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February 14, 2007

VIA OVERNIGHT MAIL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations

Dear Secretary McNulty:

Enclosed for filing are an original and fifteen (15) copies of Duquesne Light Company's Comments in the above-referenced proceeding.

Sincerely yours,

Gary A. Jack

Enclosures

c: Bureau of Consumer Services
Law Bureau
Terrence J. Buda
Cyndi Page
Daniel Mumford

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations	Docket No. L-00060182

COMMENTS OF DUQUESNE LIGHT COMPANY

Duquesne Light Company ("Duquesne") hereby provides comments to the Pennsylvania Public Utility Commission ("Commission") Advanced Notice of Proposed Rulemaking ("ANOPR") entered December 4, 2006. This Notice of Rulemaking is to consider the amendment of Chapter 56 regulations of the Commission to comply with provisions of Chapter 14 as well as possible consideration of amendment to Chapter 56 unrelated to Chapter 14.

Duquesne has previously participated in this process at Docket M-00041802 (regarding the Implementation of Chapter 14) in supporting comments filed on behalf of the member companies of the Energy Association of Pennsylvania ("EAPA"). Duquesne offered comments on May 8, 2006 regarding the *Biennial Report to the General Assembly and Governor Pursuant to Section 1415* at Docket No. M-00041802F0003.

Duquesne also supports the comments being offered at this time by EAPA, in regards to maintaining the limited scope of this rulemaking to implement the Act. The Act directs that the Commission shall amend the provisions of 52 PA. CODE CH. 56 to comply with the provisions of 66 PA.C.S. CH. 14 and may promulgate other regulations to administer and enforce 66 PA.C.S. CH. 14, but promulgation of any such regulation shall not act to delay the implementation or *effectiveness* of this chapter (emphasis added).

GENERAL COMMENTS

Duquesne is prepared to support the work entailed in this rulemaking and assist the Commission in its undertaking. The ANOPR, however, proposes having to consider regulatory changes beyond those identified by the legislature and Duquesne suggests that it is likely to result in a cumbersome proceeding. Duquesne contends that the expanded ANOPR will slow the final implementation of Chapter 14.

To avoid such a result, Duquesne suggests that the declaration of policy set forth by the legislature at 66 Pa. C.S.A. §1402 be used as the guide for this proceeding. The legislative policy declared that application of Chapter 56 rules had "not successfully managed the issue of bill payment. Increasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers' delinquencies." 66 Pa. C.S.A. §1402.

In amending Chapter 56, "the General Assembly believes that it is now time to revisit these rules and provide protections against rate increases for timely paying customers resulting from other customers' delinquencies. The General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills." 66 Pa C.S.A. §1402.

Through the implementation of Chapter 14, "the General Assembly seeks to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions." 66 Pa C.S.A. §1402.

Duquesne respectfully requests that the immediate efforts of stakeholders be focused on the full implementation of the law first passed over two years ago, as well as the subsequent issues raised and the resolutions adopted in the Implementation Orders. The initial phase of this rulemaking should encompass an examination of the policies and interpretations advanced in the Implementation Orders to ensure that they further the policies set forth by the General Assembly at 66 Pa. C.S.A. § 1402.

This ANOPR gives interested parties the opportunity to conduct a general review of this Chapter to identify, modify and/or rescind certain provisions of Chapter 56. It is Duquesne's position that Chapter 56 in its entirety does not need to be re-written. It is Duquesne's position that existing regulations under Chapter 56 that were superseded by Chapter 14 be removed. It is Duquesne's position that new regulations be established into Chapter 56 using the language defined under Chapter 14. In addition, this ANOPR suggests that all parties have the opportunity to address other issues of Chapter 56, such as technological advances, electronic billing and payment, email, the Internet, etc. The rulemaking proceeding also suggests a review of all outstanding ad hoc reporting requirements as well. Opening the whole of Chapter 56 for identification, modification and/or rescission could delay or impede the directive to implement Chapter 14.

Duquesne urges the Commission to focus its efforts on the specifically identified regulations set forth in the legislation at Section 4(1) of Act 201 as well as the regulations that are inconsistent with Chapter 14. See §4(2) of Act 201. Duquesne suggests that, to the extent other issues raised in the ANOPR that address issues not impacted by the enactment of Act 201, but may require identification, modification and/or rescission, we respectfully should be addressed at a later date in a separate proceeding. Duquesne thinks all interested parties would be best served following this suggested process.

SPECIFIC COMMENTS

Below are listed the ten items from Appendix A of Commission's said December 4, 2006 Order in this proceeding.

1. Rules that apply to victims with a protection from abuse (PFA) order and to customers of steam heating, wastewater and small natural gas companies.

A. With respect to the Commission's statement "the Chapter 14 rules 'shall not apply' to victims under a protection from abuse (PFA) order" ...,

Duquesne agrees that section 1417, states that Chapter 14 shall not apply to victims under a protection from an abuse order as provided by 23 PA.C.S. Ch 61.

B. With respect to the Commission's proposal "creating a separate chapter to address the utilities and consumers that are specifically excluded from Chapter 14 provisions" ...,

Duquesne does not propose creating a separate chapter to address the utilities and consumers that are specifically excluded from Chapter 14 provisions. It would be efficient to simply note at the beginning of Chapter 56, these important exclusions. Addressing the issue in this manner is commonly done, rather than rewriting the same rules for different circumstances or exceptions.

