BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE

PENNSYLVANIA UTILITY LAW PROJECT

Harry S. Geller
Executive Director
PA Attorney I.D. # 22415
E-mail: hgellerpulp@palegalaid.net

John C. Gerhard
Staff Attorney
PA Attorney I.D. # 94809
E-mail: jgerhardpulp@palegalaid.net

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414

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INTRODUCTION & BACKGROUND

The Pennsylvania Utility Law Project ("PULP"), as part of the non-profit Pennsylvania Legal Aid Network, provides statewide representation, advice, and support in energy and utility matters on behalf of low income utility customers. These comments are submitted in response to the Pennsylvania Public Utility Commission's ("Commission") Advance Notice of Proposed Rulemaking Order ("ANOPR"), entered December 4, 2006 at Docket No. L-00060182 and published in the Pennsylvania Bulletin on December 16, 2006, 36 Pa.B. 7614. The fair and measured promulgation of new and revised administrative regulations at Chapter 56 is of paramount importance to the safety and well being of our Commonwealth's most vulnerable families. PULP appreciates the opportunity to submit these comments and provide the Commission with its views on issues of importance to low income Pennsylvanians.

On November 30, 2004, the Governor signed into law SB 677, also known as Act 201/Chapter 14. The law went into effect on December 14, 2004 and Amended Title 66 by adding Chapter 14 (66 Pa.C.S. §§ 1401-1418), entitled *Responsible Utility Customer Protection*. The Act is intended to achieve several goals. It seeks to "provide protections against rate increases for timely paying customers resulting from other customers' delinquencies." 66 Pa.C.S. § 1402(1). It "seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of utility bills." *Id*. "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).

It is a difficult task before the Commission to balance these sometimes competing ends, that is to " … address the problem of rising utility delinquencies while at the same time ensuring that service remains available under reasonable terms to customers with legitimate financial,

medical, and other problems."[1] Since the passage of Chapter 14, termination levels have jumped to levels warranting great concern: 142,794 terminations of electric service and 111,614 terminations of natural gas service in 2005 alone.[2] Correspondingly, the number of homes without safe heat during the cold weather months and the post termination home vacancy rates have dramatically increased. PULP submits that a more pro-active approach to ensuring consumer protection must be taken.

The absence of clear regulatory guidance during this transition period has shifted the balance away from ensuring that essential utility service remains available on reasonable terms to those with legitimate financial, medical, and other problems. The pendulum has swung too far, and the opportunity is open to the Commission, through this rulemaking process, to regain a proper balance. PULP welcomes the opportunity to be part of this corrective process.

DISCUSSION

1. RULES FOR PFA

Need For A Separate Chapter

PULP supports having a separate chapter of regulations to address the utilities and customers who were excluded from Chapter 14 by the legislature. We agree with the Commission's proposal to create a separate chapter which would essentially reflect the current Chapter 56 rules. However, in order to provide greater protections to victims with a Protection

[1] 2004 Pa. Legislative Journal 2443, Governor Edward G. Rendell, letter submitted to the Senate, November 20, 2004

[2] *Implementation of Chapter 14: First Biennial Report to the General Assembly and the Governor Pursuant to Section 1415,* Dec. 14, 2006, at. P. 26.

From Abuse (PFA) Order, some additional provisions should be added to the current Chapter 56 rules in fashioning the new chapter.

It is appropriate and sound public policy to specifically and clearly designate the regulations which apply to this group of utilities and their customers as well as to victims of violence protected by a PFA order. PULP recommends the Commission ensure that those individuals, such as PFA order holders, receive the highest level of available protection. It therefore should be stated specifically that the utility must apply the standard of greatest protection to these victims of violence. For example:

- The medical certification provisions concerning "nurse practitioners;"
- The provision requiring restoration of service based on medical certification within 24 hours of receipt of medical certification, instead of "before the end of the next working day."
- Chapter 14 requires that a PGW CRP eligible customer who has been shut-off for non-payment can be restored by paying the reconnection fee and being placed on CRP, rather than requiring payment of a percentage of the outstanding arrearage as well as the reconnection fee in order to obtain service restoration.
- Winter Termination prohibitions apply to all service, not just heat related service.

The Definition of "victims under a Protection From Abuse order"

The legislature specifically exempted "victims under a protection from abuse order" from the provisions of Chapter 14. See 66 Pa.C.S § 1417. To shield victims of domestic violence from further harm, the protections provided must not be limited to victims with a current PFA order; protections must be provided whenever (a) the victim had a PFA at the time of the events

resulting in the dispute with the utility, (b) at the time she seeks an exemption from the chapter 14 provision, (c) at the time of the dispute with the utility, or (d) when the exemption being sought is needed because of the domestic violence that led to the PFA. This result is required both by the language of Section 1417 and by the intent of the provision.

Because many of the issues raised by the changes in Chapter 14 are inherently linked to actions or problems dating from a prior time period, it is reasonable to link the protections to that time period. For example, the possibility that an individual may be required to pay an outstanding balance on an account on which that individual was not the customer inherently raises an issue from the past, as does the limitation on provision of a second payment plan or the issue of denial of credit and creditworthiness. Clearly the legislature did not intend for a victim of domestic violence to be subject to the harsher provisions of Chapter 14 as a result of the prior actions of the abuser. Providing those protections only to individuals with a current PFA would unreasonably limit the statutory provision. Instead, the relevant question if a PFA has expired is whether there is a connection between the current utility issue and the prior PFA.

In addition, Section 1417 applies not only to victims who are customers or applicants for utility service, but also to other household members for whose benefit a PFA order was entered. This flows from the language of Section 1417, which refers to "victims," not to "victims who are customers or applicants." For example, the victim involved may be a child (the PFA statute referenced by the legislature explicitly includes child abuse); in that case, the customer or applicant would be an adult living with or caring for the child. Or the victim could be another adult household member in need of the protections resulting from Section 1417. If a victim of domestic violence flees an abuser and moves into another household, and that household then applies for utility service or to enroll in a utility's low income program, the customer or applicant

may be asked to disclose information to the utility about each adult member of the household, including the victim of domestic violence. In each case, the protection should extend to the entire household.

Verification Requirements

The regulations should require utilities to accept a copy of a PFA order submitted by mail, fax, or electronically. Utilities should not be permitted to require an in-person visit to submit a PFA order. Utilities also should be required to accept alternate or delayed verification of a PFA order as a result of the abuse or delays in the court process. For example, if the victim does not have a copy of the PFA order because she had to flee abuse without any of her papers, or because the abuser destroyed it, alternate or delayed verification would be necessary. In these instances, the utility should either accept a verified statement from the victim or a third party or provide additional time for the victim to submit the PFA order, without penalizing the victim for the delay. Similarly if a PFA proceeding is pending but an order has not yet been entered, the utility should extend the protections of Section 1417 while the proceeding is pending.

Instances In Which Getting a PFA Is Too Dangerous

In some instances victims of abuse are unable to obtain a PFA order because doing so would put them in even greater danger by provoking retaliation, revealing their location, or placing them in dangerous proximity to the abuser. Seeking a PFA order requires repeated contact with the abuser. While serving papers in Philadelphia, the victim is required personally to serve the PFA papers on the defendant; a police officer may accompany her, but she or another family member are required by the police to be present to identify the defendant.

Contact also happens while appearing at court hearings. The victim is at risk in the courthouse elevator, waiting room, or hallway and can be followed by the abuser when she leaves the courthouse.

As discussed by the Pennsylvania Coalition Against Domestic Violence in their Comments submitted on February 14, 2005 in conjunction with the first Roundtable on Implementation of Chapter 14, "a victim's attempt to leave a violent relationship is one of the greatest risk factors indicating that a domestic violence offender will seriously injure or kill a victim." Abusers often escalate the violence when they believe they are about to lose control of a victim, and "obtaining a PFA order may intensify the perpetrator's violent behavior and place the victim in greater danger." Pennsylvania Coalition Against Domestic Violence, Comments on Act 201 of 2004; Chapter 14 Docket M-00041802, February 14, 2005, p.1.

Although utilities are not required by Section 1417 to provide protections for victims of domestic violence who are not "under a protection from abuse order," it does not prevent utilities from choosing to provide broader protections. We urge the Commission to issue a Statement of Policy encouraging utilities to provide protections to victims of domestic violence who are unable safely to obtain a PFA order. Other institutions, including the Pennsylvania Department of Public Welfare, have devised procedures for providing waivers of requirements for domestic violence victims where complying with those requirements would make it more difficult for individuals to escape domestic violence, place individuals at risk of further domestic violence, or unfairly penalize an individual because of domestic violence. The Pennsylvania Department of Public Welfare has developed a Domestic Violence Verification Form (PA 1747) for use by individuals requesting a domestic violence waiver.

The Office of Victim Advocate administers the Commonwealth's Address Confidentiality Program for victims of domestic violence. Victims may participate if they have a PFA or if they file an affidavit with the Office of Victim Advocate affirming that they are eligible for a protection from abuse order.

PULP requests that the Commission urge utilities to consider developing procedures similar to those used by the Pennsylvania Department of Public Welfare or the Office of Victim Advocate for providing waivers of requirements for victims of domestic violence who do not have Protection From Abuse orders.

Notice and Consumer Education Requirements

Universal notification -- Letting all customers and applicants for utility service know that certain protections exist is far more effective than requiring individuals to disclose abuse prior to providing information about those protections.

PULP supports the Commission's providing The Protection From Abuse Standard Annual Customer Notification which appears on page 6 of the Chapter 14 docket M-00041802. However, this notice should be amended in four respects. First, PULP urges the Commission to replace the first clause of the first sentence with the following: "If you or a member of your household has a Protection From Abuse Order." Second, the explanation under "What is a Protection From Abuse Order (PFA)?" should more fully and accurately describe the individuals against whom a PFA can be obtained. Third, the definition of abuse should be revised to more fully and accurately describe the types of abuse covered by the PFA statute. Finally, the Note at the bottom of the Notice should be amended to state that the utility will keep information concerning the account confidential (not merely the copy of the PFA order) and to add the

following sentence: "If you are unable to provide a copy of the PFA order as a result of the abuse, you may be allowed to provide an alternative form of proof, or be given additional time to provide the copy of the Order." These provisions are necessary to protect victims of abuse.

The regulations should require utilities to provide a copy of the Standard Annual Notification to all customers at the time of application for service and once a year thereafter. In addition to providing the Standard Annual Notification, utilities should be required to post information concerning the availability of these protections in their offices, waiting rooms, and women's restrooms. Utilities should be encouraged to include this information periodically in customer service newsletters sent with bills or other similar materials and to post the Standard Annual Notification on their websites.

Requirement of specific information on particular notices -- The regulations should require that specific information concerning protections available to victims of abuse with PFA orders be included on termination notices, post-termination notices, application forms, and all other notices or forms where differences in requirements between the current Chapter 56 and Chapter 14 are relevant. For example, if the notice includes a statement about liability for prior service to the property based solely on residence at the property pursuant to § 1407(d), it must also state that this requirement does not apply to a victim of abuse who has a PFA order.

Neither the Commission nor utilities may second guess the role of the courts in issuing an order of any kind. All PFA orders—including emergency, temporary, or final orders—must be taken at face value as satisfying the statutory requirement. The informational materials provided by utilities and/or the Commission and all forms and notices provided by utilities and/or the Commission should simply refer to PFA orders, and not use any language, such as "valid" PFA orders, which implies that some PFA orders are not valid or that PFA orders are inherently

suspect. For example, the termination and post-termination notices approved by the Commission staff in 2005 after the Second Chapter 14 Implementation Order should be revised to delete the word "valid" from the bullet points concerning PFA orders.

