**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held December 19, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement

David W. Sweet, Vice Chairman

Andrew G. Place

John F. Coleman, Jr.

Ralph V. Yanora

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

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Petition for Reconsideration filed by the Office of Consumer Advocate (OCA) on July 3, 2019 (OCA Petition); and (2) the Joint Petition for Reconsideration and/or Clarification filed by 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.* or Joint Petitioners), on July 3, 2019 (Joint Petition) (the OCA Petition and the Joint Petition collectively referred to herein as the Petitions). The Petitions seek reconsideration and/or clarification of specific portions of the Commission’s Opinion and Order entered on June 18, 2019 (*June 2019 Order*), in the above-captioned proceeding.[[1]](#footnote-2) PECO Energy Company (PECO or the Company) filed its Answer to the Petitions (Answer) on July 15, 2019. For the reasons set forth herein, we shall grant, in part, and deny, in part, the Petitions, consistent with this Opinion and Order.

# History of Proceeding[[2]](#footnote-3)

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 Prepay Petition). The Prepay Petition served as both PECO’s request to implement a two-year pilot program (Plan) 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.[[3]](#footnote-4)

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.

On February 12, 2018, the Commission served the Recommended Decision of Administrative Law Judge (ALJ) Angela T. Jones on the Parties. In her Recommended Decision, the ALJ recommended that the Commission deny the Prepay 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.

The Commission’s Bureau of Investigation and Enforcement (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.

In the *June 2019 Order,* we took the following actions: (1) granted, in part, and denied, in part, the Exceptions of PECO, I&E, the OCA, and CAUSE-PA/TURN *et al*.; (2) adopted, in part, and modified, in part, the ALJ’s Recommended Decision; and (3) granted, in part, and denied, in part, PECO’s Prepay Petition subject to PECO’s compliance with certain terms and conditions as delineated therein. *June 2019 Order* at 88-91.

On July 3, 2019, the OCA and the Joint Petitioners filed their respective Petitions,[[4]](#footnote-5) seeking reconsideration and/or clarification regarding several pilot program components, as discussed further below. As indicated above, PECO filed its Answer to the Petitions on July 15, 2019, also as discussed further below.

# Discussion

## Legal Standards

By the terms of Section 703(g) of the Code, the Commission has the power to amend or rescind its own orders at any time subject only to the requirements of due process. Section 703(g) of the Code states:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g); see also *Department of Highways v. Pa. PUC*, 138 A.2d 143 (Pa. Super. 1958). In exercising our authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See* *City of Pittsburgh v. Pennsylvania Department of Transportation*, 416 A.2d 461 (Pa. 1980).

While a petition under Section 703(g) may “properly raise any matter designed to convince the commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part,” at the same time “[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.” *Duick v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 et al., 56 Pa. P.U.C. 553 (Order entered

December 17, 1982) (*Duick*) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)). As we stated in *Duick*:

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 (emphasis added).

Furthermore, a decision to deny a petition for rescission or amendment is a matter squarely within the Commission’s discretion, subject to being overturned only where a reviewing court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995).

Finally, it is well-settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Thus, any argument in the Petition that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

## The June 2019 Order

PECO’s originally proposed pilot program was structured as a two-year pilot with participation limited to 2,000 customers with smart meters installed by PECO at their residence and a household gross income above 150% of the Federal Poverty Income Guidelines (FPIG). PECO proposed that existing customers and new applicants be eligible to participate in the pilot, and all participation in the pilot be voluntary. PECO required that participants have access to the internet or a text-capable cell phone. PECO proposed the pilot program to be available to both default and shopping customers, and to electric-only or dual-service (electric and natural gas) customers. PECO also proposed that participation be limited to those customers without an account delinquency or with a maximum delinquency of $1,500. For those participants with a maximum delinquency of $1,500, PECO proposed that 25% of the prepaid funded amount be applied to reduce the outstanding balance and 75% of such amount be applied to future service. PECO proposed to permit participants to use any existing payment channel to pay or “load” funds into their account prior to usage of service, with the beginning amount to be prepaid to a minimum amount of $40. PECO proposed that a participant’s account balance will be reduced on a daily basis to reflect the charges for the prior day’s usage. For existing customers, PECO proposed that any credit deposit may be used to fund initial participation in the program, with no additional credit deposit required. *June 2019 Order* at 4-6.

PECO also proposed that participants receive electronic notices when their account balance is sufficient to cover an estimated five-, three-, and one-days’ worth of usage, with additional notices available upon customer request. If the account balance reaches zero or a negative balance, PECO proposed to give the customer a five-day grace period to load funds to the customer’s account, and to provide daily electronic notices to the customer during the grace period. If the customer does not load additional funds during the grace period, PECO proposed that the customer’s service be remotely disconnected (and only electric service disconnected for dual service customers). PECO further proposed that a participants’ restoration of service require the customer’s payment for usage during the grace period as well as an additional payment toward future service. During the pilot, the customer may choose at any time to return to standard payment terms and conditions. If this option is taken, the customer may not return to the pilot program. *Id.* at 7-8.

In reviewing PECO’s proposed pilot program and the litigated issues, as developed on the record by the OCA, the Joint Petitioners and I&E, the ALJ found that there were specific areas where the proposed pilot program was insufficient, including the procedures for electronic notification and for handling medical certifications, for protection against termination of service during the winter months, a likely increase in disconnection rates, and the omission of payment arrangement options. The Recommended Decision identified a failure to protect tenants dwelling with landlords, treatment of participants who may have protection from abuse orders, and the possible inhibition of the competitive market. R.D. at 79. However, the ALJ did identify a number of factors of the proposed pilot program as favorable; particularly, the inclusion of applicants as eligible to participate, the inclusion of participants who do not have delinquencies, 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 development of materials and a plan for education, instruction, and information for participants. Ultimately, the ALJ determined that PECO did not prove by a preponderance of the evidence that its proposed pilot program was in the public interest and recommended that the Commission not approve it. *Id.*

In the *June 2019 Order*, we disagreed with the ALJ’s recommendation to deny PECO’s prepay pilot program, stating “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” and “see how this type of program can be used by customers who wish to use it.” *June 2019 Order* at 83-84.

However, in the *June 2019 Order*, to address the Parties’ concerns and to ensure that the participants’ full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations remain in place, PECO was permitted to file a voluntary pilot plan in compliance with the *June 2019 Order* which would establish a modified prepaid pilot program consistent with the following modifications:

* 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.
* 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.

