BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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I. INTRODUCTION

On December 16, 2006, the Commission's Order (ANOPR Order) initiating an Advance Notice of Proposed Rulemaking to amend provisions of 52 Pa. Code, Chapter 56 to reflect the provisions of 66 Pa.C.S. Chapter 14[1] was published in the Pennsylvania Bulletin. 36 Pa.B. 7614. As the Commission notes in its ANOPR Order, on November 30, 2004, Act 201 was signed into law, becoming effective on December 14, 2004 as Sections 1401 to 1418 of the Public Utility Code. Act 201 (Chapter 14) is known as the Responsible Utility Customer Protection Act. The purpose of Chapter 14 is to eliminate opportunities for those customers who are capable of paying their utility bills to avoid the timely payment of those bills. 66 Pa.C.S. § 1402(2). Chapter 14 seeks to achieve this end by providing utilities with the means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. 66 Pa.C.S. § 1402(3). The General Assembly was clear, however, that such additional collection tools were not to jeopardize the availability of utility service on reasonable terms and conditions. The General Assembly stated:

> 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. § 1402(3).

Following the effective date of Chapter 14, the Commission began a series of Roundtable Discussions to address the implementation issues raised by the Act and solicited Comments on various issues that were identified by the Commission and the parties. The OCA participated in those discussions and filed several sets of Comments addressing the various implementation issues. Following consideration of these discussions and comments, the

[1] 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, Advanced Notice of Proposed Rulemaking Order, Docket No. L-00060182, entered December 4, 2006.

Commission issued a series of Implementation Orders. Those Orders include Chapter 14 Implementation, Implementation Order, Docket No. M-00041802F0002, Entered March 4, 2005 (First Implementation Order); Order re Chapter 14 Implementation – Petitions of the Energy Association and the Philadelphia Gas Works for Clarification and/or Reconsideration of the Implementation Order, Docket No. M-00041802F0002, Entered June 2, 2005 (First Reconsideration Order); Chapter 14 Implementation, Second Implementation Order, Docket No. M-00041802F0002, Entered September 12, 2005 (Second Implementation Order); Chapter 14 Implementation, Reconsideration of Implementation Order, Docket No. M-00041802F0002, entered October 31, 2005 (Second Reconsideration Order); and Chapter 14 Implementation, Declaratory Order, Docket No. M-00041802F0002, Entered November 21, 2005 (Declaratory Order).

The Commission now seeks to take the next step and formally amend certain provisions of its Chapter 56 regulations to reflect the requirements of Chapter 14 and the directives in the Commission's Implementation Orders. The OCA submits that the Commission's Chapter 56 regulations on Standards and Billing Practices, enacted in 1978, have provided important, and reasonable, consumer protections while allowing utilities the ability to collect their bills in a timely manner. While the General Assembly has provided additional tools to assist utilities further in bill collection through Chapter 14, the OCA submits that given the history and case law accompanying the operation of the Chapter 56 regulations, the Commission should not undertake unnecessary, or major, revisions to the regulations. The OCA recommends that the Commission limit its modifications to those provisions that require amendment to conform to, or reflect, Chapter 14, and those provisions that may need to be updated to reflect

newer technology, such as electronic bill payment and the wider availability of budget billing, that can further assist with bill payment and collection.

In Section II of these Comments, the OCA addresses the ten topics identified by the Commission in Appendix A to its Advanced Notice of Proposed Rulemaking Order.[2] In Section III, the OCA provides a discussion of additional modifications that may be necessitated by Chapter 14 or that may be needed to reflect improved technology that will assist in timely collection.

The OCA looks forward to continuing to work on these issues to ensure that the Standards and Billing Practices for Pennsylvania's utilities provide reasonable and equitable consumer protection while at the same time providing the necessary tools to address timely payment by those customers who are capable of paying.

[2] For purposes of clarity, where the OCA refers to a particular section of Chapter 56 in the text of these comments, it will use the section symbol - §. Where the OCA refers to a particular section of Chapter 14 in the text it will use the word "Section".

II. RESPONSE TO COMMISSION IDENTIFIED TOPICS

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.

The ANOPR Order provides, in relevant part:

> Section 1417 states that the Chapter 14 rules "shall not apply" to victims under a protection from abuse (PFA) order. The definition of "natural gas distribution utility" at § 1403 also excludes gas utilities with annual operating revenues of less than $6 million per year or that are not connected to an interstate gas pipeline. Moreover, § 1406(e) excludes water utilities. In addition, Chapter 14 excludes steam heat and wastewater utilities. In light of the above, we need to address what regulations should be applied for these utilities and consumers that are specifically excluded from Chapter 14 requirements. If it is Chapter 56 that is to be applied, we need to address what will be applicable to PFA holders and delinquent steam heat, small gas and wastewater customers once Chapter 56 is revised to reflect Chapter 14.
>
> We propose creating a separate chapter to address the utilities and consumers that are specifically excluded from Chapter 14 provisions. This separate chapter essentially would reflect the current Chapter 56 rules, except that it would only apply to residential customers of steam heating utilities, wastewater utilities, small natural gas distribution utilities, water utilities' winter termination activity, and victims with a PFA order.

ANOPR Order, Appendix A at 1.

As the Commission notes in its ANOPR Order, Chapter 14 is limited to electric distribution companies (EDCs), large natural gas distribution companies (NGDCs), and to some extent, water utilities. The rules established by Chapter 14 are not to apply to steam heat utilities, small natural gas companies, or wastewater utilities. In addition, Chapter 14 does not apply to a customer of any utility who is a victim of domestic violence and who holds a protection from abuse order. 66 Pa.C.S. § 1417.

The Commission has proposed to create a separate chapter to address the utilities and consumers that are specifically excluded from Chapter 14. As the OCA understands the

Commission's proposal, the Commission would move the existing Chapter 56 provisions into this new Chapter to apply to residential customers of steam heat utilities, wastewater utilities, small natural gas distribution utilities, water utilities' winter termination activity, and victims with a PFA order.

The OCA agrees with this proposal to retain the existing Chapter 56 regulations for those utilities and their customers that are not covered by the enactment of Chapter 14 and for customers with a PFA. To the extent that the General Assembly chose to modify existing Chapter 56 protections for some types of utilities and groups of customers, it is equally clear that they did not intend to mandate an expansion of those changes to other groups. Indeed, with respect to domestic abuse victims with a PFA, the General Assembly expressly exempted these customers from the new requirements of Chapter 14. As such, the Commission is correct to continue the existing Chapter 56 requirements for any utilities and customers not covered by Chapter 14. A separate Chapter may be the simplest and clearest way to achieve this end.

2. Previously Unbilled Utility Service.

The Commission's Order provides the following as to previously unbilled utility service:

> The "make-up" bill rules at § 56.14 address the procedures to be used when a utility bills for previously unbilled service resulting from a billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills. We propose incorporating into this section a four-year limit on such billings. This four-year statute of limitations reflects the same time restrictions found in other sections of the regulations; § 56.35 for example; and the record maintenance requirements found at § 56.202. In addition, this would reflect the four-year limit found at 66 Pa. C.S.A. § 1312.

ANOPR Order, Appendix A at 1. The OCA agrees with the Commission's proposal to incorporate a four-year limit for previously unbilled utility service. The four-year timeframe is

reasonable and consistent with comparable restrictions found in other areas of Chapter 56. Accordingly, the OCA submits that § 56.14 should be amended to incorporate the four-year statute of limitations.

The ANOPR Order also provides the following as to the obligation of a utility to negotiate a payment plan for those customers who are billed for previous utility service:

> Also concerning § 56.14, we propose maintaining the obligation of a utility to offer a payment schedule based on previously unbilled utility service. Since this section involves charges that were not previously billed and are not overdue, we see no conflict with the limitations on the number of payment agreements found in Chapter 14 at §1405(d).

ANOPR Order, Appendix A at 1. The OCA agrees with the Commission's proposal to maintain the current requirements found at § 56.14 as to the utility's obligation to negotiate a payment plan with the customer, and the OCA further agrees that Section 1405(d) of Chapter 14 creates no conflict with the existing requirements found in § 56.14.

As the Commission explained in its First Implementation Order, "The Act is intended to protect responsible bill paying customers from rate increases attributable to the *uncollectible accounts* of customers that can afford to pay their bills, but choose not to pay." First Implementation Order, (*emphasis added*). The OCA agrees that the Act was intended to address previously billed, overdue account balances – in other words, arrearages. Arrearages are the result of utility services that the customer has knowingly received, has been billed for, and has been unable to currently satisfy the full balance due on the account.

Conversely, § 56.14 does not address arrearages. Section 56.14 describes a situation where the utility, through some error, omission, oversight or mechanical failure, has not accurately billed a customer for services received. Thus, the factual scenario in a case of previously unbilled utility service is one where the *utility* has not fulfilled its obligation to the

customer; whereas, in an arrearage situation the *customer* has not currently fulfilled its obligation to the utility. The OCA submits that it would be patently unfair to include a § 56.14 payment plan within the same universe as a Section 1405(d) payment agreement, as the customer did not create the situation that has led to the account balance in question.

3. Credit Standards.

The ANOPR Order provides the following as to credit standards:

> Credit standards and procedures are found in §§ 56.31-56.38. In addition to incorporating the requirements of §§ 1404(a), 1404(d)-(f), 1407(d), 1414(c) and the § 1403 definitions of applicant and customer, into these sections, we propose revising these sections to clarify acceptable applicant identification requirements, use of social security numbers, and third-party service requests, in the context of preventing fraud and identity theft (refer to the Commission's July 14, 2005 Order re: Investigation In Re: Identity Theft at Docket M-00041811). This will include the identification standards that should be applied to "each adult occupant" per § 1404(d).
>
> Chapter 14 at § 1404(a)(2) 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." In order to insure that the credit standards being used meet these conditions and are being applied in an equitable and nondiscriminatory manner, we propose requiring utilities to include their credit scoring methodologies and standards in their Commission-approved tariffs.
>
> Chapter 14 at § 1407(d) allows a utility to hold an applicant seeking reconnection at a location terminated for non payment responsible for utility service previously furnished at the same address but in another parties name(s) for the period during which the applicant resided at the same address. Section 1407(e) addresses how a utility may establish such liability, including "...other methods approved as valid by the Commission." We propose 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. We also propose including a four-year statute of limitations on such assignments of liability. This four-year limit reflects the same time restrictions found in other

> sections of the regulations; § 56.35 for example; and the record maintenance requirements found at § 56.202. In addition, this would reflect the four-year limit found at 66 Pa.C.S.A. § 1312.

ANOPR Order, Appendix A at 2.

a. Applicant Identification Requirements.

The Commission has proposed revising §§ 56.31 – 56.38 regarding Credit and Deposit Standards for New Applicants to incorporate the requirements of Sections 1404(a), 1404 (d) – (f), 1407 (d), 1414 (c), and 1403. In addition to these changes, the Commission is proposing to clarify acceptable applicant identification requirements in order to ensure against fraud and identity theft. The OCA agrees with the Commission that as utilities are now permitted to acquire more information on new applicants and members of the household, issues will arise as to what is acceptable information for the utility to obtain and what are appropriate procedures to have in place to safeguard all information obtained on the household members.

As to safeguarding the information, the OCA supports the Commission's statement in Investigation In Re: Identity Theft, Docket No. M-00041811 (Order of July 14, 2005)(Identity Theft Order) that:

> [U]tility companies are strongly urged to develop and re-evaluate their notification of breach procedures and their initial polices to ensure that storage of customer confidential information, either on company database or on outsourced arrangement, complies with federal and other relevant laws.

