incur under standard service, and is therefore, against the public interest. OCA R. Exc. at 5-9. Specifically, the OCA highlights the ALJ’s concurrence with arguments in its Main Brief, finding that “the circumstances of the emergency may not provide the participant with the ability to call the Company” in order to prevent disconnection. *Id*. at 6 (citing R.D. at 59). The OCA further restates its contention that PECO’s pilot conflicts with winter moratorium protections contained in 66 Pa. C.S. § 1406(e)(1) and 52 Pa. Code § 56.100. OCA R. Exc. at 7. The OCA explains that PECO’s pilot would upset these protections which recognize the heightened risk that consumers face when having electric service terminated during the winter. Additionally, the OCA maintains that requiring customers to affirmatively request to return to traditional service is not adequate, noting that the record shows that low- to moderate-income customers may instead choose to endure frequent disconnections when they are struggling to pay the bills. *Id.* Furthermore, similar to the Reply Exceptions of I&E, the OCA asserts that participation in the proposed pilot is dependent upon consumers waiving many consumer protections that are intended to protect both individuals and public health and safety. Therefore, the OCA submits that these protections should not, and cannot legally be waived as PECO’s pilot program would require. *Id.* at 8-9.

CAUSE-PA/TURN *et al*. echo those sentiments of I&E and the OCA concerning PECO’s “two-step process” for accessing winter termination protections under its proposed pilot. CAUSE-PA/TURN *et al*. R. Exc. at 9‑13. CAUSE-PA/TURN *et al*. explain that the process to access winter termination protections under PECO’s proposed pilot is, in fact, a two-step process – A participant must (1) know to call and ask to be returned to standard service, and must (2) know they have the right to assert the winter termination protections. As they further note, this two-step process will only be explained to volunteers during the pilot intake process, which could be months or years before the protection is needed. *Id.* at 10, 12 (citing PECO M.B. at 5-6). CAUSE-PA/TURN *et al*. contrast these protections offered under PECO’s proposed pilot to those which exist under Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations.[[28]](#footnote-29) *Id*. at 11. CAUSE-PA/TURN *et al.* then cite to the Recommended Decision in which the ALJ 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 Chapter 14 of the Code and Chapter 56 of the Regulations, and is therefore not reasonable or in the public interest. *Id.* at 12 (citing R.D. at 59, 63).

### Disconnection Rate

#### Positions of the Parties

PECO categorically denied that any increase in the disconnection rate is unacceptable. PECO M.B. at 62. According to PECO, “a series of short disconnections” occurring under prepaid service is preferable to having one lengthy disconnection under standard service and contended that frequent disconnections may be accompanied by “increased customer satisfaction, better payment behaviors, and/or improved energy conservation . . . ” *Id*.

Additionally, PECO argued that existing prepaid programs do not give meaningful insight into whether PECO’s proposed pilot will have increased disconnections because “[n]o existing prepaid service program excludes low-income customers – which PECO’s program does – and none of the data from studies of those programs has been disaggregated on an income basis.” *Id*. Thus, PECO asserted that its pilot program should be implemented in order to collect this data. *Id*. at 62-63.

CAUSE-PA contended that the vast majority of the testimony and evidence presented in this proceeding shows that harm that PECO’s proposed pilot would cause by undermining public safety, increasing the risk of service disconnections, and costing participants more money, without a tangible benefit to the public. CAUSE-PA M.B. at 11. Referencing data collected from prepaid programs in other jurisdictions, CAUSE-PA stated that customers participating in those programs have experienced more frequent disconnections. *Id*. at 30; CAUSE-PA St. No. 1 at 25-28, TURN St. No. 1 at 10-12; OCA St. No. 1 at 13-23. It is argued by CAUSE-PA that disconnections, even those that are short in length of time, are dangerous to the participants and the public. CAUSE-PA M.B. at 31; CAUSE-PA St. No. 1-SR at 7; OCA St. No. 1 at 38-39.

The OCA presented evidence demonstrating that in other states and countries where prepaid programs have been implemented (*i.e.*, Arizona, Texas, Great Britain and New Zealand), they tend to become concentrated among low- and moderate-income customers, resulting in high disconnection rates, which indicates that enrollment in a prepaid program does not necessarily assist customers in affording and maintaining electric service, but rather results in deprivation which may be dangerous to individuals and public health and safety. OCA M.B. at 28-32. As discussed in the OCA’s Main Brief, even a temporary interruption carries with it a risk of a dangerous situation, such as the utilization of candles as an alternative to electricity. *Id*. at 23.

Like the other opponents of the pilot program, TURN *et al*. posited that in absence of Pennsylvania specific data, the Commission should review the harm caused by prepay programs in other jurisdictions. TURN *et al*. submitted a similar finding – that economically vulnerable participants may choose to endure frequent disconnections because of their inability to fund a sufficient balance for service. TURN *et al*. M.B. at 22. TURN *et al*. explained that payment troubled customers participating in prepaid service programs often make frequent, small payments, which are accompanied by transaction fees, leading to costs higher than those associated with traditional service and further hindering their ability to fund a sufficient balance to prevent service disconnections.  *Id*. at 21-22.

#### ALJ’s Recommended Decision

The ALJ found the arguments, supported by data, submitted by the opponents to be persuasive and 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.” R.D. at 65. After finding that customers in other jurisdictions offering prepay service have experienced an increase in termination, 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. *Id*. Therefore, the ALJ determined that PECO’s proposed pilot 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 pilot program and the increased disconnection rate will result in increased risks to health and safety.” *Id*. at 66.

#### Exceptions and Replies

In its first Exception, PECO asserts that it provided testimony that, when prepaid service was implemented in as many as 50 other jurisdictions, there was an increase in customer satisfaction, a decrease in delinquencies (that is, better payment behavior), and increased conservation. PECO Exc. at 3 (citing e.g. PECO Statement No. 1 (Direct Testimony of Jude Scarpello) at 4-5). PECO states there was little, or no testimony offered by the Parties that denied PECO’s testimony that prepaid service increases customer satisfaction and results in a decrease in delinquencies. Instead there was some testimonial discussion of whether the observed decreased usage should be characterized as “conservation” or “deprivation” – and PECO agreed to study and collect data to address that question. PECO asserts that its pilot is a low-risk, low-cost method of obtaining practical experience and data on prepaid service. PECO Exc. at 3 (citing PECO M.B. at 53, n.4).

In its Replies, the OCA maintains that PECO has not pointed to any benefit of prepaid programs that could not be offered without the threat of disconnection and the associated harm to health and safety that can result. OCA R. Exc. at 1. The OCA asserts that PECO has mischaracterized the record by stating that other Parties in this case presented “little or no testimony that denied PECO’s [claims] (sic) that prepaid service increases customer satisfaction and results in a decrease in delinquencies.” OCA R. Exc. at 3 (citing PECO Exc. at 3). The OCA, explains that, to the contrary, it has presented evidence demonstrating that in other states prepay programs have resulted in high disconnection rates and customer deprivation which may be dangerous to individual and public health and safety. Conversely, the OCA argues PECO has cited no data or studies to support its contention that frequent disconnections associated with prepay service may be accompanied by “increased customer satisfaction, better payment behaviors, and/or improved energy conservation…” OCA R. Exc. at 3-4, citing PECO M.B. at 62. The OCA points to the record in this proceeding, which demonstrates that the proposed pilot is not “low-risk,” but in fact, creates increased risks to households and communities, associated with increased disconnection rates and the de facto waiver of termination protections, which participation requires. *Id*. at 4-5. Therefore, the OCA submits that it is against the public interest for PECO to gain “experience” at the expense of vulnerable customers.  *Id*. at 5.