*June 2019 Order*, at 85-86 (footnote omitted); *see also* Ordering Paragraph No. 7(a)-(e). Furthermore, we stated that our approval of a modified prepaid pilot program “is not intended to circumvent or reduce the consumer protections to which customers are now entitled.” *June 2019 Order* at 87.

The *June 2019 Order* also granted waivers of several Commission Regulations on a temporary basis, including the following:

* 52 Pa. Code § 56.17(3), to allow PECO to include applicants for service in the prepaid metering pilot program;
* 52 Pa. Code § 56.17(3)(i), to allow PECO to include persons without delinquencies in the prepaid metering pilot program;
* 52 Pa. Code § 56.17(3)(iii)(B), to allow consumers to participate in the prepaid metering pilot program for any duration of time, without requiring the consumer to extinguish a delinquency;
* 52 Pa. Code § 56.53, to allow PECO to apply previously paid security deposits to the customer’s prepay balance.

*June 2019 Order* at 90-91.

The *June 2019 Order* recognized that “we have made significant modifications to the proposed program…” and provided that if PECO chose to pursue the modified prepaid pilot program, it must file a compliance plan within sixty days that complies with the Order’s requirements. *June 2019 Order* at 87, 89.[[5]](#footnote-6) However, should PECO decide not to file a compliance plan within this sixty-day timeframe, we ordered that the docket be closed by Secretarial letter. *June 2019 Order* at 91, Ordering Paragraph No. 9.

## Petitions for Reconsideration and PECO’s Answer

The Joint Petitioners urge the Commission to reconsider its *June 2019 Order* and deny, in full, PECO’s Prepay Petition, arguing that in approving a modified version of PECO’s Prepay Petition, the Commission “overlooked” the question of whether it has the authority to approve a prepaid metering program “because it conflicts with the provisions of Chapters 14, 15, and 28” of the Code. Joint Petition at 6-8. In the alternative, should the Commission ultimately permit PECO to file a modified prepaid meter pilot program, the Joint Petitioners join the OCA in its request that the Commission reconsider and clarify certain portions of the *June 2019 Order*.

While the OCA Petition indicates that it “strongly agrees with many items in the Order,” it also notes that the Commission did not approve PECO’s Prepay Petition as filed. The OCA Petition argues that, as modified, the prepaid metering pilot program overlooks a number of the OCA’s concerns or that the modifications that the Commission has made would not be in compliance with Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations. OCA Petition at 1-2. Similarly, the Joint Petitioners claim that the pilot, even as modified by the *June 2019 Order*, remains in conflict with other laws. Pages 7 through 8 of the Joint Petition states that “[w]hile 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.”

The Petitions proffer four similar arguments that both the OCA and the Joint Petitioners aver justify reconsideration and/or clarification of our *June 2019 Order*, claiming that the Commission erred when it:

1. allowed PECO to submit its modified prepaid metering pilot program proposal in a compliance filing. OCA Petition at 3‑4; Joint Petition at 9-13;
2. modified PECO’s Prepay Petition to allow the five-day grace period under the program to be the first five days in the traditional ten-day termination process, if a written notice was issued. OCA Petition at 4-5; Joint Petition at 20-21;
3. directed that PECO must “[e]nsure that there is no PECO-initiated fee for payments made on the website or customer portal,” but did not prohibit third-party fees, such as those imposed by banks or credit card companies. OCA Petition at 7-8; Joint Petition at 19-20;
4. allowed customers with incomes above 150% of the Federal Poverty Level to be eligible to participate in the prepaid metering pilot program, as modified by the *June 2019 Order*, as well as lack of the imposition of any requirements on PECO to verify income eligibility or to assess whether participants remain income eligible throughout their enrollment in the program. OCA Petition at 8-9; Joint Petition at 13-16.

Furthermore, in the OCA Petition, the OCA requests reconsideration of the Commission’s directive permitting the utilization of customer deposits towards pilot program payments. OCA Petition at 6-7. Meanwhile, in the Joint Petition, the Joint Petitioners request the following:

1. The Commission provide clarification that non-ratepayer occupants of a dwelling who return to standard service will be given the non-ratepayer termination protections found at 66 Pa. C.S. §§ 1521-1533. Joint Petition at 16-17;
2. The Commission provide clarification of the portion of the *June 2019 Order* which requires that customers holding an active protection from abuse order “be informed of their other payment plan options,” so that it is understood that it applies to “all survivors of domestic violence covered by [66 Pa. C.S. § 1417].” Joint Petition at 18-19;
3. The Commission grant reconsideration of the *June 2019 Order*, arguing that the Commission has overlooked their arguments concerning the pilot’s payment arrangement provision for customers with arrearages, which the Joint Petitioners contend does not comply with statutory requirements and eliminates payment arrangement options that may be more beneficial to the customer. Joint Petition at 21-23;
4. Lastly, that the Commission grant reconsideration based on the Joint Petitioners’ contention that “the Commission does not require the collection of participant income information. Joint Petition at 23-25.

In its Answer, PECO argues that the standard established in *Duick* has not been met in either Petition. Answer at 1-2. PECO argues that the OCA and the Joint Petitioners attempt reconsideration of issues that have already been considered and decided by the Commission. Specifically, PECO states that “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.” Answer at 2.

PECO states throughout its Answer that the Petitions do not warrant reconsideration of the *June 2019 Order* under the *Duick* standard because they simply reiterate the positions of the OCA and Joint Petitioners and raise the same questions set forth in the record developed in this proceeding. PECO reasons that because the Commission specifically considered and decided against them in the *June 2019 Order*, the Petitions do not warrant reconsideration. However, PECO does take note of the Petitions’ interest in additional collaboration and review and believes it would be beneficial to hear the views of other parties regarding the Commission’s modifications before it finalizes its compliance filing. Answer at 2.

The arguments of the OCA and the Joint Petitioners on each of the issues presented in the Petitions, along with PECO’s answer thereto and the dispositions related thereto, are discussed in seriatim below.

## Issues for Which Reconsideration and/or Clarification Is Not Warranted

As stated, Petitions for Reconsideration and Clarification are governed by the standards of *Duick*. Those standards essentially require a two-step analysis. *See* *Pa. PUC, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania, Inc.*, Docket No. M-2014-2306076 (Order entered December 18, 2014) (*Columbia Gas*). First, the Commission will determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. *Columbia Gas.* The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. *Columbia Gas*.