Use of the qualifier "valid" when describing PFA orders inappropriately implies that only current PFA orders will be considered. As discussed in these Comments, PFA orders which have expired are nonetheless relevant whenever the victim had a PFA at the time of the events resulting in the dispute with the utility or if the exemption from Chapter 14 is needed because of the domestic violence that led to the PFA. This is necessary because many of the issues resulting from the changes in Chapter 14 result from actions or problems dating from a prior time period. Outstanding balances on an account on which the individual was not the payment name, denial of credit and creditworthiness, limitations on the provision of a second payment plan, and security deposit requirements may all involve prior time periods.

Requirement that specific information be provided orally -- The regulations should require that utilities provide staff with scripts or other instructions for customer calls and for in-person conversations with applicants and customers incorporating the protections available to victims of abuse with PFA orders and information concerning how to obtain those protections. For example, if the customer or applicant is being told they are subject to security deposit requirements pursuant to Chapter 14, they must also be told that if they or a member of their household are a victim of abuse with a PFA order, the requirements are more lenient.

The regulations also should specify that customers and applicants seeking connection or reconnection of service should be informed orally by utility employees that more lenient terms are available to victims of abuse who have PFA orders.

The regulations should require that utility employees inform customers at the time of each personal contact required in the termination process that Commission regulations provide additional protections to victims who have PFA orders.

Confidentiality

The Commission should adopt regulations establishing minimum confidentiality and training requirements that ensure a domestic violence victim's interaction with a utility company does not make it more difficult for the victim to escape violence or penalizes her for having been a victim of domestic violence.

The Commission is urged to adopt regulations that impose confidentiality requirements on the handling of domestic violence related information for itself and the utilities it regulates. Since the Commission and utilities will now be collecting information about domestic violence and personal information about domestic violence victims, it is essential that measures be put in place to protect victims of abuse from the harm that results when information about their disclosure of abuse or the location of the victim occurs. Such disclosure may lead to further abuse either in retaliation or by virtue of having been given the previously concealed location of the victim. Protecting the victim's address as well as other pertinent data is vital to family safety. The establishment of protection of highly personal information may also make domestic violence victims feel more comfortable seeking the help they need to maintain utility service, an important step in their path to independence from their batterers.

In cases where domestic violence is present, regulations must require, at a minimum, that utilities provide space where customers or applicants may privately discuss domestic violence face to face, limit access to customer or applicant information, and identify the files to which

these heightened confidentiality safeguards apply. The Commission should also adopt a confidentiality policy that protects customer or applicant information in its own files or records. For example, if a customer or applicant informs the Commission of the existence of a PFA, the Commission must have a confidentiality policy that protects this information.

Confidentiality policies must apply to all situations in which the utility or the Commission is made aware of domestic violence in connection with a household, regardless of whether the victim is the customer, applicant, or another household member. For example, if a victim of domestic violence flees an abuser and moves into another household and that household then applies for utility service or to enroll in a utility's low income program, the customer or applicant may be asked to disclose information to the utility about each adult member of the household, including the victim of domestic violence.

Access to information concerning victims of domestic violence needs to be restricted to only those employees who actually need to access that information, with a code or flag system which does not implicitly disclose abuse (e.g., "referred to CARES" rather than "domestic violence" or "PFA.") This is necessary because an abuser could be an employee of the utility or could have friends or relatives who are employees of the utility. Provision of privacy for in-person discussions at the utility office is also critical. Victims of domestic violence will be reluctant to discuss their situation if they must do so in front of everyone else in the waiting room, and such public disclosure can endanger the victim and her family.

The Commission clearly is covered by Act 188 of 2004, the Domestic and Sexual Violence Victim Address Confidentiality Act, which requires state and local government agencies to accept a substitute address provided on the program participation card issued by the Office of Victim Advocate as the victim's address. This procedure permits the victim to keep

her actual address confidential and to receive mail forwarded through the Office of Victim Advocate. We urge the Commission to require utilities to accept the substitute address as the address of record for billing and other correspondence to victims who are participating in the Address Confidentiality Program. While the utility will need an actual address for the building to which utility service is to be provided, minimizing the volume of mail to that location will help protect the confidentiality of that location. Furthermore, in some instances the Commission and the utility will not need to know the victim's current location. For example, if there is a dispute concerning a bill for service at a prior residence, neither the utility nor the Commission will need to know the actual current address of the victim, as long as she can be contacted by mail at the substitute address through the Office of Victim Advocate.

PULP supports proposed regulatory language as follows:

Safeguarding information in domestic violence cases:

The Commission and utilities shall safeguard the personal data of customers and applicants who have disclosed domestic violence to the Commission or the utilities.

(a) The Commission and utilities may not disclose or release to any person any of the following information about a customer, applicant, or household member who is a victim of domestic violence:
(1) The residential address
(2) Phone number
(3) Identity and address of employer and/or school
(4) Identifying information regarding domestic violence victim's household members.
(5) Facts relating to the abuse, including the fact that the customer, applicant or household member has a PFA.
(b) This section does not prohibit disclosure of any of the above information with the customer's or applicant's informed written consent.
(c) The Commission and the utility staff must protect the above information in both paper and electronic format.
(d) Only the staff person responsible for work on the customer's or applicant's file and his or her supervisors shall be given access to the information listed in part (a) of this section.

Domestic Violence Training

The Commission should require domestic violence training of all utility staff members who interact with customers or applicants exempt from Chapter 14 due to domestic violence. Domestic violence training increases staff awareness of domestic violence and increases sensitivity when interacting with victims. This training is necessary to effectuate the legislature's intent to protect victims.

PULP supports proposed regulatory language as follows:

Domestic Violence Training

(a) All utility staff who interact with customers or applicants who are victims of domestic violence must receive domestic violence training developed in consultation with statewide or community domestic violence service providers that includes:

(1) Basic information about domestic violence.

(2) Information about appropriate responses when a customer or applicant discloses abuse and request assistance requiring a referral to community resources.

2. PREVIOUSLY UNBILLED UTILITY SERVICE

The Commission proposes in the ANOPR to maintain "the obligation of a utility to offer a payment schedule based on previously unbilled service" and to incorporate a four-year statute of limitations on a utility's authority to require payment for unbilled service. *ANOPR*, at Appendix p. 1. PULP supports the proposal to maintain "the obligation of a utility to offer a payment schedule based on previously unbilled service" but believes the Commission should institute a two-year statute of limitations consistent with that applied to unjust enrichment.

Payment Agreement

Section 1403 defines payment agreement as "an agreement whereby a customer who admits liability for ***billed*** service is permitted to amortize or pay the unpaid balance of the account in one or more payments." 66 Pa.C.S. § 1403 (emphasis added). According to the plain meaning of Section 1403, a "payment agreement" involves billed service. "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 66 Pa.C.S. §1921(b). The words of Section 1403 say that a payment agreement deals with billed service. Since Section 56.14 does not deal with billed service, it does not qualify as a payment agreement pursuant to Section 1403.

Section 1405 discusses how payment agreements function and gives the Commission authority to investigate disputes and issue payment agreements to resolve those disputes. In particular, Section 1405(b) establishes the length of payment agreements, and Section 1405(d) limits the number of payment agreements that, absent a change in income, may be issued by the Commission for a customer. While these limits are in effect for a Section 1403 payment agreement, they do not apply to make up bills pursuant to Section 56.14 because Section 56.14 does not establish payment agreements.

The statutory differences are highlighted by the different underlying situations the two payment structures address. Section 1405 is aimed at billed activity over which there is some type of dispute between the utility and the customer. Section 56.14 is aimed at a different situation, namely previously unbilled service resulting from a billing error, meter failure, leakage that could not reasonably have been detected, loss of service, or four or more consecutive estimated bills. 52 Pa.Code §56.14. Section 56.14 responds to the problem with payment options different than those in Section 1405, providing that utilities must offer customers the

option of either a payment arrangement for the unbilled balance extending the same length of time as in which the unbilled balance accrued or a payment arrangement in which "the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50% and at least $50." Because Section 56.14 was intended to deal with a different problem, the Section 1405 limitations should not be applicable to Section 56.14.

Section 56.14 comports with Chapter 14. Section 56.14 is not among the Code sections in part four of Chapter 14 that are explicitly superseded by Chapter 14. Furthermore, Section 56.14 is not implicitly superseded because it does not conflict with Chapter 14. As such, PULP recommends the Commission maintain Section 56.14 in its present form.

Statute of Limitations

PULP supports the Commission's suggestion to incorporate regulations introducing a four year statute of limitations on Section 56.14 billing situations.

A four year statute of limitations comports with other sections of the Code, with prevailing law, and with Commission practice. Several Code sections limit recovery of past due amounts when long periods of time have passed: Section 56.35 bars a utility from requiring as a condition of service payment or arrangement to pay a bill incurred more than four years previously; Section 56.83(7) and Section 56.202 both require utilities to maintain customer service records for at least four years. Section 1312 of the Public Utility Code, 66 Pa.C.S. §1312, limits refunds and credits, and Pennsylvania's statute of limitations for contract actions limits the time during which a contract may be enforced. 42 Pa.C.S. §5525. Finally, a four year statute of limitations is consistent with Commission case law concerning limitations on utility

claims for unbilled service. See Rivera v. Philadelphia Gas Works, Docket No. C-20028491 (March 9, 2004).

The inclusion of a four year statute of limitation for Section 56.14 also reflects basic notions of fairness. Customers are already at a significant disadvantage when it comes to contesting the accuracy and validity of utility bills. Utilities have the staff, expertise, and experience practicing before the Commission that customers lack. To introduce a four year statute of limitations would level the playing field and prevent utilities from reaching back over long periods of time to collect on past "debts".

Because a four year statute of limitations in Section 56.14 would align with prevailing law, Commission practice, and basic fairness, PULP recommends the Commission adopt a four year statute of limitations for Section 56.14.

Low-Income Protection

PULP recommends the Commission introduce new protections for low income families that will bring Section 56.14 more fully in line with Chapter 14's stated goal of ensuring "that service remains available to all customers on reasonable terms and conditions." 66 Pa.C.S. § 1402(2).

The Commission's concern for the well-being of low income families is shown in the policy statement on Customer Assistance Programs. 52 Pa.Code § 69.261 *et seq*. In particular, Sections 69.265(2)(i)(A) – (C) provide maximum ceilings for monthly CAP payments.[3] These

[3] Section 69.265(2)(i)(A) sets maximum payments for electric non-heating service within the following ranges: household income between 0—50% of poverty at 2%—5% of income; household income between 51—100% of poverty at 4%—6% of income; household income between 101—150% of poverty at 6%—7% of income. Section 69.265(2)(i)(B) sets maximum payments for gas heating within the following ranges: household income between 0—50% of poverty at 5%—8% of income; household income between 51—100% of poverty at 7%—10% of income; household income between 101—150% of poverty at 9%—10% of income. Section 69.265(2)(i)(C) sets maximum payments for electric heating or gas heating and electric non-heating combined within the following

ceilings ensure payments are affordable to low income households and remain in concert with the larger Chapter 14 goal of providing affordable service to all customers. PULP recommends the Commission follow this same policy by modifying Section 56.14 to require make up bills have ceilings no greater than those set out in Sections 69.265(2)(i)(A) – (C).

Discount

PULP recommends the Commission promulgate new regulations instituting a twenty percent (20%) discount on make-up bills associated with unbilled utility service where the billing took place as a result of failure to acquire an actual meter read for six months or more.

While many utilities have upgraded their equipment to employ remote meter reading devices that consistently get actual meter reads, still there are many utilities relying on estimated meter reads for their billing. Section 56.12 requires "the utility at least every 6 months, or every four billing periods for utilities permitted to bill for periods in excess of 1 month, obtains an actual meter reading or ratepayer supplied reading to verify the accuracy of the estimated readings." 52 Pa Code § 56.12(4)(ii). Where a utility fails to follow this directive, a customer can not properly monitor and adjust their usage because they do not receive accurate, timely notice of their actual use.