CAUSE-PA/TURN *et al.* maintain that although PECO alleges that its pilot program is a low-risk opportunity to gain practical experience, the conditions upon participation in the pilot raise significant concerns. CAUSE-PA/TURN *et al*. R. Exc. at 15-16. As explained at length throughout the record, economically vulnerable households prepaying for their electricity likely would experience more frequent disconnections, and thus be faced with additional transaction fees associated with frequent payments, compounding the impact on a consumer’s mental and physical health. Additionally, these disconnections create health and safety risks to both individual households and the public at large, as customers who are disconnected from essential utility service may turn to unsafe alternative sources of heat and light. *Id.* at 16-17. CAUSE-PA/TURN *et al*. opine that the alleged benefits for participants can be provided without depriving participants of the protections in place for service terminations. Therefore, they assert that if prepay is to be tested, there are alternate, less harmful ways to do so, and as such, PECO’s arguments that its pilot is in the public interest because it will allow for practical experience with prepaid meters must be rejected. *Id*. at 17-18.

### Payment Arrangement Options

#### Positions of the Parties

Chapter 14 of the Code provides for specific payment arrangement terms based on income level, with a payment amount determined, in part, by the amount of the delinquency.[[29]](#footnote-30) PECO’s proposed pilot makes provisions for a payment arrangement for those participants that enroll with delinquencies. Customers or applicants with incomes above 150% of the federal poverty level, having a delinquency of up to $1,500, will be eligible to participate, but 25% of each prepayment will be applied toward reducing the customer’s arrearage, and the remaining 75% will be applied toward the participant’s future usage. PECO St. No. 1 at 15-16.

In its Main Brief, although PECO claimed that its pilot is not in violation of the payment arrangement provisions of the Code, it recognized that opponents view the 25%/75% arrangement for allocation of payment as a violation of payment arrangements under the provisions of the Code since the terms do not consider income of the household and do not compare household income with the federal poverty level. PECO M.B. at 65. PECO first argued that if a participant wishes to have “another form of payment arrangement (and are eligible for one), then they need not volunteer to participate in the pilot.” *Id*. Additionally, similar to its response regarding concerns about winter terminations and access to medical certification protections, PECO stated that should a volunteer enter the pilot program and find that a 25%/75% payment arrangement is not appropriate, the participant can simply revert to standard service, gaining access to the applicable payment arrangement terms. *Id*.

CAUSE-PA contended that the proposed pilot’s payment arrangement provision does not satisfy the requirement that PECO enter into a payment agreement as required by 52 Pa. Code § 56.17(3)(iii). CAUSE-PA explained that to comply with the Regulations, PECO must offer a payment arrangement to households with delinquencies, not impose a formulaic requirement that 25% of all payments will go to reduce arrearages. CAUSE-PA R.B. at 10. CAUSE-PA further argued that the payment arrangement proposed in the pilot, not only falls short of meeting the requirements of the aforementioned Regulation, but also fails to meet the statutory requirements of Chapter 14, noting the special payment arrangement rules for those households under 300% of the federal poverty level. CAUSE-PA M.B. at 27-28. CAUSE-PA witness Miller testified as follows:

Chapter 14 sets forth the following payment arrangement guideline.[[30]](#footnote-31)

|  |  |
| --- | --- |
| **Household Income** | **Payment Arrangement Length** |
| ≤ 150% of poverty | 60 months (5 years) |
| > 150% but ≤ 250% | 36 months (3 years) |
| > 250% but ≤ 300% | 12 months (1 year) |
| > 300% | 6 months |

While this regulation only applies to payment arrangements investigated by the Commission, it is my experience that utilities use these guidelines as their starting point. To be sure, while a utility could be more generous in their payment arrangement lengths, it cannot be less generous, as the house would have the ability to seek a 1405(b) payment arrangement from the Commission. Under PECO’s Prepay Plan, a house with income of 275% of the federal poverty level would be entitled to a payment agreement of at least 12 months regardless of the arrearage amount. A hypothetical household of 3 with an annual income of $56,155 would be at approximately 275% of the 2017 federal poverty income guidelines. If this household had a $300 arrearage with PECO, it would be permitted to pay that arrearage off at an additional $25 per month. However, under PECO’s prepay proposal, this household would be required to surrender 25% of each of their payments to PECO. PECO estimates that average consumption would be $150 in usage per month. This would require a household to pay $200 per month in order to fund their usage – $150 (75%) for usage and $50 (25%) towards their arrears – and would have the effect of doubling that amount a household is required to pay towards arrearages.

CAUSE-PA St. No. 1 at 21-22 (citations omitted).

The OCA explained in its Main Brief that PECO’s proposed pilot program itself is a payment arrangement. OCA M.B. at 13-14. After making this distinction, that the pilot is, in fact, a form of payment arrangement, the OCA concluded that the operation of the pilot violates Section 1405 of the Code by arbitrarily setting the allocation towards arrearages at 25% without any basis in the customer’s income or consideration of other factors impacting the customer’s ability to maintain the payment arrangement, effectively disregarding the length of time a customer is statutorily provided to pay off their arrearage. *Id*. at 14; 66 Pa. C.S. § 1405. The OCA reiterated its assertion that removing customer protections contained in Chapter 14 of the Code puts the health and safety of vulnerable households at risk. Specifically, the OCA asserted that the pilot creates a risk to the health and safety of the public by failing to offer payment arrangements to households with incomes between 150% and 300% of the federal poverty level, as required by statute. *Id*. at 14.

In concurrence with CAUSE-PA and the OCA, TURN *et al*. likewise contended that PECO’s proposed pilot creates a restrictive, pre-determined, and universal payment arrangement that does not comply with statutory requirements and eliminates payment arrangement options that are available to customers under the Code. TURN *et al*. M.B. at 14. TURN *et al*. added that, depending on the individual circumstances of each participant, the rigid 25%/75% payment arrangement may be less generous than a customer could receive under standard billing, contending that PECO is obligated under 66 Pa. C.S. § 1303 to provide the best rate available to them.[[31]](#footnote-32) *Id*. Therefore, TURN *et al*. explained that since PECO would not make an individualized determination of the best rate for the participant under its proposed pilot, nor prevent enrollment of the volunteer even if the terms fail to be more advantageous than other options available, it would result in some participants being deprived of more beneficial payment terms. *Id.* at 14-15.

#### ALJ’s Recommended Decision

The ALJ found, after recognizing the critical nature of the customer protections contained in Chapter 14 of the Code, that the operation of the pilot as proposed for payments from participants that would otherwise be eligible under the protections of 66 Pa. C.S. §§ 1405, 1407, and 1417 is not in the public interest, and therefore, should not be approved. R.D. at 69.

The ALJ based her recommendation on the following findings: (1) it is undisputed that the 25%/75% arrangement for allocation of payment is a form of a payment arrangement; (2) the record is devoid of any argument from PECO that the payment arrangement proposed through the pilot complies with the Commission statute or is beneficial to participants; and (3) it is not reasonable and just to implement a payment arrangement that is less affordable than the payment arrangement terms under Chapter 14 and contrary to the provisions of the statute for participants above 150% of the federal poverty level and below 300% of the federal poverty level, whom the statute sought to protect.  *Id*. at 68-69.