While we normally address reconsideration issues starting with those matters where we grant consideration, we will not do so in this case for ease of the reader given the matters raised by the Parties on reconsideration. Since we are asked to reconsider the general issue of whether the Commission has the authority to approve the program, and given our determination on that issue, we will address all of the issues in which we reach the same outcome before addressing the other issues where we reach a different determination.

### Commission’s Authority to Approve an Advance Payment Program

#### Joint Petition

The Joint Petitioners request reconsideration of the Commission’s approval, in its entirety, of a modified version of PECO’s Prepay Petition in the *June 2019 Order*. The Joint Petitioners assert that the Commission lacks the authority to approve a pilot program for the implementation of prepaid electricity service for residential customers because doing so could deprive residential customers of their statutory rights pursuant to Chapters 14, 15, and 28 of the Code. Joint Petition at 6-8.

The Joint Petitioners reiterate arguments made in their Exceptions and throughout the evidentiary record of this proceeding, asserting that customers or applicants who volunteer for a prepayment program, pursuant to Section 56.17 of the Commission’s Regulations, will lose access to certain existing protections under Chapter 14 of the Code and will be required to pay for service upfront, rather than having at least 20 days, after the utility issues a bill, to pay for service, as Chapter 15 of the Code requires. Joint Petition at 8 (citing 66 Pa. C.S. §§ 1401 *et seq.*, 1509). Furthermore, the Joint Petitioners posit that the prepay metering pilot program, notwithstanding the Commission’s modifications, may pose a risk to tenants, entitled by law to the protections under Chapter 15, Subchapter B of the Code, resulting from a landlord’s decision to enroll in the pilot. Joint Petition at 8 (citing 66 Pa. C.S. §§ 1521-1533). The Joint Petitioners add that approval of a pilot program for the implementation of prepaid electric service could deprive residential customers of such aforementioned statutory rights under Chapters 14 and 15 of the Code, eroding the quality of service available to residential customers, and would thus, conflict with the customer service standard set forth in the Electric Generation Customer Choice and Competition Act. Joint Petition at 8 (citing 66 Pa. C.S. § 2807(d)).

#### PECO’s Answer

In its Answer, PECO refutes the Joint Petitioners’ argument that the prepaid metering pilot program approved by the Commission could deprive residential customers of their statutory rights. PECO indicates that the *June 2019 Order* layered in additional protections of consumer rights, the first of which is the modification to require automatic reversion to standard service. This modification was proposed and supported by the Joint Petitioners’ witnesses during the course of this proceeding. Answer at 3-4. Furthermore, the Joint Petitioners reference the Commission’s comments in the *June 2019 Order*, which state that this first modification “restores the full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s regulations.” Answer at 4-5 (citing *June 2019 Order* at 85). Since the Joint Petitioners, as well as other parties, recommended this modification, PECO contends that the Joint Petitioners cannot now be allowed to insist that the Commission reconsider and find that this modification violates the law. Answer at 4.

PECO retorts that the Commission has not overlooked arguments suggesting that PECO’s prepaid metering pilot program conflicts with the provisions of Chapters 14, 15, and 28 of the Code, but fully considered and evaluated them throughout the *June 2019 Order*,[[6]](#footnote-7) ultimately determining that PECO’s pilot, with the modifications, does not violate other provisions of the law. Answer at 4-5.

#### Disposition

Initially, we must address the Joint Petitioners’ argument that such a pilot program for the implementation of prepaid electric service for residential customers, notwithstanding the modifications required by the *June 2019 Order*, is legally deficient in that: (1) it conflicts with customer protections provided for in Chapter 14 of the Code; (2) it fails to comply with billing procedures outlined in Chapter 15 of the Code, 66 Pa. C.S. § 1509; (3) it conflicts with Chapter 15, Subchapter B of the Code by possibly creating additional barriers for tenants seeking to exercise their statutory rights; and (4) it is therefore, contrary to the customer service standard set forth in Chapter 28 of the Code, 66 Pa. C.S. § 2807(d). Based on these arguments and the ensuing allegation, calling into question the legal authority of the Commission to approve a prepaid metering program, the Joint Petitioners request that we reverse our judgement and reinstate the ALJ’s recommendation to reject PECO’s Prepay Petition in its entirety.

We decline to grant the Joint Petitioners request because the arguments do not meet the *Duick* standard. The Joint Petition itself points out that the Parties presented arguments, during the course of the proceeding, on why a prepaid metering pilot program contradicts various statutory provisions governing residential electric service, which we discussed at numerous places throughout the *June 2019 Order*. *See e.g. June 2009 Order*, slip op. at 83-85.

PECO’s proposed pilot program, was filed containing the following consumer protections:

* 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 the 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 Exc. at 2. The above consumer protections were approved in the *June 2019 Order*.

Additionally, our *June 2019 Order* directed additional modifications to the pilot program, as set forth on pages 85 through 86, to address the shortcomings raised by the Parties during litigation and to ensure full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations to the participants, by either modifying or including additional program requirements. *June 2019 Order* at 85-86. Given the modifications to the pilot program to ensure full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations to the participants and the new technical capabilities presented by the use of smart meters, we stated 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.” *June 2019 Order* at 84-85.

It is clear that the Commission deliberately considered, not only whether the pilot program was in compliance with relevant provisions of the Code and Commission Regulations, but whether it was in the public interest to allow such a program to be available. The Joint Petitioners, as well as other parties, raised this issue during litigation and exercised their opportunity to express concern that employing a prepaid metering pilot program would jeopardize existing statutory and regulatory protections. Based on these considerations this aspect of the Joint Petition fails the *Duick* standard.

As previously indicated, the required modifications set forth on pages 85 through 86 of our *June 2019 Order* address the shortcomings of PECO’s originally proposed pilot program to ensure full consumer protections are maintained. We acknowledge, however, that PECO must elect to take advantage of the opportunity to implement the modified version of its pilot program.

### Other Issues

#### Moderate-Income Customers (Income Between 150% - 300% of the FPIG)

1. **The Petitions**

PECO’s Prepay Petition, as originally filed, required that a customer or applicant be non-low-income (defined in the Regulations as “an individual who has an annual household gross income greater than 150% of the [FPIG]”) in order to be eligible to participate. 52 Pa. Code § 56.17(3)(i). During litigation, the Parties argued that customers with income between 150% and 300% of the FPIG are economically vulnerable and should not be allowed to participate in the pilot.