Identity Theft Order at 5. Importantly, these measures should be reviewed to ensure that they provide adequate protection of the information that is collected on persons that are not the "customer of record" so that there are no inadvertent gaps in security due to the new class of non-customer information being obtained.

The OCA also supports the Commission's proposal to clarify the types of identification that are to be considered acceptable in establishing the identity of the applicant. Specifying the type of identification will avoid potential discriminatory treatment of customers. All customers should be provided the opportunity to establish their identity through the same methods or documents. The OCA submits, however, that the regulations should make clear that a broad range of identification methods should be permitted as long as the method provides adequate assurance of the customer's identity for the purposes of receiving service. Not every customer, for example, will have a driver's license, but clearly that is not a basis on which to deny that person utility service.

b. Section 56.32 And Credit Scoring Under Section 1404(a)(2).

In addition to the methods of establishing creditworthiness in § 56.32, a utility can now use a generally accepted credit scoring methodology to determine the creditworthiness of an applicant or customer for purposes of requiring a deposit. Section 1404(a)(2) provides:

> (a) General rule. In addition to the right to collect a deposit under any commission regulation or order, the commission shall not prohibit a public utility, prior to or as a condition of providing utility service, from requiring a cash deposit in an amount that is equal to one-sixth of the applicant's estimated annual bill, at the time the public utility determines a deposit is required, from the following:
>
> (2) Any applicant or customer who is unable to establish creditworthiness to the satisfaction of the public utility through the use of a generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice.

66 Pa.C.S. § 1404(a)(2). The Commission has proposed that if a utility wishes to use credit scoring, that the credit scoring methodologies and standards be included in the Commission-approved tariffs to ensure that the standards are being applied in an equitable and non-

discriminatory manner. The OCA submits that that the Commission should also include standards and protections in its Chapter 56 regulations regarding credit scoring.

The use of credit scoring can be controversial and fraught with problems. Credit scores are often inaccurate or incorrect, and can vary significantly from one reporting agency to another. The credit score is calculated by a privately held algorithm that is not available for public review and approval. Credit scores can also be affected by circumstances that have nothing to do with a customer's payment history of utility bills and can be adversely affected by even short-lived instances of credit card theft or identity theft. Credit scoring also can disproportionately impact low-income customers and younger customers who may not have a significant credit history and who may have relied on bill payment through cash or cash-equivalents. Since the deposit requirements for applicants can now present an additional barrier to access to essential utility service due to Chapter 14's allowing the utility to require that the deposit be paid in full before service is turned on, the Commission must ensure that the credit scoring methodologies and standards are the most reasonable under the law, and that customers are provided all necessary protections.

The Commission has had some experience with credit scoring through pilot programs that it has approved for several utilities. [3] Through these pilot programs, a number of issues have been addressed and protections for customers have been developed. The OCA urges the Commission to use the experience gained from these pilot programs as it fashions its regulations regarding the use of generally accepted credit scoring methodologies.

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[3] *See* Petition of Columbia Gas of Pennsylvania, Inc. and PPL Electric Utilities Corp. for Limited Waiver of 52 Pa. Code Section 56.32(2) to permit an Experimental Program to Determine Residential Customer Security Deposits Based In Part Upon Credit Scoring, Docket Nos. P-0001807, P-0001808 (Order Entered February 8, 2001); Joint Petition of Equitable Gas Co. and the Office of Consumer Advocate, Docket No. P-0001915 (Order Entered Nov. 15, 2001); and Petition of Peoples Natural Gas Co. d/b/a Dominion Peoples for Limited Waiver of Regulations at 52 Pa. Code § 56.32(2), Docket No. P-00021972 (Order entered September 13, 2002).

The OCA submits that one key protection will be for the Commission to state what is "generally accepted." The OCA recommends that the Commission clearly state that a generally accepted credit scoring methodology is one that assesses *utility* bill payment history and risk. The pilot programs have taken this approach by using Equifax's Energy Risk Assessment Model (ERAM). ERAM was developed specifically for electric and natural gas utilities using historical payment data from energy utilities across the United States. In its Order approving the pilot program proposed by PPL Electric and Columbia Gas, the Commission described ERAM as follows:

> ERAM begins with an analysis of historical utility bill payment data from several gas and electric utilities. Over 300 credit attributes of past delinquent utility customers were analyzed to determine those credit attributes most predictive of delinquency with utility bills. These credit attributes included payment history of credit cards, bank loans, auto loans, mortgages, collections cases filed, bad debt write-offs, etc. ERAM then applies these credit attributes to prospective residential customers. Each attribute is assigned a weight or value. A higher value is assigned to accounts that are current, while a lower value is assigned to accounts that are past due. These values are added to form a score from 1 to 99. The higher the score, the more likely the applicant will pay a utility bill on time. Conversely, the lower the score, the less likely the applicant will pay a utility bill on time.

Petition of Columbia Gas and PPL Electric, Docket Nos. P-0001807, P-0001808, *slip op.* at 3, fn. 2 (Order entered February 3, 2001). The Commission also noted that ERAM complies with the Equal Credit Opportunity Act and the Fair Reporting Act. Id. at 3-4.

The OCA submits that the only "generally accepted credit scoring methodology" is one that specifically assesses the risk of *utility* bill payment. As the Commission is well aware from its years of work with customers, including low-income customers and elderly customers, utility bill payment is often the priority payment for a household. Households will do without food and medicine, and other bill payments, to meet their obligation to pay for this essential

service. *See*, National Energy Assistance Directors Association (NEADA) Survey available at www.neada.org. As such, the credit scoring methodology must recognize these factors if it is to be used to establish deposit requirements for applicants or customers that could delay or deny essential utility service.

In addition to specifying the type of generally accepted credit scoring methodology, the Commission should specify various safeguards and consumer protections that must be afforded customers. As noted earlier, credit scores are not necessarily accurate, but reliance on the score could require an applicant to pay a large deposit and deny an applicant access to an essential service if they are unable to make that deposit payment. Given the potential for denied or delayed access to essential service, the OCA submits that safeguards and protections should be included in the regulations, as well as in each utility's tariff. The OCA proposes the inclusion of the following credit scoring safeguards and protections:

(1) The credit score methodology used by a utility must reflect the individual's ability to pay for utility service and be calculated and designed for that purpose.

(2) Each utility must submit its credit score policy to the Commission for approval, and once approved, must include its policy with respect to the use of credit scores in its tariff and on its website. The policy must set forth the credit score methodology, the credit score trigger for a deposit, the basis for the utility's credit score trigger for a deposit, as well as general information about the methodology used by the credit reporting agency to calculate an individual's credit score.

(3) The level of the credit score that triggers a deposit must be the same level for all applicants and customers and all situations in which the utility chooses to rely on a credit score.

(4) A utility that relies on the use of credit scores for the determination of a cash deposit must follow its policies in this regard in a uniform manner throughout its service territory. A utility is not permitted to make use of credit scoring based on the individual's personal characteristics, neighborhood or other potentially discriminatory basis.

(5) A utility should (but is not required to) offer applicants or customers without a credit score due to the lack of a credit history or with a credit score below the

trigger for a deposit the option of determining their creditworthiness by other means.

(6) The utility must inform an applicant or customer who is required to pay a cash deposit based on a credit score both orally and in writing of the deposit requirement and the basis for the deposit requirement.

(7) The written disclosure provided by the utility must inform the individual of the acceptable credit score, the customer's credit score, the credit reporting agency, how to contact the credit reporting agency, the ability to challenge the accuracy of the credit score, and how to contact the credit reporting agency to dispute or investigate the score.

(8) The written disclosure must inform the customer of all rights under the Fiar Debt Collection Practices Act, 15 U.S.C. § 1601, *et seq.*

(9) The written disclosure concerning the application of a credit score to an applicant must include information about the individual's right under 66 Pa.C.S. § 1404(b) to furnish a third party guarantor in lieu of a cash deposit.

(10) The applicant or customer must be given information about the dispute procedures at the Commission and be permitted to dispute the determination of a deposit requirement.

(11) If a dispute concerning the accuracy of a credit score is pending before the credit scoring agency longer than three business days, the utility should provide service pending the resolution of the dispute.

The OCA submits that these safeguards and protections are necessary and should be reflected in the regulations.

Included in these safeguards is the suggestion that utilities allow an applicant or customer to establish creditworthiness by other means if they have a score below the trigger. Under the terms of the pilot programs cited above, the credit scoring methodology was not used as the sole final determination of the need for a deposit. Under the pilot programs, if an applicant or customer was unable to establish creditworthiness through the credit score, the applicant or customer was given the opportunity to establish creditworthiness through the other means included in § 56.32 (excluding § 56.32(2) which was waived for the pilot). While no

longer required under Chapter 14, the OCA would urge utilities to include this feature as part of any policy to use credit scoring to establish deposit requirements. Credit scores can be incorrect, and not necessarily predictive of utility bill payment of an individual customer since all models are based on predictions or general traits and not individual utility payment history.

Additionally, in the pilot programs, Columbia Gas, Equitable Gas, PPL Electric, and Dominion Peoples agreed to exempt from the credit scoring pilot low-income customers who qualified for one or more energy assistance programs (*i.e.*, Low Income Home Energy Assistance Program (LIHEAP)). Low-income customers' deposit requirements were based on the more traditional Chapter 56 options that reflected the individual's prior payment history for utility service. Given the lack of experience with the impact of credit scoring on a low-income customer's access to service, the OCA also urges the utilities to continue this approach as part of their policy, or, in the alternative, offer the low income customer alternative means under Chapter 56 to establish creditworthiness. Of course, as noted above, all customers should be informed of their right to provide a third party guarantor under Section 1404(b).

The OCA submits that the introduction of widescale credit scoring to support the demand for a deposit by applicants or customers will give rise to new issues that may require additional safeguards and protections. Approval of the policies by the Commission, complete and accurate information to the customer, and access to dispute procedures will be necessary to protect consumers and remove the potential for discriminatory practices.

c. Section 1407(d) And (e).

Section 1407(d) allows the utility to require an applicant to pay an outstanding balance at a property where the applicant is seeking to establish service, if the applicant resided at that location when the balance accrued. Section 1407(e) provides that the utility may establish

this fact through the use of a mortgage, deed or lease, a commercially available credit reporting agency, or "other methods." The Commission makes two proposals in regard to implementing these sections. First, the Commission proposes to require utilities to obtain Commission approval before using "other methods" to establish that the applicant resided at the property and to include the approved "other methods" in the utility's Commission-approved tariffs. Second, the Commission proposes to limit the liability to a four year period consistent with Section 1312 of the Public Utility Code and other sections of the regulations. The OCA supports both of these proposals.

Of particular importance is the "other methods" that can be used to establish whether an applicant resided at a location where service is now being requested. The vague term "other methods" could raise significant issues regarding an applicant's right to privacy or even their safety. The Commission should ensure that the "other methods" involve the review of publicly available data or the utility's own database. The Commission must also ensure that such methods do not compromise the safety of applicants. Phone calls inquiring about the location or residence of an applicant, for example, could reveal the location of a victim of domestic violence. Such inquiries should be strictly prohibited.

Other than a computer search of public data or the utility's own database, the OCA is aware of no "other method" that would be acceptable. The Commission should specify in its regulations those methods that it finds acceptable and should clearly state that methods that compromise the privacy or safety of individuals will not be entertained.

4. Payment Period For Deposits.

The Order provides the following, in relevant part, as to the time period during which deposits must be paid:

> We propose that 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) that 50% of the deposit can be required up-front as a condition of restoration, with the balance of the deposit due within 90 days of restoration. 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 can be required before service is provided per § 1404(e). For existing customers with service who are required to pay a deposit, we propose maintaining the existing rules at §§ 56.41– 42 which allows for the deposit to be paid in three installments over 60 days since Chapter 14 is silent on rules for collecting deposits from customers with service, and since these Chapter 56 provisions do not appear to be inconsistent with the credit related provisions in Chapter 14.