From a customer's perspective, especially for customers at the lower end of the income scale, payment agreements often place more of a strain on household budgets than would occur if the utility had accurately billed the customer on a monthly basis. In recognition of this, the Commission's Bureau of Consumer Services (BCS), in resolving disputes concerning make-up bills, has issued determinations which provide a twenty percent discount (20%) on unbilled

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guidelines: household income between 0—50% of poverty at 7%—13% of income; household income between 51—100% of poverty at 11%—16% of income; household income between 101—150% of poverty at 15%—17% of income.

service in situations where the period of unbilled service was more than six months. Robinson v. Philadelphia Gas Works, F-01039065 (March 24, 2004). PULP recommends the Commission promulgate regulations formalizing this practice and deter undue reliance by utilities on estimated bills.

3. CREDIT STANDARDS

Necessary Clarifications Concerning the Definitions of Customer and Applicant

In its first *Implementation Order*, the Commission determined that a "customer" ceases to be a customer after termination of service when the "final bill is due and payable." In other words, a customer continues to be a customer for a period after termination of service, which ends when the customer's final bill becomes past due. *Implementation Order*, at 22. In reaching this conclusion, the Commission noted that the Section 1403 definition of customer does not designate someone who is necessarily currently receiving service. *Implementation Order*, at 21. As the Commission explains, this interpretation of Chapter 14 means that a customer who is simply transferring service from one address to another would not be required to "meet all the standards and obligations placed upon an applicant for utility service (*e.g.*, completion of application, providing ID, providing lease/deed information, occupant information, meeting credit standards/credit scoring, payment of all balances owed, etc.)" which would otherwise be necessary if such a person lost his/her customer status at the time service was discontinued to his/her old residence. *Implementation Order*, at 21. Adoption of this interpretation would limit delays in the transfer of service and "unnecessary informal complaints from customers over

delays in getting service at a new location pending completion of an application process and payment of a deposit and any balance from the former residence." *Implementation Order*, at 21.

The Section 1403 definitions of "Customer" and "Applicant" both include, in addition to a natural person receiving or applying for service, "any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested." The Commission should specify that an adult occupant of a property pursuant to an oral lease does not come within this definition of a customer or applicant. As a practical matter, oral leases generally do not specify the names of tenants. To be included within the statutory definition of customer or applicant, and thus potentially liable for bills not paid by the person who is primarily responsible for payment of bills rendered for service, the person must not only be an occupant, but his/her name must "appear" on the "mortgage, deed or lease." To "appear" according to Webster's is "to be or come in sight."[2] A name does not "appear" on an oral lease because, obviously, an oral lease can not be seen with the eyes. Section 1403 does not authorize utilities to infer on the basis of an alleged oral lease that a person is an occupant who may be held responsible for a bill in another person's name.

Acceptable Standards For Proof Of Identity For Applicants And For Occupants.

Reasonable forms of identification ("ID") should be accepted by utilities from applicants for service. Providing social security numbers (SSNs) should not be a requirement of obtaining utility service. While use of SSNs may be an administrative convenience in the "proof of identity" process, customers who do not wish to provide SSNs or who do not have them should have reasonable alternate means of proving their identity.

[2] Webster's Ninth Collegiate Dictionary, "appear."

A social security number requirement, if allowed, would act to condition utility service upon having a particular immigration status. There are numerous immigration visas – some of them lasting multiple years – that do not allow or require the visa holder to apply for a social security number.[4] These otherwise eligible immigrant applicants for utility service would be unreasonably discriminated against if a social security number requirement were implemented.

Utilities do not need SSNs to verify identity. The July 14, 2005 Order and staff report resulting from the Commission's Investigation In Re: Identity Theft, Docket M – 00041811, determined that identify theft involving utility customers was not a major problem. *Report*, at 11. The Report found that utilities are not insisting that SSNs must always be provided in the application process. "Virtually all the utilities state that an applicant's refusal to provide a social security number does not prevent an applicant from receiving service. However, where an social security number is not provided, or where one is provided and fails to verify the person's identity, most utilities require the applicant to personally appear before a company employee and present at least two forms of identification...." *Report*, at 16.

Other reasonable forms of identification should be accepted. For instance, The City of Philadelphia Health Care Centers accept one or two of the following documents as adequate proof of identity:

- Driver's License
- Non-Driver's License
- Checking cashing card with picture that includes address
- Any official picture ID that includes an address

The following are acceptable proof of ID and also require proof of residency:

- Job photo ID
- School photo ID
- Passport (U.S. or foreign)

[4] 8 C.F.R. §§ 101(a) and 203(b); http://www.ssa.gov/immigration/.

- Visa with photo
- Other official photo ID
- Birth certificate
- A letter from a community based agency on official letterhead
- Social security card
- A letter from any Government agency

"Eligibility for Services in the City of Philadelphia Health Care Centers," City of Philadelphia, Department of Public Health, Ambulatory Health Services, September 27, 2002. PULP supports a similar list of acceptable forms of identification for utility service applications.

There are no states that explicitly authorize utility companies to demand social security numbers as required proof of identity. [5] There is also no precedent for the Commission to adopt the position that applicants or occupants must always provide a social security number as proof of identify. In a final rulemaking order, the Commission recognized that the federal Privacy Act was a barrier to any absolute requirement that customers provide proof of identity in the form of social security numbers. *Re: Establishing Standards for Changing a Customer's Electric Supplier*, Docket L-00970121, February 27, 1998, 1998 WL 201380 (Pa.P.U.C.).[6]

The FY2007 LIHEAP State Plan, like previous State Plans, takes a similar position. The State Plan at Section 601.106 suggests that alternative identity verification has generally been accepted where a customer lacks or refuses to disclose an SSN:

> Verification of social security numbers is not required for household members whose social security numbers had previously been verified and are available in a LIHEAP or public assistance case record. An applicant who does not have a social security number or refuses to disclose it shall complete an energy assistance affidavit.

PULP recommends the Commission require utilities to provide applicants with the option to complete a form similar to PWEA 4 11/03 used by the Department of Public Welfare in the

[5] Guide to Rights of Utility Consumers, National Consumer Law Center, pp. 10-12 (2006).
[6] This order was subsequently superseded by a revised order that did not address the social security number issue.

LIHEAP application process when the applicant does not have a social security number or wishes for privacy reasons not to provide the number.

In addition, Section 56.37 states that if the "verification process" for an applicant for service is "expected to take or in fact takes longer than three days," then the utility should provide service pending the completion of the process. This provision was not listed as one of the Chapter 56 provisions superseded by Chapter 14. Section 56.37 should be amended to clarify that if proof of identity either of the applicant or the occupants is expected to take or takes more than three days, then service must be provided pending completion of the process.

State-Wide Standards For Requiring A Deposit Pursuant To Section 1404(a)

PULP respectfully requests that the Commission reconsider its proposal to adopt a company specific tariff approach for the use of developing credit scoring methodologies. A uniform, statewide regulatory standard appropriate to the utility industry should be promulgated by the Commission prior to the filing of tariffs by individual companies. PULP submits that statewide standards are needed to avoid consumer confusion, ensure a minimal level of consumer protection, and ensure equality of treatment throughout the Commonwealth.

The Commission must provide for a process which permits customers and applicants from whom a deposit is required on the basis of a credit score to dispute that utility demand. Chapter 14 did not revoke the rights set forth in Section 56.2 (Definition of "dispute") and Section 56.141 of customers, occupants, and applicants to dispute utility determinations, including deposit requirements. Applicants who are required to post a deposit should be informed in writing of their credit score and the identify and contact information concerning the credit reporting agency providing the credit score. If an applicant wishes to dispute the credit

score, the utility should provide the applicant with the credit report on which it is based, including a written credit reporting company explanation of the methodology which has been utilized.

Utilities should be required to provide information supporting the credit score within three business days or provide service without requiring a deposit pending the availability of the supporting documentation. Section 56.37 should be rewritten in the credit scoring context. The Commission should redraft Section 56.37 to provide that if the utility does not provide this credit reporting information within three business days commencing the date after the applicant's request for that information is made, the utility must provide service without requiring a deposit until this information has been provided.

Applicants who have no credit score should not be denied credit solely on the grounds that they have no credit score. Young persons or families who have lived previously with their extended family will not have developed a credit score because they have not previously had bills in their name. Some separated spouses and victims of domestic violence, with or without a PFA order, are also likely to have no credit history upon which a credit score could be based. The Commission should reaffirm the continued validity of Section 56.32(3)(i), which states, "the absence of prior credit history does not, of itself, indicate an unsatisfactory risk," and clarify that the absence of a credit score is not, in itself, grounds for requiring an applicant or customer to post a deposit.

Low income applicants should not be required to post deposits because they can not afford them. For these applicants, the security deposit is a significant barrier to service. Section 1404(f)(2) provides that low income CAP eligible customers of a city natural gas distribution

operation are not required to pay a deposit if they enroll in CAP. Utilities should be required to screen applicants for income level and refer those who are low income to CAP programs.

Amendment To Section 56.36(1) Concerning Written Statement Of Reasons For Denial Of Credit

PULP submits that when a utility denies service to an applicant, it should be required to provide a complete written statement of the grounds for denial of service, including not only the grounds for requiring a deposit but also an itemized statement of all other payments (including the reconnection fee, the first installment on a payment agreement, charges to be paid in installments, lump sum charges for service received which must be paid upfront, etc.) which must be made as a condition of the utility providing service.

Section 56.36(1) provides that utilities "shall inform the ratepayer or applicant in writing of the reasons for the denial" of credit. A written statement of the reasons for denial of credit is important because such a statement assists both the applicant and the utility to identify what must be done in order for the applicant to obtain service. One effect of Chapter 14 is to increase payment amounts, including deposits, which often must be made by applicants seeking service for the first time or customers or applicants seeking reconnection after a termination of service. Applicants and customers without service need prompt and clear information concerning their status because the longer that credit requirements are not understood, not met, and not disputed, the longer an applicant must endure the lack of necessary utility service to his/her residence. It is therefore all the more important that utilities articulate the grounds for denial and provide a written statement of those grounds to applicants, including the amount of the deposit and the time frame for its payment.

Furthermore, utilities should be required to include information about the availability of more lenient terms if the applicant or customer is a victim of domestic violence with a Protection from Abuse Order in all notices denying credit, requiring a deposit, or listing the payments which must be made as a condition of the utility providing service.

Standards for Determining Previous Residency

Section 1407(e) provides that a utility may establish that an applicant previously resided at the premises and thereby incurred liability for an unpaid balance which accrued during the time the applicant resided there 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."

Section 1407(e) authorizes a utility to infer from a mortgage, deed or lease that the applicant resided at the account premises during the time that the unpaid balance accrued. More specifically, a utility is authorized to use the mortgage, deed or lease document to determine both residency and the time when occupancy commenced. However, the Commission should specify that Section 1407(e) does not establish an irrebuttable or rebuttable presumption that a mortgagor, owner or lessee resided at the property to which service was provided. An owner, mortgagor, or lessee may in fact have been residing elsewhere for all or part of the time period in question. Common examples are a non-resident owner who has rented the property to another, or a non-resident lessee who has sublet the rented property to another. Section 1407(e) was not intended to provide absolute justification for a utility's refusal to provide service to an applicant unless the applicant assumes responsibility for an unpaid balance solely on the basis of a mortgage, deed or lease document. If the applicant provides other documentation, including but

not limited to a driver's license, social security documents, employment documents, etc., the utility is required to give good faith consideration to this evidence that the applicant was not an occupant at the address while the unpaid balance was accrued.