#### Exceptions and Replies

PECO did not specifically address this issue in Exceptions, and therefore the other Parties did not file Replies. However, PECO did except generally to the ALJ’s determination that PECO’s proposed pilot is not in the public interest – specifically, that the disadvantages of the pilot program outweigh the benefits to the public. PECO Exc. at 3. The Parties responded to PECO’s general exception in their Replies. Please see the discussion of Exceptions and Replies above under “PECO’s Burden of Proof” which is incorporated herein by reference.

### Notice to Specifically Situated Tenants in Dwellings Landlord Resides

#### Positions of the Parties

Section 1523 of the Code is intended to protect tenants from termination due to nonpayment by a landlord ratepayer. 66 Pa. C.S. § 1523. Pursuant to Section 1523, prior to termination for nonpayment, a public utility is required to notify each dwelling unit reasonably likely to be occupied by an affected tenant of the proposed termination in writing. *Id.* The public utility must also permit the tenant to maintain service or to promptly resume service if it receives from the tenant(s) an amount equal to the bill for the affected account of the landlord ratepayer for the billing month preceding the notice to the tenants. 66 Pa. C.S. § 1527(b). The public utility then has an obligation to notify the tenant of each subsequent 30-day bill. *Id*.

PECO claimed that only individually-metered residential dwellings will be eligible to participate in its pilot program and, therefore, does not expect any landlord-tenant accounts to be eligible. PECO St. No. 1 at 14-15. In order to implement that requirement, PECO indicated that during the intake process, in addition to inquiring whether the service in question is through an individually-metered residential account, it will require that the potential volunteer provide their name, address, and (for existing customers) their account number. *Id.* at 15.

In rebuttal testimony, PECO expounded further that it will exclude landlord-tenant accounts from the pilot by asking two questions during the intake process: (1) are you the account holder, and (2) are you an occupant at this address? Unless the prospective volunteer answers yes to both questions, they will not be eligible to participate. PECO St. No. 1R at 15-16.

TURN *et al*. contended that PECO’s landlord-tenant procedures are not properly protective because a landlord who rents out rooms will be allowed to enroll in the pilot. TURN *et al*. explained that this could occur through two scenarios. First, if an occupant landlord moves out of the property while enrolled in the pilot and rents the property to another person; second, where a landlord lives at the property and rents out rooms. The renters or room-renters in such situations could face termination without notice. TURN *et al*. St. No. 1 at 22-24.

Although the Commission’s Advance Payments Regulations permit prepaid meter service programs only where “the service is being rendered to an individually-metered residential service dwelling, and the customer and occupants are the only individuals affected by the installation of a prepayment meter,” there is no language that specifically prohibits landlord ratepayers from participating in a prepaid meter program. 52 Pa. Code § 56.17(3)(ii). TURN *et al*. explained that under the pilot program, tenants, living at the same service address where the landlord is the ratepayer and occupant, will not receive any of the usage notifications that are provided to the landlord ratepayer, nor will they receive any written pre-termination notice or be alerted to an impending termination. Such an occurrence is in violation of the Commission statute. TURN *et al*. M.B. at 17.

#### ALJ’s Recommended Decision

The ALJ found that the operation of the proposed pilot does not comply with 66 Pa. C.S. § 1523 and therefore, is not in the public interest and cannot be approved by the Commission. R.D. at 70. ALJ Jones based this recommendation on her agreement with TURN *et al.* that where a landlord is both occupant and ratepayer of a service address where tenants are also occupants, the tenants will not receive written pre-termination notice and an alert to an impending termination under the operation of the pilot program. *Id*.

#### Exceptions and Replies

PECO did not specifically address this issue in Exceptions, and therefore the other Parties did not file Replies. However, PECO did except generally to the ALJ’s determination that PECO’s proposed pilot is not in the public interest – specifically, that the disadvantages of the pilot program outweigh the benefits to the public. PECO Exc. at 3. The Parties responded to PECO’s general exception in their Replies. Please see the discussion of Exceptions and Replies above under “PECO’s Burden of Proof” which is incorporated herein by reference.

### Protections for Participants Under Protection from Abuse Order

#### Positions of the Parties

Chapter 14 further exempts victims of domestic violence with a Protection from Abuse Order or other court order which provides clear evidence of domestic violence against the applicant or customer from Chapter 14’s specific payment arrangement requirements.[[32]](#footnote-33)

PECO’s witness, Mark Kehl, expressed his disagreement with TURN *et al*.’s characterization that “PECO has not stated any exception to these strict restoration terms [payment for the emergency usage credits plus $15] for victims under a protection from abuse order. Nor has PECO provided an exception for victims of domestic violence to its rigid 25/75 payment agreement rules under its plan.” PECO St. No. 3R at 10, citing TURN *et al*. St. No. 1 at 18. PECO submitted that its pilot plan “provides 100% exceptions for both of these payment terms: the customer can ask to revert to standard service.” *Id.*

TURN *et al.* was the only opposing party on this issue, contending that PECO’s pilot plan should be rejected because it fails to adequately identify and preserve the rights of vulnerable PECO customers who are victims under a protection from abuse order or similar court order. TURN *et al*. M.B. at 17.

#### ALJ’s Recommended Decision

ALJ Jones found that PECO failed to sustain its burden that its pilot plan maintains the protections that exist in the Commission’s Regulations for victims of protection from abuse orders as participants in the pilot through its operation and therefore, is not reasonable, just, or in the public interest. R.D. at 71.

Furthermore, the ALJ noted the record evidence is devoid of how the proposed pilot acknowledges Commission precedent to develop a payment plan that is affordable after examining the household income and expenses of the victim. *Carmencita M. Pedro-Fisher v. PECO Energy Com*pany, Docket No. Z-01392788 (Order entered August 24, 2006). *Id*.

#### Exceptions and Replies

PECO did not specifically address this issue in Exceptions, and therefore the other Parties did not file Replies. However, PECO did except generally to the ALJ’s determination that PECO’s proposed pilot is not in the public interest – specifically, that the disadvantages of the pilot program outweigh the benefits to the public. PECO Exc. at 3. The Parties responded to PECO’s general exception in their Replies. Please see the discussion of Exceptions and Replies above under “PECO’s Burden of Proof” which is incorporated herein by reference.

### Transaction Fees

#### Positions of the Parties

PECO did not address this issue in Briefs.

CAUSE-PA, the OCA and TURN *et al*. argued the common contention that transaction fees combined with the potential for multiple payments each month will likely lead to higher costs under the proposed pilot than those associated with traditional post-pay service. CAUSE-PA M.B. at 28; OCA M.B. at 18; TURN *et al.* M.B. at 21-22.

CAUSE-PA, the OCA and TURN *et al*. noted that PECO estimates the average household participating in the pilot will make three to four payments per month, incurring fees simply to fund a balance on their accounts. CAUSE-PA St. No. 1 at 28; OCA M.B. at 34; TURN et al. M.B. at 22. The Parties explained that participants will be charged the same rate as post-pay service, but depending on the method of payment, will incur an additional fee for each transaction, such as (1) a transaction fee for a credit or debit card of $2.35 per transaction or (2) $1.50 per cash transaction. CAUSE-PA Hearing Ex. 1 at 4551-552, PECO Response CAUSE-PA-I-44; OCA St. No. 1 at 8-9; TURN *et al*. M.B. at 22.

