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 ACTION ALLIANCE OF SENIOR CITIZENS, TENANT UNION REPRESENTATIVE NETWORK AND ACORN

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I. INTRODUCTION.

These comments are submitted, through counsel Community Legal Services, Inc., on behalf of three community based organizations, Action Alliance of Senior Citizens of Greater Philadelphia, the Tenant Union Representative Network (TURN) and the Association of Community Organizations for Reform Now (ACORN) (hereinafter collectively "Action Alliance") in support of protecting and furthering the consumer protections available to low and lower income public utility customers which help them to obtain utility service, to maintain that service, and to obtain restoration of service in the event that service is terminated. The comments respond to the Pennsylvania Public Utility Commission's (hereinafter "Commission") Advance Notice of Proposed Rulemaking Order (hereinafter "ANOPR"), entered December 4, 2006 at this docket and published in the Pennsylvania Bulletin on December 16, 2006, 36 Pa.B. 7614.[1]

Action Alliance of Senior Citizens is a non-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. TURN is a non-profit corporation with many low and lower income members whose mission is to advocate on behalf of low and moderate income tenants. ACORN is a non-profit advocacy and membership organization whose mission is to advocate on behalf of low and lower income persons on numerous consumer issues, including access to utility service.

II. DISCUSSION OF ISSUES.

Action Alliance submits that in enacting the Responsible Customer Protection Act (hereinafter "Chapter 14"), the General Assembly emphasized that the Act's purpose was to "achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills. 66 Pa.C.S. § 1402(2).[2] The emphasis was upon improved payment performance from "customers capable of paying to avoid the timely payment of public

[1] In these Comments, references to specific pages of the ANOPR are to the pages in the version of the Order available on the Commission's web-site.

[2] For reasons of brevity, these Comments will cite to the provisions of 66 Pa.C.S. §§ 14 01 et seq. as § 14 - -. It will cite to the provisions of Chapter 56, 52 Pa. Code §§ 56.1 et seq. as § 56.- -.

utility bills." The Commission should resist pressure from utilities who without valid legal or policy justification seek to expand utility authority provided in Chapter 14 in ways which would undermine the principles of universal service which are embedded not only in the electric and gas deregulation acts, but in long-standing Commission history. As the General Assembly announced in § 1402(3) of the Chapter 14 Declaration of Policy, Chapter 14 seeks to "ensure that service remains available to all customers on reasonable terms and conditions."

1. Rules that apply to victims with a PFA order.

a. Need for a separate chapter.

Action Alliance 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 effectuate the legislature's intent of providing greater protections to victims with a Protection From Abuse order, some additional provisions must be added to the current Chapter 56 rules in fashioning the new chapter.

In the few instances in which Chapter 14 provides greater protection than the current Chapter 56 rules, those protections should be incorporated into the new separate chapter. The legislature intended to protect victims of abuse, and not to deprive them of additional protections. This includes:

- The medical certification provision allowing "nurse practitioners" to sign the medical certification, discussed in section 7 of these comments;
- 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." This provision is discussed in section 7 of these comments.
- Chapter 14 requires that a 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. This provision is discussed in section 9 of these comments.

- Winter Termination prohibitions apply to all service, not just heat related service. This provision is discussed in section 6 of these comments.

In addition, as discussed below, there are additional provisions specific to victims of domestic violence which should be added to the new chapter.

b. 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 §1417. To effectuate the legislature's intent to protect victims of domestic violence from further harm, the protections provided must not be limited to victims with a current Protection From Abuse (PFA) order, and must be provided whenever the victim had a PFA at the time of the events resulting in the dispute with the utility, or at the time she seeks an exemption from the chapter 14 provision, or at the time of the dispute with the utility, or when the exemption being sought is needed because of the domestic violence (DV) that led to the PFA This result is required both by the language of §1417 and by the intent of the provision. The language used in §1417 ("victims under a protection from abuse order") does not require that the PFA be currently in effect. "Under" reinforces the focus on the victim, making clear that an abuser does not benefit from §1417 by virtue of having a PFA entered against the abuser. Had the legislature wanted to limit the scope of the section to victims with a current PFA order, it would have said so.

Limiting the protections of §1417 by requiring a current PFA order would make no sense, 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. 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 payment name inherently raises an issue from the past, as does the limitation on provision of a second Commission established payment agreement, and 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 eviscerate 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, §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 both from the language of §1417, which refers to "victims," not to "victims who are customers or applicants," and from the protective intent. 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 §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.

c. 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 should also be required to accept alternate or delayed verification of a PFA order if necessary as a result of the abuse or as a result of 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 §1417 while the

proceeding is pending. A sample form for delayed verification is attached to these Comments, as Attachment "A."

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 (like "valid" PFA orders) which implies that some PFA orders are not valid, or that PFA orders are inherently suspect.

d. Instances in which getting a PFA order 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, or by revealing their location or placing them in dangerous proximity to the abuser. Seeking a Protection From Abuse order requires repeated contact with the abuser—while serving papers (in Philadelphia, the victim is required to personally 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) and 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 §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 to safely obtain a PFA order. Other institutions (including the Pennsylvania Department of Public Welfare and the Office of Victim Advocate) 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, or 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. We had previously submitted a pdf file with the Domestic Violence Verification Form (PA 1747) from the Pennsylvania Department of Public Welfare, along with our comments filed on July 15, 2005, in the Chapter 14 Docket, M-00041802.

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.

We request Commission to 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. A sample form for use in the utility context is attached, as Attachment "B," to these Comments, adapted from the Department of Public Welfare form.

e. Notice and consumer education requirements.

(i) Universal notification.

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.

While we are very pleased that the Commission has provided on its website The Protection From Abuse Standard Annual Customer Notification which appears on page 6 of the Chapter 14 Docket M-00041802, this notice should be amended in four respects. We have attached to these Comments a revised draft of the Notification, as Attachment "C." First, we urge 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." As discussed in section 1(b) of these Comments, these provisions are necessary to effectuate the legislature's intent of protecting victims of abuse.

The regulations should require utilities to provide a copy of the Standard Annual Notification at the time of application for service, and once a year to all customers. In addition to providing the Standard Annual Notification, utilities should be required to post information concerning the availability of these protections in their offices which are used for in-person meetings with customers, applicants or members of the public, including waiting rooms, and women's restrooms, and 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.

(ii) 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—e.g., 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 (like "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 Protection From Abuse orders.

Use of the qualifier "valid" when describing PFA orders also inappropriately implies that only current PFA orders will be considered. As discussed in section 1 (b) of 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.

(iii) 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 should also specify that customers and applicants seeking connection or reconnection of service should also 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 <u>each</u> personal contact required in the termination process, that Commission regulations provide additional protections to victims who have PFA orders.

f. <u>Confidentiality.</u>

To effectuate the legislature's intent to protect victims of domestic violence from further harm, 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 is clearly 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.

Proposed regulatory language:

- 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.

(e) Utilities must make provision for privacy for in-person discussions of PFA orders or situations involving domestic violence.

