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November 6, 2020

VIA e-FILING

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

**Re: Public Utility Service Termination Proclamation of Disaster Emergency-
COVID-19
Docket No. M-2020-3019244**

Dear Secretary Chiavetta:

Enclosed please find the **Answer of PECO Energy Company to Joint Petition of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania For Clarification of the Commission's October 13, 2020 Order**, in the above-captioned proceeding.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,



Jennedy S. Johnson

JSJ/ab
Enclosures

cc: Per Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Service Termination :
Proclamation of Disaster Emergency - : **Docket No. M-2020-3019244**
COVID-19 :

**ANSWER OF PECO ENERGY COMPANY
TO JOINT PETITION OF TENANT UNION REPRESENTATIVE NETWORK,
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, AND
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA
FOR CLARIFICATION OF THE COMMISSION’S OCTOBER 13, 2020 ORDER**

Pursuant to 52 Pa. Code § 5.61, PECO Energy Company (“PECO”), by and through its undersigned attorneys, hereby submits this Answer to the Joint Petition (the “Joint Petition”) of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (collectively, the “Low Income Advocates”) for Clarification of the Commission’s October 13, 2020 Order.¹

I. INTRODUCTION AND BACKGROUND

On October 13, 2020, the Pennsylvania Public Utility Commission (the “Commission”) entered an Order (the “October 13, 2020 Order”), lifting the absolute moratorium on utility service terminations imposed by the Chairman’s March 13, 2020 Emergency Order and replacing it with a less restrictive phase, designated Phase 2 of the Termination Moratorium (“Phase 2”). Phase 2 puts in place “a mix of holistic, short-term and long-term solutions” which balance the need to

¹ PECO also joins in and supports the Answer of the Energy Association of Pennsylvania (“EAP”) to the Joint Petition.

protect customers who have suffered hardships as a result of the pandemic with the need to safeguard the broader public interest by reducing growing arrearages from customers who are able to pay or who could, but have not, participated in various assistance programs.

As the utility with the largest low-income population in Pennsylvania, PECO recognizes the importance of helping its customers navigate the uncertainty and hardships of the pandemic, while avoiding unnecessary growth in uncollectible expenses that would eventually be paid by its general body of customers. Even before the October 13, 2020 Order, PECO had proposed changes to its Customer Assistance Program (“CAP”) to provide greater financial assistance to low-income customers and increase enrollment. PECO also has retained 18,496 customers in CAP who could be removed for failure to provide documentary verification of their income, and PECO has proposed modifications to its Matching Energy Assistance Fund (“MEAF”) to broaden eligibility to assist more customers in crisis.

The customer protections imposed by Phase 2 of the Termination Moratorium are in addition to the foregoing actions already taken by PECO to address the impacts of the pandemic, as well as the robust pre-termination customer protections already established by the Commission’s regulations in 52 Pa. Code Chapter 56.

The Joint Petition should be denied because the provisions of the October 13, 2020 Order are clear, and the Commission acted appropriately in the public interest. In response to the August 10, 2020 Letter from Chairman Gladys Brown Dutrieuille, the Low-Income Advocates filed comments whereby they argued that, if the moratorium was lifted, certain customer protections should be adopted. The Commission, in turn, created a robust list of customer protections, which are reflected in the October 13, 2020 Order. For example, the October 13, 2020 Order, *inter alia*, requires utilities to communicate with all customers at risk of termination prior to initiating their

standard collection practices; identifies additional consumer protections for certain residential and small business customers (i.e. prohibiting service termination for residential customers at or below 300% of the federal poverty income guidelines; waiving of all late payment, connection, reconnection, and deposit fees; and providing for additional medical certificates for eligible customers); and establishes an ongoing evaluation/public comment process whereby the Commission will gather additional public input on the implementation of Phase 2 of the moratorium and to consider the need for “longer term options”. The “clarifications” that the Low Income Advocates now seek are not new or novel arguments or considerations which appear to have been overlooked by the Commission, as required by the standard set forth in Duick v. Pennsylvania Gas & Water Co., to obtain relief under Section 703(g), 66 Pa.C.S. § 703(g), but rather additional implementation steps for the requests they already made. 56 Pa.P.U.C. 553 (1992). Where, as here, the arguments advanced in support of a petition for clarification are parallel or supplemental to arguments made elsewhere in the proceeding by the petitioner, reconsideration or clarification is inappropriate. *See, e.g., Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North, LLC*, Docket Nos. C-2011-2253750, and C-2011-2253787, 2017 WL 1739467 (April 20, 2017, Pa.P.U.C.); In re Green Mountain Energy Co., Docket Nos. A-110073 and P-000119252003 WL 22880362 (Sept. 22, 2003, Pa.P.U.C.).