The *June 2019 Order* resolved the issue 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.

*June 2019 Order* at 86.

Both Petitions claim that the Commission overlooked their arguments on moderate-income customers and reiterate the general arguments of economic vulnerability, explaining that households up to 300% of the federal poverty level most often struggle to meet their basic needs and would be uniquely vulnerable to the harms associated with the prepaid metering pilot program. OCA Petition at 8-9; Joint Petition at 13-15. Additionally, the Joint Petitioners accuse the Commission of overlooking our previously voiced concern that the General Assembly intended to exclude a broader category of low-income customers from prepayment metering payment arrangements, specifically those at or below 250% of the federal poverty level.[[7]](#footnote-8) Therefore, the Joint Petitioners assert that the Commission should reconsider this aspect of its *June 2019 Order* and raise the income threshold, at the very least, to 250% of the federal poverty level, consistent with the income threshold for the winter moratorium. Joint Petition at 15.

In a related argument, the Joint Petitioners also argue 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.” Joint Petition at 15. As such, the Joint Petitioners request that the Commission reconsider its decision to allow the program to move forward without requiring PECO to verify the income of its participants. Joint Petition at 16.

1. **PECO’s Answer**

PECO retorts that the Petitions do not demonstrate that reconsideration of this issue is warranted, since the Commission has considered the arguments regarding whether moderate income customers should be considered eligible to participate in the pilot, and has stated that it is “keenly aware” of the concerns raised by the parties, and instructed PECO as to how it expects PECO to handle participants from this income tier. Answer at 7.

PECO responds to the Joint Petitioners’ argument regarding ongoing determination of low-income status by noting that, although the ALJ briefly addressed this issue in Finding of Fact No. 20[[8]](#footnote-9) and Finding of Fact No. 90,[[9]](#footnote-10) no party preserved or presented this issue for Commission consideration by raising it in exceptions or reply exceptions. Answer at 8-9.

Furthermore, PECO reiterates statements made in the testimony of its witness, Mr. Scarpello, and its Main Brief, indicating that PECO will inquire as to the income level of each customer or applicant during the intake process and may be made aware if a participant becomes low-income during the course of the pilot through various communications, which Mr. Scarpello considers to be “a robust and detailed process.” Answer at 7-8. PECO notes the 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.” Answer at 8.

#### Use of Security Deposits

1. **OCA Petition**

The OCA requests that the Commission reconsider its disposition in the *June 2019 Order* regarding the third modification required by the Commission, which states 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.

*June 2019 Order* at 85.

The OCA reiterates the arguments presented throughout the evidentiary record and its Reply Exceptions, maintaining its concern with PECO’s proposal that customers with existing deposit credits be required to transfer them to participate in the pilot program, especially given that PECO reserves its right to require a security deposit from a customer who returns to standard service. OCA Petition at 6-7.

The OCA contends that the Commission has overlooked its arguments and required modifications to PECO’s proposed pilot program that fail to remove the barriers faced by payment-troubled customers who will be required to pay the security deposit to return to standard service. Therefore, the OCA maintains that existing deposits should not be utilized as a payment mechanism for the pilot program. *Id*.

1. **PECO’s Answer**

In its Answer, PECO avers that OCA’s argument fails to meet the *Duick* standard for reconsideration, regarding the use of security deposits, because it simply reiterates the position that the OCA set forth in the record developed in this proceeding. Answer at 13-14. PECO points specifically to pages 25 through 29 of the *June 2019 Order*, which discussed the issue at length, contending that the Commission has not overlooked the OCA’s arguments, but carefully evaluated those arguments, and decided to allow such a use of existing security deposits, with modification. Answer at 13.

#### Non-Ratepayer Occupants

1. **Joint Petition**

The Joint Petitioners aver that, despite PECO’s intended process to screen out tenant occupied accounts and the modification to require automatic reversion to standard service, a concern, overlooked by the Commission, remains that the modified pilot program set forth in the *June 2019 Order* fails to protect tenants dwelling with landlords. 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 it becomes aware that a participant is a non-occupant landlord. Joint Petition at 16-17.

1. **PECO’s Answer**

In its Answer, PECO avers that the Joint Petition, once again, fails to meet the *Duick* standard for reconsideration or clarification because it simply reiterates the Joint Petitioners’ position and arguments set forth in the record developed in this proceeding. Moreover, PECO cites to the *June 2019 Order*, which specifically found that the modification to automatically revert a participant back to “standard terms and conditions, including but not limited to, the traditional termination procedures,” should they have failed to replenish their prepaid account, “protects the non-ratepayer occupant of a dwelling from experiencing a shut-off for which they had no warning.” Answer at 11 (citing *June 2019 Order* at 85). PECO explains that non-ratepayer termination procedures are part of the Code at 66 Pa. C.S. §§ 1521-1533, and therefore are part of the “traditional termination procedures” referred to by the Commission. As such, there is no clarification needed that a return to standard service includes all of the protections accorded to tenants by 66 Pa. C.S. §§ 1521-1533. Answer at 11-12.

PECO further contends that the Joint Petitioners have not provided any basis for the Commission to reconsider its *June 2019 Order*, since its intake process adequately addresses non-ratepayer participation in the pilot. Referencing its pilot participation intake process, as outlined in its Main Brief, PECO asserts that its intake screening process, which is already a component of its proposed pilot, will effectively screen out non-ratepayer participants and exclude non-occupant landlords from pilot participation. Answer at 12-13 (citing PECO M.B. at 9, Proposed Finding of Fact No. 21).

#### Payment Arrangements

1. **Joint Petition**

PECO’s Prepay Petition, as originally filed, made 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, would be eligible to participate, but 25% of each prepayment would be applied toward reducing the customer’s arrearage, and the remaining 75% would be applied toward the participant’s future usage. The Joint Petition recalls the arguments made during litigation 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. The Joint Petitioners maintain their contention that the requirement that 25% of all payments go to reduce arrearages falls

short of meeting the statutory requirements of Chapter 14 of the Code, noting the special payment arrangement rules for those households under 300% of the federal poverty level. Joint Petition at 22.

The *June 2019 Order* resolved the issue as follows:

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.

*June 2019 Order* at 86-87 (citations omitted).