(f) The Commission and utilities must accept the substitute address of a victim of domestic violence who participates in the Address Confidentiality Program administered by the Office of Victim Advocate for billing and other correspondence. In circumstances in which the Commission or a utility need to know the actual address of a participant in the Address Confidentiality Program, the Commission or the utility shall follow the procedures of the Office of Victim Advocate for obtaining a waiver from the Office of Victim Advocate, and shall keep the actual address confidential.

g. 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.

Proposed regulatory language:

- 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.

Section 56.14 provides "make-up bill" standards governing payment terms for previously

unbilled service resulting from a billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills. This provision provides that in such circumstances, the utility must offer the customer, at the option of the customer, a payment arrangement for the unbilled balance extending the same length of time 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%." The Commission proposes to maintain "the obligation of a utility to offer a payment schedule based on previously unbilled service" and to incorporate in this section a four-year statute of limitations on a utility's authority to require payment for unbilled service. As set forth in the discussion below, Action Alliance supports these proposals. In addition, Action Alliance proposes that when the unbilled service was incurred over a period of more than six months, the utility should be permitted to rebill for only 80% of the unbilled amount.

a. Payment arrangement standards for unbilled balances.

Action Alliance agrees with the Commission that a § 56.14 payment arrangement is not a "payment agreement" within the meaning of § 1403. The § 1403 definition of "payment agreement" by its terms addresses "billed service," not agreements addressing previously unbilled service. This interpretation is confirmed by Chapter 14 itself, in which the General Assembly specifically did not include § 56.14 among the Chapter 56 provisions which were to some extent superseded by Chapter 14.[3]

Because a § 56.14 payment arrangement is not a "payment agreement" under Chapter 14, a utility should not be permitted to deny such a payment arrangement to a customer on the grounds that the customer has defaulted on a previous utility established or Commission established payment agreement. In addition, default on a § 56.14 payment arrangement should not constitute a broken payment agreement for the purposes of § 1407(c)(2)(i), and should not therefore count toward the two or more defaulted payment agreements that would allow a utility to require full payment of the outstanding balance as a condition of service restoration. The

[3] 66 Pa.C.S. § 1401 (Historical and Statutory Notes).

Commission should specifically provide in § 56.14 that "a payment arrangement entered into pursuant to this Section shall not constitute a "payment agreement" within the meaning of 66 Pa.C.S. §1403."

b. Proposed Statute of Limitations.

Action Alliance supports the Commission's proposal to incorporate in § 56.14 a statute of limitations which bars a utility from requiring customers to pay for unbilled service incurred more than four years prior to the issuance of a "make-up bill." Commission policy has historically insisted that estimated bills are disfavored. For example, under § 56.12(4), a utility is required to obtain an actual meter reading including by remote reading device at a minimum every six months. In instances where utilities fail to comply with this standard, there must be some limit on their ability to issue make-up bills for previously unbilled service. In previous decisions, the Commission has limited the authority of utilities to collect for unbilled service incurred more than four years previously.[4] Customers desiring to dispute a utility claim for unbilled service should not be placed in the position of having to defend against a claim arising more than four years previously, when witnesses and relevant evidence will no longer be available or will have been lost or no longer in existence.

The Commission observes that a four year limitation is consistent with restrictions contained in other parts of Chapter 56, including § 56.35 (barring a utility from requiring as a condition of service payment or arrangement to pay a bill incurred more than four years previously), § 56.83(7)(barring termination of service for non-payment of charges incurred more than four years previously) and § 56.202 (requiring utilities to maintain customer service records for at least four years). The Commission proposal is also consistent with § 1312 of the Public Utility Code, 66 Pa.C.S. §1312, governing refunds/credits, and with the general Pennsylvania statute of limitations for contract actions. 42 Pa.C.S. § 5525. It is also consistent with Commission case-law concerning limitations on utility claims for unbilled service.[5]

[4] Rivera v. Philadelphia Gas Works, Docket No. C-20028491 (March 9, 2004).

c. Twenty percent discount for high make-up bills where there has been no meter reading for six or more months.

When a utility issues estimated bills for an extended period of time, customers who are being billed for less service than they are using do not receive accurate monthly notice of the cost of the utility service that they are using. Consequently, they are not able to adjust their usage to their capacity to pay for service provided. 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 these facts, the Commission's Bureau of Consumer Services (BCS), in resolving disputes concerning make-up bills, has issued determinations which provide a twenty percent discount on unbilled service in situations where the period of unbilled service was more than six months. Robinson v. Philadelphia Gas Works, F-01039065 (March 24, 2004). By incorporating this practice in the regulations, the Commission would both strengthen necessary customer protection and give utilities an incentive to take additional steps to avoid undue reliance on estimated bills.

3. Credit standards.

a. Necessary clarifications concerning the definitions of Customer and Applicant.

(i) First Implementation Order definition of "customer."

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 § 1403 definition of customer does not designate someone who is necessarily currently receiving service. Implementation Order, at 21. As the

[5] Rivera v. Philadelphia Gas Works, Docket No. C-20028491 (March 9, 2004).

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.

(ii) "Appears on the mortgage, deed or lease."

The § 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. 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."[6] 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.

b. Acceptable standards for proof of identity for applicants and for occupants.

Reasonable forms of identification ("ID") should be accepted by utilities from applicants

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

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.

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.[7] 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 social security numbers 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 SSN 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 in full one 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 identification along with proof of residency:

- Job photo ID

[7] 8 C.F.R. §§ 101(a) and 203(b); http://www.ssa.gov/immigration/.

- School photo ID
- Passport (U.S. or foreign)
- 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. Action Alliance 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.[8] 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.).[9]

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.

Action Alliance recommends that the Commission require utilities to provide applicants with the option to complete a form similar to that used by the Department of Public Welfare in the LIHEAP application process, when the applicant does not have a Social Security number or wishes for privacy reasons not to provide the number. Attached as Attachment "D" is the DPW

[8] Guide to Rights of Utility Consumers, National Consumer Law Center, pp. 10-12 (2006).

Energy Assistance Affidavit.

In addition, § 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.

c. State-wide standards for requiring a deposit pursuant to § 1404(a).

Section 1404(a)(2) authorizes a utility to require a deposit from a new applicant who is unable to establish creditworthiness "to the satisfaction of the public utility through the use of a generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice." The ANOPR proposes that utilities be required to include their "credit scoring methodologies and standards in their Commission-approved tariffs." ANOPR, Appendix A, at 2. Given the possibility that different utilities may use different vendors for their credit scoring, Action Alliance submits that there must be utility-specific review concerning what standards a utility proposes to adopt and whether the methodology falls within the range of general utility industry practice.

However, the Commission should clarify and/or reaffirm that certain state-wide standards continue to apply to utility requests for deposits even when credit scoring is utilized as a basis for requiring a deposit:

(i) Disputing deposit demands based on credit scores.

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.

[9] This order was subsequently superseded by a revised order that did not address the social security number issue.

Chapter 14 did not revoke the rights of customers, occupants and applicants set forth in § 56.2 (Definition of "dispute") and § 56.141 (dispute procedures) 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 identity and contact information of 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.