Furthermore, the Duick standards require a two-step analysis: first, the Commission “must 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”; then the Commission “must evaluate the new or novel argument or overlooked consideration in order to determine whether to modify its previous decision.” Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency - COVID-19: Direct Energy

Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC's Petition for Clarification or Modification, Docket No. M-2020-3019254, 2020 WL 5593144 at *7 (Aug. 27, 2020, Pa.P.U.C.). “The Commission will not necessarily modify a prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked by the Commission in its prior order.” *Id.*

In the October 13, 2020 Order, the Commission anticipated that, because of the dynamic nature of the pandemic, the protections in Phase 2 might require modification. To facilitate ongoing evaluation, the Commission convened a stakeholder process inviting comments and proposals from all interested parties regarding any revisions to the protections outlined in the Order. In requesting that comments be filed by February 16, 2021, the Commission noted that this stakeholder process would allow *both* customer and utility interests to continue to be considered.

Because the Commission has already put in place a process to consider the supplemental issues advanced by the Joint Petitioners, it would be especially inappropriate to grant reconsideration or clarification. The Joint Petition should be denied because it usurps and displaces the stakeholder process, without affording the Commission and interested parties time to evaluate the efficacy and suitability of the Phase 2 protections.

II. ANSWER TO NUMBERED PARAGRAPHS

In response to the numbered paragraphs of the Joint Petition, PECO avers as follows:

1. Admitted.
2. Admitted.
3. Admitted. By way of further answer, PECO avers that the comments submitted by the Joint Petitioners in response to the August 10 Letter requested many of the customer protections that the Joint Petition now seeks to modify.

4. Denied as stated. The Joint Petitioners' comments, being in writing, speak for themselves.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Denied as stated in part and denied in part. PECO denies that the concerns expressed by the Joint Petitioners are valid. The Order is clear in the requirements it imposes on utilities, and customers will be protected through their interactions with the utilities following the additional communication that the October 13, 2020 Order requires. The refusal of utilities to uniformly implement the additional procedures sought by the Joint Petitioners does not mean that the October 13, 2020 Order has led to uneven and unequal implementation. Rather, the programs and processes of the utilities are subject to significant variation, and a "one size fits all" approach is unworkable and impractical.

11. Denied. PECO denies that the Commission should clarify its October 13, 2020 Order and that the various harms hypothesized by the Joint Petitioners will occur absent clarification.

12. Admitted.

13. Admitted.

14. Admitted. By way of further response, PECO avers that the Joint Petition does not meet the standards set forth in Duick because it fails to raise new and novel arguments not previously heard or considerations which appear to have been overlooked by the Commission. In

addition, the Joint Petition does not plead newly discovered evidence, allege errors of law, or a change in circumstances.

15. Denied. PECO denies that the October 13, 2020 Order is appropriate for clarification. While the content of the October 13, 2020 Order could not have been known before the Order was entered, the customer protections addressed in the Order were the subject of extensive comment, including comments submitted by the Joint Petitioners themselves. The Joint Petitioners' failure to raise in their comments any potential implementation issues they considered to be critical is not a proper ground for reconsideration or clarification of the October 13, 2020 Order.

Furthermore, the October 13, 2020 Order convenes a stakeholder process to address implementation issues. The Joint Petition should be denied because it seeks to usurp and displace the stakeholder process.

16. Denied. PECO lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 16 of the Joint Petition.

17. Admitted.

18. Denied as stated. According to NEADA, only 17 states and the District of Columbia have termination moratoriums that remain in place. The other 33 states have moratoriums that have expired or never implemented state-mandated moratoriums. *See* NEADA, [Summary of State Utility Shut-Off Moratoriums Due to COVID-19](https://neada.org/utilityshutoffsuspensions/) (last updated October 19, 2020), <https://neada.org/utilityshutoffsuspensions/>.

19. Admitted. By way of further response, PECO avers that the Phase 2 customer protections and stakeholder process instituted by the October 13, 2020 Order are appropriate and sufficient safeguards to ensure the protection of the public.

20. Denied. PECO denies that the October 13, 2020 Order has created uncertainty or requires clarification.

Obligation to Apply for All Available Assistance

21. Admitted in part and denied in part. PECO admits that Joint Petitioners recognize that the October 13 Order announced the Commission’s well-intentioned goal of implementing a “mix of holistic, short-term and long-term solutions to offer customers protections and ensure the payment of bills from customers that are able to pay.” PECO denies that the October 13, 2020 Order lacks critical points of clarity.

22. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

23. Denied. The October 13, 2020 Order does not impose an obligation on utilities to evaluate customers for participation in assistance programs because that obligation is already set forth in 52 Pa Code § 56.97(a)(3), which requires utilities, prior to actual termination of service, to fully explain information about the utility’s universal service programs, including the customer assistance program and refer the customer to the universal service program to determine eligibility for a program and to apply for enrollment in a program. Moreover, PECO disseminates to its customers information regarding assistance programs and eligibility guidelines via customer bill inserts, newsletters, press releases, radio advertising, customer email broadcasts, and PECO’s website.

24. Denied. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

25. Denied. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

26. Denied. PECO avers that the Phase 2 customer protections and stakeholder process instituted by the October 13, 2020 Order are appropriate and sufficient safeguards to ensure the protection of the public.

27. Denied. For the above reasons, PECO recommends that the Commission deny the clarifications requested in paragraph 27 of the Joint Petition.

Additional Ten-Day Communication

28. Admitted.

29. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

30. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

31. Denied. PECO denies that the ten-day communication required by the October 13, 2020 Order will be insufficient to aid customers in applying for all available assistance programs prior to termination, given that the Commission's regulations require multiple attempts to contact the customer, including personal contact, 52 Pa. Code § 56.93, and an explanation of the availability of customer assistance programs prior to termination. *See* 52 Pa. Code §§ 56.91 through 56.100.

32. Denied. The Public Utility Code, 66 Pa. C.S. § 1406(b), provides adequate guidelines concerning the forms of communication that are acceptable for satisfying the ten-day notice requirement. PECO denies that the October 13, 2020 Order is unclear as to who must receive the additional ten-day communication. The October 13, 2020 Order explicitly states that the additional ten-day communication should be sent to "customers whose unpaid balances will put them at risk of termination after the lifting of the moratorium." October 13, 2020 Order, at 4.

33. Denied. PECO denies that customers and utilities require more detailed instructions regarding the additional ten-day communication.

34. Denied. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

35. Denied. PECO denies that the October 13, 2020 Order lacks specificity in its instructions to utilities. The October 13, 2020 Order together with 66 Pa. C.S. § 1406(b) provides adequate guidelines to ensure that customers are informed of their rights and obligations.

36. Denied. For the above reasons, PECO recommends that the Commission deny the clarifications requested in paragraph 36 of the Joint Petition.

Protected Customer Income, Verification, and Flexibility

37. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

38. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof. By way of further response, PECO currently accepts income verification over-the-phone, but to protect against misuse of programs that are funded by all residential customers, PECO also requires customers to submit documentary verification of their income. In recognition of the difficulties customers may face as a result of the pandemic, PECO has extended the time period for the submission of such documentary verification of income from fifteen (15) to thirty (30) days. PECO denies that further guidance is needed regarding income verification.

39. Denied. PECO denies that it will be difficult for consumers to comply with the October 13, 2020 Order or for the Commission to enforce and oversee compliance with the Order.

40. Denied. By way of further response, in addition to the notices provided for in 52 Pa. C.S Chapter 56, 66 Pa. C.S. § 1406(b), and the October 13, 2020 Order, PECO will provide customers with a notice of termination letter twenty (20) days prior to terminating a customer’s service.² Moreover, PECO complies with the provisions in 52 Pa Code § 56.97(a)(3), which require utilities, prior to actual termination of service, to fully explain information about the utility’s universal service programs, including the customer assistance program, and refer the customer to the universal service program to determine eligibility and apply for enrollment. In each termination notice, PECO provides customers with information on assistance programs. PECO also requests that customers provide income information to assist PECO in determining their eligibility for assistance programs. Although PECO permits customers to provide their income verbally, PECO requires customers to provide documentary income verification within thirty (30) days of verbal verification. Requiring utilities to forego documentary income verification creates a potential for abuse.³ The October 13, 2020 Order, balances the need for “short-term and long-term solutions to offer customers protections” while also “ensur[ing] the payment of bills from customers that are able to pay.” *See* October 13, 2020 Order, at 3. For the above reasons, PECO recommends that the Commission deny the clarifications requested in paragraph 40 of the Joint Petition.

Medical Certification

41. Admitted.

42. Admitted.

² PECO is also developing a communications and outreach plan to ensure that customers are informed above the additional consumer protections available to them under the terms of the October 13, 2020 Order.

³ Note also that customers apply for the Low Income Home Energy Assistance Program (“LIHEAP”) directly through state government and not with utilities. Thus, PECO does not have access to income information submitted with LIHEAP applications

43. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof. By way of further response, in recognition of the needs of its customers, PECO permits its customers to restore service using medical certifications. Furthermore, beginning in April 2020, PECO offered all customers the ability to restore service without requiring any reconnect fees, deposits, or payments on past-due balances.