The OCA asserted that the likely possibility of prepaid service being more expensive than post-pay service makes it more difficult for economically vulnerable households to maintain essential utility service, thus, failing to constitute providing just and reasonable rates or services under 66 Pa. C.S. §§ 1301 and 1501 *et seq*. OCA M.B. at 34.

#### ALJ’s Recommended Decision

ALJ Jones found that this aspect of the pilot is not against the public interest. The ALJ stated that although participants will incur more costs by electing to participate in the Plan than incurred through post-pay service, she found that whether it is more convenient to use this method of payment versus the post-pay method is a trade-off that the participant needs to make. R.D. at 72.

#### Exceptions and Replies

In its Exception No. 2, the OCA cites to previously postulated arguments delineated in its testimony and briefs[[33]](#footnote-34)and opines that the ALJ incorrectly found that increased transaction costs associated with PECO’s pilot are acceptable and that the Recommended Decision ignores record evidence demonstrating that higher transaction fees will make it even more difficult for economically vulnerable households to maintain essential utility service. OCA Exc. at 10-12. The OCA acknowledges that there are some payment methods that do not require an additional transaction fee. However, the OCA notes that those methods require the customer to have a bank account, which many customers in PECO’s service territory could not utilize because of either being unbanked or underbanked. Id at 11-12, citing R.D. at 20, Finding of Fact No. 79; CAUSE-PA St. No. 1 at 29, Appendix H.

In its Reply Exceptions, PECO argues that because pilot participation is voluntary and excludes low-income customers, it is appropriate to allow informed volunteers to make the decision of whether the possibility of experiencing an increase in transaction fees under the pilot is a trade-off the participant is willing to make, given their personal circumstances. PECO further notes the implausibility of participants loading their accounts at an extremely high monthly periodicity, always using the most expensive loading method, and continuing to engage in that behavior, without ever taking advantage of the standing opportunity to revert to standard service and avoiding those fees. PECO R. Exc. at 10-11.

### Program Costs

#### Positions of the Parties

PECO submitted that program estimates, by their nature, are imprecise and subjected to changes as the program develops. PECO M.B. at 68. PECO further noted that it will not be allowed to recover any of its actual expenditures until the other parties have an opportunity to weigh in on the prudence and reasonableness of those expenditures in a future base rate proceeding. Therefore, PECO argues that the variability is not a reason to reject the proposed pilot. *Id*.

I&E explained in its Main Brief its concern regarding the additional and revised terms to the pilot as proposed by PECO in its as-filed Petition that emerged during the litigation process. I&E M.B. at 12-18. I&E implied that if the Commission were to grant PECO’s as-filed Petition, it would culminate in the approval of a pilot that differs from the one evolved by PECO during this proceeding.

I&E identified inconsistencies in the following areas: (1) the process for handling undeliverable electronic notifications to participants; (2) the cost of the pilot; (3) the number of participants; (4) restoration of service to certain customers; and (5) the goals of the pilot program. *Id.* Exclusive of those regarding the cost estimates of the pilot program, the previous discussion subsumes the remaining inconsistencies of concern to I&E.

Addressing the ambiguity of PECO’s cost estimates, I&E indicated that PECO’s as-filed Petition failed to provide any cost estimate of the pilot, noting that not until direct testimony did PECO estimate the total cost of its proposed two-year pilot to be less than $500,000. I&E M.B. at 13, citing PECO St. No. 1 at 23. PECO then changed this cost estimate to $800,000 during the discovery process of the proceeding. I&E St. 1 at 14, PECO response to I&E-63. I&E submitted that without accurate cost information, it is difficult if not impossible to determine whether the proposed pilot is beneficial and prudent. I&E St. No. 1 at 17.

#### ALJ’s Recommended Decision

The ALJ determined that the change in the estimated cost of the pilot is not fatal to the approval of the pilot program. R.D. at 74. Since the approval of the pilot does not approve the costs of the program, the ALJ found it in the public interest for PECO to provide changing dynamics of the pilot, in an effort to provide a more comprehensive and workable product for the public. Consequently, the ALJ found the harm caused by the dynamics of changing estimated costs is outweighed by the benefit of a more comprehensive product for the public. *Id.*

#### Exceptions and Replies

No Exceptions were filed on this issue.

### Competitive Market Concerns with Advance Payment Service

#### Positions of the Parties

PECO took the position that “the Commission’s current regulations do not allow an EGS to provide prepaid service;” therefore, granting (or not granting) PECO’s Petition will have no impact on competitive market development because “it is the absence of regulations, not PECO’s proposal, that stands in the way of EGSs.” PECO M.B. at 69.

RESA argued that PECO’s proposed pilot must be denied because granting the Petition would “result in discriminatory and anti-competitive behavior.” RESA M.B. at 1. According to RESA, the main problem with PECO implementing a prepaid electricity program is that doing so would negatively impact the ability of electric generation suppliers (EGSs) to offer their own prepay plans by providing PECO the opportunity to: (1) leverage its right to full cost recovery to strengthen its historic relationship with consumers at the expense of competitive market development; and (2) leverage its direct billing relationship and place itself as the gatekeeper between EGSs and their customers. *Id.* at 7, 9-15.

RESA asserted that EGSs are the entities who should be offering prepay options, not the electric distribution companies (EDCs), and therefore, the Commission should focus on the changes needed to enable suppliers to offer prepay billing. RESA contended that the barrier to competitive prepay options is the current market structure in which the EDCs issue the bills to EGS mass market customers. As explained in RESA’s Main Brief, the way that EDCs have structured their Purchase of Receivables (POR) program and the fact that EGSs do not have reasonable and timely access to their customer’s real-time usage are the barriers preventing EGSs from establishing direct relationships with their customers and offering them non-commodity based value-added products or services such as prepay options.[[34]](#footnote-35)

RESA submits that, on the basis that the pilot is anticompetitive and discriminatory, the Commission’s granting the pilot program would violate the Electricity Generation Customer Choice and Competition Act (Competition Act). *Id*. at 1; 66 Pa. C.S. §§ 2801-2812. RESA, however, noted that should the Commission permit PECO to offer a prepay pilot program (over RESA’s objections), the following conditions should be part of any such approval:

Require PECO (based on collaborative consultation with interested EGSs) to submit a report to the Commission within six months after a final order in this matter that identifies the specific level of investment in basic infrastructure that PECO will undertake prior to the end of the pilot to structurally allow for competitive prepay to work;

* Limit the number of customers and time period of the pilot to one year;
* Require PECO to incorporate retail choice messaging in communications regarding the prepay pilot and also through a direct mailing of EGS offers similar to the program utilized by the First Energy companies; and
* Require PECO to include in its impact evaluation an evaluation of how the pilot has impacted retail choice.

RESA M.B. at 19-24.

Additionally, RESA’s Main Brief explained the benefits of prepaid offerings from competitive suppliers – including “consumer-focused innovation” and value-added products. *Id.* at 15-16. RESA also referenced the lack of regulatory review over EGSs, which, in RESA’s view, is a positive – allowing EGSs to “quickly respond to changing consumer preferences and desires.” *Id*. at 17.

The OCA explained that whether prepaid service is offered by PECO through its pilot or by an EGS as a competitive product, the consumer protections contained in Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations still apply. Therefore, the OCA submitted that the negative effects and lack of consumer protections that raise concerns about PECO’s proposed pilot would also be present if a prepayment program were offered by an EGS. OCA R.B. at 32-33. The OCA pointed to the experiences in prepaid programs in Texas, which indicate that “the lack of consumer protections, high fees, increased disconnections, and the resulting risks to customers still exist even if the program is offered by competitive suppliers.” *Id*. at 32.