To say that a utility "may establish" occupancy through the use of a mortgage, deed or lease only means that a utility is granted a permissive inference on the basis of such documents. The statutory language "may establish" is not sufficient to create an irrebuttable presumption, which is disfavored on constitutional due process grounds. Commonwealth of Pennsylvania, Dept. of Transportation v. Clayton, 546 Pa. 342, 684 A.2d 1060 (1996). Moreover, the provision is too vague to indicate a legislative intent to shift burdens as would result if a rebuttable presumption were created. If the legislature had intended to establish an irrebuttable or rebuttable presumption on the basis of the presence of a name on a mortgage, deed or lease, it would have done so explicitly. Rather, the provision authorizes the utility, in the absence of other evidence, to rely on specified written documents – a mortgage, deed or lease – in their initial determination that an applicant is a former occupant who may be held responsible for an outstanding balance for utility service provided to residential property.

Section 1407(e) also authorizes utilities to "establish" that an applicant previously resided at the address for which service reconnection is being sought by use of a "commercially available consumer credit reporting service or other methods approved as valid by the commission." In the *ANOPR*, the Commission proposes that utilities be required to specify in their tariffs the "procedures and standards" which the utility proposes to use to determine residency pursuant to this section. *ANOPR*, Appendix A, at 2. PULP submits that establishment of such procedures and standards is particularly important when utilities rely on credit reporting services or on yet to be proposed "other methods." However, the Commission should specify in

Chapter 56 that when a utility "establishes" prior residency on the basis of information from a credit reporting service, it is not sufficient to merely report the reporting service's conclusion. Rather, the utility must provide the material facts on which the conclusion is based. The Commission has addressed the adequacy of consumer credit report service reports in another context. In the Bookstaber v. PECO Energy Company, Commission Docket No. 20031314 (November 23, 2004), the Commission held that a denial of credit based on the report of a credit reporting service must provide not merely the credit reporting service's conclusion, but a description of the circumstances upon which it is based. In the same way, a determination by a credit reporting service that a person was a prior resident of the account premises for a particular period of time must provide the reasons for this conclusion.

Any procedure for establishing residency for Section 1407(e) purposes should provide for informing the applicant of the facts upon which the utility relies in order to establish the prior residency of the applicant and should in every case provide the opportunity for the applicant to rebut a claim of prior residency without having to overcome an evidentiary presumption.
In addition, notices informing the applicant or customer that a utility asserts a claim of prior residency must also inform the applicant or customer that victims of domestic violence with a Protection from Abuse Order are not liable for an unpaid balance on an account in the name of another person. Because victims of domestic violence, with or without a Protection from Abuse Order, are particularly vulnerable to problems resulting from non-payment of a prior bill by an abuser, this is an area in which utilities should be encouraged to provide broader protections to victims of abuse, including an alternate verification procedure for individuals who were unable to obtain a PFA order because it would be too dangerous to do so.

4. PAYMENT PERIOD FOR DEPOSITS.

The timing, amount, and payment of security deposits are important issues because they may bar entrance to utility service for many customers, particularly low income customers. To eliminate unnecessary hurdles and ease access to service, the deposit process should be clear and comprehensible. PULP respectfully submits that the Commission's proposed deposit structure in the *ANOPR*[7] does not achieve this goal of simplicity, is unduly complicated, and will be unnecessarily confusing to consumers.

At the heart of the problem, the Commission contemplates exchanging its existing Chapter 56 deposit rules that apply equally to all residential customers with individualized rules for a variety of groups: applicants who were previously customers and whose service has been terminated, applicants who have not been customers previously, current customers who fall into payment trouble and out of credit worthiness, and PGW customers.

As an alternative to having so many individualized rules for each group, PULP recommends the Commission promulgate regulations that streamline the process and apply the same deposit rules to all non-PGW customers.[8] PULP recommends using a consistent 90 day deposit process with a 25% payment up front, a 25% payment 30 days thereafter, 25% payment 60 days thereafter, and a final 25% payment 90 days thereafter. A reasonable interpretation of Chapter 14 and past Commission practice supports PULP's recommendation.

During the Roundtable discussions, several parties suggested that Sections 1404(a) and 1404(e) require the Commission to abandon its current practice of allowing security deposit payments over a period of time in installments and replace it with a single security deposit paid

[7] *ANOPR*, at Appendix A p. 3.
[8] Section 1404(f) explicitly carves out special rules for PGW customers.

as a prerequisite for receiving service. The statutory language does not support this interpretation; accordingly, it should be rejected by the Commission.

The General Assembly clearly knows how to require immediate payment when it wants immediate payment. In the PGW specific parts of Section 1404(f), the statutory language explicitly states that a deposit must be "***paid in full at the time*** the city natural gas distribution operation determines a deposit is required." 66 Pa.C.S. §§ 1404(f)(1) and 1404(f)(2) (emphasis added). Had the General Assembly intended Section 1404(a) to require immediate, upfront payment of security deposits outside of the PGW context, it would have used the same kind of clear, unambiguous language it used in Section 1404(f) for PGW. The General Assembly did not use this same clear language, and so we should see in that an intent to arrive at a result different than a single, upfront payment.

Misinterpretation of Section 1404(e) adds to the confusion surrounding the proper security deposit construct. It reads:

> **(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). This section, particularly the phrase "pay the full amount of the cash deposit," has been interpreted to support the position that payment of the security deposit is due immediately upon application for service. This interpretation is untenable. A customer who pays off a deposit over 90 days pays the "full amount of the cash deposit" as surely as a customer who pays it off in one payment. Both payments are made in full; the question is one of timing and point of reference. Section 1404(e) merely provides that if a customer does not pay in full, then the utility is not required to provide service. It says nothing of the timing of when the full

payment is required. That is left to the Commission's discretion. Because Section 1404(e) does not require a single payment, the Commission should refrain from infusing it with that meaning.

An alternative reading of Section 1404(a) provides a tenable interpretation that affords proper meaning to all sections of Chapter 14.

> **§ 1404. Cash deposits and household information requirements.**
>
> **(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:**

66 Pa.C.S. § 1404(a). Rather than reading the phrase "at the time the public utility determines a deposit is required" as key to the passage, PULP suggests looking to the phrase "from requiring a cash deposit in an amount that is equal to one-sixth of the applicant's estimated annual bill."

"Modifiers, if possible, should come next to the words they modify."[9] The phrase "at the time the public utility determines a deposit is required" immediately follows and modifies the phrase "from requiring a cash deposit in an amount that is equal to one-sixth of the applicant's estimated annual bill." It is reasonable to assume the General Assembly drafted this legislation with rules of grammar in mind so it also seems safe to assume the phrase "at the time the public utility determines a deposit is required" modifies that which immediately precedes it, namely the phrase "in an amount that is equal to one-sixth of the applicant's estimated annual bill." With this in mind, the thrust of the meaning becomes clear: it is towards the timing of the valuation of the deposit amount, not the timing of the payment of that amount.

This point becomes clear when one considers the changes in bill size that can occur over time from fluctuations in energy costs or changes in family size/composition. Section 1404(a)

[9] William Strunk and E.B. White, *The Elements of Style, 4th Edition*, (Allyn & Bacon, 2000), 30.

makes the frame of reference for the *valuation* of security deposits right "at the time the utility determines a deposit is required." When coupled with Section 1404(g), relating to the estimated annual bill, Section 1404(a) ensures only the prior 12 months, measured from the time it is decided a deposit is required, are used to determine the 1/6 deposit amount. This common sense rule prevents parties from scrambling through years of prior utility use to find the most advantageous time period for their particular end, utilities seeking time frames of high use generating a high security deposit and customers looking for periods of low use yielding a lower deposit amount.

Parties have made much about Section 1404(h)'s "90 days to pay the deposit in accordance with commission regulations." PULP suggests there are ways to interpret this passage that yield clarity and simplicity. Section 1404(h) reads:

> **(h) Time for paying deposits upon reconnection. – Applicants required to pay a deposit upon reconnection under subsection (a)(1) shall have up to 90 days to pay the deposit in accordance with commission regulations.**

66 Pa.C.S. § 1404(h).

In the *ANOPR*, the Commission interprets the section as referring to current regulations prior to the passage of Act 201. See *ANOPR*, at Appendix-A, p. 2. There is no reason to read this section as referring to current regulations, particularly when the word "current" itself is absent from the legislation and only appears in the *ANOPR*. Rather, we can read the words as they appear in the statute: (1) applicants have 90 days to pay their security deposit, and (2) payment must be made in compliance with Commission regulations. Given that the legislation requires the Commission to promulgate new regulations(see Section 6, S.B. 677), it is reasonable to assume the General Assembly anticipated their promulgation and that behavior under Chapter 14

would have to conform with them. This interpretation poses no problem for the Commission, permits the establishment of one standard to be used for all security deposits, and is a reasonable interpretation that is faithful to the legislation; PULP recommends the Commission adopt it.

As each of these layers of misinterpretation are removed, it becomes clear that the Commission can and should allow for all customers and applicants to enjoy a 90 day deposit payment scheme.

5. TERMINATION OF SERVICE

Service termination is the most important issue facing the Commission today, particularly termination of low income families. Since the passage of Chapter 14, termination levels have skyrocketed. This outcome is at odds with the intent of Chapter 14 to ensure that service remains available to all customers on reasonable terms and conditions, 66 Pa.C.S. § 1402(3). It is imperative that reasonable regulations governing service termination and reconnection are promulgated to correct this problem.

PULP recommends the Commission promulgate regulations to achieve the following: (1) Establish clear post-termination notice requirements; (2) Maintain Section 56.83 requirements regarding unauthorized terminations; (3) Incorporate new Chapter 14 notice procedures; (4) Maintain an automatic stay of termination; (5) Protect users without a contract; and (6) Incorporate new regulations regarding days of the week.

Establish Clear Post-Termination Notice Requirements

Section 1406(c)(2) requires utilities to provide a post-termination notice to a customer for whom the utility instituted an immediate termination pursuant to Section 1406(c)(1). PULP recommends, on statutory and public policy grounds, the Commission modify existing Section 56.98 to include regulations governing this post-termination notice process.

Statutory considerations require the issuance of clear post-termination regulations from the Commission. The statue requires the utility "make a good faith attempt to provide a post termination notice to the customer or responsible person at the affected premises." 66 Pa.C.S. §1406(c)(2). The "good faith" standard is fairly ambiguous and open to interpretation. To meet the General Assembly's clearly stated goal of ensuring that service remain available to all customers on reasonable terms and conditions, the Commission should promulgate regulations more fully defining the content of a "good faith attempt" for purposes of Section 1406(c)(2).

Considerations of public policy require the issuance of clear post-termination regulations from the Commission. The Commission and the General Assembly favor providing notice whenever there is a termination of service. Only in rare situations, where there is imminent physical danger, does the Commission sanction no-notice terminations. Within this context, the Commission has stated:

> We must, however, caution utilities to use this authority judiciously and only under circumstances that address clear safety concerns. *See, e.g.*, 52 Pa. Code §§56.98, 59.24(b).Implementation Order, Docket No. M-00041802F0002, entered March 4, 2005.

The quick alleviation of imminent physical danger is what justifies the use of a no-notice termination. However, the dangers caused by a no-notice termination also require Commission attention. To safeguard the public welfare, the Commission should promulgate

regulations more fully defining the content of a "good faith attempt" for purposes of Section 1406(c)(2).

To aid the Commission in promulgating these regulations, PULP respectfully submits the following contributions for the content of these regulations. Pursuant to Section 1406(c)(2), the utility employee must give personal notice to the customer or responsible person at the residence at the time of the termination. The utility employee should be required to address all the actions an individual may undertake for service termination to be prevented or a reconnection effectuated. This communication should include information regarding all of the programs available to help low income customers maintain or reconnect to utility service and how to access those programs during that customer/utility representative contact. The elements contained in each company's communication should be reviewed and approved by the Commission in order to ensure completeness, equity, consistency, and use of plain language terms. The use of such a communication will ensure that the interests of the utility to collect fully on any outstanding balance are balanced against the customer's right to access any reduced payment options to which the customer is entitled. This is particularly true for low income households.

