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July 15, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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:

PECO's Answer to the Petitions for Reconsideration in the above matter is attached for filing.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/adz
Enclosures

Cc: Certificate of Service

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

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on July 15, 2019, I served a copy of PECO Energy Company's *Answer to Petitions for Reconsideration* in the above matter, upon all interested parties via overnight delivery to:

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Dated: July 15, 2019

A handwritten signature in black ink, appearing to read "Ward L. Smith", written over a horizontal line.

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**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 :**

**Answer of PECO Energy Company
to the Petition for Reconsideration of
The Office of Consumer Advocate and
The Joint Petition for Reconsideration of CAUSE-PA and TURN *et al.***

On June 18, 2019, the Commission issued its Opinion and Order in this matter. On July 3, 2019, Petitions for Reconsideration were filed by the Office of Consumer Advocate and by CAUSE-PA and TURN *et al.* (filing together as the Joint Petitioners).¹

Both of the Petitions for Reconsideration (OCA Petition, p. 2; Joint Petition, p. 5) discuss the *Duick* standard for reconsideration² and correctly note that, in order to warrant reconsideration, a party must present “new or novel arguments not previously heard” or “considerations which appear to have been overlooked by the Commission.” Under the *Duick* standard, reconsideration is not warranted if the parties raise “the same questions that were specifically considered and decided against them.”

¹ On that same date, CAUSE-PA and TURN *et al.* filed a “Joint Application for Stay.” PECO is separately responding to the Petition for Stay. PECO does not object to a stay pending Commission resolution of the Petitions for Reconsideration.

² *Duick v Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1985).

The arguments presented in the Petitions do not meet the *Duick* standard. The Petitions do not even propose that their arguments should be considered “new or novel.”³ Rather, the Petitions are largely based on the view that, wherever the Commission did not rule in the Petitioners’ favor on an issue, that means that the Commission “overlooked” their arguments.

As PECO demonstrates in this Answer, the Commission did not “overlook” the Petitioners’ arguments. Rather, in virtually every instance the Commission “specifically considered” those arguments and then “decided against them.” Because the Petitions are largely an exercise in raising “the same questions that were specifically considered and decided against them,” the Petitions do not warrant reconsideration under the *Duick* standard.

With that said, the Petitions raise interesting procedural questions as to the scope and timing of additional collaboration and review. The Commission’s Opinion and Order requires material modifications to PECO’s Plan and PECO believes that collaboration on those modifications may be useful. PECO notes, however, that such collaboration should not be seen as an opportunity to re-argue, re-negotiate, re-litigate, or otherwise reconsider issues that the Commission has already decided. Rather, the collaboration should be limited to the question of how to best implement the modifications ordered by the Commission.

PECO’s Answer is thus broadly organized into three sections. In the first section, PECO identifies the issues from the Petitions for which reconsideration is not warranted. In the second section, PECO identifies the issues that are affected by the Commission’s modifications and on which collaboration may be useful. In the third section, PECO describes the scope, nature, and timing of the remaining collaborative and review process that it believes is warranted.

³ Other than the introductory discussions of *Duick*, the Petitions do not even mention the phrase “new or novel.”

Section 1: Issues for which reconsideration is not warranted

A. Commission authority to approve an advance payments program

The Commission's Opinion and Order (p. 85) requires several modifications to PECO's pilot. One of those modifications is that, if a customer does not make payments during the five-day grace period, the customer must be automatically returned to service under standard terms and conditions. The Joint Petitioners begin by arguing (pp. 6-8, Section A) that in approving and modifying PECO's prepaid pilot the Commission, "overlooked" the question of whether it has the authority to approve PECO's prepaid program "because it conflicts with the provisions of Chapters 14, 15, and 28." The Joint Petitioners claim that the pilot, even as modified by the Commission, remains in conflict with other laws. *See* Joint Petition, pp. 7-8: "While the Commission's modifications to PECO's proposed Prepay Program attempted to address conflicts with Chapter 14, CAUSE-PA and TURN *et al.* assert that many conflicts still remain."