Further, the OCA asserted that all the alleged customer benefits discussed by PECO and RESA can be accomplished without prepay metering. The OCA explained that advanced metering infrastructure includes the capability to provide all customers, not just those who prepay for service, with a stream of real-time information on electricity usage and expenditures. This information can be used by customers on a real time basis to monitor their usage and their budgets throughout the course of a billing period or to establish alerts for customers as the customer desires. OCA M.B. at 18-19; OCA St. 1‑SR at 16-17.

CAUSE-PA addressed the aforementioned conditions, which RESA recommended be imposed should the Commission allow PECO to go forward with the pilot, submitting that these conditions are intended to support the development of prepay offerings by EGSs, would not mitigate the risks of both physical and financial harm imposed by prepay service, which exist regardless of the entity that provides prepay service, and would be costly to implement. CAUSE-PA M.B. at 40-41; CAUSE-PA St. No. 1-R at 5-6.

CAUSE-PA contended that prepay service offerings by competitive generation suppliers would be particularly harmful, as such a model would not be subject to much, if any Commission regulation. CAUSE-PA M.B. at 40; RESA St. No. 1 at 9. Additionally, prepay offerings in the competitive market could be layered on top of other pricing schemes, such as variable rates or time of use pricing. Therefore, CAUSE-PA submitted that with the increasing complexity of electricity pricing that prepay offerings by EGSs would bring, the more heightened concerns of potential harm become. CAUSE-PA M.B. at 41.

Noting that RESA’s recommendations are aimed at laying a foundation for EGSs to offer prepay products in Pennsylvania, TURN *et al.* asserted that the Commission should reject RESA’s recommendations regardless of whether PECO’s pilot is approved or not. TURN *et al.* M.B. at 30. Both TURN *et al.* and I&E noted that the scope of this proceeding should properly be limited to consideration of PECO’s Petition and submit that any review of whether EGSs can provide prepay service directly to customers is beyond the scope of this proceeding. *Id*.; I&E M.B. at 25.

#### ALJ’s Recommended Decision

ALJ Jones found that PECO’s proposed pilot is “contrary to the public policy declarations of the Electric Competition Act, and therefore, should not be approved.” R.D. at 78. Her finding relied on three provisions of the Competition Act, namely, 66 Pa. C.S. §§ 2804(6), 2811(a) and 2802(12), which she found to be at odds with the proposed pilot. *Id.* at 77-78.

The first provision relied upon by the ALJ was Section 2804(6) of the Code, which is the open access portion of the statute that requires utilities to provide a level playing field for all customers and market participants, and 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 generation

suppliers, . . . on rates, terms of access and conditions that are comparable to the utility’s own use of its system.

66 Pa C.S. § 2804(6).

The ALJ concluded that PECO’s pilot violates this section of the Code, since the advanced payment Regulations do not enable EGS provision of prepaid service, “those barriers cause access and conditions that are not comparable to the utility’s own use of its system.” R.D. at 77. Furthermore, the ALJ noted that PECO has not denied that its pilot would results in such barriers. *Id*. at 77-78.

Next, the ALJ relied on Section 2811(a) of the Code, which is 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. *Id*. at 78; 66 Pa. C.S. § 2811(a). The ALJ referenced this provision in responding to PECO’s argument that it is the Commission’s Regulations (and not its pilot) that differentiate between EDCs and EGSs and create a barrier. The ALJ found that “if the differential treatment exists because the Commission’s regulations authorized the difference, that does not mean the regulation is right or is promoting sound policy.” R.D. at 78.

Lastly, the ALJ relied upon Section 2802(12) of the Code to support her conclusion that PECO’s proposed pilot is contrary to the Competition Act and should not be approved. R.D. at 78; 66 Pa. C.S. § 2802(12). Section 2802(12), in pertinent part, states that “[t]he 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.” 66 Pa. C.S. § 2802(12). The ALJ surmised that if PECO’s pilot “presents an impediment for generation suppliers to have direct access to retail customers, then it cannot be found to uphold this policy statute . . .” R.D. at 78.

#### Exceptions and Replies

PECO’s Exception No. 3 claims that its pilot is not contrary to the Competition Act and that various provisions of the Competition Act were misinterpreted or erroneously relied upon by the ALJ. PECO Exc. at 11-14. 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.” R.D. at 78, citing 66 Pa. C.S. §§ 2804(6), 2811(a) and 2802(12). The ALJ’s recommendation on this issue was based on the culmination of the following findings: Due to the existing barriers which EGSs face,[[35]](#footnote-36) PECO’s proposed pilot would (1) result in access and conditions that are not comparable with PECO’s own use of its system, resulting in (2) an anticompetitive and discriminatory effect on EGSs, and (3) present an additional impediment for EGSs to have direct access to retail customers. R.D. at 77-78.

PECO asserts that the ALJ erred in concluding that PECO’s proposed pilot would result in access and conditions that are not comparable with PECO’s own use of its system. PECO objects to the ALJ’s conclusion that due to the existing barriers which EGSs face, PECO’s pilot would result in access and conditions that are contrary to the Competition Act. PECO contends that there is nothing in 66 Pa. C.S. § 2804(6) or the Commission’s implementing Regulations that indicates a utility may not provide a service unless the market also provides a service, but does however, permit EDC-specific services. PECO Exc. at 12.

PECO further asserts that the ALJ erred in concluding that PECO’s proposed pilot would have an anticompetitive and discriminatory effect on EGSs. PECO objects to the ALJ’s reliance on Section 2811(a) of the Code, claiming that it is unrelated to the provision of prepaid service. PECO notes that Section 2811(a) states that “the Commission shall monitor the market for the supply and distribution of electricity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.” PECO contends that this has nothing to do with whether a utility may propose a pilot plan under exiting Commission Regulations. PECO further demonstrates the disconnect between Section 2811 of the Code and its proposed pilot by noting that under Section 2811, if the Commission believes that a market abuse exists, its only remedy is to refer the matter to other agencies for further action. PECO asserts that “[i]t would make no sense for the Commission to refer its own prepaid regulations to another agency for further action.” PECO Exc. at 13-14.

PECO further asserts that the ALJ erred in concluding that PECO’s proposed pilot would present an impediment for EGSs to have direct access to retail customers. PECO argues that the primary crux of Section 2802(12) of the Code is that system reliability should be maintained in moving to direct access and does not mention or implicate the provision of prepaid service. PECO Exc. at 14.

In Replies, RESA argues that this type of program gives an advantage to the incumbent, and by allowing PECO to offer this program, competition will be stymied. RESA notes that the purpose of the Competition Act is to make sure that EDCs do not intervene with EGSs’ abilities in offering customers direct access to the competitive market or use their competitive advantage to offer something that it denies EGSs the ability to offer. In this instance, RESA contends that, due to 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. RESA avers that this result has not been denied by PECO and is contrary to the goal of the Competition Act. RESA R. Exc. at 4-5.

RESA notes that the ALJ referenced Section 2811(a) of the Code in responding to PECO’s argument that it is the Commission’s current Regulations that do not allow EGSs to provide prepaid service, differentiating between EDCs and EGSs and creating a barrier, not PECO’s proposal. RESA R. Exc. at 6. RESA responds that PECO has neglected to address 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).  *Id*. Additionally, RESA contends that PECO has narrowly interpreted the Commission’s obligations under Section 2811, asserting that 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. *Id*. at 6-7.