The Joint Petitioners once again claim that the Commission overlooked their arguments made during the course of the proceeding, asserting that PECO cannot prevent consumers from accessing statutorily prescribed payment arrangements. Joint Petition at 22. The Joint Petitioners therefore suggests that PECO be required to (1) ensure that prepaid metering pilot program participants with arrearages are only allowed to enroll if the payment arrangement option that the program provides is the most advantageous to that customer, (2) provide information to potential participants about all of the payment arrangement options that are potentially available to them, including Commission-issued payment arrangements pursuant to Sections 1405 and 1407 of the Code, and (3) include information about Commission-issued payment arrangements on all prepaid metering pilot program notices, consistent with 52 Pa. Code § 56.91(b), as well as any educational or outreach materials. Joint Petition at 22-23.

1. **PECO’s Answer**

In its Answer, PECO refutes the claim that the Commission “overlooked” the record evidence and contends that the Joint Petitioners simply re-argue the payment arrangement issue by reiterating the same arguments that were made in their testimony and briefs. Therefore, PECO asserts that the Joint Petition fails to meet the legal standards for reconsideration because the issue of payment arrangements, about which the Joint Petitioners complain, is one that was squarely presented by the Joint Petitioners and fully considered in the Commission’s *June 2019 Order*. Answer at 5-7.

#### Data Collection

1. **Joint Petition**

The Joint Petitioners’ request for reconsideration is also based on their contention that “the Commission does not require the collection of participant income information” as part of the prepaid metering pilot program, as modified by the *June 2019 Order*. Joint Petition at 23. The Joint Petitioners note the importance of collecting income information, asserting that the income of participant households is a critical piece to evaluating the success, or lack thereof, of PECO’s prepaid metering pilot program. Joint Petition at 23-24.

The Joint Petitioners also request that PECO should be required to collect income data of participants at key points throughout the program: (1) at the time of enrollment; (2) if and/or when the participant is returned to standard service; (3) if the participant enters the grace period on two or more occasions within a six-month period; and (4) at regular annual intervals. The Joint Petitioners request that they be given access to the “raw data to enable independent evaluation and 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. Joint Petition at 24-25.

1. **PECO’s Answer**

PECO retorts that the Joint Petitioners do not demonstrate that reconsideration of this issue is warranted. PECO points out that the Joint Petitioners acknowledge that they previously presented these arguments in the Main Brief of CAUSE-PA at page 40. Answer at 14 (citing Joint Petition at 24). PECO refers to the ALJ’s Recommended Decision regarding the Joint Petitioners specific requests, wherein the ALJ denied such requests because the record evidence did not support them. Answer at 15 (citing R.D. at 79). PECO explains that since no party preserved or presented this issue for Commission consideration by raising it in exceptions or reply exceptions, nor did the Joint Petitioners point to any record evidence that was “overlooked” by the ALJ or the Commission, reconsideration of this issue is not warranted. Answer at 15.

Moreover, PECO states that the Joint Petitioners are simply incorrect when they claim that PECO will not collect income data. PECO explains that its initial Prepay Petition included a proposal to collect income information both as part of the intake process and as part of its evaluation process. PECO therefore contends that since none of the Commission’s modifications contained in its *June 2019 Order* pertain to the collection of income data, PECO’s collection of income data at intake and income data and household size information for evaluation was therefore approved by the *June 2019 Order*. Answer at 14.

#### Combined Disposition

Based on our review of the Petitions, and in consideration of the record in this proceeding, we shall additionally deny the Petitions with respect to the Parties’ requested reconsideration of the following issues:

1. That the Commission should require PECO to limit program eligibility to customers and applicants with incomes above 300% of the federal poverty level and require PECO to verify the income of program participants;
2. That existing security deposits should not be eligible for application to the prepaid metering pilot program;
3. That the Commission should require PECO to fully comply with Chapter 15, subchapter B of the Code, which protects tenants from a landlord’s nonpayment of service;
4. That the protections of Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations relating to payment arrangements will not be provided to participants of the program due to the pilot’s payment arrangement provision; and
5. That the pilot program should not be allowed to move forward without requiring PECO to verify the income of its participants. Reiterating further arguments from its Main Brief, the Joint Petitioners state that PECO should be required to collect this data at key points throughout the program and share the data with stakeholders regularly.

We find that the arguments of the OCA and Joint Petitioners in support of their requests for reconsideration of the five issues listed above are not new, novel, overlooked or otherwise not addressed by our *June 2019 Order*. Essentially, the Parties’ Petitions on these issues amount to “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” In their Petitions, regarding these issues, the OCA and the Joint Petitioners sought what *Duick* and *Pennsylvania Railroad Co.* expressly deny: a second review of questions definitively decided in our *June 2019 Order*.

In addition, the Joint Petitioners failed to raise and preserve two arguments in their exceptions, specifically (1) the claimed inadequacy of PECO’s low-income verification procedures; and (2) the claimed insufficiencies in PECO’s method of collecting income and household size data for evaluation. In the interest of judicial economy, this Commission has held that we will not grant reconsideration when a party fails to preserve issues in exceptions, resulting in a waiver of those arguments. See *HIKO Energy, LLC v. Pa. Public Utility Commission*, 209 A.3d 246, 263 (Pa. 2019).

## Issues Warranting Reconsideration and/or Clarification and Disposition

Notwithstanding the foregoing, upon review of the Petitions and PECO’s Answer thereto, we believe the following specific aspects of our *June 2019 Order* warrant the requested reconsideration and/or clarification.

### Five-Day Grace Period and Termination Process

#### The Petitions

Both the OCA and the Joint Petitioners request that the Commission reconsider and/or clarify its disposition in the *June 2019 Order* regarding the first modification required by the Commission, which states 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 customer protections in Chapter 14 of the Code and Chapter 56 of the Commissions regulations to the participants. It also protects the non-ratepayer occupants of a dwelling from experiencing a shut-off 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.

*June 2019 Order* at 85. The Parties generally support this modification to PECO’s Prepay Petition, which originally proposed that as a condition of the program, participants must agree that failure to replenish their prepayment account, resulting in a zero balance, would constitute a request for discontinuance of service and ultimately result in the participants service being remotely disconnected following a five-day grace period. However, the OCA and the Joint Petitioners submit that the Commission’s statement that a five-day grace period may be the first five days of the 10-day termination process is inconsistent with the standard requirements for billing and termination under Chapter 56 of the Commission’s Regulations. The OCA and the Joint Petitioners contend that, pursuant to Chapter 56, a participant returning to standard service must first be issued a bill and be given at least twenty days to pay the bill before the termination process can begin, which includes offering the customer a payment arrangement and information about enrollment in universal service programs in order to avoid termination as part of the 10-day termination notice. OCA Petition at 4-5; Joint Petition at 20-21 (citing 52 Pa. Code §§ 56.11, 56.21, and 56.91).