44. Denied. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof. PECO denies that the October 13, 2020 Order further restricts the availability of medical certifications. By way of further response, PECO avers that the provisions and stakeholder process proposed by the Commission are sufficient and appropriate to provide adequate customer protections.

45. Denied. PECO denies the characterization of the October 13, 2020 Order as a limitation on the availability of additional medical certifications. To the contrary, the October 13, 2020 Order provides for two medical certifications in addition to the three medical certifications provided under 52 Pa. Code §§ 56.111-56.118, 56.351-56.358, and seven days for medical professionals to return medical certificates in addition to the current three days. Thus, in total, customers are entitled to five medical certifications and ten days allotted for their return.

46. Denied. PECO does not require customers to submit medical certifications on the doctor's/medical facility's letterhead, provided that the writing includes all of the required elements of a medical certification. However, requiring utilities to credit medical certifications – both retroactively and prospectively – to customers would be unworkable, unduly burdensome, and costly. The expense of complying with such a requirement would ultimately be borne by

residential customers. For the above reasons, PECO recommends that the Commission deny the clarifications requested in paragraph 46 of the Joint Petition.

Coordination with Winter Moratorium

47. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself. By way of further response, PECO avers that the October 13, 2020 Order does not purport to change existing statutory law, including the winter moratorium on utility terminations provided in the Public Utility Code, 66 Pa. C.S. § 1406(e).

48. Denied. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof. By way of further response, PECO avers that the October 13, 2020 Order does not purport to change existing statutory law, including any protections afforded to customers with income at or below 250% FPIG.

49. Denied. PECO denies that the October 13, 2020 Order creates any potential for confusion, unnecessary use of medical certifications, or unnecessary disputes.

50. Denied. For the above reasons, PECO recommends that the Commission deny the clarifications requested in paragraph 50 of the Joint Petition.

Victims of Domestic Violence

51. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself.

52. Denied. PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Joint Petition.

53. Denied. PECO lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53 of the Joint Petition.

54. Denied. The allegation that victims of domestic violence should be afforded additional protections from utility terminations pursuant to 66 Pa. C.S. § 1417 is a conclusion of

law to which no response is required. By way of further response, in recognition of the needs of its customers, PECO accepts verbal attestations that a customer is a victim of domestic violence. However, PECO generally requires customers who offer verbal attestations to provide documentary verification within thirty (30) days. Considering that access to courts has been limited by the current pandemic, PECO has temporarily relaxed its written verification policy. Thus, victims of domestic violence are adequately protected under PECO's policies.

55. Denied. The suggested inquiry into domestic violence status is unnecessary because the termination notices that would have prompted the customer to call the utility explain the special protections available to customers that are victims of domestic violence. Including this information in the termination notices provides customers with sufficient notice of the special protections afforded to victims of domestic violence while also respecting the privacy of customers. PECO recommends that the Commission deny the clarifications requested in paragraph 55 of the Joint Petition.

Availability and resolution of Complaints

56. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

57. Denied as stated. The October 13, 2020 Order, being in writing, speaks for itself and PECO specifically denies any characterization thereof.

58. Denied. PECO denies that the October 13, 2020 Order lacks clarity.

59. Denied. PECO denies that the October 13, 2020 Order creates a potential for confusion amongst customers.

60. Denied. PECO denies that an influx of complaints will result from utility termination efforts.

61. Denied. PECO denies that the October 13, 2020 Order creates a potential for the Commission's Bureau of Consumer Services to be overburdened with additional complaints.

62. Denied. For these reasons, PECO recommends that the Commission deny the clarifications requested by paragraph 62 of the Joint Petition.

III. CONCLUSION

For the foregoing reasons, PECO Energy Company submits that the additional protections proposed by the Low Income Advocates are unnecessary and usurp the stakeholder process, and that the Joint Petition itself fails to meet the Duick standards. Accordingly, PECO Energy Company respectfully requests that the Commission deny Joint Petitioners' request for clarification.

Dated: November 6, 2020

Respectfully submitted:



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VERIFICATION

I, Richard G. Webster, Jr., hereby declare that I am the Vice President of Regulatory Policy and Strategy for PECO Energy Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.



DATED: November 6, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Service Termination :
Proclamation of Disaster Emergency - : **Docket No. M-2020-3019244**
COVID-19 :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the Answer of PECO Energy Company to the Joint Petition for Clarification of TURN et al. and CAUSE-PA in the above-referenced proceeding on the following persons in accordance with the requirements of 52 Pa. C.S. § 1.54:

SERVICE BY EMAIL

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Dated: November 6, 2020