ANOPR Order, Appendix A at 3. The Order also provides that "the payment periods in Chapter 14 appear to distinguish between applicants and customers, and customers who have had service terminated for one of the grounds listed under § 1404(a)(1)." Id. The OCA agrees that Chapter 14 distinguishes the terms "applicants" and "customers" and believes that it is prudent to start this discussion as to payment periods for deposits by reviewing the Commission's definition of these terms.

a. Applicant Or Customer

The definition section of Chapter 14 provides in relevant part:

> "Applicant." A natural person *not currently receiving service* who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.
>
> "Customer." A natural person *in whose name a residential service account is listed* and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

66 Pa.C.S. § 1403, (*emphasis added*). In its First Implementation Order, the Commission decided that a customer would retain customer status, even after the service was terminated, up

until such time as the final bill for that service became overdue. Once the final bill was issued, the customer had until the bill due date to satisfy the account by some means and seek reconnection, or the customer would revert to the status of applicant. *See* First Implementation Order at 20-22. Thus, the Commission's First Implementation Order did not deviate from the definitions of applicant and customer found in Section 1403, but it did clarify when a customer would revert to the status of an applicant.

In its First Reconsideration Order, the Commission again discussed and upheld its initial decision concerning when a customer would revert to the status of an applicant. The Commission provided that:

> As we indicated in the *Order* (page 22), however, the definition of "customer" does not require that a person be receiving service. The definition recognizes a customer as "[a] natural person in whose name a residential service account is listed." We agree that to be an "applicant" you cannot be receiving service. However, the fact that you are not receiving service does not mean you cannot be a "customer". We agree with the position advocated by PPL that a residential account can still be listed in the name, for a certain period of time, of the person terminated or discontinued and termination or discontinuance occurs when the final bill is due and payable.

First Reconsideration Order at 14. In the First Reconsideration Order's closing paragraph, the Commission provided that:

> With respect to time standards for reconnection and paying deposits, we agree that our interpretation of customer/applicant definitions may impose different time periods based on whether the consumer is considered an "applicant" or "customer". We must assume that the legislature intended this result …

First Reconsideration Order at 15. The OCA agrees with the Commission that we must presume that the General Assembly intended that Chapter 14 would impose different requirements depending upon whether the individual was a customer or an applicant. The OCA also agrees

with the Commission's decision as to when a customer would revert to the status of an applicant, as set out in the First Implementation Order and again in the First Reconsideration Order.

b. Deposit After A Termination For The Reasons Set Forth At Section 1404(a)(1).

The ANOPR Order proposes three different scenarios as to time periods for paying deposits, the first as follows:

> We propose that 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) that 50% of the deposit can be required up-front as a condition of restoration, with the balance of the deposit due within 90 days of restoration.

ANOPR Order, Appendix A at 3. The OCA agrees with the Commission that this proposal is reasonable for applicants. However, for the reasons set forth in the immediately preceding discussion of Section 1403, the OCA submits that Section 1404(a)(1) does not apply to customers. The OCA submits that if an individual's service is terminated for any of the reasons listed in Section 1404(a)(1), that individual is still a *customer* until such time as the final bill is overdue. If the *customer* rectifies whatever the underlying cause was for the initial termination under Section 1404(a)(1) before the final bill becomes overdue, then that *customer* should be able to seek reconnection without having to pay the deposit contained in Section 1404(a).

The language of Section 1404(a)(1), in relevant part provides:

> **(a) General rule.--**In addition to the right to collect a deposit under any commission regulation or order, the commission shall not prohibit a public utility, prior to or as a condition of providing utility service, from requiring a cash deposit in an amount that is equal to one-sixth of the *applicant's* estimated annual bill, at the time the public utility determines a deposit is required, from the following:

> (1) An *applicant* who previously received utility distribution services and *was a customer* of the public utility and whose service was terminated for any of the following reasons:

66 Pa.C.S. § 1404(a)(1), (*emphasis added*). The General Assembly did not draft Section 1404(a)(1) to include "applicant" and "customer" interchangeably. The OCA submits that the plain language of Section 1404(a)(1) as to deposits applies only to applicants, and that customers should not be subjected to this Section as to the collection of deposits.

Consider the natural gas distribution customer whose service is terminated for failing to provide access to the customer's meter, as is provided for in Section 1404(a)(1)(iii). Under the Commission's interpretation of who is a customer, this individual might be able to contact the company and arrange for access to the meter prior to the final bill due date. Once the access was accomplished, this individual – who would still be a customer – could seek reconnection. Of course, the utility may charge the appropriate reconnection fees under Section 1407, and may also charge this customer a deposit if the customer falls within the parameters of some other Section of Chapter 14 that would allow a deposit to be charged to a customer. However, this customer should not be charged a deposit under Section 1404(a)(1).

This approach meshes with the Commission's decision as to when an individual who was once a customer would revert to the status of an applicant, and also provides sound public policy. It is in the best interest of all concerned to keep customers on the system and, when necessary, to seek reconnection in a timely fashion. Accordingly, Section 1404(a)(1) should only apply to individuals who have been terminated under that Section, and then fail to act before the final bill for their account becomes overdue. For the reasons just noted, the OCA agrees with the Commission's proposal as to deposit payment periods under Section 1404(a)(1)

for applicants who have been terminated, but submits that customers should not be included in the Commission's final determination on this issue.

c. Applicant's Failure To Pay A Security Deposit.

The ANOPR Order provides a second scenario where a time period is involved for paying a deposit, as follows:

> 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 can be required before service is provided per § 1404(e).

ANOPR Order, Appendix A at 3. The OCA respectfully disagrees with this Commission proposal on the same general grounds as just discussed, in that Section 1404(e) does not contain the word customer, only applicant. Section 1404(e) provides:

> **(e) Failure to pay full amount of cash deposit.--**A public utility shall not be required to provide service if the *applicant* fails to pay the full amount of the cash deposit.

66 Pa.C.S. § 1404(e), (*emphasis added*). The OCA agrees with the Commission that applicants seeking service outside the parameters found in Section 1404(a)(1) may be subject to the payment requirements as set out in Section 1404(e). However, the OCA submits that based on the language of Section 1404(e), customers should not be included with applicants in that class of individuals who may be subject to paying the full amount of a deposit prior to receiving service. The OCA submits that customers who are required to pay a deposit should be able to pay within the timeframe set out in §§ 56.41 – 42, because Chapter 14 does not address timeframes for *customers* to pay a deposit. Chapter 14 only addresses timeframes for *applicants* to pay a deposit.

d. Deposit Payment Periods For Customers.

The ANOPR Order contains this last proposal as to time periods for paying deposits for existing customers:

> For existing customers with service who are required to pay a deposit, we propose maintaining the existing rules at §§ 56.41– 42 which allows for the deposit to be paid in three installments over 60 days since *Chapter 14 is silent on rules for collecting deposits from customers* with service, and since these Chapter 56 provisions do not appear to be inconsistent with the credit related provisions in Chapter 14.

ANOPR Order, Appendix A at 3, (*emphasis added*). The OCA agrees with the Commission that the existing provisions found in §§ 56.41 and 56.42 should be retained and applied for deposit payment periods for customers, as the term customer is defined by Chapter 14. However, the OCA submits that the apparent limitation to only customers "with service" is not in accord with Chapter 14. Up to this point, the Commission has only identified two possible classes of individuals under Chapter 14, applicants or customers. To introduce the limitation of "with service" would seem to indicate that there are two types of customers, ones "with service" and ones "without service". In light of the considerable discussion and explanations that the Commission has already engaged in as to when an individual who was once a *customer* would revert to the status of an *applicant*, the OCA submits that a second class of customer is neither warranted nor necessary.

The OCA also agrees with the Commission that §§ 56.41 and 56.42 do not conflict with Chapter 14, as the time periods set out in Chapter 14 for the payment of deposits relate only to applicants, and not customers.

The OCA submits that for all the reasons previously discussed, Sections 1404(a)(1) and 1404(e) apply only to applicants as far as the imposition of deposits or the time

period in which deposits must be paid. Conversely, §§ 56.41 and 56.42 of the existing Chapter 56 regulations should be retained and applied to customer deposit payment periods, as this issue is not addressed in Chapter 14.

5. Termination of Service.

The Order provides the following as to termination of service:

> Regulations governing the termination of service are found in Chapter 56 sections 56.81 – 56.131. Termination of service can have serious consequences, not only for the customers immediately affected but also for neighbors and the surrounding community. Therefore, we seeks comments that reflect careful consideration of the health and safety factors for those immediately affected by termination of essential utility service, as well as the Commission's duty to protect the health and safety of all citizens of the Commonwealth.
>
> Chapter 14 includes grounds for authorized termination at § 1406(a) and we propose incorporating these grounds into § 56.81. Section 1406(c) lists grounds for which immediate termination without prior notice is authorized and we propose incorporating these into § 56.98. However, Chapter 14 does not specifically list grounds for which termination of service is not authorized as currently found at § 56.83. This section includes prohibitions on terminating utility service for nonpayment of nonbasic charges, for charges of a different rate class, for overdue account balances less than $25.00, for unpaid concurrent service, etc. We propose maintaining § 56.83 to the extent that it is found to be consistent with Chapter 14. We also propose maintaining the distinction between "user without contract" and "unauthorized use" as determined and support by the Commission in the first Implementation Order, pp. 7-10.
>
> Moreover, we propose revising the termination notice process to incorporate the new termination notice procedures found in Chapter 14 at § 1406(f). We also intend to address the interaction of dispute procedures (§§ 56.92, 56.97, 56.141—181) with the termination procedures, including the obligation of the utility to stay termination pending resolution of a dispute, and the obligation to provide the consumer with an opportunity to file an informal complaint after a dispute is addressed by the utility and the customer remains dissatisfied. 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. Likewise, the procedures found at § 56.94 addressing what is to happen immediately prior to termination appear not to be impacted by Chapter 14.

ANOPR Order, Appendix A at 3-4.

a. Introduction.

As the Commission correctly recognizes in its Order, termination of essential utility service can be a matter of life or death and is central to the Commission's obligation to protect the health and safety of all citizens of the Commonwealth. Order at 5. The Commission is all too aware of the potentially significant, and harmful, consequences that can result when a household is without natural gas service during the winter or without essential electric service at any time of the year. Deadly fires from households trying to use candles for light and carbon monoxide poisoning or fires from homes trying to heat with dangerous alternative fuels have been well-documented in Pennsylvania when families have been without utility service. Given the importance of this issue to the health and safety of the citizens of the Commonwealth, the OCA submits that the Commission should reduce existing termination protections in Chapter 56 only to the extent necessary to reflect the mandates of Chapter 14.

Section 1406 is the primary section of Chapter 14 that addresses the termination of service. From the OCA's review, Section 1406 has an impact upon four broad areas related to termination of service. Those areas include the grounds for termination, the days on which termination can occur, the notice procedures, and the winter termination procedures. The OCA will discuss winter termination in Section II.6 of these Comments. In this Section, the OCA will address the other broad areas identified by the Commission for consideration regarding termination.

b. Grounds for Termination.

i. Section 56.81 – Authorized Termination of Service.

Section 1406(a) sets forth the grounds for termination of service, and Section 1406(c)(1) identifies additional grounds for termination where termination can proceed on an immediate basis without notice. The Commission has proposed to incorporate the grounds for termination found in Section 1406(a) into § 56.81 entitled "Authorized termination of service." The OCA agrees with the Commission's proposal to include the grounds for termination of Section 1406(a) into § 56.81 and, from the OCA's review, Section 1406(a) and § 56.81 are fairly well aligned. Minimal, if any, changes will be needed to implement Section 1406(a). The OCA would also note that current § 56.81 includes the grounds for termination contained in Section 1406(c)(1). The Commission may wish to maintain these grounds in § 56.81 for the sake of consistency and completeness.

ii. Section 56.98—Grounds For Immediate Termination.