2. Previously unbilled utility service.

A. With respect to the Commission's proposal "incorporating into this section a four-year limit on such billings" ...,

Duquesne proposes that a four year statute of limitation on rebilling resulting from billing errors, meter failure, leakage that could not have been reasonably detected or loss of service, or four or more consecutive estimated bills does not support the intent and plain language of Chapter 14. Section 1402 (3) explains that the intent of Chapter 14 is to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. Utilities must be allowed, without unnecessary restriction, to collect, as well as responsibly protect its customers from unnecessary rate changes. Duquesne does not see the need to incorporate other statutory law, like the statute of limitations, into this rulemaking involving Chapter 14.

B. With respect to the Commission's proposal "maintaining the obligation of a utility to offer a payment schedule based on previously unbilled utility service" ...,

Duquesne supports that a payment agreement be offered for previously unbilled service (not resulting from theft of service or fraud). Duquesne proposes this agreement should allow the customer payback terms in line with the length of time of the rebilling. This proposal may be more generous to the customer than the PUC could offer within §1405. Duquesne supports that no customer is entitled to a payment agreement on any previously unbilled service that resulted from theft or fraud.

3. Credit Standards

Duquesne agrees that, §56.32, §56.33 and §56.35 have been superseded in Section 4 of Act 201, and therefore notes that it is unnecessary to incorporate the requirements of § 1404(a), 1404(d)--(f), 1407(d), 1414(c) and the § 1403 definitions of applicant and customer, into these sections. Duquesne proposes that Chapter 56 remain intact as to any regulation not impacted by Chapter 14, remove any regulation that has been superseded from Chapter 56, and establish new regulations that define the language from Chapter 14.

Duquesne notes that §56.31,§56.34, §56.36 and §56.37 have not been superseded. Duquesne believes §56.38 has been abrogated by Section 4 (2) of Act 201 due to its inconsistency with Chapter 14.

A. With respect to the Commission's proposal "requiring utilities to include their credit scoring methodologies and standards in their Commission-approved tariffs" ...,

Duquesne proposes that insofar as acceptable applicant identification requirements are concerned, the use of the Commission's Identity Theft Order concluded in its study, in the state of Pennsylvania, identity theft is not a problem for utilities (The Commission's July 14, 2005 Order re: Investigation In Re: Identity Theft at Docket M-00041811). Therefore, Duquesne recommends continuing the procedures within §1404 (a) (2) with respect to social security numbers, and third-party service requests, in the context of preventing fraud and identify theft. Duquesne offers review of Section 1404(a) (2) which specifies utilities are to use "a generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice." Utilities apply these methodologies in an equitable and nondiscriminatory manner now, and make these available to the Commission on an ongoing basis. As these credit-scoring methodologies are proprietary and confidential, they are therefore, unable to be placed in utility tariffs, as requested by this Commission.

B. With respect to the Commission's proposal "requiring utilities to seek approval from the Commission before using the "other methods" mentioned in this section by requiring utilities to include the "other

methods" in their Commission-approved tariffs including a four-year statute of limitations on such assignments of liability" ...,

Duquesne does not find the proposal of including a four-year statute of limitations on assignments of liability to be consistent with the intent of this rulemaking procedure nor the intent or purpose of Chapter 14 and its intent to reduce utility debt from delinquencies.

4. Payment period for deposits.

A. With respect to the Commission's intention "to address deposit payment timeframes in this proceeding" ...,

Duquesne notes that Chapter 14, Sections 1404(a), 1404(e) and 1404(h) with the added clarification on payment period for deposits in the first Implementation Order of March 3, 2005, pp. 15-17(M-00041802F0002), gave valuable direction on security deposit implementation. Duquesne welcomes this opportunity, as the Commissioners invited in the first Implementation Order p.17, to revisit this policy. Applicants or Customers that have been terminated for non-payment of a delinquent account have demonstrated a non-secure payment pattern that is directly at the heart of Chapter 14. Utilities must collect a security deposit in full and prior to reconnection or establishing service from these applicants and customers. As specifically stated in the first Implementation Order, p. 17, the Commission intends to address deposit payment timeframes in a subsequent rulemaking proceeding.

B. With respect to the Commission's proposal "that in situations where a customer or applicant is seeking restoration" ...,

Duquesne proposes in situations where a customer or applicant is seeking restoration of service after having been terminated for any of the grounds found in §1404(a) (1) they should be required to pay the entire security deposit in full, up-front as a condition of restoration, to minimize the credit risk behavior they have displayed.

C. With respect to the Commission's situation "where a customer or applicant is seeking service outside of the grounds found in § 1404(a)(1)" ...,

Duquesne agrees that for situations where a customer or applicant is seeking service outside of the grounds found in § 1404(a)(1), the full amount of the security deposit must be required before service is provided per § 1404(e). For existing customers with service who are required to pay a deposit, we respectfully disagree with the Commission's proposal of maintaining the existing rule at § 56.41 as it has been superseded by the general rule of §1404 (a).

D. With respect to the Commission's statement "existing customers with service who are required to pay a deposit" ...,

Duquesne agrees with the Commission's proposal of maintaining the existing rule at 56.42 that allows for the deposit to be paid in three installments over 60 days, as Duquesne does not believe that Chapter 14 is silent on rules for collecting deposits from customers with service.

5. Termination of service.

A. With respect to the Commission's statement "seek comments that reflect careful consideration of the health and safety factors for those immediately affected by termination of essential utility service" ...,

Duquesne proposes that utility goals are not to terminate service. Quite the contrary, utility service must be provided to produce revenue. Utilities are a creditor, in that they are required to provide service first, and then collect for that service provided. The collection process is designed to provide customers with notification of pending collection action based upon non-payment. Each notification in this process, including the written termination notices, is designed with the health and welfare, as well as the customer's safety in mind. In addition, termination notices provide customers with options to avoid termination. It is only after providing many notices of termination, and the customer's decision not to take advantage of the options provided to stop termination, that a utility is bound to terminate service, to protect against future rate increases of its paying customers.