If no personal contact is made at the time of termination, the utility employee should be required to post in a conspicuous place a Commission approved notice outlining all of the ways in which service termination can be prevented or a reconnection effectuated. While Section 1406(c)(2) requires posting for single meter, multi unit dwellings, the Commission should make posting the standard for any terminated dwelling. This posted notice should highlight all of the programs available to help low income customers maintain or reconnect to utility service.

Within 72 hours of terminating service, unless service has been reconnected in the meantime, the utility should be required to send a Commission approved post-termination letter to the customer outlining all of the ways in which service can be reconnected. This mailed notice should highlight all of the programs available to help low income customers maintain or reconnect to utility service.

Only if both steps are taken by the utility – personal contact/posting and issuance of a 72 hour post termination letter – should it qualify as a "good faith attempt" satisfying Section 1406(c)(2).

Maintain Section 56.83 Requirements Regarding Unauthorized Terminations

PULP recommends the Commission maintain Section 56.83, relating to unauthorized termination of service, in its current form because it comports with Chapter 14. Chapter 14's intent is to require payment from those who can afford to pay but choose not to pay. 66 Pa.C.S. § 1402(2). Equally important, the General Assembly wanted to ensure that service remains available to all customers on reasonable terms and conditions. 66 Pa.C.S. § 1402(3). Because Section 56.83 helps achieve this second goal without frustrating the first, the Commission should retain it unchanged.

To achieve its goal of requiring payment from those who can afford to pay but choose not to pay, Chapter 14 introduces a number of devices to identify and pursue nonpaying customers who can afford to pay. Section 1403's definition of "customer" is one such device:

> **§ 1403. Definitions –**
> **A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for 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.**

This definition helps utilities by expanding the number of people potentially responsible for the payment of an outstanding utility bill. However, this expanded definition of "customer" makes parts of Section 56.83 confusing and requires clarification.

There are several parts of Section 56.83 involving factual situations where it would be inappropriate for a utility to attempt collection. Customers should not lose the protections afforded by Section 56.83 due to an overzealous interpretation of Section 1403. For example, Section 56.83(4) prohibits issuing a termination notice or termination without express Commission authorization where there has been "nonpayment of bills for delinquent accounts of the prior ratepayer at the same address." This section promotes a goal of basic fairness: a party should not have to pay for someone else's utility service. This goal is compatible with Chapter 14 and should not be lost to an expanded definition of "customer" that would allow for an immediate termination.

It is important that, while enabling Chapter 14 to achieve its goal of better collections, the Commission also promote Chapter 14's goal of ensuring reasonable service. The Commission can achieve this by maintaining Section 56.83 in its current form, which merely requires utilities to establish the facts of liability in a hearing before receiving Commission sanction to issue notice and begin the termination process.

Therefore, PULP recommends the Commission promulgate clear regulations maintaining the protections afforded by existing Section 56, particularly Sections 56.83(4) and 56.83(8), that prohibit the utility, absent prior Commission authorization, from issuing termination notices or terminating service to these customers.

Incorporate New Chapter 14 Notice Procedures

Section 1406(b) introduces a new notice procedure for terminations. Parts of the existing Chapter 56 regulations are inconsistent with the new Section 1406(b) requirements, and the Commission should make changes to Chapter 56 accordingly.

Section 1406(b)(1)(i) requires slight modifications to Section 56.91 when it states, "a termination notice shall remain effective for 60 days." This effective period is absent from and must be added to existing Section 56.91.

Section 1406(b)(1)(ii) enables utilities to discharge their seventy two hour notice obligation by making "telephone contact" with the customer or occupant. PULP recommends the Commission amend Section 56.94 to include this new notice procedure. However, PULP submits that Section 1406(b)(1)(ii) is not inconsistent with Section 56.94(1)-(4)'s meaning of "personal contact," which should therefore remain in effect unaltered.

Section 1406(b)(1)(iii) deals with new winter termination procedures. This subject is dealt with under Section 6 of these Comments dealing with winter terminations.

Section 1406(b)(1)(iv) is consistent with Section 56.94, relating to procedures immediately prior to termination. No Commission action on Section 56.94 is required.

Perhaps the most important change rendered by Chapter 14 is its removal of the protections afforded by 56.95, relating to deferred termination when no prior contact is made. Section 1406(b)(1)(iv) allows utility employees to terminate service, after prior notices have been issued, even if personal contact is not made at the time of termination. This eliminates the protections of Section 56.95 so the Commission should alter Chapter 56 to reflect this change. Even with the removal of Section 56.95, Section 56.96, relating to post-termination notice, remains fully consistent with Chapter 14 and should remain in effect. Given that failure to make

personal contact at the time of the termination no longer bars the completion of that termination, it is more important than ever for notice to be posted at the residence after the termination takes place. This will aid households in taking the requisite steps quickly to reconnect their service.

Maintain An Automatic Stay Of Termination

In the *Second Implementation Order,* the Commission resolved to maintain Section 56.141' s automatic stay on termination activity pending the resolution of a properly registered dispute with a utility or informal or formal complaint before the Commission. *Second Implementation Order*, at 35. PULP supports this decision and, for reasons of statutory interpretation and public policy, recommends the Commission maintain Section 56.141 in its present form.

Some parties, making reference to Section 1405 (c) and Section 1406 (b) (2), have used the passage of Chapter 14 to posit that the automatic stay provisions in Chapter 56 have been superseded. There is no sound basis in either of these sections, or in any other part of Chapter 14, to support the elimination of the Section 56.141 automatic stay.

Section 1405(c) states that "customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission." Parties argued that, since Section 1405(c) precludes payment agreements for CAP rates, a CAP customer complaining about issues related to CAP payments was asking for something beyond Commission authority to grant; therefore, the automatic stay should not apply. There is nothing in the statutory language at Section 1405(c) or any other part of Chapter 14 that expressly eliminates the automatic stay in CAP matters. Absent express language, the Commission should refrain from inferring it.

Section 1406(b)(2) reads, "The public utility shall not be required by the commission to take any additional actions prior to termination." 66 Pa.C.S. § 1406(b)(2). This also may be interpreted to suggest the Commission no longer has the authority to stay termination proceedings pending the result of a properly filed dispute before the Commission. PULP disagrees with this assertion. Section 1406(b) is entitled "Notice of termination of service" and contains Chapter 14's notice provisions related to the termination of service. Located within the notice section, Section 1406(b)(2) should be understood only as a limitation on the Commission's power regarding notice, making it clear that once the specific steps in Section 1406(a) have been taken a utility has met its notice burden and can not be required by the Commission to take any more notice steps prior to termination. This prohibition in no way limits any other power enjoyed by the Commission, certainly not its powers of review over utility actions to ensure they are in compliance with prevailing law and the public interest and that community health and welfare are protected. See 66 Pa.C.S. §§ 331, 501, and 701; 52 Pa.Code 56.94.

In addition to a lack of any statutory basis for its elimination, there are policy reasons of considerable weight for keeping the automatic stay. Termination of service is a momentous decision; it costs the utility time and money; it places the customer in jeopardy; it endangers the well being of the community. Ensuring that the facts underlying the termination are trustworthy is critical. The automatic stay provides customers, utilities, and the Commission the time to ascertain these underlying facts. It also provides a window of opportunity for the parties to negotiate and avoid the termination entirely. Furthermore, Section 56.141(2) requires customers to pay undisputed portions of the bill. All of these factors support the continuation of the automatic stay.

Protect Users Without A Contract

PULP agrees the Commission should maintain the concept of "unauthorized use" as it is defined in Chapter 56. However, PULP recommends the Commission maintain the position it established in the *First Implementation Order* regarding "users without a contract". The issues at question with "unauthorized use" are not present in a "user without a contract" situation. Therefore, the immediate termination that is appropriate for "unauthorized use" is inappropriate for "users without a contract". The Commission should maintain its current regulations regarding "users without contracts".

New Regulations For Days Of The Week

Section 1406(d) reads, a "… public utility may terminate service for the reasons set forth in subsection (a) from Monday through Friday as long as the public utility can accept payment to restore service on the following day and can restore service consistent with section 1407 (relating to reconnection of service)." 66 Pa.C.S. § 1406(d). Since nothing in Chapter 14 requires the removal of the reasonable limitations to termination found at 56.82(2)-(4), which prohibits terminations on and around various holidays, these sections should remain unchanged in the new regulations.

6. WINTER TERMINATION PROCEDURES

The *ANOPR* correctly states, "termination of utility service in the winter-time is of critical importance and of great interest to many parties." *ANOPR*, at Appendix-A p. 4. The subject's importance arises because termination during the winter directly impacts the health and

welfare of the Commonwealth's citizens, particularly those most vulnerable, low income households. Because of the gravity of winter terminations, PULP submits theses comments for the Commission's consideration.

Heat & Non-Heat Services

PULP recommends the Commission promulgate regulations extending winter time termination prohibitions to both heat and non-heat electric and gas utility service.

Existing Section 56.100 specifically prohibits utilities from terminating "***heat related service*** between December 1 and March 31 except as provided in this section or in § 56.98 (relating to exception for termination based on occurrences harmful to person or property)." 52 Pa. Code § 56.100(a) (emphasis added). Under Section 56.100, only customers with heat related utility service are protected from termination in the winter months. Section 1406(e) removes this limitation stating, "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 … ." 66 Pa C.S. § 1406(e)(1). Clearly omitted from this and any other section of Chapter 14 is language limiting the termination prohibition to heating related utility service only. In omitting this limiting language from Section 1403(e), the General Assembly clearly extends the Winter Moratorium protections to both heat and non-heat services. Thus, existing Section 56.100 is superseded by Section 1406(e)(1) and should be altered to protect both heat and non-heat utility service from shut-off between December 1 and March 31.

Winter Termination Notices to Low-income Customers

PULP recommends the Commission promulgate regulations prohibiting utilities from issuing termination notices to low income households after November 20 and before February 1.

Several sections of Chapter 14 work together with existing Chapter 56 sections, sections not expressly or implicitly superseded by the passage of Chapter 14, to carve out a window of time during which a termination notice to a low income household can not be acted upon by the utility without Commission approval and, therefore, which cannot be issued by the utility.[10]

Existing regulations at Section 56.99 prohibit utilities from threatening to terminate service where the utility has no present intent to terminate service or where termination of service is prohibited. 52 Pa Code § 56.99. Section 4 of Chapter 14 does not cite Section 56.99 as a regulation explicitly superseded by the passage of Chapter 14, nor is Section 56.99 in any way inconsistent with Chapter 14. Therefore, PULP recommends the Commission maintain Section 56.99 unchanged.

Section 1406(b)(1)(i) makes termination notices effective for 60 days and requires the issuance of a written termination notice 10 days prior to the date of the scheduled termination. 66 Pa C.S. § 1406(b)(1)(i). Section 1406(e) prohibits the termination of service after November 30 and before April 1 to households with income below 250% of the Federal poverty level and between 150% and 250% of the Federal poverty level respectively. 66 Pa C.S. § 1406(e)(1)-(2).

When Section 56.99 is read in tandem with Sections 1406(b)(1)(i) and 1406(e), it becomes clear that a utility can not act upon a termination notice sent to a low income household

[10] Chapter 14 creates two strata of low income households for purposes of the Winter Moratorium, one group for electric distribution utilities and natural gas distribution utilities and one group for city natural gas distribution utilities. Section 1406(e)(1) establishes the low income threshold at 250% of the Federal poverty level for all electric distribution utilities and natural gas distribution utilities. Section 1406(e)(2), with some exceptions at Section 1406(e)(2)(i-iv), sets the low income threshold at 150%-250% of the Federal poverty level for city natural gas distribution utilities. In promulgating regulations, PULP recommends the Commission make explicit that regulations apply to low income household customers of electric distribution utilities, natural gas distribution utilities, and city natural gas distribution utilities.

after November 20 because there is insufficient time in which to provide the 10 day notice before the termination prohibition period begins. Any termination sent after November 20 can not be acted upon and would breach Section 56.99's prohibition on issuing termination notices without the intent to act.