The Joint Petitioners explain that a participant that is returned to standard service after a five-day grace period for failure to replenish their prepayment account is just five days into their first standard billing cycle and would not yet have received a bill for the five days of service that they failed to pay. Therefore, a customer cannot be considered delinquent until after they fail to pay their next bill. As such, the Joint Petitioners request that the Commission clarify and provide clear instruction that, upon return to standard payment terms, a consumer must be treated as a new or returning standard payment customer, subject to all of the provisions of the Code and the Commission’s Regulations governing billing, credit, and collections – including receipt of an initial bill with an appropriately calculated due date, followed by any credit and collections activities that may later become warranted if the customer becomes delinquent on their standard bill. Joint Petition at 20-21.

#### PECO’s Answer

PECO does not directly respond to or refute the arguments of the OCA and Joint Petitioners in support of their requests for reconsideration and/or clarification of the conclusion that the five-day grace period may constitute the first five days of the traditional 10-day termination notice period. PECO simply indicates that it has not yet determined whether it will move forward with a prepaid pilot, as modified by the *June 2019 Order*, and requests additional time to further review its IT systems and termination procedures, as well as discuss this issue in a collaborative fashion with the other parties. Answer at 16.

#### Disposition

Regarding the five-day grace period as the start of the ten-day termination notice, we shall grant reconsideration. According to the arguments set forth in the Petitions, the *June 2019 Order* erred when it modified PECO’s Prepay Petition to allow the five-day grace period under the program to be the first five days in the traditional ten-day termination process if a written notice was issued. OCA Petition at 4-5; Joint Petition at 20-21. Per our *June 2019 Order*, this modification was intended to restore “the full consumer protections in Chapter 14 of the Code and Chapter 56 of the Commission’s regulations.” *June 2019 Order* at 85. Based on our review of the record, the Petitions and PECO’s Answer, we agree that reconsideration is warranted in order to preserve such protections and the intention of this modification. We recognize that the process of returning a consumer to standard payment terms and conditions includes the requirement that the customer be issued a bill, pursuant to 52 Pa. Code § 56.11,[[10]](#footnote-11) and be given at least twenty days to pay the bill before the termination process can begin. We agree with the OCA and Joint Petitioners and will modify the *June 2019 Order* to require that a participant, upon returning to standard payment terms and conditions, must be treated as a returning standard payment customer, subject to all the provisions of the Code and the Commission’s Regulations governing billing, credit, and collections, including receipt of a standard bill with an appropriately calculated due date, followed by any credit and collections activities that may later become warranted if the customer becomes delinquent on their standard bill.

### Proposed Collaborative and Review Procedure

#### The Petitions

Both the OCA and the Joint Petitioners submit that a compliance filing, incorporating the modifications as required by the *June 2019 Order*, does not provide adequate time and process to evaluate and determine whether the terms and conditions of any revised pilot program that PECO may file are consistent with the Commission’s *June 2019 Order* and applicable laws. OCA Petition at 3-4; Joint Petition at 9-13. In the alternative to a compliance filing, which would provide parties with just ten days to review PECO’s revised pilot program and submit exceptions thereto,[[11]](#footnote-12) the Petitions generally suggest three modifications: (1) that this matter should be referred back to the Office of Administrative Law Judge (OALJ) 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 ten days to analyze and respond to PECO’s compliance filing. *Id*. The OCA suggests that this matter should be re-assigned to the OALJ for further hearings to “allow the parties to ensure that all applicable consumer protections are being fully implemented under any new program.” OCA Petition at 4. Similarly, the Joint Petitioners suggest “a process for additional investigation and review” to determine whether the Commission’s modifications are consistent with consumer protections. Joint Petition at 9. The Joint Petitioners additionally request that, as part of their suggested process for additional investigation and review, the Commission should set forth “clear and specific requirements for PECO to engage in a robust stakeholder process from development through implementation,” which “would help ensure that the collaborative process is meaningful, and will help shield customers from harm.” Joint Petition at 10-13.

#### PECO’s Answer

As previously indicated, PECO does not believe that reconsideration is appropriate for any of the issues raised by either the OCA or the Joint Petitioners; however, PECO notes that it does support their requests that the Commission provide adequate time and process to review PECO’s revised pilot program, especially considering the time needed to fully vet the five material modifications to PECO’s initial proposal required by the *June 2019 Order*. Answer at 2, 18-21; *June 2019 Order* at 85‑86.

As to the suggestion of additional hearings, PECO asserts that this request is not warranted because: (1) all of the parties have already presented testimony on the major modification to require automatic reversion to standard service, which was, in fact, supported by the OCA and Joint Petitioners’ witnesses; and (2) PECO believes that collaborative discussions concerning the inclusion of the five-day grace period within the ten-day termination notice period will be more effective than additional litigation. Answer at 19-20.

Acknowledging the usefulness of collaborative discussions regarding the modifications set forth in the *June 2019 Order*, PECO’s Answer sets forth the scope, nature and timing of the collaborative and review process that it believes is warranted. Answer at 18-21. Specifically, PECO requests that the Commission: (1) allow the stakeholders a six-month period after the Commission issues its Opinion and Order on Reconsideration to collaboratively discuss implementation of the Commission’s five modifications; (2) require PECO to make a compliance filing sixty days after the end of the discussion period (that is, eight months after the issuance of the Commission’s forthcoming Opinion and Order on Reconsideration); (3) allow the other parties thirty 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 (4) allow PECO fifteen days to file reply exceptions.[[12]](#footnote-13) Answer at 20-21.

#### Disposition

In our opinion, the first prong of the *Duick* analysis has been satisfied with regard to the OCA’s and Joint Petitioners’ concern regarding adequate time and process to review any revised program that PECO may propose in its compliance filing.[[13]](#footnote-14) Consistent with our discussion in the *June 2019 Order* and our belief that a prepaid metering pilot program should be given an opportunity to proceed, we will grant the Petitions to the extent that the petitioning parties request a process for additional review and input into PECO’s future compliance filing consistent with the modifications set forth in the *June 2019 Order* and herein; however, such an informal process to help PECO shape the compliance filing should not be used as an opportunity to re-argue, re-negotiate, re-litigate or otherwise reconsider issues that the Commission has already decided.

