


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 3, 2019

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

Re: PECO Energy Company's Pilot Plan for an
Advance Payments Program Submitted
Pursuant to 52 Pa. Code § 56.17 and PECO
Energy Company's Petition for Temporary
Waiver of Portions of the Commission's
Regulations with Respect to that Plan
Docket No. P-2016-2573023

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Petition for Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

Lauren M. Burge
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Enclosures:

cc: Honorable Angela T. Jones
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Certificate of Service
*275562

CERTIFICATE OF SERVICE

Re: PECO Energy Company's Pilot Plan for :
an Advance Payments Program :
Submitted Pursuant to 52 Pa. Code § :
56.17 and PECO Energy Company's : Docket No. P-2016-2573023
Petition for Temporary Waiver of :
Portions of the Commission's :
Regulations with Respect to that Plan :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Petition for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 3rd day of July 2019.

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Dated: July 3, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company's Pilot Plan	:	
For an Advance Payments Program	:	
Submitted Pursuant to	:	
52 Pa. Code § 56.17	:	
	:	
and	:	Docket No. P-2016-2573023
	:	
PECO Energy Company's Petition for	:	
Temporary Waiver of Portions of the	:	
Commission's Regulations with	:	
Respect to that Plan	:	

PETITION OF THE
OFFICE OF CONSUMER ADVOCATE
FOR RECONSIDERATION

The Office of Consumer Advocate (OCA) hereby submits this Petition in accordance with Sections 5.41 and 5.572 of the Pennsylvania Public Utility Commission's (Commission) regulations. 52 Pa. Code §§ 5.41, 5.572. The OCA requests that the Commission reconsider certain portions of its Order entered June 18, 2019, regarding PECO Energy Company's (PECO or the 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 (Pilot Plan).

I. INTRODUCTION

On June 18, 2019, the Commission entered an Opinion and Order (Order) in the above-captioned proceeding. In its Order, the Commission found that PECO would be permitted to implement an Advance Payments Pilot Plan with a number of significant modifications intended to address the parties' concerns and ensure that important consumer protections remain in place. The OCA strongly agrees with many items in the Order, including that participants in the Pilot

will not be terminated for nonpayment but rather will be returned to standard service, that failure to pay is not treated as a voluntary discontinuance, and that consumer protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations still apply. However, the OCA submits that the Commission has overlooked a number of the OCA's concerns or has made changes to the Pilot Plan that would not be in compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. For the reasons discussed below, the OCA respectfully requests that the Commission reconsider specific items in its June 18, 2019 Order.

II. STANDARD OF REVIEW

In Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553 (1985) (Duick), the Commission set forth the standards for granting a petition for reconsideration, as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad case, wherein it was stated that "[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . ." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559, (quoting Pennsylvania R.R. Co. v. Pa. PUC, 179 A. 850 (Pa. Super 1935)).

In this Petition, the OCA raises considerations which appear to have been overlooked by the Commission or not addressed by the Commission. For the reasons set forth below, the OCA submits that this Petition meets the Duick standard for reconsideration.

III. RECONSIDERATION

The OCA respectfully requests that the Commission reconsider the following aspects of its June 18, 2019 Order.

A. Modifications to the Proposed Plan and Review Process

In its Order, the Commission “recognize[s] that we have made significant modifications to the proposed program . . .” Order at 87. The Order provides that if PECO still wishes to pursue the Pilot Plan, it must file a compliance plan within 60 days that complies with the Order’s requirements. The OCA submits that a compliance filing does not provide adequate time and process for the parties to evaluate and understand the design and ramifications of a new program, which the Commission itself has noted will be significantly different from PECO’s original proposal.

The Order is clear that approval of an advance payment program “is not intended to circumvent or reduce the consumer protections to which customers are now entitled.” Order at 87. However, allowing PECO to submit its new proposal in a compliance filing does not afford the parties sufficient time to review the new plan, ensure that all consumer protections are accounted for and that the revised plan does not result in other negative consequences. The parties in this proceeding invested significant time and effort in developing a record regarding PECO’s original proposal, but under the Order’s process the parties will have a very short time period to review what amounts to an entirely new Pilot Plan.¹ The Order encourages PECO to “take sufficient time to collaborate with the public and low-income advocates,” but only as it relates to “the development and preparation of educational materials and scripts that will be used when the

¹ 52 Pa. Code Section 5.592(c) provides parties 10 days to file exceptions to a compliance filing.

program is ready for implementation.” Order at 87. It does not, however, require PECO to work with the parties in developing the plan itself.²

The OCA submits that the Commission has overlooked the need for the parties to have adequate time and process to review any new and significantly revised program that PECO proposes. As such, the OCA respectfully requests that any revised plan that PECO files should be assigned to an Administrative Law Judge for further proceedings. This process will allow the parties to ensure that all applicable consumer protections are being fully implemented under any new program.