As noted, grounds for immediate termination without prior notice are set forth in Section 1406(c)(1). The Commission has proposed to incorporate the grounds for immediate termination into § 56.98 of its regulations. The current § 56.98 allows for immediate termination without prior notice only in circumstances where the service termination was based on an occurrence which endangers the safety of a person or may prove harmful to the energy delivery system. 52 Pa. Code § 56.98. While a termination in such a circumstance can proceed without notice so long as the utility honestly and reasonably believes grounds to terminate service exist, the current version of § 56.98 also requires the utility to make a bona fide attempt to deliver a notice of termination to a responsible person at the affected premises, or to post the notice if the premises is a single meter, multi-dwelling unit.

Chapter 14 now broadens the grounds for an immediate termination beyond those specifically related to endangering safety or that may prove harmful to the energy delivery system. Of particular note, the specific grounds for immediate termination without notice now include fraud or material misrepresentation of the customer's identity for the purpose of obtaining service. 66 Pa.C.S. § 1406(c)(1)(ii). With the changes in the grounds for immediate termination brought about by Chapter 14, the OCA submits that there are several modifications to § 56.98 that the Commission should consider.

As an initial matter, the Commission has proposed to include the specific grounds for immediate termination found in Section 1406(c)(1) into § 56.98. The OCA agrees with this proposal, particularly given the significant change brought about by Section 1406(c)(1). In addition to incorporating the grounds for immediate termination found in Section 1406(c)(1), the OCA submits that it is also necessary to include the notice provisions of Section 1406(c)(2) in § 56.98. The notice provision of § 56.98 is very similar to that in Section 1406(c)(2), but as revisions are being made, these notice provisions should also be incorporated.

Given the introduction of the broader ground for immediate termination without notice, particularly the inclusion of fraud or material misrepresentation of the customer's identity for the purpose of obtaining service, the OCA submits that the Commission should consider further modification to § 56.98 to provide for immediate review procedures and to further define what constitutes fraud or material misrepresentation for purposes of allowing utilities to engage in the extreme measure of terminating customers without prior notice.

The OCA submits that utilities should not have unfettered discretion to decide what constitutes fraud or material misrepresentation under Section 1406(c)(1) for purposes of the immediate termination of a household without notice, particularly in the winter. Allowing

immediate termination without notice, particularly in the winter, is an extreme measure that has traditionally been reserved only for those situations where the safety of the system, employees, or other persons is endangered. Situations involving safety or harm to the utility infrastructure that justify immediate termination without notice have been made clear through years of Chapter 56 implementation and review by the Bureau of Consumer Services (BCS). Now, however, there may be questions as to the circumstances where such an extreme measure is permitted for fraud or material misrepresentation – situations where safety may not be compromised.

The utilities' own undefined determination of "fraud" or "material misrepresentation" is likely to lead to increased disputes, and a lack of consistency across the Commonwealth is likely to lead to the appearance of discrimination. Such inconsistency will also contribute to difficulties in educating customers on their rights. Furthermore, since terminations without notice have the potential to threaten the safety of children and other household members that are not responsible for the conduct of the individual customer of record, the Commission should carefully set forth the narrow grounds that would justify such terminations. For example, as the Commission has correctly found, inadvertently bouncing a check is not fraud. Second Implementation Order at 18. But this possible interpretation of Section 1406(c)(1)(ii) has already been proposed and could have led to a termination without notice in the winter without the Commission's resolution. Id. Care must be taken that the drastic action of termination without notice does not occur without a proper basis. The OCA submits that it is reasonable for the Commission to promulgate regulations to further delineate the specific elements of fraud or material misrepresentation that could result in an immediate

termination.[4] In setting forth the criteria that would need to be satisfied to trigger this potentially dangerous step, the Commission should also require the utilities to document in their internal records the facts concerning the alleged fraud or misrepresentation.

Additionally, the OCA submits that where a utility has performed an immediate termination without notice, there must be a procedure in place in which a customer can immediately challenge the termination. The regulations should require the utility to file with BCS, within 24 hours of the termination, sufficient facts as to the basis for any such termination. The customer involved should be permitted to obtain an expedited/emergency review with an emergency assignment to an ALJ or Special Agent if necessary. Immediate restoration and reimbursement of reasonable customer costs should be ordered if the ALJ finds the utility's proof is lacking or clearly in error.

The OCA submits that immediate termination without notice is an extreme measure. Accordingly, sufficient safeguards and Commission oversight are necessary to ensure against the erroneous or arbitrary application of this extreme measure. The OCA submits that the Commission should modify § 56.98 to provide the necessary safeguards in light of the modifications brought about by Chapter 14.

iii. Section 56.83 – Unauthorized Termination of Service.

The Commission also notes in its Order that § 56.83 of the regulations specifies situations where termination is not authorized, while Chapter 14 is silent on this point. The

[4] According to Pennsylvania case law, the elements of common law fraud include a misrepresentation; knowledge of the misrepresentation; intention by the misrepresenter that the recipient will be induced to act; justifiable reliance by the recipient on the misrepresentation; and damage to the recipient. Donahue v. W.C.A.B., 865 A.2d 230, 237 (Pa. Commw. Ct. 2004). This case law suggests that the utility would, at a minimum, have reason to believe (based on prior contact and other interactions with the customer) that the customer has knowledge of the utility's allegation of fraud or misrepresentation and has continued the course of conduct without sufficient response or facts to challenge the utility's allegations. While the utility may not be required to provide a termination notice per se, the termination should not be assumed to be appropriate without some prior contact or communication by the utility concerning the alleged fraud or misrepresentation.

Commission proposes to maintain § 56.83 to the extent that it is consistent with Section 1406. The OCA supports the Commission's proposal in this regard. A section on Unauthorized Termination of Service such as § 56.83 provides clarity to utilities as to those situations where termination of service is not proper. Such clarity, particularly as modifications to termination procedures necessitated by Chapter 14 are being implemented, will be useful in avoiding potentially dangerous and improper terminations of service.

iv. User Without Contract and Unauthorized Use As It Affects Grounds For Termination.

In its discussion, the Commission indicates that it intends to maintain the distinction between "user without contract" and "unauthorized use" that it set forth in its First Implementation Order. *See* First Implementation Order at 7-10. In the First Implementation Order, the Commission noted:

> It is important from a safety standpoint to maintain the distinction between a user without contract and unauthorized use of service. The Commission historically has viewed unauthorized use of service and user without contract as separate and distinct issues. Unauthorized use of service usually refers to meter tampering, diversion of service, or some other means of stealing utility service from the company. Whereas a user without contract involves situations where the customer has not been identified.

First Implementation Order at 8.

As the Commission correctly notes in its Order, a user without contract situation normally arises when the utility chooses to let the service remain on after a ratepayer vacates a property and discontinues service. When the new occupant moves in, they are a user without contract until the application is completed. Another common situation is when a spouse who was the customer of record either dies or leaves the home, and the remaining spouse continues to live in the house and receive service. First Implementation Order at 9-10. These situations do

not present a safety situation for the utility and they are not attempts to avoid paying for utility service.

The OCA submits that the Commission has correctly identified the distinction between unauthorized use and user without contract. This distinction should be embodied in the regulations as proposed by the Commission.

c. Section 56.82--Days Termination Of Service Is Prohibited And Section 56.192—Personnel Available To Restore Service.

Section 1406(d) modified the provisions of 66 Pa.C.S. Section 1503(a) that had prohibited termination of utility service on certain days, including Friday. Section 1406(d) now allows for the termination of service (for the grounds identified in Section 1406(a)) from Monday through Friday as long as the utility can accept payment to restore service the following day and can restore service consistent with Section 1407. The regulations at § 56.82 had previously incorporated 66 Pa.C.S. Section 1503(a), and will need to be modified to reflect the provisions of Section 1406(d).

In addition, the regulations will need to reflect the mandate in Section 1406(d) that the utility be able to accept payment on the following day and restore service consistent with Section 1407, which can require restoration within 24 hours under certain circumstances. There are two places where these requirements may need to be reflected. First, the OCA recommends that for the sake of completeness and understandability, the requirements be included in § 56.82. The regulations also include § 56.192, which addresses the hours that personnel must be available to restore service. The hours and days specified in § 56.192 will need to be altered to reflect the new requirement that personnel be available to receive payment the following day,

whether a regular work day or not, and that personnel be available to restore service within 24 hours in certain circumstances.

The OCA would also note that having personnel available to receive payment and restore service does not mean just answering the phones at an after hours dispatch center and being advised to use an electronic payment methods. Personnel must be available who can discuss the customer's account, resolve disputes, negotiate payment arrangements, refer customers to payment assistance, and receive actual payment. The regulations at § 56.82 and/or § 56.192 should specify that personnel are available to perform these tasks.

d. Sections 56.91-56.99 – Notice Procedures.

Section 1406(b) made a number of changes to the Commission's existing notice procedures regarding termination of service. From the OCA's review, the primary change made by Section 1406 would be to § 56.93 (personal contact provisions) and § 56.95 (deferred termination when no prior contact). The Commission notes in its Order that it does not find §56.94 (procedures immediately prior to termination) to be affected by Chapter 14. The OCA concurs with this assessment. The OCA would also note that § 56.91 (general notice provision) that calls for notice at least 10 days prior to the date of termination is also unaffected by Chapter 14.

The current regulations at § 56.93 require that at least three days prior to the termination personal contact must be made with the ratepayer or a responsible adult occupant either in person, by phone, or through contact with a person designated by the ratepayer. If the ratepayer has not made a designation, the utility is to contact a community interest group or the local police department that has previously agreed to contact ratepayers in this circumstance. If no such group exists, the Commission is to be notified.

Section 1406(b)(1)(ii) requires only an attempt at personal contact, either in person or by phone. Section 1406(b)(1)(ii) also provides a specific definition of what constitutes an attempt at personal contact by phone. The OCA submits that § 56.93 will need to be amended to reflect the personal contact provisions of Section 1406(b)(1)(ii). The OCA would note, however, that Chapter 14 should not be read to modify the Commission's third party notification program as found in § 56.131 and reflected in § 56.93. As the Commission notes in its current regulations, the third party notification program is designed to assist in preventing unnecessary terminations and protecting the public health and safety. There is nothing in Chapter 14 to suggest that the General Assembly intended to deprive Pennsylvania's most vulnerable citizens of this important protection.

The current regulations at § 56.95 also require that if a personal contact is not made with the customer prior to termination, and personal contact is not made with the customer or a responsible adult at the time of termination, the termination be deferred and a 48-hour termination notice be posted. Section 1406(b) eliminates this requirement for the non-winter months. The non-winter termination procedures in § 56.95 will need to be modified to note that the deferred termination and 48-hour notice are no longer required in the non-winter period.

Finally, the OCA would note that the Commission has accomplished much in regard to the notice process through its Implementation Orders and the development of the specific notices relating to termination.[5] The OCA would urge the Commission to incorporate the notice forms that have been developed into the Appendix to the regulations and direct the use of these standardized forms by all affected utilities.

[5] The OCA will discuss winter termination notice procedures in the Section addressing winter termination.

e. Sections 56.141-181 – Dispute Procedures.