In our view, and in consideration of PECO’s persuasive arguments, it is appropriate to use a collaborative process, where the parties are given an opportunity to work out their differences in shaping PECO’s upcoming compliance filing. We believe the use of a collaborative process during the preparation of PECO’s compliance filing, as well as during the implementation of any Commission-approved pilot program, will be beneficial for expeditiously identifying and resolving issues, including those that may arise during the two-year pilot. Consequently, we expect that PECO will meet with stakeholders, as needed, throughout the duration of the pilot to allow for appropriate monitoring of the program and, where appropriate and possible, swift resolution of any issues which may be revealed by the collected data. As we will not micro-manage the Company’s compliance efforts, PECO will be responsible for determining the topics to be covered in stakeholder meetings and all other aspects of the on-going stakeholder process. As stated above, we agree with PECO 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.

We are of the opinion that our directive that PECO work collaboratively with the interested stakeholders is in the best interest of PECO’s customers and all Parties involved, as it may potentially avoid further litigation expense and further delay of this proceeding. The schedule that we have established in the Ordering Paragraphs of this Opinion and Order should allow for sufficient investigation and review of the pilot to determine whether the terms and conditions are consistent with the *June 2019 Order*, as well as the modifications and clarifications set forth in this Opinion and Order.

### Third-Party Fees

#### The Petitions

Both the OCA and the Joint Petitioners request that the Commission reconsider and/or clarify its disposition in the *June 2019 Order* regarding the fifth

modification required by the Commission, which states that PECO’s compliance filing must:

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

*June 2019 Order* at 86. The OCA and the Joint Petitioners reverberate the common contention that transaction fees combined with the potential for multiple payments each month may lead to higher costs under a prepaid metering pilot program than those associated with traditional post-pay service. OCA Petition at 7-8; Joint Petition at 19-20. Therefore, the OCA 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 clarify that it is also prohibiting third-party fees. OCA Petition at 7-8. Likewise, the Joint Petitioners 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. Joint Petition at 19-20.

#### PECO’s Answer

PECO asserts that it does not believe reconsideration on this issue is warranted. PECO refutes the Parties’ claim that the Commission overlooked the arguments on this issue, submitting that the *June 2019 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, the Commission would have said so explicitly. Nevertheless, considering the level of disagreement as to the meaning of the *June 2019 Order*, PECO agrees that, in its forthcoming Order on Reconsideration, the Commission should clarify its intention with respect to third-party transaction fees. Answer at 10-11.

#### Disposition

Our *June 2019 Order* requires PECO to modify its pilot to “[e]nsure that there is no PECO-initiated fee for payments made on the website or customer portal.” Based on the ambiguity raised in the Petitions, for this directive in our *June 2019 Order* we will provide clarification. However, such clarification, as discussed below, does not amend the *June 2019 Order*.

Regarding transaction fees, the OCA and the Joint Petitioners reiterate their prior arguments in this proceeding that any transaction fee incurred by the customer for participating in the prepaid pilot program is harmful. The ALJ disagreed, and we partially reversed the ALJ’s recommendation by placing a restriction on PECO-initiated transaction fees. Thus, reconsideration of the *June 2019 Order* on this issue is not warranted; however, as clarification, we note that the restriction imposed on PECO-initiated fees was not intended to require PECO to waive credit card and bank fees charged by third parties. Rather, PECO will be required to waive transaction fees initiated by PECO (on behalf of itself or its vendors or other agents). The goal of this pilot program, as modified by the *June 2019 Order*, is to test and provide data about how a permanent program may impact customers, including, *inter alia*, the potential cost impact on customers. While such pilot data will better inform PECO, the Parties and this Commission about the potential cost impact on PECO and participants in the program, we note that should PECO be required to waive all third-party transaction fees for participants, and recover such costs from all ratepayers, the total costs would likely be substantial over time. No evidence has been presented to demonstrate that such a path forward is in the public interest.

### Protections for Participants Under Protection from Abuse Orders

#### Joint Petition

The Joint Petitioners request that the Commission clarify its disposition in the *June 2019 Order* regarding the fourth modification required by the Commission, which states 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.

*June 2019 Order* at 86.

The Joint Petitioners request clarification that this section of the *June 2019 Order* applies to “all survivors of domestic violence covered by section 1417,” claiming that in specifying a potential participant’s holding of a PFA order, the Commission’s disposition in the *June 2019 Order* overlooks other court orders, providing clear evidence of domestic violence against the applicant or customer, and overlooks the additional relief, beyond the additional payment plan options, which may be entitled to those participants with a PFA or other court orders. Specifically, the Joint Petitioners indicate that survivors of domestic violence with an appropriate court order are also entitled to additional notice of termination throughout the whole year and are not liable for and cannot be terminated for arrears accrued in someone else’s name. Joint Petition at 18 (citing 52 Pa. Code §§ 56.335, 56.285, 56.323).

Additionally, the Joint Petitioners assert that the *June 2019 Order* fails to specify the manner and method of notice provided to victims of domestic violence with an appropriate order and requests that PECO be required to provide such potential participants with information about several of the protections available. Joint Petition at 18-19.

#### PECO’s Answer

PECO argues that its understanding of the fourth modification in the *June 2019 Order* is that it is applicable to all survivors of domestic violence covered by Section 1417 of the Code and no clarification is required; however, PECO states that it “does not object to the Commission so stating.” Answer at 17. PECO further indicates its desire 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. Answer at 18.

#### Disposition

Upon review of the Petitions and PECO’s Answer thereto, we believe that the first prong of the *Duick* analysis has been satisfied with regard to the aspect of our *June 2019 Order* requiring that PECO’s compliance filing must provide that “customers holding an active protection from abuse order…be informed of their other payment plan options….” For this directive in our *June 2019 Order* we will, therefore, provide clarification and amend the *June 2019 Order* in accordance with the discussion below.