(ii) Required provision of information supporting disputed credit score.

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. Redrafting § 56.37 in the credit scoring context, the Commission 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.

(iii) No credit score.

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 previously lived with parents, grandparents, uncles and aunts 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 Protection from Abuse 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 § 56.32(3)(i)("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.

(iv) No deposits for low income customers.

Low income applicants should not be required to post deposits, because they can not afford them. 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.

d. Amendment to § 56.36(1) concerning written statement of reasons for denial of credit.

Action Alliance 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.

e. Standards for determining that an applicant previously resided at the service address where an account in the name of another person(s) was terminated for non- payment.

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 § 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 another person's 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 evidentiary 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. Action Alliance 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, PUC 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 § 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 Protection from Abuse Order because it would be too dangerous to do so, as discussed in section 1 (d) of these Comments.

4. Payment period for deposits.

The ANOPR interprets Chapter 14 to divide applicants and customers into three categories, for deposit purposes. The first category are applicants who were previously customers and whose service has been terminated. The second category is other applicants who have not previously been customers (or who in some prior period were non-delinquent customers). The third category are current customers who are chronic "late-payers." According to the ANOPR, the first category, previously terminated applicants, may be required to pay a deposit of 1/6 the estimated annual bill within 90 days of the time that the utility determines that a deposit is required (50% upfront and the remainder within 90 days). The second category, other applicants, must pay a deposit of 1/6 the estimated annual bill upfront before receiving service, unless they can qualify for an exemption on the grounds of their credit-worthiness. The third category, chronic "late-paying" customers may be required to pay a deposit of 1/6 the estimated annual bill, 50% when the utility determines that a deposit is required, 25% 30 days

later, and 25% 30 days after that.

Deposit requirements constitute a significant barrier to utility service for low and lower income households. Under Chapter 14, applicants/customers seeking reconnection of service can be required to pay a reconnection charge and the outstanding balance or a first installment on a payment agreement as a condition of restoration. At the same time, as a counterbalance, Chapter 14 provided for payment of security deposits over 90 days, rather than over 60 days. Nothing in the statute justifies requiring 50% of the total deposit amount to be paid up front, in situations where deposits are allowed to be paid in installments.

Action Alliance proposes that all customers be allowed 90 days within which to pay a deposit, with minimum payments of 25% at the time that the utility determines that a payment is required, and 25% within 30 days, 25% within 60 days and the remaining 25% within 90 days.[10] In making this recommendation, Action Alliance recognizes that the allowable upfront payment would be less than proposed by the Commission in situations where the applicant or customer is allowed to pay the deposit in installments. As the Commission recognizes, § 1404(h) provides that applicants not subject to § 1404(a)(1) should have 90 days to pay a deposit, without prescribing how the deposit amount should be broken out into installments. For customers receiving service, the amount of the deposit significantly increases the amount of the monthly bill during the period when the deposit must be made. For that reason, the installments should be apportioned in order to spread the burden as evenly as possible over the full statutorily allowed ninety (90) days.

5. Termination of Service.

The Commission aptly reminds us that the termination of service can have serious consequences. In this vein, we heed the Commission's call to submit comments that reflect

[10] The ANOPR proposes maintaining Chapter 56 rules contained in §s 56.41-56.42 concerning "late-payer" deposits for customers who have service. The Commission bases this proposal on the observation that Chapter 14 does not contain provisions for deposits to be required from customers with service. However, § 1404(a)(2) and § 1404(a)(3) do contain provisions concerning deposits to be required from "customers" as well as "applicants." It is therefore more appropriate to harmonize the payment terms for late payer deposits with other Chapter 14 deposit terms.

careful consideration of the health and safety factors for those immediately affected by termination of life-essential utility service.

a. Immediate Termination under § 1406(c) is justified only when there are clear safety concerns.

The Commission proposes to incorporate the four (4) grounds for authorized termination at § 1406(a) into § 56.81 (Authorized termination of service), and the four (4) grounds for immediate termination without prior notice at § 1406(c) into § 56.98 (Exception for terminations based on occurrences harmful to person or property). Section 1406(c)(1)(ii) includes an additional ground for immediate termination which did not exist under Chapter 56: "fraud or material misrepresentation of the customer's identity for purposes of obtaining service." The risk of error is especially great in § 1406(c)(1)(ii) situations where the utility is often relying upon information obtained from non-utility parties like credit reporting agencies. Customers accused of fraud or misrepresentation, who were receiving and paying bills and have been terminated without notice, need procedural protections from the Commission to resolve quickly any disputes of wrongful termination. However, given the serious consequences of any terminations without notice, procedural protections should be in place for all cases where the utility has terminated service without notice.

Section 56.98 provides that termination without written notice is allowed where "the utility honestly and reasonably believes" there has been "an occurrence which endangers the safety of any person or may prove harmful to the energy delivery system of the utility." Section 56.98 was not specifically listed as a superseded provision by Chapter 14. Therefore, the utility intent language at § 56.98 should remain intact. Retaining the language in § 56.98 is also consistent with the Commission's first Implementation Order, which cautions utilities to use the authority to terminate without advance notice "judiciously and only under circumstances that address clear safety concerns." Implementation Order, at 9, citing 52 Pa. Code §§ 56.98, 59.24(b).

b. Utilities may not terminate service without prior notice on the basis of mere suspicion, and must promptly provide customers with complete post-termination written notice.

The post-termination notices approved by Commission staff for use by utilities do not require that the utility provide any specificity as to the reason for an immediate termination without prior notice. The current post-termination notices are essentially the same notice used for customers terminated for non-payment. Unlike a non-payment case where the customer received prior notice, where the reason for termination is clear and where a customer knows the amount to pay to get restored, the immediate termination case involves no prior notice, a vague theft/tampering/fraud reason for termination, and often a "to be determined" deposit and balance to pay to get service restoration. Action Alliance submits that the current notice practice for immediate terminations unreasonably prolongs the time that households must endure lack of utility service while they attempt to wade through layers of utility bureaucracy in order to obtain the specific reason for immediate termination and the dollar amount to pay to restore, often with no explanation as to how the amount was calculated.

The Commission should require that utilities not engage in immediate terminations unless they have substantial evidence that the customer has committed one of the acts prohibited by § 1406(c)(1). The post-termination notice should inform customers in detail of the alleged facts underlying the grounds for immediate termination and the terms for service restoration. The post-termination notice should also include the procedures for obtaining prompt review of the termination by the utility and for filing an informal complaint with the Commission. The utility should promptly provide restoration terms to the customer so that the customer is aware of the company's demand and can take any necessary steps to restore service. The utility should explain the restoration terms, for instance, itemizing deposit and reconnection fees and stating whether the outstanding balance was based on actual meter readings, estimated from prior bills or estimated from an appliance analysis.

c. The Commission should require that utilities provide substantial justification of immediate termination within five (5) days of the filing of an informal complaint.