There is one overriding reason that the Joint Petitioners should not be allowed to seek reconsideration on the basis that PECO's pilot, as modified by the Commission to require automatic reversion to standard service, violates Pennsylvania law. *The modification to require automatic reversion to standard service was proposed and supported by the Joint Petitioners' witnesses. See* CAUSE-PA Statement No. 1 (Miller), pp. 37-38. Mr. Miller stated (emphasis added):

Q: Are there program design changes that you believe could be made that would make prepay acceptable?

A: * * * First, all consumer protections must be maintained. If allowed to proceed, PECO should treat prepay customer[s] like post pay customers and give up the fiction that households who do not reload their accounts have voluntarily disconnected. In other words, PECO should be required to afford all of the protections that exist under Chapter 14 for termination of service for non-payment. *If an account balance reaches \$0, PECO*

would begin providing credit to the customer – in effect, the customer would revert back to standard service – and allow the customer to accrue a balance while at the same time pursuing termination of service pursuant to Chapter 14 and Chapter 56.

See also, TURN et al. Statement No. 1R (Geller Rebuttal), p. 8 (emphasis added): “In the event that the Commission grants PECO’s petition, *I agree with Mr. Miller’s recommendations regarding consumer protections that must be incorporated into PECO’s plan,*” citing the page numbers from Mr. Miller’s testimony that contain the above-quoted recommendation. Witnesses for the OCA and BI&E also supported this modification. See OCA Statement No. 1, Howat, p. 48, where Mr. Howat recommends (emphasis added) that “[i]n the event that the billing credits of a customer receiving prepaid residential electric or natural gas service are exhausted, *the customer shall be given a five-day disconnection grace period, after which the customer shall revert to traditional, credit-based service, subject to all rules and customer protections applicable to such service;*” see also BI&E Statement No. 1, Grab, p. 25 (emphasis added): “[I]f a participant in the Advance Payments Plan fails to replenish their account balance within the five-day grace period, *instead of disconnecting their service, PECO would switch the participant back to standard service automatically.*”

The Joint Petitioners (and the other parties) recommended this modification, and the Commission adopted it. The Joint Petitioners cannot now be allowed to insist that the Commission reconsider and find that this modification violates the law.

It also should be underscored that the Commission did not “overlook” the Joint Petitioners’ claims that PECO’s plan violates Chapters 14, 15, and 28. The Commission discussed the Chapter 14 claims at numerous places, including pages 30, 38, 50-52, 56, 61, and 68. It discussed the Chapter 15 claims at numerous places, including pages 12-13, 37, 65-67, and 70. It discussed the Chapter 28 claims at numerous places, including pages 52-53, and 74-83. In addition, the

Commission found (p. 85) that its first modification (discussed above) “restores the full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s regulations.”

The Commission thus clearly did not “overlook” these considerations; it fully evaluated them and ruled that, with the modifications, PECO’s pilot does not violate other provisions of the law. The Joint Petitioners have thus simply raised “the same questions that were specifically considered and decided against them.” Reconsideration is not warranted.

B. Customers with income between 151%- 300% of the Federal Poverty Level

PECO’s pilot plan proposes that customers who have income of 150% of the Federal Poverty Level (“FPL”) or below will not be eligible for participation in its pilot, but that customers with incomes of 151% or greater will be eligible. *See* PECO’s October 26, 2016 Petition, Attachment 1, Paragraph 3. During litigation, the other parties argued that customers with income between 151% and 300% of the FPL (which were referred to as “moderate-income” customers) are economically vulnerable and should not be allowed to participate in the pilot. In addition, the parties argued that customers in the moderate-income range should also be ineligible for the pilot because, the parties claimed, voluntary prepaid service is inconsistent with certain statutory payment arrangements for which those income levels are eligible. *See* Recommended Decision (“R.D.”), pp. 67-68. The R.D. (p. 68) found that, due to the claimed inconsistency with payment arrangement law, program eligibility for customers with income between 151%-300% of the FPL would not be in the public interest, and therefore the ALJ recommended that customers with income between 151%-300% of the FPL should not be eligible for participation in the pilot.