Regarding protections for victims of domestic violence, while we find reconsideration is not warranted, we will provide clarification. The modification to PECO’s pilot program in the *June 2019 Order* was intended to be applicable to all victims of domestic violence covered by Section 1417 as well as to inform them of all existing protections. Accordingly, we shall amend Ordering Paragraph No. 7(d) of the *June 2019 Order* by replacing “Customers holding an active protection from abuse order” to “All victims of domestic violence subject to 66 Pa. C.S. § 1417” and we shall include additional language about such customers being informed of protections available to them under Chapter 56, Subchapters L through V, as shown below:

1. ~~Customers holding an active protection from abuse order~~ All victims of domestic violence subject to 66 Pa. C.S. § 1417 are eligible for the prepaid metering pilot program but must be informed of their other payment plan options and the protections made available to them at Chapter 56, Subchapters L through V, of the Commission’s Regulations, in order to determine which option may be the best choice for them;

We reiterate that the approval of a prepaid metering pilot program is not intended to circumvent or reduce the consumer protections to which customers are now entitled, including those applicable to victims of domestic violence, as defined by the Code. We direct the stakeholders meetings, as discussed below, to address methods of how to best notify participants of the protections provided to victims of domestic violence subject to 66 Pa. C.S. § 1417, including those protections made available under Subchapters L through V of Chapter 56 as set forth in 52 Pa. Code § 56.251.

# Conclusion

Based upon the foregoing discussion, we shall (1) grant, in part, and deny, in part, the OCA’s Petition for Reconsideration, consistent with this Opinion and Order; (2) grant, in part, and deny, in part, CAUSE-PA/TURN *et al.*’s Joint Petition for Reconsideration and/or Clarification, consistent with this Opinion and Order; (3) amend and clarify our *June 2019 Order* consistent with the discussion set forth in this Opinion

and Order; and (4) rescind and revise the pertinent Ordering Paragraphs of our *June 2019 Order* consistent with the discussion set forth in this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed by the Office of Consumer Advocate on July 3, 2019 regarding the Commission’s Opinion and Order entered herein on June 18, 2019, is granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Joint Petition for Reconsideration and/or Clarification filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia on July 3, 2019 regarding the Commission’s Opinion and Order entered herein on June 18, 2019, is granted, in part, and denied, in part, consistent with this Opinion and Order.
3. That Ordering Paragraph No. 7 of the Opinion and Order entered on June 18, 2019, in the above-captioned proceeding is modified, as follows:

That within eight (8) months (240 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, as well as portions of the Opinion and Order entered on June 18, 2019, in this docket and not modified by this Opinion and Order, which creates a modified prepaid metering pilot program consistent with the following terms and conditions:

1. 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;
2. 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;
3. 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;
4. All victims of domestic violence covered by 66 Pa. C.S. § 1417 are eligible for the prepaid metering pilot program but must be informed of their other payment plan options and the protections made available to them at Chapter 56, Subchapters L through V, of the Commission’s Regulations, in order to determine which option may be the best choice for them;
5. PECO Energy Company may not initiate a fee for prepaid metering pilot program payments made on the website or customer portal.
6. That, in accordance with this Opinion and Order, for the purpose of developing a pilot plan consistent with the established parameters and applicable laws, PECO Energy Company shall have six (6) months (180 days) from the date of entry of this Opinion and Order to meet with interested parties and engage in collaborative discussions. PECO Energy Company shall have sixty (60) days from the end of the six-month discussion period to file the pilot plan referred to in Ordering Paragraph No. 4, above.
7. That the parties shall have thirty (30) days from the date that PECO Energy Company files the pilot plan referred to in Ordering Paragraph No. 4, above, to file Exceptions, with the scope of those Exceptions limited per 52 Pa. Code § 5.592(c), and fifteen (15) days from the date Exceptions are due to file Reply Exceptions.
8. That, except as otherwise subsequently clarified and/or amended consistent with this Opinion and Order, our Opinion and Order entered on June 18, 2019, remains in full force and effect.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 19, 2019

ORDER ENTERED: December 19, 2019

1. By Opinion and Order entered July 11, 2019, in the above-captioned docket, we granted the Petitions pending further review of, and consideration on, the merits. [↑](#footnote-ref-2)
2. A more complete discussion of the history of this proceeding is presented in the *June 2019 Order*. [↑](#footnote-ref-3)
3. 52 Pa. Code § 52.17(3)(i); 56 Pa. Code § 56.17(3)(iii)(B); 52 Pa. Code § 56.53(c). [↑](#footnote-ref-4)
4. On July 3, 2019, the Joint Petitioners also filed a Petition for a Stay (Petition for Stay) of the *June 2019 Order*. By Opinion and Order entered August 8, 2019 (*August 2019 Order*), we granted the Petition for Stay until such time that a final Order is entered in this docket that resolves the issues raised in the Petitions for Reconsideration and potentially establishes a new timeline for a future PECO compliance filing. *August 2019 Order* at 4-5. [↑](#footnote-ref-5)
5. *See*, *supra*, n. 4. Since the Petitions for Reconsideration address numerous pilot program components that would need to be addressed in PECO’s August 19, 2019 compliance filing, the Joint Petitioners’ Petition for Stay was granted by our *August 2019 Order*, staying the implementation of the *June 2019 Order* until the resolution of the issues raised in the Petitions for Reconsideration. [↑](#footnote-ref-6)
6. PECO notes that the Commission discussed the Chapter 14, 15, and 28 claims at numerous places throughout the *June 2019 Order*, including pages 30, 38, 50‑52, 56, 61, and 68, which discuss claims involving Chapter 14, pages 12-13, 37, 65‑67, and 70, which discuss claims involving Chapter 15, and pages 52-53, and 74-83, which discuss claims involving Chapter 28. Answer at 4. [↑](#footnote-ref-7)
7. *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*). [↑](#footnote-ref-8)
8. Finding of Fact No. 20 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 the volunteer will be informed that they are not eligible to participate.” [↑](#footnote-ref-9)
9. Finding of Fact No. 90 discusses the allegations that the income verification procedures are “unclear.” [↑](#footnote-ref-10)
10. 66 Pa. C.S. § 1509 also states that “[a]ll customers shall be permitted to receive bills monthly and shall be notified of their right thereto.” [↑](#footnote-ref-11)
11. 52 Pa. Code § 5.52(c). [↑](#footnote-ref-12)
12. PECO notes that neither the collaborative discussions nor the exceptions to the compliance filing should be viewed as an opportunity to re-argue, re-negotiate, re-litigate, or otherwise reconsider issues that the Commission has already decided. Answer at 2, 20-21. [↑](#footnote-ref-13)
13. Under the Commission’s standard regulatory timeline, 52 Pa. Code § 5.592(c), the parties would be allowed ten days to respond to the compliance filing. [↑](#footnote-ref-14)