The Commission should treat informal complaints of immediate terminations as "off" cases that require utilities to provide a utility report within five (5) days. The Commission should require utility reports within 18 hours in life-threatening situations, which is the same processing time for LIHEAP Crisis applications in similar situations. LIHEAP 2007 Final State Plan, at § 601.4(2). If the report is not provided within the required time period, the Commission should order service restored pending disposition of the informal complaint. In cases where the customer was receiving bills and was terminated without notice, the Commission should engage in a heightened review and require that the utility provide substantial documentation of the grounds for termination. Action Alliance submits that such customers receive unfair treatment and endure unnecessarily long delays without service when they are treated as other so-called unauthorized users. These procedures are necessary to ensure that utilities are only engaging in immediate terminations under warranted and well-documented circumstances that can be promptly verified.

d. Section 56.83 (Unauthorized termination of service) is consistent with Chapter 14 and should be maintained.

Action Alliance supports the Commission's proposal to maintain § 56.83 (Unauthorized termination of service) to the extent that it is found to be consistent with Chapter 14. Subsections § 56.83(4) and (8) involving third-party liability should remain impermissible grounds for service termination when such liability is for the prior named customer's bill. Section 1407(d) allows a utility to condition *reconnection* of service on payment of that portion of the outstanding balance of the prior named customer for the time that the applicant resided at the premises for which service is requested. Section 1407(d) does not however provide a ground for *termination* of service. Therefore, §§ 56.83(4) and (8) should remain impermissible grounds for service termination.

e. Users without contract should be consistently treated as customers, not unauthorized users.

Action Alliance supports the Commission's decision in the first Implementation Order to maintain the historical distinction between "user without contract" and "unauthorized use." As the Commission stated, "user without contract" situations are covered by 66 Pa.C.S. § 1503(b), which is not inconsistent with Chapter 14, and a 3-day notice is still required prior to terminating these accounts. Implementation Order, at 9-10. Further, a "user without contract" should not be terminated in the winter for nonpayment if his/her household income level is at a level protected from winter termination. Three-day notices posted in the winter should include notice of low-income protections so that affected persons are aware to report relevant income information.

f. <u>The termination notice process must be strengthened to assure that termination is avoided whenever possible.</u>

Pre-Chapter 14, a utility was required, under § 56.95, to make actual personal contact with the customer or a responsible adult at the account premises at the time of termination of service. If the utility was not able to do so, it was required to post at the premises a written notice stating that service would be terminated in not less than 48 hours. Except for the winter period, Chapter 14 eliminates the 48 hour notice requirement and authorizes a utility to terminate service even if the customer or responsible adult is not at the premises at the time when the utility arrives to terminate service. Due to the lack of a 48 hour requirement, there is a greater risk that a customer will be terminated unnecessarily. In this context, the written 10-day termination notices must be enhanced and utilities should be required to implement procedures that specifically require utility employees to inquire whether customers in contact with the utility prior to termination may be eligible for CAP and to provide necessary information concerning application for CAP.

In the first Implementation Order, the Commission clearly demonstrated that § 56.97 (Procedures upon ratepayer or occupant contact prior to termination) was not superseded by Chapter 14. This section provides that a utility, when contacted by the customer prior to termination, must "fully explain … [a]ll available methods for avoiding a termination." Also, the

existing Commission Policy on Customer Assistance Programs (CAP), at 52 Pa. Code §69.265(6)(i), provides that "[t]he utility should make automatic referrals to CAP when a low-income customer calls to make payment arrangements." Despite this policy, many low-income utility customers who are eligible for CAP are not being enrolled and are instead induced to accept unaffordable standard payment agreements. A 2005 Commission Report reveals that electric utilities statewide enroll only 39% of confirmed low income CAP eligible customers, while gas utilities enroll only 38% of those eligible. Report on 2005 Universal Service Programs and Collection Performance, at 40-41. The Report states that the "CAP participation rate would be much lower if the rate reflected estimated rather than confirmed low income customers." Id. at 40.

Chapter 56 should be specifically amended to ensure that CAPs fulfill their purpose as a utility safety net. At critical points of contact, when customers evidence payment problems (payment agreement request, 10-day termination notice, immediately prior to termination, post-termination notice, and reconnection negotiations), utilities should determine eligibility for their CAPs and enroll eligible customers. Sections 56.2 (definition of "Notice or termination notice"), 56.91, 56.93, 56.94, 56.95, 56.96, and 56.97, which all involve a notice to a customer or contact with the customer, should be amended to require utilities to notify the customer verbally and in writing about the public utility's CAP, inquire about the customer's eligibility and enroll eligible customers into the CAP, if the customer consents.

Further, the regulations should state that a CAP application submitted after a termination notice is issued should stay the termination process pending review of the application. If the application is approved, the termination should be cancelled.

g. Chapter 14 does not alter Commission rules regarding stay of terminations pending disputes and informal or formal complaints.

Action Alliance agrees with the Commission that Chapter 14 has not eliminated the stay on termination associated with the filing of disputes and informal complaints. Chapter 14

contains no provisions addressing dispute and informal complaint procedures. References to the stay of termination pending a utility dispute, and informal or formal complaint are pervasive in Chapter 56. See, 52 Pa. Code §§ 56.2 (definition of "Notice or termination of notice"), 56.92, 56.94, 56.97, 56.101, 56.141, 56.142, 56.143, 56.152, 56.174. Moreover, Chapter 14 does not abrogate the Chapter 56 provisions that specifically provide for such stays, including §§ 56.92, 56.97, 56.141, 56.142, 56.143, 56.152, 56.174.[11]

It is anticipated that some utilities may take the position that § 1406(b)(2) nullifies the existing obligation of utilities to stay terminations pending resolution of customer disputes and informal/formal complaints. This interpretation is incorrect. Section 1406(b) (Notice of termination of service) on its face addresses only notice requirements. At § 1406(b)(1), the pre-termination notice requirements are listed. Section 1406(b)(2) then states that the "public utility shall not be required to take any additional actions prior to termination." The term "additional actions" refers to giving of additional pre-termination notices. Moreover, such regulations imposing a stay do not require "action" by a utility, but rather inaction or abstention from taking termination actions. This narrow reading of § 1406(b)(2) also harmonizes with § 1406(f), which requires a utility to stay termination of service, even after serving a termination notice, when the customer files a medical certification. Section 1406(b)(2) in its context allows the Commission, as it must, to give meaning to all the provisions contained in Section 1406.[12]

h. Section 1406(d) concerning Friday terminations should be read narrowly.