In its Opinion and Order (pp. 19-20, 39, 58-60, 63, 68, 70-71, 82-83), the Commission discussed the economic vulnerability of moderate-income customers in the 151%-300% FPL range. The Commission also discussed (pp. 61-65) the argument that eligibility for 151%-300%

customers violates existing statutory rights to payment arrangements. In the Commission's concluding discussion (pp. 86-87, footnote omitted), it resolved those arguments as follows:

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. 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.

Both of the Petitions claim that the Commission "overlooked" their arguments on moderate-income (151-300% FPL) customers. The OCA's Petition (pp. 8-9, Section E) re-argues the general issue of economic vulnerability, explicitly and by reference making the same arguments in its Petition for Reconsideration that it made in its testimony and briefs, alleging (p. 9) that "the Commission's Order has overlooked these concerns." The Joint Petition (pp. 13-16, Section D and pp. 21-23, Section I) re-argues the general issue of economic vulnerability and also re-argues the payment arrangement issue, explicitly and by reference making the same arguments in its Petition for Reconsideration that the Joint Petitioners made in their testimony and briefs, alleging (p. 22) that the "Commission overlooked these arguments in making its decision." *See also* p. 13 ("the Commission overlooks the substantial record evidence"); p. 14 ("the Commission appears to have overlooked" the record evidence),

The Commission did not “overlook” the arguments that the parties made with respect to moderate-income (151-300% FPL) customers. Rather, the Commission discussed those arguments at length, stated that it is “keenly aware” of the concerns raised by the parties, and instructed PECO as to how it expects PECO to handle pilot participants from this income tier. That is, if anything, the opposite of “overlooking” the considerations raised by the parties. The Petitions thus do not demonstrate that reconsideration of this issue is warranted.

C. Low-Income Verification

In a related argument, the Joint Petitioners also argue (p. 15, Section D) that “the Commission overlooked the need for explicit guidance for how PECO will determine whether a potential program participant is low income and how PECO will assess whether a participant remains income eligible.”

While it is true that the Opinion and Order did not discuss this issue, the Commission did not “overlook” this issue. The Joint Petitioners did not raise this issue in exceptions (nor did any other party), and thus did not preserve this argument or present it to the Commission for resolution in the Opinion and Order.⁴

Brief background on this issue will provide context. PECO’s pilot proposal excludes customers with income of 150% or less of the FPL. PECO’s direct testimony (PECO Statement No. 1, Scarpello, p. 14) described how PECO will implement that exclusion. (“During the intake process, PECO will inquire as to the income level of each customer or applicant We will use the same procedures for income inquiry [that PECO uses] when a customer or applicant calls for a payment arrangement, or access to our universal services programs.”) Several stakeholder

⁴ The Joint Petition (p. 16) states that this issue was raised in the Main Briefs of CAUSE-PA and the OCA but does not identify any place where the argument was raised in the Exceptions of any party.

witnesses stated that this procedure would not identify volunteers who were not low-income at the time of enrollment, but who became low-income during the program. PECO's rebuttal testimony (PECO Statement No. 1R, Scarpello, pp. 14-15) responded by stating that "if a customer becomes low-income during the course of the pilot, PECO may become aware of this fact through various [listed] communications," and that the witness, Mr. Scarpello, "considers that to be a robust and detailed process."

PECO addressed the argument regarding ongoing determination of low-income status in its Main Brief (p. 66), stating that:

Mr. Geller notes that low-income customers have variable incomes, and that a customer might volunteer for the pilot at a time when they have income of greater than 150% of the Federal Poverty Level, but drop below that income level while in the pilot. He questions whether PECO will be able to identify such a person and remove them from the program. TURN Statement No. 1, pp. 21-22.

Mr. Scarpello noted that PECO will have various ways of obtaining such information, including a customer abiding by the rules of the program and informing PECO that their income status has changed, a customer calling PECO to discuss payment difficulties, a customer calling PECO to claim low-income status for some other purpose, and customer receipt of a LIHEAP grant. The customer may also call PECO and request a reversion to standard service without giving a reason. PECO Statement No. 1R, pp. 14-15.

As noted by the Joint Petitioners, the OCA briefly addressed this issue in its Main Brief (p. 36), where the OCA claimed that PECO "has not provided any detail" with respect to these procedures. CAUSE-PA addressed this issue briefly (in a single sentence) in its Main Brief (p. 36), noting that PECO had not provided "application materials, call center scripts, or other customer interaction protocols" to be used in the income determination.