B. With respect to the Commission's proposal "maintaining § 56.83 to the extent that it is found to be consistent with Chapter 14" ...,

Duquesne does not support the Commission's proposal to incorporate §56.81 with 1406 (a). It is Duquesne's position that Chapter 56 in its entirety does not need to be re-written. It is Duquesne's position that existing regulations under Chapter 56 that were superseded by Chapter 14 be removed, and new regulations, using the language defined under Chapter 14 be established. Duquesne does not support that §56.83 regarding Termination of Service be maintained, as it is not supported under the intent of Chapter 14, specifically §1402. Providing additional opportunities for customer to avoid payment is contrary to the intent of Chapter 14, and its directive of timely payment of bills.

C. With respect to the Commission's proposal "maintaining the distinction between "user without contract" and "unauthorized use" ...,

Duquesne notes in regards to the issues of "user without a contract" and "unauthorized use, clarification of these terms and their handling have been fully discussed and direction provided according to the

Implementation Order dated March 3, 2005 pages 8-10, and no further clarification is necessary.

D. With respect to the Commission's proposal "to incorporate the new termination notice procedures found in Chapter 14 at § 1406(b)" ...,

Duquesne has revised its termination notice process to incorporate new termination notice procedures found in Chapter 14. It is Duquesne's position that Chapter 56 in its entirety does not need to be re-written. It is Duquesne's position that existing regulations under Chapter 56 that were superseded by Chapter 14 be removed, and new regulations, using the language defined under Chapter 14 be established. Section 56.92 has not been abrogated by Chapter 14 and therefore, this regulation does not need to be addressed under this docket.

E. With respect to the Commission's statement "obligation of the utility to stay termination pending resolution of a dispute and obligation to provide the consumer with an opportunity to file an informal complaint" ...,

Duquesne notes the regulations at §56.141 through §56.174 have not been abrogated by Chapter 14 and are not inconsistent with Chapter 14, and no further clarification is necessary. By way of background, dispute procedures were addressed under this Commission's Proposed Rulemaking Order to Review and Rescind All Obsolete and Excessive Rules and Regulations at Docket L-950103, which identified, modified or eliminated regulations which were burdensome and no longer served a useful purpose. On May 1, 1998, the Commission approved final changes designed to clarify, simplify, and remove excessive and burdensome requirements from parties dealing with its Bureau of Consumer Services, published at 26 Pa.B. 2908.

Duquesne believes §56.140, §56.142, §56.151, §56.152, §56.162, were modified. The Commission, in its Order at L-950103, stated "through these changes, we are eliminating those sections which no longer serve a useful purpose and we are modifying others to promote the ease of application as well as fairness..." The resulting modifications were made to allow utilities more latitude in pursuing collection, and to prevent misuse of the dispute process by customers to avoid proper collection action. However, these language modifications and rescissions were still deficient regarding dispute rights processes as customers continued to misuse the dispute rights process as a means to avoid collection action.

To further support the above statement, on March 1, 2002, the Commission's Bureau of Consumer Services (BCS) issued a written response to utility questions submitted for clarification on various issues. In response to question 13, (attached as exhibit A) which refers to dispute rights procedures, the BCS refers to its "long-standing policy of not accepting a case during the 120 day window absent extenuating circumstances..." Attached to this response were the BCS's intake

procedures for informal complaints, instructing the BCS personnel not to open an informal complaint even after 120 days if: the consumer admits to not having paid anything on the prior BCS decision; the customer did not pay through the winter; the customer did not act in good faith; or the customer had 2 prior BCS decisions in the past 12 months, among other things. The "120 day window" is a reference to the BCS directed practice that utility report dispute rights need only be provided every 120 days.

It is Duquesne's position that to take any position going backward, would be contrary to the intent of the ANOPR of 1995 as well as the instant ANOPR. Chapter 14, in its policy statement at §1402 (3) seeks to provide public utilities with an equitable means to reduce uncollectible accounts and increase timely collections. Given the intent of Chapter 14, §1402, we disagree with the Commission position that these regulations §56.141-174 need to be addressed, and agree that there appears to be nothing in Chapter 14 that supersedes the dispute regulations in Chapter 56 that would negate any of the rights a consumer has to raise a dispute with a utility, and that existing dispute procedures remain intact.

Duquesne notes that §56.181 has been abrogated by Chapter 14, specifically §1405 (f) §1406 (h), §1409, §1410 (2) and §1418. It is Duquesne's position that Chapter 56 in its entirety does not need to be re-written. It is Duquesne's position that existing regulations under Chapter 56 that were superseded by Chapter 14 be removed. It is Duquesne's position that new regulations be established into Chapter 56 using the language defined under Chapter 14.

F. With respect to the Commission's statement "nothing in Chapter 14 that supercedes the dispute regulation in Chapter 56 would negate any of the rights the consumer has to raise a dispute with a utility and what is to happen immediately prior to termination appears not to be impacted by Chapter 14" ...,

Regarding §56.94, Duquesne disagrees that this regulation does not appear to be impacted by Chapter 14, as it has been superseded by §1406, and is listed in §1418. It is Duquesne's position that Chapter 56 in its entirety does not need to be re-written. It is Duquesne's position that existing regulations under Chapter 56 that were superseded by Chapter 14 be removed and that new regulations be established into Chapter 56 using the language defined under Chapter 14.