Section 1406(d) allows for terminations from Monday through Fridays, so long as the utility can accept payment and restore service the following day. The statute at 66 Pa.C.S. § 1503(a) and regulations at § 56.82 (Days termination of service is prohibited) prohibits

[11] 66 Pa. C.S. § 1401 (Historical and Statutory Notes)

[12] Other parts of Chapter 14 appear to presuppose the continued existence of stays on termination pending disputes and complaints. Sections 1405(f) (Failure to comply with payment agreements) and 1410 (Complaints filed with Commission) both provide that "[p]ending the outcome of a complaint filed with the Commission," the customer must pay undisputed bills. Payment of current bills not in dispute has historically been a condition of the stay or a requirement to avoiding termination of service pending the outcome of a complaint with the Commission. § 56.174; Stammel v. PG Energy, 98 Pa.P.U.C. 262 (2003). If the legislature intended to eliminate stay of termination pending disputes and complaints, it would have done so explicitly and would not have made reference to conditions of the

terminations on Fridays, Saturdays, Sundays and holidays and the day before holidays. Section 1406(d) should be read narrowly to delete the word "Friday" from 66 Pa.C.S. § 1503(a) and § 56.82. Terminations should not be allowed on holidays observed by banks, by the utility, and by the Commission, and on days preceding such holidays. Such prohibitions would preclude terminations on a Friday that is also a holiday or on a Friday that precedes a Saturday holiday.

i. Victims of domestic violence need proper notice of special protections.

Since victims of abuse with a Protection From Abuse order are exempted from the Chapter 14 changes permitting quicker terminations, including immediate terminations under §1406(c)(1)(ii) and Friday terminations, as well as the elimination under Chapter 14 of the 48 hour notice requirement except during the winter, it is critical that utilities provide information concerning the protections available to victims with PFA orders at every opportunity. As discussed in section 1 of these Comments, in addition to the PFA Standard Annual Notification, all termination or post-termination notices must contain information about these protections, and this information should also be provided orally at each personal contact required in the termination process. The regulations should state that an assertion by a customer that the customer or a member of the customer's household has a Protection From Abuse order should stay the termination process while the customer is given an opportunity to provide the utility with a copy of the PFA, or to complete the verification form for delayed or alternative verification.

Due to the particular dangers inherent in utility terminations, and the vulnerability of victims of domestic violence to financial problems as a result of the abuse, 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 Protection from Abuse Order because it would be too dangerous to do so, as discussed in section 1 (d) of these Comments.

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stay.

6. Winter Termination Procedures.

Section 1406(e) has eliminated the longstanding winter moratorium against utility service terminations in Pennsylvania. Utilities governed by Chapter 14 now have the dangerous authority to terminate service in the winter-time, except to certain lower income and vulnerable households. The fact that some residential customers may be legally terminated without prior approval of the Commission places all customers at risk, due to the possibility of erroneous terminations of exempt customers. As the Commission notes, the issue of winter-time termination raises serious health and safety concerns. These concerns are underscored by the recent fire deaths in Philadelphia of two senior citizens, living in houses without a safe heating source, on the same cold winter night.[13]

The exemptions to winter termination contained in § 1406(e) apply to all customers whose household income is at or below 250% Federal poverty level ("FPL") for all gas and electric utilities, except the Philadelphia Gas Works (PGW). For customers of PGW, the same prohibition applies for customers with household income at or below 150% FPL, and for some households with income in the 150-250% FPL range, depending upon household composition and/or payment history. The only customers not protected by this prohibition are customers "whose actions conform to subsection [1406] (c)(1)," *i.e.*, customers who have committed "unauthorized use" or committed "fraud or made material misrepresentation for the purpose of obtaining service." As acknowledged in the ANOPR, it is critically important for the Commission to protect the health and safety, not just of customers, but of "citizens of the Commonwealth," as it implements and enforces winter termination procedures. ANOPR, Appendix A, at 4.

a. <u>Winter termination notices</u>.

(i) Utility duty to solicit customer income and household information at every

[13] "Space heaters proved lethal," *Philadelphia Daily News*, January 11, 2007; "Kensington fires kill 2," *The Philadelphia Inquirer*, January 11, 2007.

opportunity.

A termination notice is the first step on a credit and collection path which in the automated systems of public utilities leads aims at imminent termination of service. The first protection against erroneous winter terminations is to enact regulations which bar utilities from issuing winter termination notices to the low and lower income customers who are exempt from winter termination. The Commission should therefore adopt regulations which require utilities to systematically gather income and household information concerning its customers.

As the Commission stated in its Declaratory Order, entered December 22, 2005, "utilities subject to Chapter 14 have a continuing obligation to take reasonable steps and implement sound business practices that will maximize the number of customers for which the utility has income and household size information."[14] Such sound business practices would require that the utility collect income and household information at every opportunity from all applicants for service and from current customers that contact the utility.

Applicants. Utilities have been granted new powers to require at application time that applicants provide household information (§ 1404(d)) and information to establish creditworthiness (§§ 1404(a)(2) and 1404(f)). These powers should not only be used for payment arrangement and security deposit collection purposes. This authority should also be used to collect information that will provide the utility with information to determine which households are exempt from winter-time service termination.

CAP Enrollment. For applicants or customers whose income indicates CAP eligibility, the utility should notify the applicant/customer verbally and in writing about the utility's customer assistance program, inquire about the applicant/customer's eligibility and enroll eligible applicants/customers into the customer assistance program. Under Chapter 14 rules, low-income customers who fall behind on bills will have very limited opportunities for

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[14] Re: Chapter 14 Implementation, Docket No. M - 00041802F0002 (Order entered December 22, 2005), at 11.

payment agreements and will often face unaffordable restoration terms if service is terminated. Low-income CAP-eligible customers should be placed on the right track from the start with CAP bills that they can better afford to pay.

Customers. Those customers seeking payment agreements or other assistance such as CAP enrollment would necessarily provide income and household information to obtain the appropriate agreement or assistance. At critical points of contact, when customers evidence payment problems (payment agreement request, 10-day termination notice, contact immediately prior to termination, post-termination notice, and reconnection negotiations), utilities should request income and household information to establish eligibility for payment agreements, CAPs and, at the same time, winter-time exemption from termination. Sections 56.2 (definition of "Notice or termination notice"), 56.91, 56.93, 56.94, 56.95, 56.96, and 56.97, which all involve a notice to a customer or contact with the customer, should be amended to require utilities to request income and household information. [15]

In the Second Implementation Order, at 11, the Commission encouraged utilities to provide a simple form for customers to complete and return to the utility asserting their qualifications for an exemption. Although the Commission fell short of requiring that such a form be included with monthly bills, Action Alliance urges the Commission to require, at a minimum, that such a form be included with termination notices. Action Alliance provides a proposed attachment to PGW's termination notices, providing a simple check-box form to enable customers to assert an exemption. A form is the easiest way to empower customers to assert exemptions and to provide a paper trail that such an exemption has been requested. This attachment should be used for any termination notice that proposes termination between December 1 and April 1. A copy is included as Attachment "E" to these Comments.[16] Such a

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[15] If the new regulations provide that utilities conduct a survey of current customers for purposes of determining eligibility for winter-time service termination, the regulations should also require that utilities advise those customers who are CAP-eligible of the benefits of CAP and enroll the customer in CAP if the customer consents.

[16] We have provided the proposed form in English., and included a question concerning language to assist in ascertaining the need for interpretation and translation for individuals with limited English proficiency. This form, like all termination notices and other vital documents should of course be translated into Spanish pursuant to

form is not a substitute for requiring utilities to verify income and household information before actual termination, as discussed further below.