The R.D. briefly addressed this issue in Finding of Fact 20 (p. 11), which states that: "PECO will inquire about the income level of each volunteer to participate in the Plan and if the result of the inquiry is an income at or below 150% of the FPL, then volunteer will be informed that they are not eligible to participate" and Finding of Fact 90 (p. 22) (which discusses the

allegation that the income verification procedures are “unclear”). The R.D. does not provide further discussion of this issue. No party preserved or presented this issue for Commission consideration by raising it in exceptions or reply exceptions. Not surprisingly, the Opinion and Order – which primarily addressed exceptions and reply exceptions – contains no discussion of this issue. Because the issue was not presented in exceptions or reply exceptions, it is incorrect to assert that the Commission “overlooked” anything, and reconsideration is not warranted.

If the Commission chooses to consider the income verification issue at this time (notwithstanding the Joint Petitioners’ failure to present it at the exception stage), then PECO relies upon the testimony and arguments set forth above, and requests that the Commission find that PECO’s proposed income verification procedures are appropriate.

D. Third-Party Fees

In PECO’s proposed pilot, participants may incur fees to “load” funds to their account, depending upon the method that the customer chooses when loading the funds. Those fees may include fees initiated by PECO (on behalf of itself or its vendors or other agents) or may be imposed by unaffiliated third parties such as banks or credit card companies.

At hearing and in briefs, the Petitioners argued that it is not in the public interest to allow such fees to be charged. The Administrative Law Judge (“ALJ”) disagreed, and consequently the R.D. (p. 72) found that the public interest would not be harmed by the imposition of such fees:

I agree that participants will incur more costs electing to participate in the Plan than incurred through post-pay service. However, I find that this is a trade-off that the participant needs to make, whether it is more convenient to use this method of payment versus the post-pay method. Yes, there are transaction fees, but these same fees may be incurred with post-pay service.

I understand the point made by CAUSE-PA that the frequency of the transactions will increase under the Plan, and thus, the cost incurred by the participant will increase. However, I believe there is a benefit in paying \$50.00 per week for cash flow purposes versus \$200.00 per month. The participant is to weigh whether that benefit is worth the

incurred costs. Consequently, because there is a benefit to be weighed against the additional cost incurred by the participant, I cannot find that the public interest is harmed.

In its Opinion and Order (pp. 69-71), the Commission discussed the parties' positions on the fees issue. It then partially reversed the R.D. and directed (p. 86) that PECO must "[e]nsure that there is no PECO-initiated fee for payments made on the website or customer portal."

Both the OCA and the Joint Petitioners seek reconsideration of this holding and request that the Commission not only prohibit PECO-initiated fees, but also prohibit third-party fees. The OCA (pp. 7-8, Section D) reiterates its prior arguments that fees are harmful, 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," and requests the Commission to state that it is also prohibiting third-party fees. The Joint Petitioners (pp. 19-20, Section G) similarly reiterates their prior arguments, state that "the Commission's Order is unclear as to whether these fees would be permissible if charged by a third-party vendor," and requests that the Commission state that third party fees will not be allowed.

First, PECO considers fees charged by itself or a vendor acting as PECO's agent to be a "PECO-initiated fee," and it understands that the Commission ordered it not to charge such fees. With that said, PECO also believes that the Commission is aware of the difference between a PECO-initiated fee and a third-party fee, such as a credit card fee or a bank fee. The R.D. found that the imposition of these transaction fees is not against the public interest. The Commission reversed that determination as to PECO-initiated fees but did not reverse it as to third party fees. The Commission did not "overlook" the arguments on this issue; it resolved the arguments by prohibiting some, but not all, transaction fees.

As to the requests for clarification, PECO believes that the Opinion and Order is already clear because, if the Commission had meant that PECO should find a way to disallow credit card

fees and bank fees charged by third parties – perhaps by paying those fees on behalf of customers engaging in prepaid loading transactions – the Commission would have said so explicitly. With that said, it seems that the parties read this portion of the Opinion and Order differently and are likely to continue to disagree as to the meaning of the Opinion and Order. PECO therefore agrees that, in its forthcoming Order on Reconsideration, the Commission should clarify its intention with respect to third-party transaction fees.