6. Winter termination procedures.

As a utility our goal is not to terminate service, but rather to provide service throughout the year in order to provide the security and comfort our customers have contracted for and have a level of expectation. Chapter 14 is in fact, more protective of low-income customers than Chapter 56 had been as further clarified by the Second Implementation Order pages 5-15. The termination process, regardless of season, ensures

that utilities act in good faith and to use fair judgment at all times when dealing with its customers.

Current termination notices for all utilities have been Commission approved, and clearly provide customers, faced with collection action, their rights and responsibilities, as clarified by the Second Implementation Order, pages 11 through 15. Termination notices provide customers with options to avoid service termination. It is only after providing many notices of termination, and the customer's decision not to respond or provide payment, or take advantage of the options provided to stop termination, is a utility bound to terminate service, to protect against future rate increases of its paying customers.

A. With respect to the Commission's statement "to align § 56.100 with the statute" ...,

Duquesne agrees that §56.100 has been superseded by §1406 (e). Duquesne does not support the Commission's statement that no direction has been provided regarding utility obligations to determine and confirm a customer's eligibility for winter time termination based upon their income and the customer's obligation to cooperate with such procedures. On the contrary, this issue was discussed at length in the Second Implementation Order pages 3-11. Duquesne reiterates that the customer clearly has an obligation to respond and a responsibility to provide the utilities with household income and occupancy information at all times, regardless of season.

Duquesne does not support the Commission's proposal to align §56.100 with §1406 (e) and eliminate the distinction between heat and non-heat accounts. Chapter 14 is silent on heating versus non-heating termination. Because Chapter 14 does not specifically make a distinction between heat and non-heat, that distinction should be maintained in Chapter 56. The Commission's proposal to eliminate the distinction between heat and non-heat should not be adopted.

B. With respect to the Commission's statement "how far back a termination had to have occurred to be included in the accounts surveyed" ...,

In addition, Duquesne notes that §56.100, in its entirety, has been superseded by §1406, and is not supported under the intent of Chapter 14, specifically §1402. Requiring utilities to revise its winter termination survey is contrary to the intent of Chapter 14. Adding additional survey requirements is not part of this docket, is not raised in Chapter 14, is contrary to the statutory intent of Chapter 14 and should not be addressed here.

C. With respect to the Commission's proposal "that utilities report to the Commission anytime they become aware of a death" ...,

A public utility lacks the legal and forensic expertise to make a determination where it appears that a death may be related to the lack of utility service. Also, it is unlikely a public utility would receive notice either.

7. Emergency Medical Procedures.

A. With respect to the Commission's proposal "amending all of the emergency medical provisions in Chapter 56 (§§ 56.111--118) to include "nurse practitioner" as found in Chapter 14, § 1406(f)" ...,

Duquesne believes that regulations be written to include the definition of Certified Registered Nurse Practitioner (CRNP) according to 49 Pa. Code Chapter 21, 21.251, pursuant to Chapter 14, 1418, Section 6 of Senate Bill 677, in compliance with 1406 (f) recognizing the inconsistency within sections 56.113, 56.114, 56.115, 56.116, according to Section 4.

Duquesne proposes that the existing medical certification procedures were addressed and amended under this Commission's Proposed Rulemaking Order to Review and Rescind All Obsolete and Excessive Rules and Regulations at Docket L-950103, which identified, modified or eliminated regulations which were burdensome and no longer served a useful purpose. On May 1, 1998, the Commission approved final changes designed to clarify, simplify, and remove excessive and burdensome requirements from parties dealing with its Bureau of Consumer Services, published at 26 Pa.B. 2908.

Specifically section 56. 114 was amended and language was added to allow a ratepayer to renew a medical certification only twice in situations where the ratepayer is not fully meeting the obligation under section 56.116 to equitably arrange to make payment on all bills, as this commission found that the existing regulation with unlimited medical certifications was excessive. It was found that some customers were abusing the medical certification process to evade the termination process by invoking section 56.113, without either equitably arranging to pay, nor paying their outstanding balances during a medical certification stay of termination proceeding, as well as continual and repeated medical certifications by physicians for either a stay of termination or for restorations of service.

Based upon the situation as described above, on October 29, 1997, Duquesne invoked its right under 56.118 and filed its Petition for Waiver of the Medical Certification Procedures Pursuant to 52 Pa. Code 56.118 with respect to the Electric Service Account of Thurman Dumas. The BCS docketed this case at S.T. 0416194, Petition No: 00971286, and issued its decision dated February 17, 1998. In its Decision, the BCS found that Mr. Dumas had not met his duty to pay for the utility service, and that Duquesne's request was reasonable, and granted Duquesne's

request not to honor another medical certification for Mr. Dumas or any other occupant. The BCS's decision was for a period of one year. In addition, on April 8, 1998, Duquesne filed another Petition for Waiver of the Medical Certification Procedures.... with respect to the Electric Service of Temora T.C. Calloway, docketed at S.T. 0453499, Petition No: P-00981359. The BCS issued in a parallel decision on April 20, 1998, finding Duquesne's petition reasonable and granting our request for a waiver, as a result of the customer's repeated filing of medical certifications to stop termination, and her failure to pay both company and BCS issued payment agreements.