(ii) No issuance of termination notices for winter termination of households with unknown income and household information.

Regulations concerning the issuance of termination notices for utility shut-off in the winter period should require that before a termination notice may be issued for a residential account for termination in the winter period, the utility must have household income and composition information in its data base which indicate that the household is not exempt from termination. For customers of the Philadelphia Gas Works, this necessary information must also include data concerning whether the household includes a person 12 years or younger or 65 years of age or older.

In granting utilities authority to issue termination notices to customers whose income and household information has not been verified, the Commission stated that it was addressing utility concerns that utilities have income and household information for only some of their customers and that the other customers would "thwart the process by refusing to supply the utility with household size and income information."[17] However, utility company concerns about uncooperative customers are exaggerated and have been accorded too much weight.

Chapter 14 already provides many built in incentives for customers to disclose income and household information to obtain assistance, aside from the threat of winter-time service termination. Utilities have Chapter 14 enhanced non-winter termination capabilities at their disposal. Allegedly uncooperative customers who refuse to pay bills during the winter may face prompt service termination in the Spring if bills remain unpaid. Chapter 14 restoration rules allow utilities to impose reconnection fees and security deposits on these customers, in addition

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§56.201, and into the other most common languages in PGW's service area, pursuant to Title VI of the Civil Rights Act of 1964, and the Commission's policy of creating "fair and equitable residential utility service standards" to be "liberally construed …to ensure justice for all concerned. 52 Pa. Code §56.1.

[17] Re: Chapter 14 Implementation, Docket No. M - 00041802F0002 (Order entered December 22, 2005), at 10.

to upfront payment of unpaid balances, in many cases, as conditions of service reconnection. Section 1407(d) contains provisions aimed at preventing terminated customers from obtaining reconnection to their household while evading payment. Even assuming that there are a few instances of customers who refuse to cooperate with providing income and household information, utilities are disingenuous to argue that they are helpless against these customers who may or may not be exempt from winter termination. Whether or not a customer could have been eligible for winter termination, in the end, customers who fail to pay bills during the winter must take care of the unpaid bills or endure service termination when winter is over.

Also, as the Commission noted, the percentage of customers for whom utilities, including PGW, will have income and household information should rapidly increase under Chapter 14, because so many of the collection standards are linked to income level and household composition.[18] Therefore, utilities should not be given permanent authority to issue termination notices without adopting reasonable procedures to avoid threatening exempt vulnerable customers with service termination. Requiring verification of income and household size before issuance of winter termination notices would give utilities the incentive to collect such information from payment troubled customers who call the utility. Utilities should be obtaining such information in any case to determine the proper payment arrangement and eligibility for CAP.

PGW, in particular, has special authority to terminate service to certain customers with incomes between 150% and 250% FPL. Section 1406(e)(3), requiring that PGW provide notice to the Commission when sending a winter termination notice to a Level 2 customer, indicates the legislature's intent that such notices not be sent to exempt customers. The regulations should require that all utilities obtain income and household information before a termination notice is issued in order to avoid unreasonably threatening exempt vulnerable customers.

> (iii) No issuance of termination notices for winter termination to customers known to the utility to be exempt from winter-time service termination.

Utilities should be prohibited from sending termination notices to those customers for whom the utility has information that would exempt the customers from winter-time service termination. The utility may have current income and household information for the customer from a recent application for service. The utility may directly or indirectly have information that the customer falls into a protected income level. For instance, customers on the utility's CAP and customers recently approved for a LIHEAP grant that was assigned to the utility are just two examples of the groups of customers who would have income levels that make them exempt from winter time service termination. Customers known to the utility to be exempt from winter-time service termination should never receive a winter termination notice.

It is anticipated that the utilities will argue that the § 1406(e) prohibition against winter-time service termination of lower income customers is a prohibition against actual termination and does not act as a prohibition of issuance of termination notices under 1406(b). However, the Commission has under § 56.99 historically prohibited utilities from using termination notices solely as a collection device. A utility may not send a termination notice unless it actually intends to terminate service and has reason to believe that all the legal grounds for termination on the notice have been met. In the winter, these grounds include knowledge of the customer's household income level. For PGW, the utility must also know the customer's household composition and payment history. Section 56.99 (Use of termination notices solely as collection devise prohibited) was not superseded by Chapter 14.

> (iv) Pre-November 20 and post-February 1 termination notices must contain a shut off date between April 1 and November 30.

No termination notices should be sent in the winter period to low income customers unless there is actual intent to terminate, and unless termination can legally be effectuated on the earliest date stated in the termination notice. Individuals who are exempt from winter termination under Section 1406(e) should be assured on the notice that their service will not be

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[18] Re: Chapter 14 Implementation, Docket No. M - 00041802F0002 (Order entered December 22, 2005), at 11.

disconnected between December 1 and April 1, even if the notice is sent in October or November.

For example, a notice sent November 1 may inform the customer that, "Your service will be terminated on or after November 11 but not after November 30." Similarly, a termination notice sent on February 1 would be effective for 60 days and can be the basis for a service termination on or after April 1, when the winter prohibitions end. Under recent utility practice, these winter termination notices typically and erroneously state that the service may be terminated "on or after" ten (10) days from the date of the notice. A termination notice sent in February or March should state a termination date on or after April 1 and not just 10 days following the date of the termination notice.

The practice of sending shut off notices with a shut off date within the prohibited period is unfair and deceptive and violates § 56.99. Low income customers exempt from winter termination should not be receiving false threatening notices, especially when such notices can mislead a household of limited means into forgoing payment for other life essentials to pay for heat service.[19]

b. No service termination in winter unless utility verifies income and household information with customer or responsible person after issuance of termination notice.

Under Chapter 14, a utility must verify current income and household information before any residential customer may be terminated for non-payment during the winter period. Section 1406(e)(1) flatly prohibits winter termination of service to households that fall within protected income levels. For PGW, the Commission has required that PGW continue its practice of determining customer eligibility for termination, pursuant to § 1406(e)(2), prior to completing

[19] Low income households routinely must forgo basic necessities of life due to lack of financial resources. It is therefore particularly important that they be provided accurate information concerning when they may lose an essential service due to non-payment. See, *e.g.,* Apprise, Philadelphia Gas Works Customer Responsibility Program, Final Evaluation Report, Table V-41, at 102.

actual termination.[20] Chapter 14 allows the Commission to prohibit actual termination of service to any household for which the utility does not have current income and household information.

With regard to winter terminations, Chapter 14 only prevents the Commission from prohibiting service terminations that are allowed by § 1406 to customers "with household incomes exceeding 250% of the federal poverty level." § 1406(e)(1). Therefore, the Commission may require that utilities obtain verification of termination eligibility prior to actual termination of a customer in the winter time. If a utility follows the termination notice steps in § 1405(b) and obtains verification through actual contact and current information that the household is eligible for winter time service termination, then the utility may proceed with termination. If the utility cannot verify through actual contact that the household is currently eligible for winter time service termination, then the termination may not proceed.