E. Non-ratepayer Occupants

The Joint Petition (Section III.E., pp. 16-17) alleges that the Commission “acknowledges the unique concerns of non-ratepayer occupants of a dwelling” but “appears to have overlooked the impact that PECO’s proposed Prepay Program would have on tenants.” The Joint Petitioners therefore request that the Commission (1) “clarify that a return to standard service includes all of the protections” accorded to tenants by 66 Pa. C.S. §§ 1521-1533; (2) require PECO to obtain written affirmation from participants that they reside at the property, and (3) require that PECO immediately return landlord accounts to standard service if becomes aware that a participant is a non-occupant landlord.

Again, the Commission did not “overlook” any of these arguments. The Opinion and Order (pp. 65-67) discussed these arguments. Moreover, for the key modification ordered by the Commission (p. 85) – that “a customer who has not paid during the five-day grace period [will be] automatically removed from the program and returned to standard terms and conditions, including, but not limited to, the traditional termination procedures” – the Commission specifically found (p. 85) that this modification “protects the non-ratepayer occupants of a dwelling from experiencing a shut-off for which they had no warning.” The Commission did not overlook this issue, it

reviewed it, decided it, and concluded that the modified plan will properly protect the rights of non-ratepayer occupants.

Moreover, the Joint Petitioners' specific requests do not warrant reconsideration. The Joint Petitioners request clarification that those who return to standard service will be given the non-ratepayer termination protections found at 66 Pa. C.S §§ 1521-33. But the Commission's modification, discussed above, clearly states the upon a customer's automatic return to standard service, the terms and conditions of such service "including, but not limited to, traditional termination procedures" must be provided. The non-ratepayer termination procedures are part of the statutory Public Utility Code (66 Pa. C.S §§ 1521-33) and thus are clearly part of the "traditional termination procedures" referred to by the Commission. The Opinion and Order is quite clear.

As to the request that PECO be required to "obtain written affirmation from participants that they reside at the property" PECO's proposed pilot already contains detailed procedures to elicit that information during the intake process. *See* PECO Main Brief, p. 9, Proposed Finding of Fact 21.⁵ The Joint Petitioners have provided no reason to believe that the detailed intake procedure described above will not be effective in screening out non-ratepayer participants.⁶

⁵ "21. Only individually-metered residential dwellings will be eligible to participate in PECO's pilot. PECO Statement No. 1, p. 14. In order to implement that requirement, during the intake process PECO will require that the potential volunteer provide their name, address and (for existing customers) their account number. PECO will also inquire whether the service in question is through an individually-metered residential account. Commercial accounts and non-individually-metered residential dwellings will not be eligible for the program. PECO Statement No. 1, p. 15. PECO therefore does not expect any landlord-tenant accounts to be eligible for the pilot. PECO Statement No. 1, p. 15."

⁶ *See* PECO Statement No. 1-R (Scarpello), p. 16: "Mr. Geller provides no reason to believe this procedure will not properly identify and exclude landlord-tenant accounts."

Consequently, the Joint Petitioners provide no reason why that inquiry must result in a “written” affirmation, and thus they have not provided any basis for the Commission to reconsider its Order.

As to the request that PECO be required to “immediately return landlord accounts to standard service if becomes aware that a participant is a non-occupant landlord,” PECO already made the commitment to exclude non-occupant landlords from the pilot. While PECO believes that intake screening will effectively exclude such situations from pilot participation, if PECO becomes aware during the pilot that a non-occupant landlord has enrolled in the pilot, PECO will determine that the customer is not eligible for the pilot and will remove the customer from the pilot.

F. Use of deposits

PECO’s pilot proposal petition requested a waiver of Commission regulations to allow pilot volunteers to use any existing deposit to fund their prepaid account. Several stakeholders argued against this waiver and the R.D. (pp. 42-47) agreed with those parties and recommended against granting the requested waiver. PECO excepted to this finding. The Opinion and Order discussed the issue at length (pp. 25-29), and the Commission granted the waiver (Ordering Paragraph 8d), subject to a modification.