RESA contends that the absence of a specific reference to prepaid service does not mean that Competition Act provisions can be ignored, nor do the presence of other issues render the primary purpose of the Competition Act (i.e., allowing customers to choose among EGSs in a competitive generation market through direct access) inconsequential. RESA R. Exc. at 8. RESA notes that, although PECO admits that the Competition Act “is an open access statute that sets up a structure b which EGSs can sell generation to customers on a non-discriminatory basis,” it fails to dispute the at its proposed pilot will be an impediment to the ability of EGSs to have direct access to retail customers an offer their competitive prepaid plans.  *Id*. at 9, citing PECO Exc. at 14. Furthermore, RESA submits that PECO has offered nothing in its Exceptions to support rejecting the ALJ’s reasoning that its proposed pilot conflicts with the public policy directives of Section 2802(12) and Section 2804(2) – to provide EGSs direct access to retail customers. *Id*. at 9.

The OCA and CAUSE-PA/TURN *et al*. replied to PECO’s third Exception, but do not take a position as to whether PECO’s proposed pilot is contrary to the public policy declarations of the Competition Act. OCA R. Exc. at 12; CAUSE-PA/TURN *et al*. R. Exc. at 19-20. Their responses simply maintain their positions that prepaid service is harmful to residential electric customers, regardless of whether offered by EDCs or EGSs, and should not be offered in Pennsylvania. They submit that the negative effects and lack of consumer protections that raise concerns about PECO’s pilot would be also present if prepayment programs were offered by competitive suppliers. *Id*

## Disposition

At the outset, based upon our review of the record and the Parties’ positions, we disagree with the ALJ’s finding and RESA’s contention that the pilot program will inhibit competition in the electricity and/or natural gas retail markets. The Competition Act[[36]](#footnote-37) does not bar an EDC from offering a service if the market cannot. Additionally, we reiterate that this is a pilot, which will allow the Commission to analyze the impacts of a utility-offered pre-pay program on, among other things, the competitive market. As such, PECO’s Exceptions are granted on this issue.

However, the concerns presented by the OCA, I&E, and CAUSE-PA/TURN in this proceeding regarding PECO’s proposed pilot program for advance payments are well received. We do not want to take any action which will result in increased risk to PECO’s most vulnerable customers, and accordingly, we appreciate the issues raised by these Parties. We agree that there must be additional protections in place before PECO can implement its proposed pilot program.

At the same time, it is clear that the placement of AMI or “smart” meters[[37]](#footnote-38),[[38]](#footnote-39) has opened a door to new possibilities that were not available under the prior analog or automated meter reading (AMR) systems. The traditional billing cycle where the meter is read monthly is no longer the only way to approach billing, as the smart meters can transmit daily usage. Customers using the prepaid program can add funds to their accounts in a manner that suits their needs, perhaps adding funds every two weeks to coincide with their paychecks, instead of making a large payment monthly. This may more accurately reflect the way that money flows into their households. It would be unfortunate to miss an opportunity to see how this type of program can be used by customers who wish to use it. We are mindful that this is a pilot program, and that participation is strictly voluntary.

The Parties recognize that there was much discussion in this proceeding regarding the Commission’s existing Regulations, at Section 56.17, related to prepaid metering. *See* 52 Pa. Code § 56.17. The OCA claims that the ALJ’s Recommended Decision relies upon these Regulations too heavily, as they were adopted in 1978 and have never been used. In our opinion, Section 56.17 of our Regulations has little relevance to the pilot program presented in PECO’s Petition, as the technology of the time of promulgation of this Regulation did not anticipate the electronic exchange of information and currency that is now available with smart meters, cell phones, and internet. Indeed, when Section 56.17 came up for our review in 2011 and 2019 as part of the Chapter 56 rulemakings,[[39]](#footnote-40) we identified an “unfortunate” lack of “practical experience” with prepaid meters that has hampered the Commission’s ability to evaluate its own prepaid service Regulations and policy.

We believe that this proposed pilot program should be given an opportunity to proceed in order to gather data to aid in the determination of its viability in terms of convenience to customers, cost effectiveness, reduction in terminations, and increase in reconnections, particularly just before the winter moratorium takes effect, and other benefits.

To address those shortcomings raised by the Parties while giving PECO an opportunity to implement the pilot, we are permitting PECO to file a compliance filing which must incorporate the following modifications in order to receive approval:

* Provide that a customer who has not paid during the five-day grace period is automatically removed from the program and returned to standard payment terms and conditions, including, but not limited to, the traditional termination procedures. This removes the practice of “voluntary discontinuances of service” and restores the full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s regulations to the participants. It also protects the non-ratepayer occupants of a dwelling from experiencing a shut-off for which they had no warning. We note that, if a written notice[[40]](#footnote-41) is issued, the five-day grace period under the program may be the first five days in the traditional 10-day termination process.
* Provide that a participant who informs PECO that a medical certification will be provided is automatically removed from this program and returned to standard payment terms and conditions in order to provide full consumer protections to those in need of them.
* Provide that existing deposits may be eligible for application to the program but may be returned to the customer at the customer’s election.
* Provide that customers holding an active protection from abuse order are eligible for this pilot program but must be informed of their other payment plan options in order to determine which may be the best choice for them.
* Ensure that there is no PECO-initiated fee for payments made on the website or customer portal.

In addition, PECO must commit to keeping meticulous records to determine the number of participants who are removed from the program, the reason for removal, at what stage removal occurred, whether the addition of the traditional termination notices resulted in the customers’ payment to prevent disconnection versus those for whom the electronic notifications were sufficient, as well as the reporting proposed.

We are keenly aware of the OCA’s warning that prepaid programs tend to become concentrated among low- to moderate-income customers, and we want to be clear that this approval is meant to permit an innovative *pilot* program consistent with available technologies to allow customers and applicants more convenience and flexibility. While we are hopeful that there will be benefits to this pilot, we cannot evaluate its success until we have gathered data to support or to weigh against its continuation. It is even possible that this prepaid service will provide a means of obtaining or continuing service to payment-troubled customers who may be barred from Commission assistance by the provisions of Chapter 14.

We remind PECO that this program is not to be used as a substitute for the company-issued payment arrangements that it offers to payment troubled customers now. PECO is expected to continue to negotiate payment arrangements with payment-troubled customers in good faith.[[41]](#footnote-42) We assure all stakeholders that this approval is not intended to circumvent or reduce the consumer protections to which customers are now entitled. If at any time during the pilot, those protections are imperiled, PECO must suspend the program and may do so with a letter to the Commission at this docket.

We expect PECO to take sufficient time to collaborate with the public and low-income advocates in the development and preparation of educational materials and scripts that will be used when the program is ready for implementation. This includes, but is not limited to, ensuring that customers understand they may be required to restore a full security deposit if they choose to revert to standard service.

We also recognize that we have made significant modifications to the proposed program, but that those modifications were discussed and are supported in the underlying record. If these modifications are not acceptable to PECO, then PECO will simply not file its compliance filing, and the program will not be developed. However, a compliance filing that does not include these modifications will be rejected.

Based on the foregoing, we shall grant PECO’s request for temporary waivers of the following Regulations to the extent such Regulations are deemed necessary: (1) 52 Pa. Code § 56.17(3) to include applicants in the pilot program; (2) 52 Pa. Code § 56.17(3)(i) to include persons without delinquencies in the pilot; (3) 52 Pa. Code § 56.17(3)(iii)(B) to permit duration of participation in the pilot to not be contingent upon any delinquency of a participant; and (4) 52 Pa. Code § 56.53. Such waivers are granted for purposes of allowing the pilot program only and will expire at the end of the pilot program.