A verification requirement is not unreasonable to insure that low-income households and lower-income households with small children, elderly or sick members do not mistakenly lose service in the winter. During the verification process, any contact with and notices to customers should include information on all available methods of avoiding service termination, pursuant to § 56.97, including notifying the customer verbally and in writing about the exemptions to winter-time termination and the public utility's CAP, inquiring about the customer's eligibility for an exemption or CAP enrollment, and enrolling eligible customers into the CAP, if the customer consents.

c. "Users without Contract" are protected from winter termination to the same extent as other customers.

As set forth above in Section 5 (Termination of service), the Commission in its first Implementation Order has determined that "users without contract" are not unauthorized users within the meaning of § 1406(c)(1). As users without contract, they are to be viewed as "customers," which under § 1403 includes occupants whose names appear on a mortgage, deed

[20] Re: Chapter 14 Implementation, Docket No. M - 00041802F0002 (Order entered December 22, 2005), at 10.

or lease and occupants requesting service. In the winter period, they are therefore protected from winter termination to the same extent that customers of record of the particular utility are protected. The Commission should therefore specify that the protections against winter termination contained in § 1406 fully apply to users without contract.

d. Chapter 14 restrictions on winter termination of residential service apply equally to heat related and non-heat-related service.

Action Alliance agrees that the terms "heat related" should be eliminated from § 56.100, as the Chapter 14 prohibitions on winter-time service terminations do not distinguish between heat related and non-heat related accounts. ANOPR, Appendix A, at 4. In Section 1407(e)(1), the legislature unambiguously recognized that the maintenance of continuous residential electricity or gas service of any kind in the winter months is important for health and safety reasons.

e. Expanded Cold Weather Survey.

Action Alliance agrees that, with the Chapter 14 authority to expand service termination to the winter-time, utility Cold Weather Survey reporting obligations should also be expanded. Action Alliance supports the Commission's proposal to revise the winter survey provisions of §§ 56.100(4) and (5) to require updates throughout the winter. Action Alliance recommends that the winter survey, in addition to being submitted on December 15, also be updated as of December 31, January 15, February 1, February 15, March 1 and March 15 of each winter. The purpose of the updates is to inform the Commission and the public of the progress made in restoring service to households reported as not receiving service in the initial survey. The Commission should compile this data and make it available within fifteen (15) days of the submission date. Prompt publication of such data raises public awareness of the need for utilities, community based organizations, and governmental authorities to provide assistance in obtaining service restoration for households without winter service.

Further, Action Alliance supports the Cold Weather Survey recommendations submitted by the Pennsylvania Utility Law Project (PULP) and incorporates those recommendations herein by reference.

f. Reporting requirements concerning death, injury and property damage linked to lack of utility service.

Chapter 14 has resulted in increased terminations of public utility service[21], and has often made it financially more difficult for customers whose service has been terminated to obtain service reconnection. With increased levels of termination and greater barriers to reconnection, there is a greater risk of death, injury and property damage resulting from a lack of public utility service. The recent fire deaths in Philadelphia of two senior citizens, living in houses without a safe heating source, on the same cold winter January night, underscores the seriousness of the danger.[22]

A fundamental purpose of customer service regulations like Chapter 56 is to assure that public utility service remains available to everyone on reasonable terms and conditions. In enacting Chapter 14, the General Assembly indicated in § 1415 that it looked to the Commission to monitor the societal impacts of Chapter 14 and to provide appropriate changes that might be necessary. The Commission should therefore systematically gather information and conduct investigations sufficient to determine whether Chapter 14 has increased the risk of death, injury and property damage. Such information gathering is also useful in order to identify policies and procedures which can reduce the risk of death, injury and property damage associated with the termination, denial or unavailability of residential utility service. Finally, such information gathering and investigations are necessary if Chapter 14 regulations are to be reasonably enforced.

[21] The termination rates for both gas and electric companies have risen significantly from 2004 to 2005. Electric companies conducted 44.2% more terminations in 2005 than in 2004; and gas companies conducted 54.7% more terminations in 2005 than in 2004. "First Biennial Report, Implementation of Chapter 14," December 14, 2006, at 27 (Pa. P.U.C.).

[22] "Space heaters proved lethal," *Philadelphia Daily News*, January 11, 2007; "Kensington fires kill 2," *The Philadelphia Inquirer*, January 11, 2007.

At the current time, the Commission appears to have a relatively informal process for identifying deaths, injuries and property damage potentially linked to lack of utility service. Action Alliance submits that the Commission should issue regulations requiring utilities to report deaths, injuries and property damage resulting from house fires within their jurisdictions, and to provide to the Commission the history of utility service to the affected premises in the two years preceding the fire. In this respect, as in the case of the Cold Weather Survey, the Commission should broaden the range of reporting from one year to two years.

In addition to deaths, injuries or property damage resulting from house fires, another related category often reported in the press are deaths and hospitalizations associated with carbon monoxide poisoning or asphyxiation associated with such heating sources as kerosene/oil space heaters, kitchen stove/ovens, propane space heaters. Utilities should also report these deaths and hospitalizations and provide a two year history of utility service to the premises where the deaths or hospitalizations occurred.

Although the Commission has inquired about this issue in the context of winter terminations, Action Alliance urges the Commission to bear in mind that lack of utility service, especially electricity service, can result in the warm summer months in deaths and hospitalizations from hyperthermia or heat exhaustion. The Commission should require utilities to report deaths and hospitalizations associated with hyperthermia or heat exhaustion, which are often reported in the press in the warm weather months. In the case of electricity service, utilities should be required by regulation to provide the two prior years of service history to the premises where such death, injury or property damage occurred.

g. <u>Victims of domestic violence need proper notice of exemption from winter termination.</u>

Precisely because victims of abuse with a Protection From Abuse order are exempted from the Chapter 14 changes permitting winter terminations, it is critical that utilities provide

information concerning the protections available to victims with PFA orders at every opportunity. As discussed in section 1 of these Comments, in addition to the PFA Standard Annual Notification, all termination or post-termination notices must contain information about these protections, and this information should also be provided orally at each personal contact required in the termination process. In addition, utilities should solicit information concerning PFA orders at every opportunity, along with information concerning customer income and household composition, using language like "If you or someone in your household is a victim of domestic violence who has a Protection from Abuse order, there are some additional protections available to you. If you want us to consider whether these protections apply to you, please check here."

The regulations should state that an assertion by a customer that the customer or a member of the customer's household has a Protection From Abuse order should stay the termination process while the customer is given an opportunity to provide the utility with a copy of the PFA, or to complete the verification form for delayed or alternative verification. Because of the particular dangers inherent in winter terminations, and the vulnerability of victims of domestic violence to financial problems as a result of the abuse, 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 Protection from Abuse Order because it would be too dangerous to do so, as discussed in section 1 d of these comments.

7. Emergency Medical Procedures.

Action Alliance agrees with the Pennsylvania Utility Law Project (PULP) that in considering emergency medical procedures, the Commission's primary focus should be on protecting against harm which lack of utility service would cause to sick or disabled persons who are occupants in households which are usually low or lower income, and have not kept current on their utility bills. Action Alliance therefore adopts and incorporates by reference the section of PULP's Comments which addresses emergency medical procedures.