The OCA’s Petition (pp. 6-7, Section C) reiterates its arguments against the waiver and alleges that the Commission “overlooked” its arguments. As with the other issues discussed in Section 1 of this Answer, the arguments presented by the OCA do not demonstrate that the Commission “overlooked” the OCA’s arguments, they demonstrate that the Commission carefully evaluated those arguments and decided, in this case, to grant the requested waiver (with modification) notwithstanding those arguments. The OCA has thus simply raised “the same

questions that were specifically considered and decided against them.” Reconsideration is not warranted.

Nonetheless, as discussed in Section 2, PECO believes that there are certain aspects of the deposit modification for which PECO would benefit from obtaining additional thoughts from the OCA as to implementing the deposit modification ordered by the Commission.

G. Collection of income data and other evaluation issues

The Joint Petitioners also request (p. 23) reconsideration because, they claim, “the Commission does not require the collection of participant income information.”

The Joint Petitioners are simply incorrect when they claim that PECO will not collect income data. PECO’s initial Petition includes a proposal that it will collect income information both as part of its intake process (PECO Direct Statement No. 1, Scarpello, pp. 13-14) and as part of its evaluation process (PECO Direct Statement No. 2, Reiley, p. 4). The Commission approved that plan (none of the Commission’s modifications denied PECO’s proposal to collect income and household size data) and thus it approved PECO’s collection of income data at intake and income data and household size information for evaluation.

The Joint Petitioners also request (p. 24-25) that PECO should be required to collect data on specific data points identified by Joint Petitioners in their testimony, that the Joint Petitioners be given access to “raw data to enable independent evaluation analysis of the results of the pilot,” and that PECO be required to share the data “regularly” through an ongoing stakeholder process, rather than providing an end-of-pilot evaluation. The Joint Petitioners note (p. 24, ¶ 55) that they previously presented these arguments in the Main Brief of CAUSE-PA at page 40.

The ALJ found that these specific requests -- which she grouped with other suggested stakeholder modifications as the “contingencies” – should be denied because the record evidence does not support them. The R.D. states (p. 79, emphasis added):

In the event that the Commission should find that the Plan is in the public interest, I find it problematic to address the suggested contingencies. I find that the contingencies contribute to the cost of the Plan. I do not find it responsible to address the contingencies without the associated weighing of the costs that they may contribute. Thus, I find from the lack of the record evidence for the costs that the contingencies bare on the Plan, that the contingencies are denied.

The Joint Petitioners did not challenge this finding in their exceptions, and consequently the Commission’s Order did not address it. Moreover, the Joint Petitioners do not point to any record evidence that was “overlooked” by the ALJ (or the Commission) in reaching this conclusion. Reconsideration of this finding is thus not warranted.

Section 2: The Commission’s modifications

The Opinion and Order (pp. 85-86) contains five listed, bulleted modifications to PECO’s proposal. Some of those modifications were addressed in the Petitions for Reconsideration. PECO does not believe that reconsideration is appropriate for any of these issues but does recommend that those modifications should be collaboratively discussed by PECO and the other parties.

A. Automatic removal from the pilot, and return to standard payment terms and conditions, for failure to pay during the five-day grace period

The first modification required by the Commission (p. 85) is that PECO’s compliance filing must:

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 is issued, the five-day grace period under the program may be the first five days in the traditional 10-day termination process.

The OCA's Petition (pp. 4-5, Section B) generally applauds this modification, with one exception – it seeks reconsideration of the conclusion that the five-day grace period may constitute the first five days of the traditional 10-day notice period. The Joint Petitioners (pp. 20-21, Section H) make a similar argument.

PECO understands that, if it is to move forward with a prepaid pilot, it will need to accept this Commission modification. However, PECO has not yet determined whether it wishes to take advantage of the offer to allow the five-day grace period to count as part of the 10-day notice period. In order to determine whether to do so, PECO will need to further review its IT systems and termination procedures to determine whether the five-day grace period can be easily “feathered into” the existing termination procedures. In addition, PECO would like to discuss this issue with the other parties before reaching a conclusion as to its position. It therefore believes that collaborative discussion on this issue would be helpful.