# Conclusion

Based on our review of the record, and consistent with the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions of PECO, I&E, the OCA, CAUSE-PA/TURN *et al*.; (2) adopt, in part, and modify, in part, the Recommended Decision of ALJ Jones, and (3) grant, in part, and deny, in part, PECO’s Petition for Approval of an Advance Payments Program and the related Petition for Temporary Waiver of Commission Regulations subject to PECO’s compliance with certain terms and conditions as delineated herein; **THEREFORE,**

**IT IS ORDERED:**

1.That the Exceptions filed by PECO Energy Company on March 5, 2018, are granted, in part, and denied, in part, consistent with this Opinion and Order.

1. That the Exceptions filed by the Commission’s Bureau of Investigation and Enforcement on March 5, 2018, are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Exceptions filed by the Office of Consumer Advocate on March 5, 2018, are granted, in part, and denied, in part, consistent with this Opinion and Order.
3. That the Exceptions jointly filed by the Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia on March 5, 2018, are granted, in part, and denied, in part, consistent with this Opinion and Order.
4. That the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on February 12, 2018, is adopted, in part, and modified, in part, consistent with this Opinion and Order.
5. That PECO Energy Company’s Petition for a Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17, at Docket No. P-2016-2573023, is granted, in part, and denied, in part, consistent with this Opinion and Order.
6. That, within sixty (60) days of the date of entry of this Opinion and Order, PECO Energy Company may file a pilot plan in compliance with this Opinion and Order which creates a modified prepaid metering pilot program consistent with the following terms and conditions:
7. A customer who has not paid during the five-day grace period shall automatically be removed from the prepaid metering pilot program and returned to standard payment terms and conditions, including, but not limited to, the traditional termination procedures;
8. A participant who informs PECO Energy Company that a medical certification will be provided shall automatically be removed from the prepaid metering pilot program and returned to standard payment terms and conditions in order to provide full consumer protections to those in need of them;
9. Existing customer deposits may be eligible for application to the prepaid metering pilot program but may be returned to the customer at the election of the customer;
10. Customers holding an active protection from abuse order are eligible for the prepaid metering pilot program but must be informed of their other payment plan options in order to determine which option may be the best choice for them;
11. PECO Energy Company may not initiate a fee for prepaid metering pilot program payments made on the website or customer portal.
12. That PECO Energy Company’s Petition for Temporary Waiver of Portions of the Commission’s Regulations with Respect to the Plan, at Docket No. P‑2016-2573023 is granted, consistent with this Opinion and Order. Specifically, the following requests for waivers are granted for purposes of allowing the prepaid metering pilot program only, and the waivers will expire at the end of the prepaid metering pilot program:
    1. PECO Energy Company’s request for a temporary waiver of the Commission Regulation at 52 Pa. Code § 56.17(3) to include applicants in the pilot;
    2. PECO Energy Company’s request to temporarily waive the Commission Regulation at 52 Pa. Code § 56.17(3)(i) to include persons without delinquencies in the pilot;
    3. PECO Energy Company’s request to temporarily waive Commission Regulation at 52 Pa. Code § 56.17(3)(iii)(B) regarding duration of participation in the pilot not contingent upon extinguishing any delinquency; and
    4. PECO Energy Company’s request to temporarily waive Commission Regulation at 52 Pa. Code § 56.53 regarding use of customer deposits in the pilot.
13. That, if PECO Energy Company chooses not to file a compliance plan within sixty (60) days of the entry of this Opinion and order, this docket may be closed by Secretarial Letter.
14. That PECO Energy Company shall serve a true and correct copy of its compliance plan, if any, upon the Parties to this proceeding at the above-captioned docket.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 25, 2019