A similar situation occurs at the end of the Winter Moratorium period. Section 1406(b)(1)(i) makes termination notices effective for 60 days, thereby allowing a utility to issue a termination notice to a low income household during the Winter Moratorium that will only take effect after the Winter Moratorium. The first date an effective termination notice can be sent is February 1.

The cumulative effect is to create a period after November 20 and before February 1 where it is not permissible for a utility to issue a termination notice to low income households. PULP recommends the Commission promulgate new regulations making this explicit.

Establishing Income Level

It is recommended that utilities terminating service during the winter pursuant to Section 1406(e)(1) and/or Section 1406(e)(2) be required to affirmatively confirm the income level of the household prior to issuing a termination notice to the household.

PULP recognizes the Commission has identified the customer as the primary source of income information for the household. *Second Implementation Order*, at 7. The Commission also stated at the time that it does "not believe that Chapter 14 prohibits the issuance of a winter termination notice to a delinquent account for which the company does not know household size and income." *Id*, at 10. PULP respectfully requests the Commission to reconsider its decision at this time and implement new regulations requiring companies to affirmatively identify the size

and income level of households prior to issuing a termination notice. PULP make this recommendation on two bases: legislative intent and the gravity of the situation.

The legislative intent in Section 1406(e) is expressed clearly:

> **§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 language bans utilities from terminating certain low income customers in the winter. The language speaks in active terms – "shall not." The statute does not read retroactively, as it could have if the General Assembly intended for it to be a retroactive measure. It does not read, "utilities shall reconnect service to low income customers if the company erroneously conducts a winter termination." No, the General Assembly specifically prohibits the action from happening in the first place.

The statutory language prohibiting winter termination for low income households creates an affirmative obligation for utilities to ascertain the household size and income information *prior* to initiating the termination process. How else can a utility adhere to the Section 1406(e) prohibition if it does not first request the requisite information from the household?

The other reason why the commission should reconsider its decision in the *Second Implementation Order* arises from the gravity of the situation. Unlike so many other areas of debate that deal with business efficiencies, allocation of costs, or recovery of rates, winter

terminations deal with life and death. As we were tragically reminded this past October when the Commission finalized a settlement process with Allegheny Power arising from the death of a customer,[11] decisions about utility matters are essential. The Commission recognizes and respects the gravity of this situation when it requires utilities to affirmatively confirm the household's income characteristics before initiating the termination process.

The Commission points to the 24 hour reconnection requirement as an adequate safeguard should a utility erroneously terminate service to a household during the winter period. See *Second Implementation Order*, at 10. This safeguard fails because it does not overcome the statutory mandate to affirmatively ascertain income levels so as to avoid incorrect terminations, and it only ameliorates some of the potential harm to customers without eliminating the danger completely. The danger inherent in even one day without heat is so grave the General Assembly intended the act of termination to be prevented and not merely corrected. Thus, the 24 hour reconnection requirement does not relieve a utility from the duty to act properly under the existing law which prospectively forbids certain terminations from even happening. 66 Pa C.S. 1406(e)(1).

PULP respectfully requests the Commission reconsider its position adopted in the *Second Implementation Order* and to issue regulations imposing on utilities an affirmative obligation to confirm a household's size and income prior to the issuance of a termination notice. Should the Commission fail to adopt PULP's recommendation, then in the alternative the Commission should introduce the following presumptions establishing a household is low income for purposes of issuing a termination notice in the winter:

[11] "According to media reports, Heeman was found dead in her home at 2131 North Oak Lane, State College, PA, on July 4, 2005. The cause of death was accidental carbon monoxide poisoning from a gasoline powered generator that the household was using to generate electricity." *Settlement Agreement Between Law Bureau Prosecutory Staff and West Penn Power Co., t/d/b/a Allegheny Power*, Docket No. M-00061952, at 2.

- Where a household has received a LIHEAP grant or weatherization assistance at any time in the 4 years prior to the proposed date of termination of service.
- Where a household is currently enrolled in the terminating company's CAP program at the time of the proposed termination.
- Where a household has been enrolled in the terminating company's CAP program at any time in the 4 years prior to the proposed date of termination of service.
- Where a household has received a hardship grant from the terminating utility at any time in the 4 years prior to the proposed date of termination of service.
- Where a household has received LIURP services at any time in the 4 years prior to the proposed date of termination of service.

PULP also recommends the Commission issue regulations establishing that the abovementioned presumptions can be rebutted only in one of two ways:

- Where the utility affirmatively contacts a responsible household member and confirms that the household is no longer low income.
- Where the utility petitions the commission in writing for permission to terminate service.

Content of Winter Termination Notices

PULP recommends the Commission promulgate new regulations listing the required content of winter termination notices issued by regulated utilities.

Chapter 14 includes new and important changes to the winter termination procedures that allow for certain customers to have their service terminated during the winter months in ways not authorized by prior Chapter 56 regulations or Commission practice. There are several important

reasons why termination notices should be updated to inform customers of the new situation: due process concerns, legislative intent, economic efficiency, and health and welfare concerns.

As the Office of the Consumer Advocate aptly argued in its comments during the implementation of Chapter 14, due process requires that customers be fully informed of their rights and obligations in association with utility terminations.[12] Many utility customers may be unaware that they enjoy certain protections from termination because of their income level or because of the time of year. It is critical that these customers be made aware of these protections so they can, in an informed manner, decide whether to take advantage of them.

In addition to due process concerns, termination notices should be updated and expanded to effectuate legislative intent. The General Assembly aims through Chapter 14 to eliminate opportunities for customers capable of paying to avoid paying but seeks to ensure service remains available to all customers on reasonable terms and conditions. 66 Pa C.S. §1402(2) and (3). In order for service to remain available to all customers, those customers must be made aware of protections they enjoy. Commission guidance will ensure notices contain the correct information.

Concerns of economic efficiency also suggest the Commission should promulgate regulations expanding the information in termination notices. Customers protected under Chapter 14 must know of their protected status and must know how to inform utility companies when a termination notice is erroneously issued to them during a time of protection from termination. It is much cheaper for a utility to prevent an erroneous termination than it is to reconnect a customer after an erroneous termination. Providing customers with expanded

[12] *Implementation of Chapter 14 Roundtable – Comments of the Office of Consumer Advocate*, Docket No. M-00041802, at 19.

information in the termination notice is the best method for preventing these erroneous terminations.

Finally, the protection of the health and welfare of utility consumers requires additions to termination notices. Chapter 14 has made fundamental changes to how utilities may interact with customers in the winter time. Many customers are unaware these of these changes, and they can not access protections of which they are unaware. Because utilities have access to this information, it is proper that the utilities inform their customers.

Given these reasons, PULP recommends, in addition to those elements already required at 52 Pa. Code § 56.2, relating to notice or termination notice, the Commission should require utilities to include the following elements in their termination notices:

- A clear statement that certain categories of customer are exempt from termination in the winter, along with a listing of those categories of customers that enjoy the winter termination protection.
- Information on the federal poverty guidelines by household size.
- The contact information of the utility employee protected customers should contact if their service is terminated.
- The required documentation or information the household must provide so as to avoid termination.
- Information on protection from termination for victims under Protection From Abuse Orders.
- Contact information of a utility employee who can assist customers with disabilities or customers in need of language translation service.

Winter Termination and Dishonorable Tender of Payment

PULP recommends the Commission promulgate regulations affirming that the winter termination prohibitions at Section 1406(e) apply to winter terminations pursuant to Section 1406(h), allowing termination of service due to dishonorable tender of payment.

Section 1406(e) establishes clear parameters for winter terminations, including a prohibition of termination for certain low income households. Section 1406(e)(1) also has specific exceptions to the winter termination moratorium. These exceptions are the grounds for immediate termination listed at Section 1406(c)(1). Only these exceptions are listed.

Section 1406(h) allows for termination of service where there is a dishonorable tender of payment after receiving termination notice. Importantly, the dishonorable tender of payment at Section 1406(h) is **not** one of the specific exceptions listed at Section 1406(c)(1). Because it is not a specific exception, dishonorable tender of payment is not a permissible basis on which to conduct the winter termination of a low income household protected by Section 1406(e). Where the statute itself explicitly includes a list of exceptions that omits dishonorable tender of payment, then the Commission should not infer dishonorable tender of payment is an exception.

Furthermore, it is clear the exceptions to the winter termination prohibition at 1406(c)(1) are each concerned with health and safety, Section 1406(c)(1)(i), (iii), and (iv), or with establishing customer identity for the acquisition of service, Section 1406(c)(1)(ii). Each of these listed criteria deals with important situations unlikely to be the result of a mistake or accident. These rationale are fundamentally different from the "dishonorable tender of payment" referenced at Section 1406(h), which is likely to be the accidental result of a bounced check or misbalanced checkbook. The General Assembly clearly identified the criteria at Section

1406(c)(1) as important public policy reasons for allowing immediate termination, even in the winter. The same is not true for 1406(h), which is why it is not listed at 1406(e)(1).

Winter Survey

Given the new termination powers granted to utilities under Chapter 14 and the requirement placed upon the Commission to monitor the effects on consumers of these changes, PULP recommends the Commission promulgate regulations which enhance the usefulness of the survey for the Commission, utilities, and customers.

PULP submits the existing winter survey requirements at Sections 56.100(4) and (5) should be supplemented to provide critical information which is unknown presently to the Commission:

- Winter Survey information should be collected from any residence terminated or reconnected within 2 years of the survey.
- For residences not receiving service for six months or more, utilities should provide information regarding:
    - whether the residence has ever been enrolled into the utility's CAP program,
    - whether the residence has received a LIHEAP grant or had a LIHEAP grant applied against its account,
    - whether the residence has received a hardship grant against its account,
    - whether the residence has had a medical certification applied against its account, and/or
    - whether the residence has been the recipient of a payment arrangement.

Utility Related Deaths

Given the new termination powers granted to utilities under Chapter 14, PULP recommends the Commission promulgate regulations expanding utility reporting requirements for utility related deaths.

Utility terminations have resulted in the tragic deaths of residents of the Commonwealth. Each year, newspapers report deaths from fire, asphyxiation, hypothermia, hyperthermia, and carbon monoxide poisoning, all resulting from a household that has had its utility service terminated, whether legitimately according to Commission rules or illegitimately in breach of Commission rules. Not only does the residence with terminated service suffer, but the entire neighborhood can suffer as fire and smoke endanger neighboring residences and their occupants.

All of this is of concern to the Commission because the Commission is charged with safeguarding the welfare of the Commonwealth's utility customers. It seems reasonable and logical to assert that the Commission can not properly, effectively, and responsibly discharge its health and welfare obligation without timely, accurate information. It follows that the Commission must have pertinent information about **all utility related deaths**, whether directly or indirectly, if the Commission is to meet the challenge of protecting all utility customers.

Therefore, PULP recommends the Commission require utility companies to inform the Commission immediately upon the discovery of an accidental death connected to or associated with a residence which has had utility service terminated within the prior two years. Upon receiving this notice, PULP submits the Commission should open a full investigation into actions the company took to continue and/or restore utility service to the affected residence, including but not limited to contacts with customers regarding payment arrangements and enrollment into appropriate Universal Services programs.

7. EMERGENCY MEDICAL PROCEDURES

The medical certification process is not primarily about the termination process or whether or not a residence may be terminated. It is about the process needed to effectuate a remedial statutory mandate. Medical certifications serve to protect the health and welfare of a sick person, and that health and welfare should remain squarely in front of any discussion of the certification process. The stay of termination or the reconnection procedures are merely means toward the end of promoting a sick person's welfare.