It is Duquesne's position that 56.114 was amended at L-950103, to limit the number of medical certifications, and this amendment nor the limit on medical certifications has not been superseded by Chapter 14 and therefore, it is not inconsistent and does not need further clarification. Therefore, it is unnecessary to address the questions raised by the Commission under this docket. Chapter 56, pursuant to 1418, (1) and (2), supersedes any inconsistent requirements imposed by law, and all other regulations are to be abrogated to the extent they are inconsistent with the law.

B. With respect to the Commission's proposal "amending the medical certificate renewal provisions at § 56.114 to clarify that the limit of two renewal certifications applies to medical certificates filed for the same set of arrearages, meaning that if the customer subsequently eliminates the arrearage, the customer is once again eligible to file medical certificates, regardless of the number of medical certificates filed previously. We would also apply these restrictions to the household and the same account; meaning that the limits apply to the entire household as long as the account remains in the same name(s)" ...,

Duquesne will support the Commission's proposal that the medical certificate renewal provisions at § 56.114 for 2 renewal certifications applies to medical certificates filed for the same set of arrearages, meaning that if the customer subsequently eliminates the arrearage, the customer is once again eligible to file medical certificates, regardless of the number of medical certificates filed previously.

Duquesne disagrees with the Commission's proposal that these restrictions apply to the household and the same account; meaning that the limits apply to the entire household ONLY (emphasis added) so long as the account remains in the same name(s). This proposal is contrary to the intent of Chapter 14, specifically, §1402, the definitions of customer and applicant, and the definition of household income, under sections 1403, 1406 (f), 1407 (b) (1), 1407 (d) and (e), and would hinder the utilities' ability to collect, and therefore, are not supported by plain language and true intent of Chapter 14, as well as the administrative costs to the Commission. There are existing programs, such as CAP, and LIHEAP

and payment agreement terms that offer a better long-term solution for our payment troubled customers, than the medical certification process.

C. With respect to the Commission's proposal "that a utility does not have to petition the Commission using the procedures at § 56.118 if it is simply enforcing the restrictions at § 56.114; petitioning is necessary only if the utility does not want to honor a medical certificate that does not fall under the restrictions" ...,

Duquesne disagrees with the Commission's proposal regarding petitioning the Commission using the procedures at § 56.118 if it is simply enforcing the restrictions at § 56.114 because 56.113 through 56.117 have been superseded and 56.118 has been abrogated to the extent of any inconsistency with Chapter 14.

It is Duquesne's position that Chapter 56 in its entirety does not need to be re-written. It is Duquesne's position that existing regulations under Chapter 56 that were superseded by Chapter 14 be removed. It is Duquesne's position that new regulations be established into Chapter 56 using the language defined under Chapter 14.

8. Commission informal complaint procedures.

A. With respect to the Commission's proposal "revising the Commission's informal and formal complaint procedures found at §§ 56.161--181 to develop some of the details that are necessary to effectively integrate the requirements of Chapter 14 into these sections" ...,

It is Duquesne's position that the Commission's formal and informal complaint procedures at §56.161-174 have not been superseded or abrogated by Chapter 14. Duquesne notes the exception of the inclusion of definitions of "Formal and Informal Complaint", found at §1403, that previously did not exist under Chapter 56, as well as §1410, (which now requires that a customer must affirm that they have first contacted the public utility to attempt resolution, prior to filing an informal or formal complaint, that customers are obligated to pay undisputed portions of the bills not in dispute, and for a formal complaint to be valid, the customer must attest to the truth of the fact alleged in the complaint and that formal complaint proceedings must be under oath.)

The example that the Commission refers to above, regarding changes to their informal and formal complaint procedures (i.e. §1405 and payment agreements and CAP payment agreements) is incorrect. The Commission is correct in its assessment that §1405 dictates the payback time restrictions for payment agreement decisions rendered by the Commission, for customers whose service is on, but these examples have nothing to do with Informal and Formal complaint proceedings under §56.161-181, and

therefore are not inconsistent with Chapter 14, and should not be part of this docket. In addition, §56.181 had been superseded by §1410 (2).

B. With respect to the Commission's proposal "applying the restriction to any balance that reflects application of CAP program rates and also to any account balance comprised of both CAP rates and standard rates and to clarify that while the Commission will not be establishing payment agreements on CAP balances per the above noted restrictions, the Commission can still address CAP-related disputes" ...,

The plain language of Chapter 14, §1405 states that "CAP rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the Commission." This language is clear in its meaning and the Commission's proposal to address balances comprised of CAP and standard rates is unnecessary and clarification not required by the plain language of the law. CAP related dispute investigations are outside of this docket and should not be addressed here.

C. With respect to the Commission's proposal "clarifying the role of the Commission in establishing payment agreement restoration terms for customers whose service has been terminated" ...,

Duquesne notes that it has been determined by the plain language of Chapter 14, as well as the clear direction taken by this Commission, that the PUC's role in restoration cases is limited to making sure that the utility is properly applying the provisions of §1407 (c) and that "life events" are properly considered. Clarification of the Commission's role in establishing payment agreement restoration terms for customers, whose service has been terminated, has been addressed to the full extent in the first Implementation Order as well as the Reconsideration Order also at the docket. Once the application of §1407 is verified, the Commission will inform the complainant that the utility's payment requirements are consistent with Pennsylvania Law and must be met. In addition, the clear and plain language of Chapter 14 is true throughout this law, as the law is subtitled by the description of each section. Section1405 is entitled "Payment Agreements" and details clearly what payment agreement payback time frames the PUC must use in its decisions, as well as providing clear guidance on the number of payment agreement decisions the PUC can provide, as well as giving the utility's discretion as to the number of payment agreements they may enter into with a customer. Section1407 is entitled "Reconnection of Service," and the plain language in this section refers to what a PUBLIC UTILITY may offer or require as a condition of reconnecting service. Nowhere in this section does it state or even suggest, what the Commission may offer.