B. Five-Day Grace Period and Termination Process

The Commission’s Order provides that any plan submitted by PECO must “[p]rovide 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.” Order at 85. The OCA strongly supports this requirement, particularly given that it “removed the practice of ‘voluntary terminations 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.” *Id.* However, the Order goes on to say that “if a written notice is issued, the five-day grace period under the program may be the first five days in the traditional 10-day termination process.” *Id.* The OCA submits that this statement is inconsistent with Chapter 56 of the Commissions regulations and is not supported by the record in this proceeding.

As the Order states, when a customer is removed from the program for non-payment, they are “returned to standard payment terms and conditions. . .” As such, the standard requirements for billing and termination under Chapter 56 of the Commission’s regulations will apply. Chapter

² The OCA would encourage PECO to work with the stakeholders to develop an acceptable program once the parameters of the program have been established.

56 requires that a utility issue a bill once per billing period to residential customers. 52 Pa. Code § 56.11.³ After the utility issues a bill, a customer must have at least 20 days until payment is due. 52 Pa. Code § 56.21; 66 Pa. C.S. § 1509. If the customer fails to pay the bill, the customer must be offered a payment agreement and information about enrollment in universal service programs in order to avoid termination as part of the 10-day termination notice. 52 Pa. Code § 56.91. The Commission's statement that a 5-day grace period may be the first five days of the 10-day termination process overlooks the fact that upon returning to standard service, the customer must be issued a bill and given at least 20 days to pay the bill before the termination process can begin.

Further, there is nothing in the record to indicate that this would be consistent with PECO's credit and collection practices and procedures. To the OCA's knowledge, PECO does not issue a termination notice on the day a customer misses a payment, as would be necessary for the five-day grace period to be part of the 10-day termination process. From a process perspective, the OCA is unsure how PECO could issue a termination notice the day a customer in the program runs out of prepaid funds, or why PECO would choose to issue a termination notice while a customer is still in the five-day grace period and may add sufficient funds to their account and remain in the program.

For these reasons, the OCA submits the Commission has overlooked the Chapter 56 requirements related to billing and terminations that will apply when a customer is returned to standard service, such that the five-day grace period cannot be included as part of the 10-day termination process. Further, this statement is not supported by the record in this proceeding and is not reasonable from a practical perspective. Therefore, the OCA respectfully requests that the Commission reconsider this aspect of the Order.

³ 66 Pa. C.S. Section 1509 also states that "[a]ll customers shall be permitted to receive bills monthly and shall be notified of their right thereto."

C. Customer Deposits

The OCA respectfully requests that the Commission reconsider its directive permitting existing security deposits to be utilized as payment for the Pilot Plan. In the Order the Commission stated that PECO must modify its treatment of customer security deposits to “[p]rovide that existing deposits may be eligible for application to the program but may be returned to the customer at the customer’ election.” Order at 85. The Commission stated as follows:

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.

Order at 87. The OCA supports the requirement that PECO take sufficient time to collaborate with statutory and low-income advocates to develop and prepare educational materials and scripts for the Pilot Program.⁴ However, as discussed in the OCA’s Main Brief, OCA witness Howat raised significant concerns regarding the ability of payment-troubled customers to return to standard service if the existing deposit is used towards the Pilot Program. OCA M.B. at 42. OCA witness Howat testified as follows:

...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 three or more bills over 12 months.⁵ 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.

⁴ As discussed above, the OCA suggests that PECO should work with the stakeholders to develop all aspects of the program, not just the development of educational materials.

⁵ 66 Pa. C.S. § 1404(a)(2), (3); 52 Pa. Code § 56.41.

OCA M.B. at 42; OCA St. 1-S at 12-13. The Commission overlooked the fact that educating pilot participants of the requirement to restore a full security deposit if they choose to revert to standard service does not remove the barriers faced by payment-troubled customers who will be required to pay the security deposit to return to standard service. This is especially true for customers who will be automatically reverted to standard service due to nonpayment, since these customers would be required to pay the security deposit in order to retain vital electric service. Moreover, the Commission did not address the issue raised in the OCA's Main Brief that requiring customers to re-post a security deposit may lead to frequent disconnections and the associated public health and safety risks for families who are already struggling to pay their bills. See, OCA M.B. at 42.