ORDER ENTERED: June 18, 2019

1. 52 Pa. Code § 52.17(3)(i); 56 Pa. Code § 56.17(3)(iii)(B); 52 Pa. Code § 56.53(c). [↑](#footnote-ref-2)
2. Reply Comments were filed by PECO, I&E, OCA, CAUSE-PA, TURN *et al*., NRG Energy, Inc., RESA, and jointly by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company. [↑](#footnote-ref-3)
3. Of the eighteen Commenters, a majority expressed opposition to PECO’s proposal, and the group in support of the pilot included suppliers and utilities that potentially seek to implement advance payment programs in the future. *See* Comments of the Retail Energy Supply Association to PECO Energy Company’s Pilot Plan and Petition, P-2016-2573023 (December 15, 2016); Comments of NRG Energy, Inc. to PECO Energy Company’s Pilot Plan and Petition, P-2016-2573023 (December 15, 2016); Comments of Direct Energy to PECO Energy Company’s Pilot Plan and Petition P-2016-2573023 (December 15, 2016); Comments of Duquesne Light Company to PECO Energy Company’s Pilot Plan and Petition, P-2016-2573023 (December 15, 2016); Comments of PPL Electric Utilities Corporation to PECO Energy Company’s Pilot Plan and Petition, P-2016-2573023 (December 15, 2016). [↑](#footnote-ref-4)
4. Among those who testified at the public input hearings were Lance Haver, Director of City Engagement for City Council, Paulette Adams, on behalf of Philadelphia City Councilwoman Blackwell, Glen Forster, on behalf of Philadelphia City Council woman Helen Gym, Markita Morris-Louis, on behalf of Clarifi, Logan Welde, on behalf of the Clean Air Council, Amanda Solch on behalf of CARIE (Center for Advocacy for the Rights and Interests of the Elderly), Miguel Angel Torres of Rising Sun Health Center, Tyrone Williams, Community Liaison for the Strawberry Neighborhood Action Center, and several PECO customers. Tr. at 38-172. [↑](#footnote-ref-5)
5. Participants who shop for generation service will receive information based upon generation pricing information for the most recent month available. At the end of month PECO will reconcile these participants’ balance using actual pricing information from the alternative supplier. Petition, Attachment 1 at ¶ 17. [↑](#footnote-ref-6)
6. The Plan originally provided for participation by a maximum of 1,000 residential customers and applicants. Petition at ¶¶ 5-6. This number was revised upward in PECO’s direct testimony to permit 2,000 residential customers and applicants to voluntarily participate in the pilot program. PECO St. No. 1 at 24. [↑](#footnote-ref-7)
7. PECO St. No. 1 at 17-18. [↑](#footnote-ref-8)
8. Additionally, only individually-metered residential dwellings will be eligible to participate. PECO St. No. 1 at 14-15. [↑](#footnote-ref-9)
9. PECO St. No. 1 at 13. [↑](#footnote-ref-10)
10. PECO St. No. 1 at 7. [↑](#footnote-ref-11)
11. *Id.* at 4. [↑](#footnote-ref-12)
12. If a participant has a delinquent balance, 25% of each prepayment will be applied toward reducing the participant’s arrearage, and the remaining 75% will be applied toward the participant’s future usage. PECO St. No. 1 at 15-16. [↑](#footnote-ref-13)
13. CAUSE-PA Hearing Exhibit 2 at 3, PECO Response to I&E I-9. [↑](#footnote-ref-14)
14. PECO proposes to accept prepayments through existing payment channels to load funds on participants’ accounts. Petition, Attachment 1 at ¶ 7. According to PECO, customer payments made to prepaid accounts will be deposited in PECO’s accounts and used to fund the operations of the Company. Any interest earned on those deposits will be reflected as “other revenues” and will be reflected in its future base rate proceedings. PECO St. No. 3R at 14-15. [↑](#footnote-ref-15)
15. Participants may also choose to receive additional notifications; Petition, Attachment 1 at ¶ 11. [↑](#footnote-ref-16)
16. As a condition of the Plan, participants must agree that failure to renew the credits by making a prepayment for additional service constitutes a request for discontinuance under 52 Pa. Code § 56.72(1), except during a medical emergency, and that discontinuance will occur when the additional usage on the emergency backup credits runs out. PECO St. No. 1 at 6. [↑](#footnote-ref-17)
17. The Plan does not require an applicant to make credit deposits. PECO St. No. 1 at 22. [↑](#footnote-ref-18)
18. I&E notes that PECO’s Exceptions do not address the following five provisions of the Plan that the ALJ determined were contrary to the public interest: (1) procedure of notification through solely electronic means; (2) increases in the disconnection rate; (3) omission of payment arrangement options; (4) failure to protect tenants dwelling with landlords; and (5) failure to protect participants under a protection from abuse order. PECO addressed the provision regarding inhibition of the competitive market in its third Exception. [↑](#footnote-ref-19)
19. Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14; General Review of Regulations, Summary of Comments and Discussion, Revised Final Attachment One at 57, Docket No. L-00060182 (Order entered June 13, 2011). [↑](#footnote-ref-20)
20. 66 Pa. C.S. 1406(b); 52 Pa. Code § 56.91. [↑](#footnote-ref-21)
21. 66 Pa. C.S. § 2804(1). [↑](#footnote-ref-22)
22. Since 1978, the Pennsylvania General Assembly enacted the Discontinuance of Services to Leased Premises Act (July 1978) (66 Pa. C.S § 1521 *et seq*.), the Electric Generation Customer Choice and Competition Act (1996) (66 Pa. C.S § 2801 *et seq.*), and the Responsible Utility Customer Protection Act (2004, 2014), codified at Chapter 14 of the Public Utility Code (66 Pa. C.S. § 1401 *et seq*.). CAUSE-PA/TURN et al. Exc. at 4. [↑](#footnote-ref-23)
23. CAUSE-PA also noted in its Main Brief that PECO’s medical certification procedures “already inappropriately – and in direct contravention with clear Commission guidance – limits the medical certificate protections to a total of 90 days (one initial certificate and two renewals) if a household does not pay all of their arrears during the pendency of the medical certificate protection.” CAUSE-PA M.B. at 23. [↑](#footnote-ref-24)
24. PECO notes that customers will be informed of the medical protections and the process for exercising the protections upon enrollment in the prepay pilot. PECO Exc. at 5. [↑](#footnote-ref-25)
25. The ALJ noted that “education prior to when it may be effective pales in comparison.” R.D. at 59. [↑](#footnote-ref-26)
26. Under standard medical certificate and winter procedures, a customer facing the loss of service receives written notice of the medical and winter termination protections ten days before service is terminated. 66 Pa. C.S. §§ 1406(e)-(f); 52 Pa. Code §§ 56.91(b)(8), (10). [↑](#footnote-ref-27)
27. PECO notes that customers will be informed of the medical protections and the process for exercising the protections upon enrollment in the prepay pilot. PECO Exc. at 5. [↑](#footnote-ref-28)
28. Under standard medical certificate and winter procedures, a customer facing the loss of service receives written notice of the medical and winter termination protections ten days before service is terminated. 66 Pa. C.S. §§ 1406(e)-(f); 52 Pa. Code §§ 56.91(b)(8), (10). [↑](#footnote-ref-29)
29. 66 Pa. C.S. § 1405 and § 1407. [↑](#footnote-ref-30)
30. Mathematical inequality symbols edited for correctness. [↑](#footnote-ref-31)
31. 66 Pa. C.S. § 1303 states that “[a]ny public utility, having more than one rate applicable to service rendered to a patron, shall after notice of service conditions, compute bills under the rate most advantageous to the patron.” [↑](#footnote-ref-32)
32. 66 Pa. C.S. § 1417. [↑](#footnote-ref-33)
33. OCA M.B. at 32-34, 38-39; OCA R.B. at 3-4. [↑](#footnote-ref-34)
34. This includes the fact that PECO requires EGSs wishing to utilize POR to utilize utility consolidated billing (UCB) for all EGS residential customers and EGSs are not able to disconnect service to a nonpaying customer. RESA M.B. at 20-21. [↑](#footnote-ref-35)
35. As RESA explained in its briefs, the barriers which stem from the current infrastructure in Pennsylvania include, the sole option of utility consolidated billing, the inability of EGSs to disconnect service to a nonpaying customer, and EGSs’ lack of ability to access real-time usage data. RESA M.B. at 17, 22; RESA R.B. at 3. [↑](#footnote-ref-36)
36. 66 Pa. C.S. § 2801, *et seq.* [↑](#footnote-ref-37)
37. Act 129 of 2008 (Act 129 or Act), which was signed into law on October 15, 2008, and became effective on November 14, 2008, amended Chapter 28 of the Code and, *inter alia*, required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See* H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008)). [↑](#footnote-ref-38)
38. In accordance with Act 129 of 2008, 66 Pa. C.S. § 2807(f), PECO sought and obtained the Commission’s approval to complete the installation of AMI meters for substantially all customers within its service territory by the end of 2014. *See* *Petition of PECO Energy Company for Approval of its Smart Meter Universal Deployment Plan*, Docket No. M-2009-2123944 (Order entered August 15, 2013)); *see also* *Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944 (Order entered May 6, 2010). [↑](#footnote-ref-39)
39. Following the Chapter 14 enactments in 2004 and 2014, we undertook a general review in 2011 and 2019 of our Chapter 56 Regulations and promulgated rulemakings to amend Chapter 56 and other regulations to implement and enforce Chapter 14. *See Rulemaking Re: Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14*, L-00060182 (Revised Final Rulemaking Order entered June 13, 2011) (*2011 Revised Final Rulemaking Order*); *see also* *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14*, Docket No. L-2015-2508421 (Final Rulemaking Order entered February 28, 2019) (*2019 Final Rulemaking Order*). In the *2011 Revised Final Rulemaking Order*, we specifically declined to make further substantive changes to the advance payment Regulation as suggested by one of the commenters in that proceeding, citing our lack of practical experience with implementing the Regulation because no utility had opted to utilize it.  *See* *2011 Revised Final Rulemaking Order*, *Revised Final Attachment One*, slip op.at 57. In the *2019 Final Rulemaking Order*, in response to comments received on Section 56.17, we again cited our lack of practical experience with the advanced payments Regulation and specifically cited to this instant proceeding to defer making any changes to the Regulation at the time the Rulemaking was finalized. *See* *2019 Final Rulemaking Order*, *Attachment One*, slip op.at 29. [↑](#footnote-ref-40)
40. The written notice must comply with 66 Pa. C.S. § 406 and 52 Pa. Code §§ 56.91, 56.331. [↑](#footnote-ref-41)
41. Section 56.97(b) of the Commission’s Regulations requires the utility to “exercise good faith and fair judgment in attempting to enter a reasonable payment arrangement or otherwise equitably resolve the matter.” 52 Pa. Code § 56.37(b). [↑](#footnote-ref-42)