B. Automatic removal for presentation of a medical certificate

The second modification required by the Commission (p. 85) is that PECO's compliance filing must:

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.

Neither of the Petitions for Reconsideration addressed this modification, and PECO believes that implementation of this modification will be relatively easy to implement. Nonetheless, PECO is aware that medical certification issues are of substantial importance to the

other parties and would like to have access to their insights before finalizing its procedures to implement this modification.

C. Deposits

The third modification required by the Commission (p. 85) is that PECO's compliance filing must:

Provide that existing deposits may be eligible for application to the program but may be returned to the customer at the customer's election.

As noted in Section 1, the OCA has sought reconsideration of the deposit waiver and this modification (and PECO does not believe that such reconsideration is warranted). With that said, before PECO finalizes its procedure on this issue, it would like to have discussions with the OCA and the other parties regarding the time and manner that customers will be able to exercise the election noted in this modification.

D. Protection from Abuse Orders

The fourth modification required by the Commission (p. 86) is that PECO's compliance filing must:

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.

The Joint Petitioners (pp. 18-19, Section F) request clarification that this modification applies to "all survivors of domestic violence covered by section 1417."

It appears obvious to PECO that this modification applies to all survivors of domestic violence covered by section 1417. While it therefore does not believe that such clarification is needed, PECO does not object to the Commission so stating.

In addition, PECO would like to have discussions with the other stakeholders regarding the best time(s) and method to provide the noted information to survivors of domestic violence who volunteer to participate in the prepaid pilot.

E. PECO-Initiated Fees

The fifth modification required by the Commission (p. 86) is that PECO's compliance filing must:

Ensure that there is no PECO-initiated fee for payments made on the website or customer portal.

Both Petitions sought reconsideration of this modification. Those requests for reconsideration were discussed at length in Section 1 (and PECO does not believe that reconsideration is warranted). With that said, in Section 1 PECO agreed that the Commission should clarify its intention with respect to third-party fees, and once that clarification is received PECO would like to conduct discussions of this modification so that, at a minimum, it can provide increased awareness of its plans to the other parties.

Section 3: Proposed Collaborative and Review Procedure

The Opinion and Order directs PECO to file a compliance filing accepting the Commission's modifications within 60 days of issuance of the Opinion and Order (that is, by August 17, 2019). Under the Commission's standard regulatory timeline, 52 Pa. Code §5.592(c), the other parties would then be allowed 10 days to respond to the compliance filing.

Both Petitions (OCA Petition, pp. 3-4, Section A; Joint Petition, pp. 9-13, Sections B and C) express concern about this procedure. They generally suggest three modifications: (1) that this matter should be referred back to the Office of Administrative Law Judge for additional evidentiary hearings; (2) that the parties should engage in collaborative discussions prior to PECO making its

compliance filing; and (3) that the parties should be given more than 10 days to analyze and respond to PECO's compliance filing.

PECO does not believe that additional hearings are warranted, but is amenable to having discussions with the other parties about the Commission's modifications before it finalizes its compliance filing. PECO also is amenable to the other parties being given more than 10 days to respond to its compliance filing.

First, as to the suggestion of additional hearings. The OCA suggests (p. 4) that this matter should be re-assigned to the Office of Administrative Law Judge for further proceedings "to allow the parties to ensure that all applicable consumer protections are being fully implemented" under the Commission's modifications. The Joint Petitioners suggest (p.9) "a process for additional investigation and review" to determine whether the Commission's modifications are consistent with consumer protections.

As PECO demonstrated in Section 1A of this Answer, the witnesses for all the Petitioners are already on record as being in favor of the major modification suggested by the Commission. Frankly, it is difficult to see what evidentiary value could be found in having those witnesses testify that the modification is illegal or otherwise is not in the public interest. Moreover, since all parties have already presented testimony on the major modification of automatic reversion, there is no warrant for additional hearings.