Furthermore, it is even more important to place consideration of medical certifications in its proper context. We are not talking about all households with sick members. We are not even talking about all households or even all low income households with sick members. We are talking about a subset of a subset, the most vulnerable segment of our population, households in which there is a sick occupant, usually chronically sick, that is not keeping current on their bills. These are not the customers capable of paying but who choose not to do so. It is precisely this population - poor, unable to pay their bills, and sick - that the General Assembly was concerned about protecting and excluding from the more rigorous collection goals of Chapter 14. See 66 Pa.C.S. § 1402(2). The Medical Certification protection found in Section 1406(f) is remedial. It is to be broadly and liberally construed to expand the rights of those who benefit, not to contract those rights. Tenant Action Group v. Pennsylvania Public Utility Commission, 514 A.2d 1003 (Pa. Cmwlth. 1986).

Nurse Practitioner

PULP supports the proposal to amend all of the emergency medical provisions in Chapter 56 (§§ 56.111–118) to include "nurse practitioner" as found in Section 1406(f). Section

1406(f) changes existing emergency medical procedures by introducing the nurse practitioner, along with the physician, as a qualified individual who can provide a medical certification. The legislation clearly intends to permit nurse practitioners to certify the existence of medical conditions under Sections 56.111-118. This makes sense given the increasing use of nurse practitioners in the place of physicians, particularly in clinics and medical centers. In keeping with this reality, Governor Rendell's recent *Prescription for Pennsylvania* would enable and encourage a more extensive use of nurse practitioners and other licensed health care providers to practice to the fullest extent of their training and skills.[13] This goal can be achieved, without detriment to the utility, by amending all of the emergency medical provisions in Chapter 56 (§§ 56.111–118) to include "nurse practitioner" as found in Section 1406(f).

Parameters of the Medical Certificate

PULP submits that it is the individual medical condition that is the focus of Section 1406(f) and Section 56.111, both of which clearly refer to "customer," "occupant," and "member of the customer's household" as the targets of the medical certificate. This makes sense because individuals get sick, not accounts or residences. Section 1406(f) specifically addresses the individual "medical condition which is aggravated by cessation of service." To limit the medical certificate to a household or account would be to frustrate the General Assembly's attempt to prevent the aggravation of individual medical conditions. To preserve the proper intent of the legislation and to avoid the past confusion which has developed, the Commission should clarify within the Chapter 56 emergency procedures that a medical certificate must be honored on behalf of each individual certified by a physician or nurse practitioner to be seriously ill or is affected with a medical condition which will be aggravated by a cessation of service. This will achieve

[13] Office of the Governor, Press Release, Jan. 18, 2007

the legislative goal of preventing a service termination from aggravating a serious medical affliction.

Medical Certificate Payment Arrangements are not Section 1405 Payment Agreements

Sections 56.116 and 56.118 both refer to *equitable payments* in the context of medical certification. Such equitable arrangements are necessary in order to assure continuity of service to households where termination would impact persons who are seriously ill or who have medical conditions which would be aggravated by loss of service. These equitable payment arrangements are not, and must be clearly distinguished from, Section 1405 payment agreements. It is of little benefit to an ill individual who has defaulted on a Section 1405 payment agreement to condition the stay of termination only upon making the same level of payments previously required. The remedial nature of the medical certification process requires the allowance of an equitable payment arrangement as contemplated in Sections 56.116 and 56.118. To fail to do this would result in an untenable situation whereby ill individuals, threatened with termination of service for failure to make timely payments according to a Section 1405 payment agreement, would be able to avoid termination of service only by making the same level of payment. This is clearly a situation in which the credit and collection objectives embodied by Section 1405 payment agreements bear no relation to and are irrelevant for the remedial goals of Section 1406(f).

In addition, if the payment arrangement negotiated pursuant to a medical certificate were deemed a Section 1405 payment agreement, the restrictions which Section 1405 places upon the Commission would be counter to the remedial nature of the section and could deprive the

Commission of oversight and review of payment terms which have not been equitably negotiated or which would result in significant life endangering peril.

Limitations on use of Medical Certificates

PULP strongly agrees with the Commission statement that any restrictions on the use of the medical certificate that are contained at Section 56.114 be deemed to apply only if the customer is not meeting their obligation to arrange equitable payment on all bills as required per Section 56.116.

Moreover, PULP submits that a medical certification should not be connected to a particular set of arrearages. Limitations on time or to a particular set of arrears would be artificial and unrelated to the principal concern, the state of the sick individual. As stated above, the focus of Section 1406(f) is to prevent the aggravation of serious illness through the interruption of utility service. The focus is clearly on the health of the individual. The absence of any limiting language should caution the Commission that the General Assembly recognized that the health and welfare of customers is a paramount concern and did not see in the medical certification process a danger to the rates of the general ratepayer.

Duration of the Medical Certificate

PULP recommends that the length of stay of termination related to a medical certificate should correlate to the actual medical need that gave rise to the certificate. Experience has demonstrated that the present maximum 30 day limitation on the duration of the certificate has given rise to numerous administrative difficulties for medical practitioners, patients, and utilities. Medical practitioners, already overburdened with administrative activity which diverts from

treatment, reasonably balk at the necessity of submitting additional certification for patients each 30 days. This is especially so when the initial certification requirement under Section 56.114 (3) had previously required the practitioner to provide "The nature and **anticipated length** of the affliction." In some cases, PULP has been informed that medical practices have considered ceasing to provide monthly re-certifications. The burden of monthly recertification is potentially greater for an ill patient who has already been certified by a physician to have an affliction expected to last beyond 30 days. Finally, the administrative burden to a utility company of the demands of monthly re-certification would be relieved by establishing a medical certification period to be consistent with the duration of the affliction. PULP therefore recommends that Section 56.114 be amended to eliminate the present 30 day maximum length of the certification period.

Section 56.114 (1) would not be affected by this change. This subsection relates to the situations in which time periods are either unspecified or difficult to determine. In those cases a 30 day minimum protection period is provided.

Appealing to the Commission

While many sections of Chapter 14 discuss customers who can afford to pay but do not, no such language is to be found anywhere in Section 1406(f). In this section, the focus is on the health and welfare of vulnerable, ill citizens, which trumps the focus on collections that permeates the rest of Chapter 14. It is clear the General Assembly did not see a danger to general ratepayers by prohibiting the termination of utility service to poor, sick people.

PULP submits that the appeal process is the proper way to balance health and welfare with the financial considerations of the utility in preventing fraud or abuse of the medical

certification process. Section 56.118 provides a process whereby the utility can present evidence that a customer is abusing the medical certification process. This appeal process should be made available to utilities when they have a good faith belief that a customer who can afford to pay for utility service has acquired a medical certificate and is using it to avoid payment and termination. If the appeal reveals that the customer is fraudulently using the medical certification, then the Commission could at that time give permission to begin termination proceedings. Pending the resolution of an appeal, the stay on termination should stay in effect.

It should be recognized that there are many poor customers and many sick customers, all of whom meet the obligation to pay their utility bill. These considerations do not touch them. We are focusing on the small minority of customers who are sick, poor, and unable to pay. It is this small group that the General Assembly chose to protect with Section 1406(f) and who the General Assembly did not see as a threat to the rates of general ratepayers.

PULP acknowledges that many of our suggested changes run counter to past Commission practice and that the final sentence of Section 1406(f) states, "The medical certification process shall be implemented in accordance with commission regulations." 66 Pa.C.S. § 1406(f). Neither of these facts prevents the Commission from promulgating modifications to Sections 56.111-56.118 to reflect Chapter 14's clear intent to establish the physical health of poor and sick customers as a paramount concern which overrides maximizing collections.

It is unreasonable to interpret Section 1406(f) to mean only those Commission regulations currently in place. It is perfectly reasonable to see that sentence as instructing parties to follow regulations that the Commission passes now or in the future. This single sentence should not be used to tie the hands of the Commission and prevent it from establishing a medical certification process that more properly reflects the General Assembly's remedial goals.

8. COMMISSION INFORMAL COMPLAINT PROCEDURES

The passage of Chapter 14 does not fundamentally alter the Commission's authority or obligation to regulate disputes, informal complaints, or formal complaints. While Chapter 14 does contain some limited restrictions on Commission authority, the Commission retains many of its traditional powers. It is important that parties do not read into Chapter 14 a broad divestment of Commission authority that the Act does not support.

Automatic Stay Provisions

In the *Second Implementation Order*, the Commission resolved to maintain Section 56.141' s automatic stay on termination activity pending the resolution of a properly registered dispute with a utility or informal or formal complaint before the Commission. *Second Implementation Order*, at 35. PULP supports this decision and, for reasons of statutory interpretation and public policy, recommends the Commission maintain Section 56.141 in its present form.

PULP directs the Commission's attention to Part 5. Termination of Service of these Comments for a full discussion of PULP's recommendations regarding the automatic stay.

Section 1405 Payment Agreements

Under existing law, regulations, and Commission practice, several payment situations exist that can modify the traditional bill payment structure, often delaying or amortizing the bill over a period of time so a customer can retain service while paying off an outstanding balance. Section 1405, in particular, authorizes the Commission to establish payment agreements between utilities and customers whereby an outstanding balance is amortized over a period of time

depending on a number of criteria. 66 Pa.C.S. § 1405. Importantly, Section 1405 payment agreements come with a number of important strings and limitations. Section 1405(b) limits the length of payment agreements; Section 1405(c) prohibits the inclusion of CAP rates in a payment agreement; Section 1405(d) limits the number of payment agreements the Commission may establish for a customer; Section 1405(e) limits the types of extensions that may be applied to payment agreements. Other payment options are different from Section 1405 payment agreements, both in their statutory origins and in the situations toward which they are addressed; Section 1405 limitations should not be extended to cover these other payment options.

Section 56.14 obligates utilities to offer make-up payment schedules for customers as a result of a billing error or other problem resulting in unbilled service. As discussed in Part 2. Previously Unbilled Utility Service, Section 56.14 make-up bills deal with unbilled activity, whereas Section 1405 deals with billed activity. Equitable payment arrangements pursuant to a medical certificate, as discussed previously in Part 7, also are not subject to Section 1405 payment agreement restrictions. Given that these payment devices are aimed at different problems, it is reasonable for the Commission to maintain different rules governing their operation and refrain from extending Section 1405 limitations to cover make-up bills.

Section 56.12(7) requires utilities to operate a budget billing system whereby customers may opt to average bills out over 10, 11, or 12 months. Budget billing resembles Section 1405 payment agreements in so far as the customer is permitted to pay off an unpaid balance over the course of time. However, unlike a payment agreement, budget billing does not involve liability for billed service so much as it involves an agreement to average out payment for current and future usage. Again, given that these payment devices are aimed at different problems, it is

reasonable for the Commission to maintain different rules governing their operation and refrain from extending Section 1405 limitations to cover budget billing.

Under Section 1407(c)(2) a utility may as a condition to reconnection of terminated utility service require payment of an outstanding balance over a period of time. This situation closely resembles a Section 1405 payment agreement, but it arises from different statutory authority in Section 1407(c)(2). Section 1407 includes all of the provisions for reconnection and includes its own structure for arranging payment of outstanding balances owed. There is no statutory language supporting the application of Section 1405 limitations to Section 1407; therefore, the Commission should refrain from doing so.

Section 1404 and Section 56.38 deal with the payment of security deposits. Once again there is no statutory language within or outside of Section 1404 explicitly or implicitly requiring that the limitations present in Section 1405 be applied to deposit payments under Section 1404 or Section 56.38. Where the statute does not require application of Section 1405, such an application should not take place.

Section 1405(c) and CAP Rates

Section 1405(c) reads that "customer assistance program rates shall be timely paid and shall not be subject to a payment agreement that is negotiated or approved by the Commission." In the *Second Implementation Order*, the Commission understood this to mean that the Commission is prohibited from establishing a payment agreement for a customer who is participating in a CAP program. In the *ANOPR*, the Commission extends this by taking the position that Section 1405(c) also prohibits the Commission from granting payment agreements

to a customer where any portion of the customer's unpaid balance includes CAP rates. PULP submits that this interpretation is not supported by the statutory language at Section 1405(c).