The Commission proposes to address the interaction of its dispute procedures with the termination procedures. As the Commission correctly notes, there appears to be nothing in Chapter 14 that superseded the dispute regulations in Chapter 56. In fact, Chapter 14 is clear that termination is authorized for "nonpayment of an undisputed delinquent account." 66 Pa.C.S. §1406(a)(1). While some changes to the dispute procedures may be necessitated by other provisions of Chapter 14, the interaction of the dispute procedures with the termination provisions of Section 1406 should be essentially the same as currently exists.

6. Winter Termination Procedures.

The ANOPR Order provides the following as to winter termination procedures:

> New winter termination rules at § 1406(e) are significantly different and supersede the traditional rules at § 56.100. As a result, the revisions to § 56.100 are of great importance and the Commission urges all parties to seriously consider the many issues involved and invites specific and detailed comments on this section in particular. Winter-time termination restrictions are based upon the customer's income in relation to the federal poverty level. There is also a need to promulgate specific regulations to cover the winter-time statutory provisions exclusive to the Philadelphia Gas Works.
>
> Section 1406(e) restricts termination without Commission permission for customers at or below 250% of the federal poverty level (150% for PGW.) However, there is no direction provided regarding utility obligations to determine and confirm a customer's eligibility for winter time termination based on their income and the customer's obligation to cooperate with such procedures. The Commission addressed this to some extent in the Second Implementation Order and we propose incorporating this guidance into this regulation.
>
> Unlike § 56.100 which distinguishes between heat related and non-heating accounts (heat-related accounts are protected from termination without PUC permission), § 1406(e) does not make this distinction in Chapter 14. To align § 56.100 with the statute,

> we propose eliminating the distinction between heat and nonheat accounts.
>
> In addition, one of the major tools used by the policymakers and other parties is the information obtained per the provisions of § 56.100(4) and (5). These subsections require utilities to annually, at the beginning of the winter, survey the heat-related accounts they have terminated and to make a good faith effort to restore service to as many as possible. The utilities are then required to report to the Commission by December 15 of each year on these efforts and the number of heat-related accounts still without service. Given that Chapter 14 now allows utilities to terminate some utility service throughout the winter without PUC permission, we believe that updated information on the number of households without utility service throughout the wintertime may be necessary. We propose revising the survey provisions (§56.100(4) and (5)) to require updates throughout the winter consistent with the Final Order of July 20, 2006 re: Biennial Report to the General Assembly and Governor Pursuant to Section 1415 (M-00041802F0003). We also propose to clarify what grounds for termination should be included in the survey in addition to non-payment (safety, meter non-access, etc.) Also, we propose to clarify how far back a termination had to have occurred to be included in the accounts surveyed. This has all been a matter of confusion at times and providing additional clarifications should assist utilities with compliance to this section.
>
> As a related matter we propose that utilities report to the Commission any time 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.

ANOPR Order, Appendix A at 4-5.

a. Introduction.

Section 1406(e) made significant changes to the Commission's winter termination procedures and will necessitate revisions to § 56.100. The current Chapter 56 regulations do not allow winter termination of heat-related utility service of any customer without prior Commission approval, unless there is an issue of safety. § 56.100(2). Section 1406(e) now creates a class of customers with incomes at or below 250% of the federal poverty level that may

not be terminated in the winter without Commission permission, but allows for termination without prior Commission review or authorization of customers with incomes above 250% of the federal poverty level. Section 1406 also allows Philadelphia Gas Works (PGW) to terminate customers with incomes between 150% and 250% of the federal poverty level so long as the customer is not otherwise protected from termination as set forth in Section 1406(e)(2). Section 1406 also sets forth specific notice requirements that the EDC or NGDC must follow if it intends to terminate a customer with an income above 250% of the federal poverty level. Notably, Section 1406(e) does not change the rules for water utilities providing heat-related service, so the Commission's regulations at § 56.100 still apply to heat-related water service terminations in the winter.

In its ANOPR Order, the Commission notes that the revisions to § 56.100 occasioned by Section 1406(e) will be of great importance. The OCA agrees that these revisions will be of critical importance. Winter termination can have profound impacts on the lives of the citizens of this Commonwealth and the Commission must ensure that all protections allowed under the law are provided to ratepayers to prevent unnecessary hardships and tragedies, particularly to children and other members of the household who will be impacted by the distinctions now required by Chapter 14's household income categories.

b. Section 56.100 (2) and Preamble—Winter Termination Procedures.

From the OCA's review of Section 1406(e), the primary changes to § 56.100 will be to the preamble, and to §§ 56.100(1) and (2). Currently, the preamble reflects the Commission's directive that no customer be terminated in the winter by any utility covered by Chapter 56, unless the termination is based on occurrences harmful to person or property. The provision at § 56.100(2) provides a procedure that would allow the utility to request permission

from the Commission to terminate a customer in the winter if they have been unable to reach a reasonable agreement with the customer. This provision has allowed utilities to request permission to terminate customers in the winter in those circumstances where the utility believes the customer is capable of paying but has refused to reach an agreement to do so in a reasonable manner.

The preamble of § 56.100 will need to be modified to reflect the directive in Section 1406(e) that customers with incomes at or below 250% of the federal poverty level cannot be terminated by an electric distribution utility or a natural gas distribution utility between November 30 and April 1 unless otherwise authorized by the Commission. It will also be necessary to reflect this change in § 56.100(2) which currently requires Commission permission for any termination in the winter. It is important to note that these changes do not apply to heat-related water service, small natural gas distribution companies, or victims under a protection from abuse order. As discussed in Section 1, the existing provisions of § 56.100 will need to be retained for these customers in a separate Chapter.

Additionally, given the unique provisions relating to PGW, the Commission may wish to adopt a separate subsection that is specific to terminations by PGW. The provisions of Chapter 14 that address PGW are unique, and complex. A separate subsection on PGW that includes the PGW additional, specific termination authority and the additional notice requirements in Section 1406(e)(3) would provide the most understandable format for the regulations. These new subsections will need to be referenced in the preamble and in § 56.100(2).

c. Additional Regulations Setting Forth The Obligation Of The EDC Or NGDC To Obtain Information Should Be Established.

As the Commission found in the Second Implementation Order, Section 1406(e) clearly places an obligation on the electric and gas utilities to implement procedures that attempt to identify accounts that are protected from termination during the winter period. Second Implementation Order at 7-8. As the OCA noted in its Comments of July 15, 2005, Section 1406(e)(1) of Chapter 14 places an affirmative duty on utilities to ascertain whether a customer is at or below 250% of the Federal Poverty Level prior to engaging in a winter termination. The message from the General Assembly is clear and unequivocal on this important issue, which in relevant part provides:

> § 1406. Termination of utility service
>
> (e) Winter termination.--
>
> (1) Unless otherwise authorized by the commission, after November 30 and before April 1, an electric distribution utility or natural gas distribution utility *shall not* terminate service to customers with household incomes at or below 250% of the Federal poverty level except for customers whose actions conform to subsection (c)(1).

66 Pa.C.S. § 1406(e)(1)(*emphasis added*).

This provision of Chapter 14 is written as a prohibition that tells the utilities what they cannot do. The Commission recognized this important point in its Second Implementation Order and stated:

> [I]n light of the prohibition against terminating service to households that fall into the protected income categories listed at § 1406(e)(1), a utility must not complete the process and physically terminate service to a delinquent account for which the company doesn't know household size and income unless it makes a diligent, good faith attempt to verify that the household does not fall into the protected income category by following the processes

> required by 66 Pa.C.S. §§1401 *et seq.* and 52 Pa. Code §§56.1 *et seq.* as well as the notice provisions outlined in this Order.

Second Implementation Order at 10.

The OCA submits that the Commission should incorporate into § 56.100 the duty of the utility to verify whether a household is in a protected category prior to proceeding with a winter termination. As pointed out in the OCA's Comments of July 15, 2005, the vast majority of customers facing possible termination have already entered into, or should have been contacted to enter into, a payment agreement. Termination should only be a last resort, particularly in the winter. In these cases the utility already has, or should have, income information that was used to create the original payment agreement. There is no burden on the utility to simply retrieve the information it already possesses, confirm it, and apply that information against the Federal Poverty Guidelines prior to engaging in a winter termination.

In the event that the utility does not already possess the customer's income information, it is reasonable to assume that the utility is capable of contacting the customer to obtain such information. The responsible utility action at this point should be to contact the customer, not only to obtain the necessary income information, but also to open a dialogue with the customer as to the account arrearage that might avoid termination. The OCA submits that such a course of action is reasonable and proper for the utility to pursue before it would consider the last resort of winter termination.

The OCA urges the Commission to include this obligation in its regulations and specify steps necessary for the utility to take when making a "good faith" attempt to verify the

household income.[6] The OCA remains concerned, however, with termination in the winter when the utility has been unable to confirm whether the household is in a protected category, including the protection offered by the medical certification procedures. While Chapter 14 has provided an income based protection, income alone is not the final arbiter of whether a customer is capable of paying the utility bill. Health conditions, and other factors, can contribute to a household not meeting their payment obligation. Indeed, it is not hard to imagine a case where a ratepayer has an income above 250% of the federal poverty level, but a medical condition has rendered the ratepayer unable to fully understand the need for bill payment or unable to manage bills in a timely manner.

The Commission should clearly delineate in the regulations the utility's obligation to verify that the household it is about to terminate in the winter does not fall into a protected category, including whether there is a serious illness or medical condition where a customer would be protected from termination through a medical certification. In its Second Implementation Order, the Commission put utilities on notice that it will not treat this issue lightly. The Commission stated:

> Given the serious repercussions that winter terminations could have to life and/or property, we shall put all utilities on notice that violations of the § 1406(e) winter termination provisions and the failure to restore service pursuant to § 1407(b)(1), will be subject to civil penalties allowed under the Public Utility Code. 66 Pa.C.S. § 3301.

Second Implementation Order at 11. The gravity of this situation should likewise be reflected in the revisions to Chapter 56.

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[6] The OCA recognizes that some customers may refuse to cooperate or supply the utility with the information sought. In such a case, the OCA submits that the utility should advise the Bureau of Consumer Services ("BCS") of the customer's actions if the utility is unable to determine if the customer is in a protected category. At that point, BCS should attempt to obtain the customer's information. If that fails, the utility could then petition the Commission for authorization to terminate similar to existing practice under the regulations. The Commission could authorize the utility to terminate service if so warranted.

d. Section 56.100(1) – Notice Procedures.

Adequate notice, particularly in the winter, is a critical part of a comprehensive plan to ensure against a customer being illegally terminated when they are a member of a protected class, being wrongfully terminated due to an administrative error on the part of a utility, or being terminated without adequate opportunity to resolve, or dispute, the outstanding arrearages. The Commission has taken a number of steps already to address the need for adequate notice, including a detailed description of information to be included in the notice and the development of uniform termination notice forms. *See* Second Implementation Order at 14-15.

As the Commission is revising its winter termination provisions, the Commission will need to modify § 56.100(1) relating to notice. Under Chapter 56, the notice procedures for termination were the same for winter and non-winter terminations. The notice procedures included a 10-day notice, a 3-day notice by personal contact, and a 48-hour posting at the residence if no personal contact was made. *See*, §§ 56.91, 56.93, and 56.95. The regulations at § 56.100(1) reflect this fact by cross-referencing the notice provisions of §§ 56.91 through 56.95.

Section 1406(b), however, removes the 48-hour posting notice during the non-winter period, which will necessitate changes to the existing regulations at §§ 56.91 to 56.95. The 48-hour posting notice remains for the winter period under Section 1406(b)(iii). Because of this difference in the winter and non-winter notice provisions, the OCA recommends that § 56.100(1) be revised to include the precise notice requirements for winter termination set forth in Section 1406(b), rather than relying on a cross-reference to other regulatory provisions.