PECO is aware that the other parties believe that the inclusion of the five-day grace period within the 10-day termination notice period is a new proposal to which they have not yet had the opportunity to respond. It is, however, a middle ground between the position taken by PECO in litigation and the position taken by the other parties in litigation, and therefore it reflects a reasonable extension by the Commission of the existing record. Moreover, PECO does not intend

to decide whether it wishes to include the five-day grace period in the 10-day notice period until it has had discussions with the parties. Collaborative discussions will accomplish that discussion more effectively than additional litigation.

As to the collaborative discussions, PECO would like to hear the views of the other parties regarding the Commission's modifications before it finalizes its compliance filing. As noted in the Introduction, PECO believes that such collaboration should not be seen as an opportunity to re-argue, re-negotiate, re-litigate, or otherwise reconsider issues that the Commission has already decided. Rather, the collaboration should be limited to the question of how to best implement the modifications ordered by the Commission.

Towards that end, PECO proposes collaborative discussions regarding the five issues identified in Section 2 of this Answer. That agenda comprehensively covers the modifications required by the Commission. These discussions might take place in person, by phone, or by email exchange. Moreover, it may be appropriate to have separate meetings/discussions for each of the five Commission modifications as separate agenda items. During these discussions, PECO intends to share its intentions and elicit the other parties' views on the Commission's modifications. PECO would then provide a compliance filing that is more informed by the other parties' views (albeit the other parties may still have concerns with the compliance filing.)

As to timing of the collaborative discussions, PECO is willing to take time to have discussions that allow meaningful breaks for the parties to complete their review and analysis of each issue. As a shared bandwidth constraint, PECO also notes that it recently requested that all of these parties engage with it in a collaborative discussion regarding possible changes to PECO's Fixed Credit Option low-income program, which will take significant resources from all of these

parties through March 31, 2020.⁷ PECO therefore proposes that the collaborative discussions in this prepaid docket should occur over a 6-month period after the Commission issues its Order on Reconsideration. PECO proposes that, 60 days after the end of the discussion period (that is, eight months after the issuance of the Commission's forthcoming Order on Reconsideration), PECO will make the compliance filing currently required by August 17, 2019.

The Commission's regulations, 52 Pa. Code 5.592(c), provide that exceptions to compliance filings may be made within 10 days after such a filing, and that the utility's reply must be made five days later. PECO has no objection to the parties being given additional time – 30 days seems sufficient – for the other parties to analyze and file exceptions to its compliance filing, once made. PECO requests that it then be given 15 days to prepare and file any replay exceptions.

The Commission's regulations that allow exceptions on compliance filings strictly regulate the content of such exceptions. 52 Pa. Code §5.592(c) states (emphasis added) that:

Exceptions to a tariff revision under this section may be filed by a party to the proceeding within 10 days of the date of service of the compliance filing, and *shall be strictly limited in scope to the factual issue of alleged deviation from requirements of the Commission order*. The utility making the compliance filing may respond to exceptions within 5 days. No further pleadings will be permitted.

In other words, the exceptions to the compliance filing also should not be viewed as an opportunity to re-argue, re-negotiate, re-litigate, or otherwise reconsider issues that the Commission has already decided. We are past the point where the parties can re-argue positions that were “decided against them.” Rather, the exceptions on the compliance filing must comply with the Commission's regulations and be “strictly limited in scope to the factual issue of alleged deviation from requirements” of the Commission's forthcoming Order on Reconsideration.

⁷ See PECO Letter of June 28, 2019 in Dockets Nos. M-2012-2290911 and M-2015-2507139.

Conclusion

PECO therefore respectfully requests that the Commission (1) deny the Petitions for Reconsideration; (2) suspend the requirement that PECO make a compliance filing within 60 days of the Commission's June 18, 2019 Order; (3) allow the stakeholders a six-month period after issuance of the Commission's Order on Reconsideration to collaboratively discuss implementation of the Commission's five modifications; (4) require PECO to make a compliance filing 60 days after the end of the collaboration period (that is, eight months after issuance of the Commission's Order on Reconsideration); (5) allow the other parties 30 days to file any exceptions to PECO's compliance filing, with the scope of those exceptions limited per 52 Pa. Code §5.592(c); and (6) allow PECO 15 days to file reply exceptions.

Respectfully submitted,



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