Section 1405(a) gives the Commission general authority to establish payment agreements between a utility and customer, subject only to the limits of the chapter. This is a general authority applying to all rates. Only in Section 1405(c) is this authority limited and only for certain rates. Section 1405(c) specifically cites "customer assistance program **rates**" (emphasis added) as the focus and gives two limitations: (a) that they are to be paid timely, and (b) that they shall not be the subject of a payment agreement negotiated or approved by the Commission. There is no indication, either at Section 1405(c) or in any other part of Section 1405, that the General Assembly intends for this limited exception to extend beyond CAP rates to standard rates. Where there is no indication in the statutory language to extend these limitations further than "customer assistance program rates," then the Commission should refrain from doing so. Yet, the Commission's proposal does just that.

By denying a payment agreement to customers with unpaid balances comprised of standard rates and customer assistance rates, the Commission inappropriately extends the limited prohibition at Section 1405(c). When a customer has an unpaid balance that includes a portion comprised of standard rates and a portion comprised of CAP rates, the customer has a statutory right pursuant to Section 1405(a) to at least one payment agreement for the portion of the balance comprised of standard rates. The Commission's proposed policy will deny this right.

In addition to the forgoing statutory arguments, there are sound public policy reasons for rejecting the Commission's proposed application of Section 1405(c) because that policy runs the risk of penalizing low income families for getting better paying jobs that raise them up out of eligibility for CAP programs. For example, if a CAP household's income rises above 150% of

the federal poverty level, the CAP customer then becomes ineligible for CAP and will be removed from the program. This often happens when a customer finds a job or finds a better paying job. Upon departure from the CAP program, unforgiven pre-CAP arrears are no longer suspended and come back on the bill, requiring the customer to either pay them off immediately (often beyond the customer's financial ability) or arrange to pay them by means of a payment agreement. Many CAP customers are still likely to have substantial pre-CAP arrearages at the time that they go off CAP. Under the Commission's proposed interpretation of Section 1405(c), if any part of this arrearage is comprised of CAP rates, then all of the arrearage becomes ineligible for inclusion in a payment agreement. This policy creates a perverse result whereby the household is in a worse situation as a result of securing better employment and higher pay.

Given that the Commission's policy is unsupported by the statutory language and creates dubious results for low income families, PULP recommends the Commission reconsider its interpretation and provide all customers with the payment agreements to which they are entitled.

9. RESTORATION OF SERVICE

Along with the provisions that make it easier for low income families to have their service terminated, Chapter 14 also makes reconnection of service a more difficult and less likely process for low income families. Because of these hazards, PULP recommends the Commission carefully promulgate regulations that clarify restoration procedures and safeguard low income families.

Assignment of Liability

Perhaps one of the most troubling new additions of Chapter 14 is Section 1407(d), relating to the assignment of liability of one customer's outstanding balance to another applicant if the applicant resided at the property during the accumulation of the outstanding balance. The possibility of erroneously assigning liability to an inappropriate party is significant and may frustrate the speedy restoration of service. PULP recommends the Commission promulgate regulations carefully structuring this process so liability is only assigned to appropriate parties.

The ANOPR suggests the Commission intends to allow individual utilities to formulate and publish in their tariffs their own procedures for assigning liability to an applicant for another customer's outstanding balance. *ANOPR*, at 7. PULP opposes this suggestion. Allowing each utility the discretion to establish procedures under Section 1407(d) will lead to a patchwork of different methodologies across the Commonwealth. This scattered approach will be difficult to understand for advocates, customers, and Commission staff.

The procedure for assigning liability will be a fact intensive affair open to considerable debate; it will likely involve a fair amount of disagreement between applicants and utilities, leading to disputes before the Commission. If each of the utilities has an individual process for assigning liability it will undermine the efficiency of these proceedings. Since the basis for Section 1407 is restoration of service, we also can expect there to be a fair amount of urgency around the proceedings as the applicant will be without service during the pending dispute. A unified system in use across the Commonwealth will enable all parties to become familiar with and proficient in a single system so that cases can be processed and service restored expediently.

In addition to establishing a statewide system, the Commission should promulgate regulations clarifying that Section 1407(d) assignment of liability only comes into play if an

applicant is seeking to reconnect service for an existing account that has been terminated. Because Section 1407(d) is within the reconnection section of Chapter 14 it only applies to reconnection of service, not to an applicant seeking to open a new account. Commission regulations should make it clear that new applicants are not covered by Section 1407(d).

Finally, PULP recommends the Commission include in its regulations a prohibition against assigning liability for another customer's outstanding balance to an applicant who was a minor at the time the balance accrued. It would be inappropriate to place the debt burden of a payment troubled parent onto a young adult attempting to secure utility service for the home. To do so would place an unfair and inequitable burden on the shoulders of a young applicant simply because that applicant was a minor in a household struggling to pay for utility service. It was clearly not the intent of the General Assembly to pursue children for the debts of their parents.

Statute of Limitations

The Commission states in the *ANOPR* that it will apply a four year statute of limitations to the assignment of outstanding balances to an applicant. *ANOPR*, at 7. PULP supports this decision because it brings Section 1407 into compliance with other sections of the Code, with prevailing law, and with Commission practice. Several Code sections limit recovery of past due amounts when long periods of time have passed: Section 56.35 bars a utility from requiring as a condition of service payment or arrangement to pay a bill incurred more than four years previously; Section 56.83(7) and Section 56.202 both require utilities to maintain customer service records for at least four years. Section 1312 of the Public Utility Code, 66 Pa.C.S. §1312, limits refunds and credits, and Pennsylvania's statute of limitations for contract actions limits the time during which a contract may be enforced. 42 Pa.C.S. §5525.

There is, however, an exception to the four year statute of limitations period. PULP supports the argument advanced by Action Alliance that a two year statute of limitations, based on unjust enrichment, rather than the four year period proposed in the ANOPR, Appendix A, at 7, should apply in the case of an occupant applying for service who may be obligated under § 1407(d) to assume liability for the bill of service provided in the name of another person.

Timing Issues

PULP supports the Commission's choice to use calendar days, not business days, as the basis for calculating time for Section 1407. Section 1407(b) deals with the amount of time permitted a utility to reconnect service to a customer. These are short time frames, reflecting the gravity of a service termination. It is reasonable for the Commission, in recognition of the gravity of the situation, to use calendar days as the basis for counting. This ensures reconnection will occur more quickly and the welfare of the community will be best safeguarded.

Upfront Fees

The Commission established in the *Second Implementation Order* that Section 1407 lays out the permissible levels of upfront payment that a utility may charge for reconnection of service. *Second Implementation Order*, at 31-33. PULP recommends that the Commission continue the position it stated in its *Second Implementation Order* and promulgate clear regulations prohibiting the use of upfront fees as a condition for a service reconnection outside of those expressly permitted by Section 1407.

10. REPORTING REQUIREMENTS

A comprehensive and current data warehouse is essential to enable the Commission to fulfill its obligation to monitor utility collections and credit processes and to protect the health and welfare of Pennsylvania residents. In addition, Section 1415 specifically requires the Commission to monitor the impact of Act 201 upon the access to utility service by residential customers. PULP submits that some important and often essential data is not available to the Commission. Although the Commission has always been mindful of the burdens it imposes upon utility companies and quite conservative in the reporting obligations it confers upon them, the Commission's general responsibilities, as well as the specific requirement to assess, on an ongoing periodic basis, the impact of the Act upon access to service requires that the Commission maintain a comprehensive data bank.

PULP concurs with the Commission's intention to extend the monthly collections data reporting requirements specified at Section 56.231 to include Class A water utilities. We agree that 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. Additionally, the reports of two water companies which indicate more than 25,000 water service terminations occurred in 2005 and again in 2006 warrants that the Commission obtain consistently developed monthly data.

PULP supports the proposal to revise Section 56.231 to incorporate each of 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). However, PULP strongly feels that additional data reporting is needed to accurately assess the level of access to utility service and respectfully requests that the Commission revisit the list of Collection Data Variables initially considered in the Tentative Order to Docket No. M-00041802F0003, concerning the Biennial Report, and expand the data required.

The Commission presently utilizes existing monthly reported termination and reconnection data and the Cold Weather Survey to measure access to utility service. However this data has some significant omissions. For example, as the Commission noted on page 25 of its *Biennial Report to the General Assembly and Governor Pursuant to Section 1415,* the data available does not provide any information as to how long an individual household or even a subgroup of households has been without utility service. Customers whose service was terminated in a prior year will not be revisited the next year although they may still be without utility service.

As stated above, in response to *Winter Survey* issues discussed in Section 6, PULP recommends that:

- Winter Survey information should be collected from any residence terminated or reconnected within 2 years of the survey.
- For residences not receiving service for six months or more, utilities should provide information regarding:
    - whether the residence has ever been enrolled into the utility's CAP program,
    - whether the residence has received a LIHEAP grant or had a LIHEAP grant applied against its account,
    - whether the residence has received a hardship grant against its account,

- whether the residence has had a medical certification applied against its account, and
- whether the residence has been the recipient of a payment arrangement.

Utilities should be required to report to the Commission anytime they are aware of a death or serious injury following a termination of utility service. Service terminations are at high levels. Deaths and serious injuries as a result of fire, hypothermia, hyperthermia, asphyxiation or other causes can be a tragic reality and consequence of utility terminations. Visitors and neighbors to the service-terminated household may also be affected. Although much attention is justifiably and properly focused on termination-related deaths, the responsibility of the Commission to protect *the health and welfare* of Pennsylvania citizens is one which requires a broader data base beyond just death-related incidents. We therefore recommend including "serious injuries" within the report.

Reporting an event only if and when a utility becomes 'aware' of it sets an indefinite and unreliable standard. PULP respectfully requests that the Commission require that utilities develop a specific plan to ensure that they obtain current and comprehensive information from reliable sources within their service territory such as fire departments, health clinics, or hospitals.

Termination-related deaths and serious injuries may occur at any time and should be reported year-round.

In order for the Commission to adequately assess the impact of service terminations on communities, PULP recommends that the termination and Cold Weather Survey data be obtained and classified according to the first three digits of the zip code. Service terminations have an effect on the general neighborhood and on community services. Households without utility service, as demonstrated by the Cold Weather Survey and the study entitled <u>An Examination of</u>

the Relationship between Utility Service Terminations, Housing Abandonment and Homelessness, [14] frequently result in household members vacating the premises. Vacant housing may lead to abandonment of housing, neighborhood safety concerns and create a downward community economic spiral.

Additionally, PULP urges the Commission to require utilities to report:

- the number of applicants or customers who disclose to the utility that they are victims of domestic violence with a Protection From Abuse Order who were able to provide a copy of the Protection From Abuse Order;
- the number of applicants or customers who disclosed to the utility that they are victims of domestic violence who were unable to provide a copy of the Protection From Abuse Order as a result of the abuse and who were permitted by the utility to provide alternative or delayed verification;
- the number of applicants or customers who disclosed to the utility that they are victims of domestic violence who were unable to obtain a Protection From Abuse Order due to dangerousness and who were permitted by the utility to pro vide alternative verification;
- the number of applicants or customers who disclosed to the utility that they are victims of domestic violence who were unable to obtain or provide a Protection From Abuse Order and who were not permitted by the utility to provide alternative verification.

[14] Energy Coordination Agency, Institute for Public Policy studies, Temple University, 1991

These reporting requirements are necessary to determine whether or not the legislature's goal of ensuring that victims of domestic violence are not further harmed by the more stringent requirements of Chapter 14 is being met.

CONCLUSION

For all the foregoing reasons, PULP requests that the Commission issue Proposed Regulations which are consistent with the recommendations contained in these Comments.

Respectfully submitted,

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Harry S. Geller
John C. Gerhard
Pa Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
(717) 232-2719

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