Additionally, given the work to date on identifying the contents of the winter termination notice and the design of the uniform termination notices, the Commission may wish

to add regulations specifying the content and the use of the BCS-developed winter termination notice form. The Commission specified the following content in its Second Implementation Order:

> In addition to the content requirements for termination notices at 52 Pa. Code §56.2 relating to the definition of termination notice, the following information must be included in the notice used by electric and gas utilities when applying §1406(e): information on the federal poverty guidelines by household size; the required documentation or information the customer must supply to avoid termination; information on the protection from termination for victims under a Protection From Abuse Order, and contact information for those customers with disabilities or those customers needing translation assistance.

Second Implementation Order at 14. This content should be embodied in the regulations.

The OCA also recommends that the uniform notice that has been developed should be included in the Appendix to the regulations, and use of the uniform notice should be specified in the regulations. A well-constructed and fully informative notice is essential for customers and utilities, particularly given the possibility of winter terminations and the protections that are afforded certain customers in the winter. The comprehensive winter termination notice forms developed by BCS address the many issues that customers need to know regarding termination and include the content specified by the Commission. The OCA recommends that the Commission revise the regulations to require the use of the form by all utilities.

e. A Subsection Should Be Added Specifying Unauthorized Winter Terminations.

Similar to its regulation at § 56.83 regarding unauthorized termination of service, the Commission should add a subsection to § 56.100 addressing circumstances where winter termination is not permitted. For example, questions have already been raised as to whether

dishonorable tender of payment by a household whose income is at or below 250% of the federal poverty level creates a ground for winter termination. Similarly, questions have arisen as to whether a winter termination can proceed without notice after a dishonorable tender of payment. The Commission has clarified both of these questions in its Second Implementation Order and this guidance should be embodied in the regulations. As to these issues, the Commission found dishonorable tender of payment is not a grounds for immediate termination, and in the winter, does not create a ground for termination of an otherwise protected customer. Second Implementation Order at 24. The Commission also found that in the winter, termination must follow the winter termination notice procedures. Id. These determinations may need to be embodied in the regulations so that there is no further question.

The OCA recommends that the Commission add a section regarding unauthorized winter terminations. Such a section would include, or reference, those already listed in § 56.83 on unauthorized termination, and the additional special circumstances that might arise under Chapter 14.

f. Section 56.100(4) and (5) -- Revisions to the Survey And Reporting Requirements

The Commission is proposing to revise §§ 56.100(4) and (5) relating to the winter survey in several respects. The Commission proposes to clarify the information to be included in the survey and to require that the survey be updated periodically during the winter. The OCA agrees with these proposals. The clarifications should assist the utilities in conducting the surveys and will better ensure the comparability of the data across the utilities. Additionally, since winter termination is now permitted for some customers, updating the survey periodically

throughout the winter will provide the Commission with necessary information throughout the winter on households that may be without heat.

The Commission has also proposed to add a requirement that the utility report when it becomes aware of a death following a termination of utility service where it appears that the death is linked to the lack of utility service. Given the changes in winter termination procedures, and notice requirements, this information will greatly assist the Commission in assessing the impact of the changes and whether modifications to its regulations or procedures may be needed. The Commission should also require a report if the utility becomes aware of a serious injury or serious health crisis following termination that may be linked to lack of utility service.

7. Emergency Medical Procedures.

The ANOPR Order provides the following as to emergency medical procedures:

> Section 56.111 refers only to a "physician" as being eligible to file a medical certificate. However, Chapter 14, § 1406(f), in addition to physician, also refers to "nurse practitioner." We propose amending all of the emergency medical provisions in Chapter 56 §§ 56.111-118 to include "nurse practitioner" as found in Chapter 14, § 1406(f).
>
> Much of the language at § 56.114 concerning limitations on renewal of medical certificates has been in effect only since 1998. Since that time utility experience in implementing these sections has resulted in numerous informal inquiries to Commission staff about details not currently specified in the current regulation. For example, are the limitations noted in this section applicable per individual or household or account, and is there any timeframe on these limitations such as annual, lifetime of the account or are the limitations just in reference to consecutively filed certificates? And given that the section also requires that a utility petition the Commission if it wishes to contest a certificate renewal, is this directive intended for certificates that are not already barred by the restrictions listed previously in this section, or does the directive apply to any certificate a utility wishes to contest?

> We propose answering these questions in a way that balances the need of the utility to effectively manage account collections with the needs of consumers with medical conditions to obtain necessary, temporary relief from the threat of termination. It is important to point out that the restrictions at § 56.114 only apply if the customer is not meeting their obligation to arrange payment on all bills as required per § 56.116. We propose 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).
>
> We also propose 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. Requiring a petition in all circumstances where a utility does not want to honor a medical certificate would essentially make the restrictions at § 56.114(2) meaningless, when the intent of this section when it was proposed in 1996 was to "clarify, simplify and remove excessive and burdensome requirements for the parties dealing with our Bureau of Consumer Services." (26 Pa.B. 2908).

ANOPR Order, Appendix A at 5-6.

a. Introduction.

The medical certification procedures are some of the most important procedures to safeguarding the health and safety of the most vulnerable residents of Pennsylvania. The General Assembly has recognized the importance of medical certification in Section 1406(f). As in the prohibition against terminating customers with incomes at or below 250% of the federal poverty level found in Section 1406(e), Section 1406(f) is one of the provisions of Chapter 14 that tells a utility what it absolutely cannot do. Section 1406(f) bears repeating, and provides:

> (f) Medical certification.- A public utility *shall not* terminate service to a premises when a licensed physician or nurse practitioner has certified that the customer or a member of the customer's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and shall promptly forward it to the public utility. The medical certification procedure shall be implemented in accordance with commission regulations.

66 Pa.C.S. § 1406(f)(*emphasis added*).

The OCA submits that Section 1406(f) is clear that premises where there is a seriously ill individual or an individual afflicted with a medical condition that would be aggravated by the cessation of service that has been certified by a physician or nurse practitioner are not to be terminated. The OCA submits that given this clear statutory directive, now is the time for the Commission to examine its medical certification procedures to ensure that the protection directed by the General Assembly is made available to Pennsylvania residents. The OCA will discuss some of the key changes below.

b. Sections 56.111-118 Should Be Amended to Include "Nurse Practitioner".

The Commission proposed to amend the emergency medical provisions in § 56.111-118 to include "nurse practitioner" as a person able to certify that a customer or member of the customer's household is seriously ill or afflicted with a medical condition that would be aggravated by the cessation of service. The OCA agrees that nurse practitioners should be added in all appropriate sections to comport with the Section 1406(f) language. Including the nurse practitioner may enable customers to obtain the necessary medical certificate without as much expense and burden.

c. Section 56.114—Length of Postponement; Renewals.

The Commission states in its Order that it is seeking to "balance" the need of a utility to manage accounts with the customer's need to obtain temporary relief from termination in certain medical situations. The OCA respectfully submits, however, that a balancing is not the appropriate framework for this issue. Section 1406(f) strictly prohibits termination when the physician or nurse practitioner has certified the medical condition as meeting the requirements of Section 1406(f). The Commission's proposals must fully reflect the protection provided in Section 1406(f).

The Commission first proposes to amend the medical certificate renewal provisions at § 56.114 that apply when the customer has not met the duty to make arrangements to pay the bill. Under § 56.114, the maximum time for a medical certificate is 30 days and the certificate can be renewed for the same time and in the same manner two times if the ratepayer has not met the duty to pay the bills. Under the Commission's proposal, there would still be a limit of two renewal certifications but the limit would only apply to the same set of arrearages. In other words, if the customer paid the arrearages and new arrearages accrued that threatened termination, the customer could initiate the medical certification procedures again for the new arrearages. The OCA supports this Commission proposal. If new arrearages accrue, and the medical certification procedure is necessary, it can be used to prevent terminations for these new arrearages.

The OCA would note, however, that further change may be necessary. Given the prohibition against termination of a customer with a medical certificate, the OCA would question whether a termination could proceed on the outstanding arrearages that are subject to the medical certificate as long as the customer is meeting their duty to pay their current bills. The OCA

supports reaching equitable payment arrangements with the customer for the arrearages, but it must be recognized that the medical certificate is to protect against termination during the course of the illness for the accrued arrearages or other reason for termination. As long as the current bills are being paid in full, service should remain available for the customer until the medical certificate is removed.

The OCA also urges the Commission to consider allowing a medical certificate with a term of greater than 30 days. Medical certificates are available for both short term, acute situations and for longer term, chronic illnesses. While the OCA supports a process that allows for the periodic re-evaluation of the condition and the need for medical certification by the physician or nurse practitioner, there are conditions that are unlikely to change in 30 days. It can often present a burden for a seriously ill individual to go to a medical appointment and it can be a waste of a customer's limited financial resources to incur the cost of a medical appointment when the condition is unchanged. It can also be a waste of valuable medical staff time and resources to have a medical condition reassessed every thirty days when the medical condition is unlikely to change. A physician or nurse practitioner should be permitted to specify a period longer than 30 days for the medical certificate if they certify that the condition is unlikely to change or improve significantly in the time specified and the individual is not scheduled for a follow-up appointment in that time. While the Commission may wish to put a time frame for the duration of a certificate when there is a chronic condition, it should be longer than the 30 days currently allowed in the regulations.

The OCA submits that in light of Section 1406(f), the Commission should revisit these medical certification procedures to ensure that the protection provided under Chapter 14 is fully available to Pennsylvania's most vulnerable citizens.

d. Section 56.118—Right Of Utility To Petition Commission.

Section 56.114(2) provides that if a utility wishes to contest a medical certificate, it should petition the Commission in accordance with § 56.118(3). The Commission asks for comments regarding whether the directive in § 56.114 is intended to apply to certificates that are already barred by the restrictions listed in the section. The Commission proposes that if the utility is only enforcing the restrictions found in § 56.114, the utility does not have to petition the Commission using the procedures at § 56.118. The Commission suggests that petitioning for approval to terminate is only necessary if the utility does not want to honor a medical certification.

The OCA submits that given the strict prohibition against terminating customers with a medical certificate, and the need to protect the most vulnerable Pennsylvania residents, the utility should be required to petition the Commission for approval to terminate customers with a medical certificate in all circumstances. While the Commission is concerned that requiring a petition in all circumstances would make any restrictions on the number of renewals meaningless, the OCA submits that this protection is essential in light of the language of Section 1406(f).

The OCA submits that the Commission should also make clear that a utility must honor a medical certificate that it has received, unless and until the utility petitions the Commission to contest the certificate and the Commission issues a final order beyond appeal in the utility's favor. The Commission should also make clear that such procedures to contest a medical certificate are for the rare circumstance, and not for issues of a technical nature. For example, if there are technical defects, such as the doctor's medical license number being left off the certificate, the utility should proactively contact the doctor's office to obtain the necessary

information. Physicians and nurse practitioners should not be unnecessarily, routinely, or lightly called away from their duties. Physicians and nurse practitioners fully understand their obligations when completing these certificates. Challenges should be the rare circumstance. Additionally, the OCA submits that any close question must be resolved in the customer's favor given the seriousness of this situation.

The OCA submits that the Commission should be reviewing all terminations that are undertaken when medical certification procedures have been invoked. The Commission must at least ensure that the termination only proceeds after providing the maximum protection to the household allowed under Section 1406(f).

8. Commission Informal Complaint Procedures.

In the ANOPR Order, the Commission proposes several revisions to its formal and informal complaint procedures, found at §§ 56.161 to 56.181. ANOPR Order, Appendix A at 6. The first proposed revision is as follows:

> Regarding the restriction at § 1405(c) [CAP rates should not be the subject of Commission payment agreements], we propose 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. At the same time we intend 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 including but not limited to issues like billing, eligibility requirements and default as part of the Commission's obligation at § 2203(8) and 2804(9) to ensure that the utility's CAP is operated in a cost-effective manner through compliance with its approved CAP plan, including the proper calculation of a participant's CAP payment amount.