Further it is Duquesne's position that the first Implementation Order was not overturned by the October 27, 2005 Reconsideration Order regarding the application by the PUC of §1407. The Reconsideration Order simply

reversed the first Implementation Order that the PUC could not provide another payment agreement under §1405 if the Company had previously provided one. The Reconsideration Order addresses only "one of the 7 issues addressed in the March 3, 2005 Order of these threshold issues of the payment agreement restriction in 1405 (d)." There is nothing ambiguous or in need of clarification in that statement. Representative Evans, who offered S.B. 677, which became Chapter 14 law, stated "that the legislative intent of §1405 is to outline the power of the PUC with regard to PUC ordered payment agreements; it does not limit nor outline payment agreements that are negotiated between utilities and customers without PUC involvement..." Reconsideration Order, page 6.

Further, this interpretation has been upheld by ALJ Larry Gesoff, in John Lavrusky v. Columbia Gas of Pa., Inc. (Complainant Appellant), C-20066425. Gesoff states on pages 6 of his decision that "From the language of Section 1407 it is clear that the Legislature intended that Section 1407 (2) (i) apply to a utility, not the Commission. Because the Commission cannot exercise 1407 options the Commission's BCS cannot exercise these options either.

Further, Gesoff states on page 10 of his decision that "Giving effect to both Sections 1405 and 1407 in this case is not possible because allowing BCS to render payment agreements under Section 1405 when a terminated customer reapplies for service would negate the specific options for the General Assembly gave public utilities under Section 1407 regarding terminated customers reapplying for service. Sections 1405 and 1407 were enacted at the same time and there is no indication that the General Assembly intended the general provisions of Section 1405 to apply under the fact situation presented in this case. Because the conflict between Sections 1405 and 1407 is irreconcilable, the special provisions of 1407 prevail and Section 1405 does not apply.

For this reason the BCS did not have the statutory authority to provide Mr. Lavrusky with a payment agreement." His order reversed the BCS decision. For the reasons stated above, it is Duquesne's position that the BCS procedures entitled "Procedure to Handle Customer OFF/Applicant Complaints dated December 2005, be abolished to the extent they are inconsistent and non-compliant with the above order entered October 26, 2006.It is our position that no further clarification is required.

D. With respect to the Commission's proposal "§ 56.163 be amended to include the imposition of a standard upon the utility in response to consumer informal complaints filed at the Commission 30 days where the customer's service has been terminated, we are proposing a five-day standard" ...,

Duquesne welcomes a discussion regarding the Commission proposal that §56.163 be amended to include the imposition of a standard upon the utility in response to consumer informal complaints filed at the

Commission. However, it is our position that this proposal does not support the intent of Chapter 14, was not abrogated by Chapter 14, and therefore, should not be part of this docket at this time.

However, this recommendation is quite puzzling. According to the Commission, this standard already exists, as demonstrated in its annual Utility Consumer Activities Report and Evaluation (UCARE). Response Time to Consumer Complaints is explained as "...the time span in days from the date on which the utility provides the BCS with all of the information needed to resolve the complaint. Response time quantifies the speed of a utilities response to BCS informal complaints." Response time is considered a measure of a company's complaint handling performance, and Appendix E represents a measurement of utilities response times. In addition to the UCARE report, further documentation exists that supports that this standard currently exists.

The BCS's interpretation of §56.163 is that if the Bureau requested a company to submit a report containing information determined by the Commission staff to be relevant to the informal complaint, and the company failed to do so, BCS staff was directed to determine that the failure to respond is an apparent violation of a duty inherently established at Section 56.163; namely a utilities obligation to provide material deemed necessary for fulfillment of Commission staff's responsibilities under Chapter 56. (Chapter 56 Compendium dated February 1990).

In addition, on March 1, 2002, the Commission's Bureau of Consumer Services (BCS) issued a written response to utility questions submitted for clarification on various issues. (Attached as exhibit A) On page 4, in response to question number 3; "Why is the Bureau citing the utilities for 56.153 when the Bureau still has cases open for six months or longer?", the BCS responded, "This question apparently intends to reference Section 56.163**,** (emphasis added) relating to Commission informal complaint procedures. BCS investigators use this provision, often in frustration, when a utility company report is late or incomplete, that is, when 30 days have passed and the company has not provided a report at all, or the report that has been provided lacks the information necessary to issue a BCS decision." The BCS continued that "...in the few instances where BCS may have informally upheld an alleged infraction of 56.163, it is generally to encourage the company to strengthen a part of its process to ensure more timely or complete responses to future informal complaints."

"With respect to the portion of the question that appears to suggest delays within the Commission obviate the obligation of companies to adhere to 56.163, this simply is not the case." Interestingly, 56.163 refers to Commission informal complaint proceedings, it does not refer to utility complaint proceedings. It does not state a 30-day response time requirement for either the utility nor the Commission. In fact, §56.163 only requires that the Commission provide a decision in an informal complaint "within a reasonable period of time."

So, in the ANOPOR, this Commission is suggesting that for a regulation that currently exists and is interpreted by the Commission to refer to utility response time, and provides the BCS with direction to cite a company for violation of this particular regulation, as well as report on an annual basis utility response times for performance measurement purposes, doesn't really exist, and requests that a new "30 day" response requirement be established under Chapter 14 for utility response time? While Duquesne's position is that this issue should be addressed under a separate docket, Duquesne requests this issue be raised after the implementation of Chapter 14.