For these reasons, the OCA submits that existing deposits should not be utilized as a payment mechanism for the pilot program. As such, the OCA respectfully requests that the Commission reconsider its directive permitting the utilization of customer deposits towards pilot program payments.

D. Third-Party Fees

The Commission's Order states that PECO must modify its Pilot Plan to "[e]nsure that there is no PECO-initiated fee for payments made on the website or customer portal." Order at 86. In discovery, PECO identified transaction fees associated with a variety of payment methods. OCA M.B. at 34; OCA St. 1 at 8-9; CAUSE-PA Hearing Exh. 1, PECO's response to CAUSE-PA I-45. However, to the OCA's knowledge, there is nothing in the record to indicate whether the transaction fees would be initiated by PECO or by a third party vendor. In regard to charges by third-party vendors, OCA witness Howat testified as follows:

Even though transaction fees may reflect charges by third-party vendors, they are nonetheless costs absorbed by PECO's customers seeking to retain access [to] necessary utility service.

OCA St. 1 at 43. As discussed in the OCA's Main Brief and testimony, prepaid customers tend to make several payments each month in order to retain access to service and would be required to pay additional costs in the form of transaction fees under the pilot program. OCA M.B. at 34; OCA St. 1 at 15-17; OCA St. 1-S at 14. OCA witness Howat testified as follows:

[U]nder the Company's estimate, if a customer adds funds four times per month using a credit or debit card online or on a mobile app, they will incur an additional \$9.40 in transaction fees each month. At the upper end of the range, a customer who loads funds seven times per month using the same methods incurs an extra \$16.45 just in transaction fees.

OCA M.B. at 34; OCA St. 1 at 9.

The OCA supports the Commission's directive ensuring that no PECO-initiated fee will be charged for Pilot Program payments made on the website or customer portal. The OCA, however, submits that the Commission has overlooked the possibility that the transaction fees identified by PECO may reflect third-party vendor fees, as opposed to PECO-initiated fees, for payments made on its website and customer portal. Therefore, the OCA respectfully requests that the Commission reconsider this aspect of the Order.

E. Income Qualifications

The Order allows customers with incomes above 150% of Federal Poverty Level (FPL) to be eligible to participate in the Pilot Program as PECO originally proposed. The Commission states in the Order that it is "keenly aware of the OCA's warning that prepaid programs tend to become concentrated among low- to moderate-income customers . . ." Order at 86. However, by allowing all customers above 150% of FPL to participate in this program, the Commission has overlooked the OCA's significant concerns about affordability for many moderate-income customers.

As discussed in the OCA's testimony and briefs in this proceeding, many households in the Company's service territory with incomes above 150% of FPL still struggle to afford basic necessities. OCA M.B. at 27; OCA St. 1 at 31-32. OCA witness Howat noted that a 2012 report found that for a 3-person household with an infant and a toddler living in Philadelphia County, an income of \$57,746 was required to meet the expenses of a basic, no-frills budget. OCA M.B. at 27; OCA St. 1 at 32.⁶ This income is equal to 302% of the 2012 FPL for a 3-person household. OCA M.B. at 27; OCA St. 1 at 32.⁷ Thus, people with incomes between 150% and 300% of FPL would be eligible to participate in PECO's Pilot Plan but may be unable to afford basic living expenses, including utility bills. Indeed, OCA witness Howat calculated that 18% of PECO's customers fall between 150% and 250% of FPL, thus making a significant group of customers eligible to participate in the Pilot that are also likely to be unable to make ends meet. OCA M.B. at 27; OCA St. 1 at 33; OCA St. 1-S at 12.

Therefore, the limitation that customers below 150% of FPL are not eligible to participate in the Pilot does not adequately limit the program and would allow many lower- to moderate-income customers that may already struggle to pay the bills to enroll in the prepaid program. The OCA submits that the Commission's Order has overlooked these concerns. Therefore, the OCA respectfully requests that the Commission reconsider this aspect of its Order and instead limit program eligibility to customers with incomes above 300% of FPL.⁸

⁶ Citing Pearce, Overlooked and Undercounted: How the Great Recession Impacted Household Self-sufficiency in Pennsylvania, October 2012, at 8, available at http://depts.washington.edu/selfsuff/docs/PA2012_Web_101112.pdf.

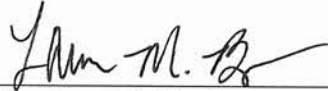
⁷ Citing <https://aspe.hhs.gov/2012-hhs-poverty-guidelines>.

⁸ See OCA M.B. at 47.

IV. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission reconsider specific portions of its June 18, 2019 Order as described herein.

Respectfully Submitted,



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Dated: July 3, 2019

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