ANOPR Order, Appendix A at 6-7. The OCA submits that the Commission's proposal to treat account balances that are a mixture of CAP rates and standard rates in the same manner as account balances that are made up of only CAP rates – meaning that the customers responsible

for these accounts would not be eligible for one Commission-approved payment agreement – is not reasonable or required by Chapter 14.

a. Account Balances And Payment Agreements.

The Second Reconsideration Order addressed the question as to the Commission's role in providing payment agreements within the parameters of Chapter 14. *See* Second Reconsideration Order. In its Second Reconsideration Order, the Commission provided that it could establish one payment agreement, "subject to the requirements and limitations of § 1405." Second Reconsideration Order at 22. The Commission is empowered to establish one payment agreement for customers, unless the balance that is the subject of the payment agreement accrued from CAP rates.

Under the Commission's proposal, however, any customer who participates in CAP and accrues a CAP rate balance, and either carries a standard rate balance into the program, or accumulates a standard rate balance after leaving the program would be ineligible for the one Commission established payment agreement as provided for in Chapter 14. The OCA submits that customers should not be so penalized for having participated in CAP. Utilities should be responsible for keeping records in such a manner as to distinguish CAP balances from balances a customer may have accrued while on standard rates. As such, the OCA submits that customers with mixed balances should be eligible for at least the one Commission established payment agreement as to any balance accrued while such customer was paying standard rates.

b. Clarification Of Commission's Role As To Restoration Terms.

The Commission's second proposed revision to its formal and informal complaint procedures as set out in the ANOPR Order provides in relevant part:

> We also propose clarifying the role of the Commission in establishing payment agreement restoration terms for customers

> whose service has been terminated as addressed, to some extent, in the first Implementation Order (pages 11-12) and with the Reconsideration of Implementation Order of October 27, 2005 (M-00041802F0002).

ANOPR Order, Appendix A at 7. The OCA agrees with the Commission's proposal to clarify its role in establishing payment agreement restoration terms.

c. Timeframes For Company Responses To Informal Complaints.

In its ANOPR Order, the Commission also proposed the following revisions to the timeframes for company responses to informal complaints:

> In addition to addressing Commission procedures as noted above, we propose § 56.163 be amended to include the imposition of a standard upon the utility in response to consumer informal complaints filed at the Commission. To facilitate the handling of informal consumer complaints, we are proposing a company response standard of 30 days as found in the analogous telephone regulations (52 Pa. Code § 64.153). For informal complaints where the customer's service has been terminated, we are proposing a five-day standard.

ANOPR Order, Appendix A at 7. The OCA agrees with the Commission's proposed timeframe for a company response where the informal complaint is not related to the customer's service having been terminated. As to those informal complaints that deal with service termination, the OCA submits that different standards should be applied for customers whose heat-related service has been terminated during the winter. The OCA agrees with the Commission's proposal that five (5) days should be the outer boundaries for a company response when a customer's service has been terminated, unless such termination has in any way resulted in the loss of the customer's central heating unit during the winter. In such a case, the OCA submits that a company response time of no more than 24 hours is reasonable.

9. Restoration of Service.

The ANOPR Order provides the following as to the restoration of service:

> Chapter 14 provides utilities with expanded opportunities for assigned liability for balances that accrued in another party's name if some other party seeks restoration service. Section 1407(d) allows a utility to "...also 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." This section is elaborated on by the section that follows it at § 1407(e), i.e., "[a] public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission."
>
> We propose 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. This will help ensure equitable and nondiscriminatory liability determinations. This four-year statute of limitations reflects the same time restrictions found in other sections of the regulations such as § 56.35 and the record maintenance requirements found at § 56.202. In addition, this would reflect the four-year limit found at 66 Pa.C.S. § 1312.
>
> Chapter 14 at § 1407(b) includes service restoration timeframes which we propose incorporating into § 56.191, while clarifying that the timeframes refer to "calendar" days and hours as opposed to "business" days and hours. We also intend to clarify that the timeframes found in this section are contingent upon what time of the year it is when the customer or applicant has met all applicable restoration conditions. For example, the standards in § 1407(b) require that service be restored within 24 hours for "...terminations occurring after November 30 and before April 1." If the customer satisfies all restoration requirements in December, we would impose the 24 hour reconnection timeframe found at § 1407(b)(2), regardless of when the termination of service occurred.

ANOPR Order, Appendix A at 7-8.

a. Tariffs.

The Commission proposes to require utilities to include in their tariffs the procedures and standards that the utility will use in order to determine whether an applicant or customer has previously resided at a property and also whether that applicant or customer is responsible for an unpaid balance under Section 1407(d) and (e). The OCA discussed this issue in Section II.3.c, above. As discussed there, the OCA submits that the regulations should also clearly establish the standards, procedures and methods that can be used in light of the significant privacy issues and safety issues that can be presented. Additionally, uniformity in the type of proof accepted should be included in the regulations. The OCA submits that including these details in the regulations will avoid the potential for discrimination, reduce disputes in interpretation, and foster a uniformity of interpretation that will make the consumer education programs concerning Chapter 14 more likely to be successful.

The Commission proposes to incorporate a four-year limitation on the liability for payment of an outstanding balance. Consistent with its Comments above, the OCA supports a limitation of four years.

b. Section 56.191 – General Rule On Restoration Of Service.

In light of Section 1407(b) which specifies the time frames for restoration of service, the Commission proposes to clarify § 56.191 regarding the timeframes for restoration to refer to "calendar" days and hours instead of "business" days and hours. The OCA agrees with the Commission's proposal to refer to calendar days especially since Section 1406(d) allows for Friday terminations with restoration within 24 hours if the reason for termination is remedied. That means that a restoration may need to be made on a Saturday or Sunday. Additionally, over a holiday weekend, a business day interpretation could delay restoration for multiple days and

could cause serious harm to consumers, particularly if that holiday weekend fell in the winter months.

The Commission also proposes to clarify when a restoration must occur based on the time of year it is when the customer or applicant has met all applicable restoration conditions. The Commission proposes that if the customer satisfies all restoration requirements in December, the 24-hour reconnection timeframe found in Section 1407(b)(2) should be applied. The OCA submits that this procedure is reasonable and in keeping with the restoration timeframes in Section 1407(b). Section 1407(b) is clear that the only situations that allow for a longer reconnection period are those from April 1 to November 30 (non-winter) and where digging is required. Section 1407(b)(3), (4), and (5). The OCA would also note that reconnection within 24 hours in the winter period could avoid potentially hazardous and life-threatening situations.

10. Reporting Requirements.

The Commission's ANOPR Order includes the following as to proposed revisions to its data reporting requirements:

> The monthly collections data reporting requirements are specified at § 56.231. Under this regulation, electric, gas and steam heating utilities report to the Commission monthly on a variety of collection variables including the number of service terminations, overdue customers, service restorations and arrearages. Policy makers, utilities and the general public use this information to measure the effectiveness of utility collection activities. We propose revising this section to also include Class A water utilities. Water utility rates have increased significantly since this section was first promulgated and concerns with collection issues in the water industry are now sufficient to amend this section to include major water utilities.
> In addition, we propose revising this section 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).

ANOPR Order, Appendix A at 8. The OCA agrees with the Commission's proposals to revise § 56.231 to include Class A water utilities, and also the Commission's proposal to revise § 56.231 for the purpose of integrating the requirements set forth in Section 1415 of Chapter 14.

III. ADDITIONAL ISSUES FOR CONSIDERATION

A. Introduction.

Since the last set of revisions to Chapter 56, there have been many important developments in billing and payment practices that could impact utility billing for residential customers. With more widespread use and access to the internet, and more convenient banking methods of electronic transfer of funds, new opportunities are now available to utilities and to customers that will afford greater convenience and improved collections. For example, the option for electronic payment of bills through automatic checking account withdrawal and electronic check add convenience for the customer and can improve timely collection of revenues by utilities. Additionally, the use of credit cards for utility bill payment has grown in use. The OCA submits that the Commission should consider any necessary modifications to Chapter 56 to allow for electronic billing and electronic payment options for customers and to recognize the wider use of credit cards. The Commission should also consider some of the unique safeguards and protections that may need to be in place for customers that select these options.

In addition to the development of alternative payment options, the use of budget billing can assist both customer and utilities with bill payment. For customers, a levelized bill may be more affordable throughout the year and allow for more routine and timely payment. For utilities, revenue may be more predictable throughout the year. The Commission has recently entered an order regarding budget billing to make it more widely available and useful for consumers. The OCA recommends that the guidance in that Order be reflected in Chapter 56.

The Commission should also ensure that utilities follow timely collection practices. In light of the limitations on payment agreements in Chapter 14, billing and collection

practices that result in the accrual of unresolvable arrearages are not in the interest of consumers or utilities. The OCA recommends that the Commission set forth a requirement that utilities engage in timely collection efforts.

The OCA discusses each of these issues below.

B. Electronic Billing, Electronic Payment, Automatic Payment And Credit Card Payment

1. Electronic Billing

Electronic billing can be an important and useful option for many customers as well as the utility. Access to the internet is more widespread, and many customers may prefer to receive their bill electronically rather than by paper. Savings can accrue to the utility through reduced postage for mailing paper bills, and for reduced supplies needed to generate paper bills. The development of electronic forms of bills can also allow customers to access their bills on-line through the utility's website whether or not the customer participates in the electronic billing program.

If not properly implemented, and if proper protections are not in place, however, electronic billing could prove problematic. For example, electronic billing that does not also provide customers with necessary bill inserts in an easily readable, on-screen format may result in customers not having access to necessary safety or conservation information. Also, bill formats that do not easily allow a customer to contribute to Hardship Funds could reduce contributions to these important funds. And, if the bill is being e-mailed to the customer, e-mail can sometimes be rejected, and never delivered, if the inbox is full, the size is too large, or the e-mail or attachment gets caught in a virus or spam filter. For electronic billing to be widely used, the utility's procedures will need to address all of these, and other, issues.

The OCA submits that Chapter 56 should recognize the existence of electronic billing options, but should establish minimum protections that should accompany the offer of an electronic billing option. The OCA recommends the following:

(1) Electronic billing should be a voluntary option for residential customers.

(2) A customer should receive a visual presentation of their electronic bill in the same format as the paper bill issued by the utility.

(3) The electronic bill must include the same disclosures and required educational messages that are required for paper bills.

(4) The electronic bill must include all required bill inserts in an easily accessed and easily readable format.

(5) The electronic bill must include the option for the customer to contribute to the utility's Hardship Fund.

(6) A customer should be permitted the option of continuing to receive a paper bill if they so desire.

(7) A customer should not be required to pay an additional fee to receive an electronic bill.

(8) The utility must maintain a system to ensure delivery of electronic bills if the bill is e-mailed to a customer.

(9) The utility must maintain sufficient system security to assure customer privacy.

The OCA understands that many of these consumer protections are generally applicable to utilities that have used electronic billing.[7]

With the proper standards and protections included in Chapter 56, the OCA submits that electronic billing by utilities can further develop in a manner that will bring benefits to all.

[7] While electronic billing provides a convenient option for customers for billing purposes, not all customers may wish to pay through an electronic or automatic mechanisms. The Commission may wish to ensure that customers retain the option to pay through a means other than electronic payment or automatic withdrawal.