Duquesne does not support the Commission in its request for a 5day response time standard for utilities regarding off cases, as per 1407 (c) the Commission lacks authority to issue a decision on these cases, and therefore, this request is not supported by the intent of Chapter 14.

9. Restoration of Service.

A. With respect to the Commission's proposal "requiring utilities to include in their tariffs the procedures and standards the utility will use to determine whether an applicant or customer has previously resided at a property and whether an applicant or customer is responsible for an unpaid account balance per § 1407(d) and (e) and specify the means for providing acceptable proof of such" ...,

Duquesne notes the provisions of §1407 are clear and precise. The Commission is without authority to permit any variation from this statutory requirement, which includes any of the suggested tariff requirements. Chapter 14 is clear that it is the utilities discretion to use the methods described in §1407 (d) and (e) and the Commission's authority to assure that the utilities have adhered to the law, therefore we believe that no further direction is required to comply with the law. Section 1407 (d) and (e) direct utilities that they may require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. §1407 (d) supersedes §56.35. §1407 has superseded §56.191 regarding the reconnection of service.

B. With respect to the Commission's proposal "incorporating a four-year statute of limitations on such determinations" ...,

Duquesne reiterates that incorporating a 4 year statute of limitations is contradictory to the intent of Chapter 14, specifically §1402, , and we therefore disagree with the Commission's proposal. Duquesne does not agree that the plain language of Chapter 14 is to be interpreted as in the Commissions proposal that the 24 hour reconnection time frame found at

§1407 (b) (2) applies, regardless of when the termination of service occurred.

10. Reporting requirements.

A. With respect to the Commission's proposal "revising Section 56.231 to incorporate the *Interim Guidelines for Residential Collections Data Reporting Requirements of the Electric, Natural Gas and Water Distribution Companies in Accordance with the Provisions of Chapter 14 at § 1415* as contained in the Final Order of July 24, 2006 re: *Biennial Report to the General Assembly and Governor Pursuant to Section 1415* (M-00041802F0003)" ...,

Duquesne supports the Commissions statement that the monthly collections requirements are specified at §56.231. However the Commission's proposal to incorporate the reporting requirements at § 1415 into Chapter 56 is not supported by Duquesne. Our proposal is to establish new regulations that secure language from Chapter 14. We propose that the regulations be re-written to include§ 1415.

11. Statement of Commissioner Kim Pizzingrilli – Incorporation of Statutes

I request that commentators address the question of whether it is appropriate or necessary to incorporate portions of the statute directly into the regulations. In addition, I note that the ANOPR proposes that utilities report to the Commission when they become aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service. As a relatively new issue that was brought to our attention by the Consumer Advisory Council, I request that commentators provide input on specific recommendations regarding the implementation of this proposed requirement, including what situations should be reported and the need to establish a requisite time frame linking an incident and lack of utility service ...,

RESPONSE OF DLC:

Duquesne is in agreement with Commissioner Pizzingrilli's statement that many of Chapter 14 application issues were addressed during the implementation process as evidenced in the 1st & 2nd Implementation Orders as well as the Reconsideration and Declaratory Orders at this docket. Duquesne welcomes the opportunity to work with the Commission to amend Chapter 56 to comply with Chapter 14 and promulgate other regulations to administer and enforce Chapter 14.

Duquesne also agrees with Commissioner Pizzingrilli's statement, as to the question of whether it is appropriate or necessary to incorporate portions of the statute directly into the regulations. Duquesne believes it is appropriate to incorporate statutory language from Chapter 14 in many instances. It removes doubt that the statute is the regulatory guidance. It is also simpler rather than arguing over appropriate regulatory language.

In response to Commissioner Pizzingrilli's request for specific recommendations regarding the implementation of the proposed requirement in the ANOPR that utilities report to the Commission when they become aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service, Duquesne maintains that this proposed requirement is outside the mandate of the Commission. As always if the Commission investigates such an occurrence, the utilities will cooperate in the investigation to the full extent of the law.

SUMMARY

In conclusion, Duquesne agrees with the EAPA's position and compliments the Commission as well, for recognizing the importance of resolving issues that are likely to arise between the statute found at 66 Pa. C.S.A. §§1401-1418 and regulations presently found at Chapter 56 of the Pennsylvania Code. Initially, this should be the primary focus of this rulemaking. We maintain that the role of this rulemaking is to fully implement the policy declarations set forth at Section 1402 of Act 201, 66 Pa. C.S.A. §1402.

In this regard, at Section 4 of Act 201, the General Assembly identified a conflict between specific sections of previously promulgated regulations found in Chapter 56 at §§56.32, 56.33, 56.35, 56.41, 56.51, 56.53, 56.81, 56.82, 56.83, 56.91, 56.93, 56.94, 56.95, 56.96, 56.100, 56.101, 56.111, 56.112, 56.113, 56.114, 56.115, 56.116, 56.117, 56.181 and 56.191 which imposed requirements inconsistent with Chapter 14.

It is these regulations that Duquesne requests the Commission to examine first. We propose that, to the extent there are areas raised in the ANOPR that address issues not impacted by the enactment of Act 201, those issues can be resolved at a later date either in a continuation of this docket or in a separate proceeding.

Duquesne looks forward as well to addressing this rulemaking. Duquesne is committed to carrying out the goals of Chapter 14 while ensuring that service is available to all customers based on equitable terms and conditions.

Submitted this 14th day of February, 2007.