2. Electronic Payment And Automatic Payment Options.

In addition to providing for electronic billing, Chapter 56 regulations should also address electronic payment options and automatic payment options. It is likely that most customers opting for electronic billing will also wish to utilize an electronic or automatic payment option. Even customers who continue to receive a paper bill may wish to utilize these alternative payment methods. The most common methods are: (1) an automatic deduction from the customer's checking account; (2) credit or debit cards to make a one-time payment; and (3) the ability to make one-time payment by electronic check. These payment options would include the more traditional utility payment options of sending a paper check through the mail or by paying in person at a utility-authorized payment center. Utilities in Pennsylvania, and across the nation, have already begun to make these alternative payment options available to customers.

The OCA submits that Chapter 56 should recognize all of these payment options as appropriate if the utility has the capability to offer the option and the customer elects the option. The OCA understands that a utility may find a benefit from offering such payment options through reduced cash working capital requirements from prompt, timely payment and through reduced uncollectible revenue or collection activity. Customers may also receive a benefit from these methods through these reduced utility costs and through more convenience in making their payments.

Several issues can arise from the use of electronic or automatic payment options that the Commission may wish to address in Chapter 56. Issues regarding confirmation of payment, the timing of the payment when an automatic withdrawal is used, and potential fees or costs for using an alternative payment method may need to be addressed. The OCA would urge the Commission to set forth the standards that each program must meet and then require each

utility to include the details of the program in its tariff and on its website so that the customer has access to all information regarding the workings of the program. The OCA will discuss the issue of fees for using an alternative payment method in Section III.B.3.

Similar to electronic billing, the OCA would suggest the following standards for any electronic or automatic payment program:

(1) Electronic or automatic bill payment should be voluntary and should not be required in conjunction with electronic billing if the customer does not elect the electronic or automatic bill payment.

(2) For automatic bill payment through a charge to a customer's credit card or automatic withdrawal from a customer's checking account, the program must set forth the date (or number of days after issuance of the bill) when such automatic payment will be made.

(3) All terms of the payment process and procedures must be fully disclosed to the customer in writing before the customer enters the program. Any program changes must be conveyed to the customer in writing and the customer must be given an opportunity to withdraw from the program if they do not wish to continue under the new terms.

(4) The utility must provide a receipt (either electronically or in paper) to the customer upon payment through the alternative method.

(5) The utility must maintain sufficient system security to protect all customer information and all access to any customer account.

In addition to the protections discussed regarding electronic billing, these additional protections for electronic or automatic payment should allow these programs to develop in a manner that provides necessary protections to customers.

As noted, the question as to whether there can be additional fees to the customer for the use of an electronic or automatic bill payment method is not settled. The OCA will discuss the issue next, but the OCA would urge that utilities not include additional fees for the use of these methods. Such fees may erect barriers to the development of the programs and they may not recognize the benefits that can result from the programs.

3. Fees For Use of Alternative Payment Options.

A question arises when a customer that seeks to pay by credit or debit card is assessed a specific fee for payment by credit or debit card. A merchant, for example, cannot charge a customer an additional fee for paying by credit card. Such a fee would result in an increase in the finance charge or interest rate associated with the card. Truth in Lending Act, 15 U.S.C. §§ 1601-1667(f), as amended. As stated in a Federal Trade Commission brochure designed to assure compliance with the Truth in Lending Act:

> the 'finance charge' is the dollar amount charged for credit. It includes interest and other costs, such as service charges, buyer's points, loan fees, and mortgage insurance. It also includes the premiums for credit life, accident, and health insurance, if required, and for property insurance, unless the buyer may select the insurer.

Federal Trade Commission, How to Advertise Consumer Credit and Lease Terms.[8] Customers who use their credit card to pay for goods and services ordered over the phone or on the Internet are not charged an additional fee for this reason.

Currently, some utilities offer credit and debit card payment methods without a fee, while others offer the payment option through a third party vendor, and that vendor charges a fee. Some of those fees have been as high as $4.95 per transaction.[9] It is not entirely clear to the OCA that such a fee should be allowed to accompany such a program, even if the service is provided through a third party vendor. The key policy issue is whether the customer who uses a service promoted or advertised by the utility should pay an additional fee for one or more options for payment of the regulated utility bill. The effect of such a fee is to increase the price of this

[8] Brochure available at http://www.ftc.gov/bcp/conline/pubs/buspubs/creditad.htm.

[9] See, PPL Electric Utilities "service fee" at www.pplelectric.com/home/payment+services.payment+options.htm

service to the customer without regulatory oversight. If, for example, the utility sought to impose a fee on customers who walk into the utility office to pay the bill, such a charge would immediately be viewed as improper.

The OCA submits that allowing for the creation of a regulatory distinction between a fee charged directly by the utility or a fee charged by an entity undertaking a service under contract with the utility might not be sound public policy. Any fees or expenses incurred by the utility to offer payment options may be more properly reflected in the revenue requirement. Just as the utility incurs a cost to process papers bills and checks, the fees associated with accepting credit card payments or other electronic payments seem no different. In addition, the benefits of these payment methods in reducing costs and improving collections should be reflected in the revenue requirement to the benefit of all customers.

The OCA submits that the various payment options are a convenience to both the utility and to the utility's customers and can provide significant benefits to both from the immediate payment for utility services. The utility and the ratepayer both have an interest in a wide variety of payment methods. Allowing the imposition of fees, some as high as $4.95 per transaction, can only discourage these efficiencies from developing.

C. Budget Billing.

In light of the Commission's NOPR Order, which invited all parties to comment on other relevant issues,[10] and considering the recent issuance of the Commission's final Order as to the budget billing provisions found at § 56.12(7), the OCA submits the following comments on budget billing.[11]

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[10] ANOPR Order at pg. 5.

[11] In Re: Insuring Consistent Application of 52 Pa. Code §56.12 (7), Equal Monthly Billing, Docket No. M-00051925, Order entered Nov. 14, 2006.

Section 56.12 (7) contains an obligation for a utility to offer its residential customers "equal monthly billing," described as an estimate of utility billings over a 10-month, 11-month, or 12-month period. Utilities are also required to review accounts at least three times during the levelized or budget payment plan. 52 Pa. Code § 56.12(7). Chapter 14 did not change these obligations. The Commission has recently issued further guidelines[12] applicable to equal or budget billings which should be reflected in the revisions to Chapter 56. The OCA submits that the "essential elements" for an acceptable budget billing program found in the Commission's Equal Monthly Billing Order,[13] should be reflected in Chapter 56. These elements include the following:

(1) Budget billing must be available, on a rolling enrollment basis, to all utility customers with residential end use irrespective of the rate used to bill the account;

(2) Budget billing should be the method proffered by utilities to customers with an arrears balance so that customers pay their current bills and liquidate the past due amounts owed to the utility;

(3) Budget billing accounts should be routinely monitored and adjusted at least three times per year so that over or under collections can be minimized;

(4) Natural gas utilities should adjust their budget bills at least four times per year, in conjunction with their Purchased Gas Cost adjustment quarterly rate changes;

(5) Budget billing periods should reflect a minimum of 12-months unless a customer specifically or affirmatively agrees to a lesser period (which will require an amendment to the current language of the subsection);

(6) Customers should be allowed to pay off a true up balance owed as a result of the budget billing plan for a period that reflects the true up amount (i.e., 3-6 months for an amount less than 100% of their required monthly payment and at least 12 months for an amount that is more than 100% of the required monthly payment); and

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[12] In Re: Insuring Consistent Application of 52 Pa. Code §56.12 (7), Equal Monthly Billing, Docket No. M-00051925, Final Interpretive Order (entered June 2, 2006) and Order (entered Nov. 14, 2006).

[13] In Re: Insuring Consistent Application of 52 Pa. Code §56.12 (7), Equal Monthly Billing, Docket No. M-00051925, Final Interpretive Order (entered June 2, 2006) and Order (entered Nov. 14, 2006).

(7) Utility tariffs that are inconsistent with these guidelines should be null and void.

The Commission's June 1, 2006 Order contained a provision that sought to prevent natural gas utilities from truing-up their budget billing customer's accounts during the winter heating season. In Re: Insuring Consistent Application of 52 Pa. Code §56.12 (7), Equal Monthly Billing Final Interpretive Order at pg. 18, Dock. No. M-00051925, Order entered June 2, 2006. In its November 9, 2006 Order in response to several utilities who objected to this provision, the Commission stated its intent to delete the outright prohibition on winter true-ups, but noted that "We expect utilities to exercise good judgment in dealing with these situations, and to manage their budget billing programs in a manner designed to avoid large winter true-ups for heating customers." In Re: Insuring Consistent Application of 52 Pa. Code §56.12 (7), Equal Monthly Billing Order at pg. 9, Docket No. M-00051925, Order entered November 14, 2006 The OCA recommends that Chapter 56's budget billing section be amended to include this directive. The OCA submits that the revisions to § 56.12(7), as discussed above, will ensure the consistent and fair application of the budget billing regulations for all utility customers.

D. Standards For Timely Collection.

Under Chapter 56, many factors were taken into account in negotiating and arriving at a payment agreement that was affordable to the household. Consideration was given to the household's income and necessary expenses in order to establish a repayment period. Now, under Chapter 14, there are narrowly prescribed time limits for repayment periods. Although the utility can give a customer more time to pay – the Commission cannot.

As the OCA discussed in its Comments of July 15, 2005, the OCA submits that the utility's own billing and collection practices must take into account the limited period in which arrearages must be paid. If a utility's billing and collection procedures allow a customer

to accumulate very large arrearages before the utility actively takes steps to manage that account, this can cause significant problems for both the utility and the customer. Under the new payment timeframes imposed by Section 1405(b), customers with large arrearages will be at greater risk of termination for nonpayment because they will not be able to make up the arrearages in the time allotted.

The OCA submits that in order to ensure that payments on arrearages can be managed by customers within the timeframes specified in Section 1405(b), the Commission should promulgate regulations that require utilities to engage in timely collection practices.[14] For example, under the BCS informal guidelines, a low-income customer may have been ordered to pay $15 per month towards their arrears, in addition to making the full current monthly payment. If we now overlay Section 1405(b)(1) on that scenario, that would limit the payment agreement to five years (or 60 months), we find that any arrearage beyond $900, for a customer who is at that income level (60 x $15 = $900), may result in an inability of the household to manage the payment agreement. This could inevitably lead to termination for failure to abide by the payment agreement.

Accordingly, the OCA submits that Commission regulations should address delayed billing, billing errors, and lack of account management activities that could lead to unresolvable arrearages. Billing and collection practices that allow a household to accrue extraordinary levels of arrearages before contact with the customer or any attempt to implement a payment agreement is made, should not be permitted. The Commission should promulgate regulations to establish a framework for responsible utility collection practices. Utilities should

[14] The OCA is not advocating for the Commission to micro-manage the utilities' collection practices. The OCA agrees that the individual policies and procedures should be left up to the utilities as a business decision, but submits that the overall framework that must be complied with should be established by the Commission.

be encouraged to survey and replicate best practices. In addition, utilities should maintain a reasonable procedure and document collection activities for their accounts.

IV. CONCLUSION

The OCA thanks the Commission for this opportunity to address a number of issues regarding the impact of Chapter 14 in the provisions of the Commission's regulations at 52 Pa. Code Chapter 56. The OCA agrees with the Commission that many of the changes to Chapter 56 necessitated by 66 Pa.C.S. Chapter 14 will be complex. As the Commission contemplates these changes in light of its obligation to protect the health and safety of all residents of the Commonwealth, the OCA urges the Commission to retain the protections of Chapter 56 to the extent permitted by Chapter 14. The Commission should only make those changes to Chapter 56 that are required by Chapter 14 and that support the General Assembly's twin goals of improving collections from customers who can pay, while maintaining necessary protections for those who cannot.

Respectfully Submitted,

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