Respectfully submitted,
Duquesne Light Company

Irene Krepps
Manager of PUC & Customer Relations

By Counsel:

Gary A. Jack
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 1, 2002

DAVE EPPLE
ENERGY ASSOCIATION OF PA
800 NORTH THIRD STREET
SUITE 301
HARRISBURG PA 17102

Dear Mr. Epple:

BCS has prepared a written response to all the questions that EAP submitted on February 21 on behalf of its member companies. My staff and I decided that it would be appropriate to communicate in writing so as to minimize potential miscommunication about the important issues raised in these questions. However, I would like to emphasize that BCS also welcomes the opportunity to meet with companies at any time throughout the year to discuss questions and issues of concern that they may have.

BCS has long stressed the importance of companies communicating questions or concerns about BCS casehandling procedures and interpretation of regulations directly to us in writting. In our opinion, the annual EAP meeting should not be viewed as a substitute for the ongoing dialogue that must occur routinely between BCS and your member companies. My staff and I were surprised by the tone of some of the questions to us that suggested a degree of frustration on the part of your members. BCS has met individually with representatives of six of your member companies in the last few months. We sensed no hostility during those meetings. At the March 6 meeting, I plan to stress once again the importance of companies immediately communicating any concerns or problems directly to BCS rather than allowing frustration to build over the course of a year until the next EAP meeting. I hope the companies will take advantage of this offer.

I trust that the BCS' responses to the questions in the attached document will serve to alleviate at least some of the frustration that your member companies appear to be experiencing. In addition, my staff and I look forward to further discussing their questions and concerns on Tuesday.

Very truly yours,

Mitchell Miller, Director
Bureau of Consumer Services

attachment
cc: EAP Companies

Agenda
Energy Association of Pennsylvania
Bureau of Consumer Services Meeting
March 6, 2002

I. Collection Policies, Procedures and Performance
   - Review BCS response to EAP Questions (Questions 34)

II. Customer Assistance Programs
   - Review BCS response to EAP Questions 7, 15-17, 32

III. Data Exchange Project (Question 33)

IV. BCS Plans for Future Public Reports including the Annual Activity Report (Question 30)

V. Quality of Service Benchmark Reports (Question 31)

VI. BCS Casehandling Procedures (Questions 1-2, 4-6, 9-10, 13-14, 18-24)

VII. Regulation Interpretation (Questions 3, 11-12, 25-29, 35, 36)

BCS would also like to remind companies of the Cold Weather Procedures (CWP) for termination. BCS has repeatedly expressed its willingness to act on properly filed termination requests. The BCS has also repeatedly expressed its opinion to utilities that the filing of some CWP requests would help disseminate the correct message that there is no winter moratorium.

11. What is the Bureau's policy towards the company effecting termination action on a customer who has called the Commission and is waiting for a decision but is not paying the undisputed portion of bills?

BCS Response

Chapter 56 at §56.81(1) provides that utility service to a dwelling may be terminated for nonpayment of an undisputed delinquent account. The applicable notice procedures must be followed. The affected customer in turn may exercise rights afforded to residential customers in Chapter 56.

12. What does the Bureau suggest companies do with cases where a decision has been rendered and the customer is paying per the decision as to the disputed amount, but no payments are being made as to undisputed amounts? (These undisputed amounts can accumulate significantly depending on how long it takes for the complaint to be processed).

BCS Response

Chapter 56 at §56.81(1) provides that utility service to a dwelling may be terminated for nonpayment of an undisputed delinquent account. The applicable notice procedures must be followed. The affected customer in turn may exercise rights afforded to customers in Chapter 56.

13. If a customer has had four (or some other number) of priors and has not paid off the balance, further complaints should not be taken unless the customer's service has been terminated. These customers have had multiple opportunities to keep company and Bureau agreements, and they have had ample opportunity to appeal and possibly participate in low-income programs. There is no argument that customer has not been afforded their "rights" they have been. What ever happened to the concept of "temporary inability to pay". Please respond.

BCS Response

BCS has no reason to believe that the situation described in #13 is anything but an isolated instance. BCS urges any company that finds a pattern of abuse as described here should bring this to BCS' attention in writing. This issue has not previously been brought to BCS' attention.

Nevertheless, during the week ending 2/22/02 all BCS Staff (includes 1to1) were reminded of office policy on opening new PARs. The long-standing policy of not accepting a case during the 120 day window absent extenuating circumstances was discussed. Specifically, staff was reminded of the following that even after 120 stay our provision , opening a case may not be appropriate.

Additional Guidelines for When Not to Open a Case
Attachment A

Do not open a new informal complaint even after 120 days if you are aware that any of the following circumstances apply to the consumer.

The consumer admits to not having paid anything on the prior BCS decision.

- ***The prior BCS decision required an up-front payment that the consumer did not pay. BCS usually only requires an up-front amount because the consumer had a previous BCS decision or is considered to be a level 4 (someone who should have paid their bills).***
- ***The consumer has made no or little attempt to pay during the winter months (this is a clear sign that they are using the winter period to avoid payment, therefore, showing bad faith).***
- ***The consumer has had a prior formal complaint that was closed due to a settlement between them and the company (also a clear sign of bad faith on the consumer's part, again appearing to use the process to avoid payment).***
- ***The consumer has had two BCS decisions within the last 12 months.***

Please remember that there is no substitute for good judgment. If you have a situation that you believe should be looked at again, then you are always permitted to open a new informal case, providing proper documentation, and allow the investigator to make the final decision after reviewing the information provided by the company.

14. For customers with multiple broken agreements, shouldn't the payment history be reflected in the Bureau's determination through lump-sum awards or increases from payments that would otherwise be required under the