In addition, while Action Alliance, like PULP, disagrees with the parts of the Commission's Secretarial Letter of December 21, 2005 which limit the scope of the medical emergency protections set forth in §§ 56.111 - 56.118, the Commission should reaffirm the continued viability of aspects of the medical emergency provisions identified in the latter part of the Letter. Those aspects are as follows:

§ 56.112. Termination will be stayed for three days when the utility is informed that an occupant of the account premises "is seriously ill or has a medical condition which will be aggravated by a cessation of service." This provision confirmed by the Letter provides protection at the point where it is most necessary, and permits time for the subsequent procurement of the actual medical certification.

§ 56.113. Concerning this section, the Letter states: "While utilities are free to use standard medical certificate forms for use by the customer and physicians, the use of such forms cannot be required." When time is of the essence, as it often is with medical certifications, the fact that a physician or nurse practitioner does not have a utility's form should not prevent a medical certificate from being submitted to protect a customer's household.

§ 56.118. A utility which desires to dispute whether a medical certification is valid must file a petition with the Commission. As the Letter states, in its communications with physicians and customers concerning medical certifications, the "utility must avoid language that could have the appearance of threatening or intimidating either customers or physicians from utilizing the medical emergency procedures."

§ 56.111. A utility is barred from terminating service or refusing to restore service when a physician "certifies" that a member of the customer's household is "seriously ill or affected with a medical condition which will be aggravated by a cessation of service or failure to restore service." As the Letter states, utilities should refrain from communications which misrepresent this legal standard by using such terms as "dangerous," "critical" or "life threatening" or

distinguishing between "chronic" and "non-chronic" illnesses.

§ 56.115. If utility service has been terminated, service must be restored promptly upon "receipt" of a medical certification. Receipt of the certification alone is the basis for restoration. As the Letter states, payment of reconnection fees, security deposits or any other charges can not be required as a condition of reconnection pursuant to a medical certification. This rule recognizes the emergency nature of service restoration pursuant to a medical certification and removes potential barriers to prompt restoration.

§ 56.113. Medical certifications may be written or oral. When they are oral, they are subject to the right of the utility to request written confirmation within 7 days. Consistent with these requirements, the Letter requires that when a utility instructs physicians or nurse practitioners providing medical certifications to use a company fax number, the "fax number should be easily accessible and readily available for use." Emergency medical procedures are dependent on means of communication which function effectively and without delay.

8. Commission informal complaint procedures.

a. Section 1405(c) does not bar the Commission from establishing a payment agreement for a former CAP customer whose arrearages include missed CAP payments.

Section 1405(c) provides 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 noted the general consensus that this provision precluded the Commission from establishing a payment agreement for a customer who was participating in a CAP program. In the ANOPR, however, the Commission proposes to take the position that § 1405(c) also precludes the Commission from establishing a payment agreement for a former CAP customer, no longer participating in a CAP program, if any of the outstanding arrearages are attributable to unpaid CAP bills. ANOPR, Appendix, at 6. This expansive interpretation is not a reasonable interpretation of Chapter 14.

Such an interpretation inequitably impairs the access of former CAP customers to the one Commission established payment agreement available to every other non-CAP customer.

The Commission has recognized that in enacting Chapter 14, the General Assembly intended to permit the Commission to provide all non-CAP customers, regardless of income level, with one Commission established payment agreement.[23] It is inconsistent with this statutory grant of authority to interpret § 1405(c) to deprive the Commission of the authority to provide a payment agreement to someone not presently a CAP customer solely because at some point in the past he/she was a CAP customer and did not pay all the payments required under the CAP plan.

(i) Former CAP customers face higher monthly bills as well as pre-CAP arrears.

Since this issue was not addressed in the Commission Roundtables which resulted in the two implementation orders, the serious negative impacts of such an interpretation on former CAP customers have not been adequately explored. When CAP household income rises above 150% FPL, either due to an increase in income, or a change in household composition, the CAP customer then becomes ineligible for CAP and will thereafter be removed from CAP by the utility.[24] For example, when CAP customers obtain employment, or better employment, as is often the case, the incremental household income causes them to rise into Level 2, the 150-250% FPL range, which is basically the range of the working poor. In the case of a two person senior household, the death of a spouse may cause the household, without any increase in income, to "rise" into Level 2, because of a decrease in household size. Moreover, former CAP customers are especially likely to need payment agreements, because when a customer leaves CAP, 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

[23] Re: Chapter 14 Implementation, PUC Docket No. M - 00041802F002 (Reconsideration of Implementation Order, entered October 31, 2005), at 18, and Ordering Paragraph 2.

[24] In some circumstances, there will be legitimate reasons for a customer voluntarily to discontinue participation in a CAP program. In "percentage of income" CAP plans, like that of the Philadelphia Gas Works, some customers will choose to leave a CAP plan because due to a change in household composition or income, the CAP budget is greater than the monthly non-CAP budget.

arrange to pay them by means of a payment agreement.[25]

Under the Commission's proposed interpretation of § 1405(c), any such former CAP customer with any outstanding CAP delinquency is ineligible for a Commission established payment agreement. Whether a customer's service is on or off, if the customer has a total outstanding balance which even in part contains dollars derived from a CAP delinquency, that customer will be turned away by BCS. In contrast, a delinquent Level 2 customer with the same total outstanding balance, who was not previously on a CAP program, and who has not received a Commission established payment agreement, would not be turned away by BCS and would be able to obtain a Commission established payment agreement. There can be no reasonable grounds for such unfair discrimination between two non-CAP utility customers with the same income levels and the same delinquency levels.

(ii) Commission precedent is opposed to the ANOPR interpretation.

The Commission's proposed interpretation is not consistent with Commission precedent. A more reasonable interpretation is that § 1405(c) only prohibits the Commission from establishing § 1405 payment agreements for current CAP participants. In fact, the Commission itself has, on several notable occasions, described § 1405(c) as precluding the establishment of a payment agreement for CAP participants. For instance, in the Reconsideration of Implementation Order, the Commission stated that § 1405(c) "prevent[s] the Commission from establishing payment agreements for customers enrolled in Customer Assistance Programs...."[26] The Commission has also approved Commission established payment plans for the payment of arrearages which contained some CAP payments.[27] The proposed interpretation is inconsistent

[25] Many CAP customers are likely to still have substantial pre-CAP arrearages at the time that they go off CAP, because arrearage forgiveness under many CAP programs is accomplished progressively over between six and four years. The existence of such pre-CAP arrearages, now added to the outstanding balance, will represent a completely insurmountable barrier to continued service for many former CAP customers.

[26] Re: Chapter 14 Implementation, PUC Docket No. M - 00041802F002 (Reconsideration of Implementation Order, entered October 31, 2005), at 18. In that Order, the Commission correctly assumed no conflict between this statement and the statement at the end of the Order that "rates paid by the Customer Assistance Programs cannot 'be the subject of payment agreements negotiated or approved by the Commission.'" Id., at 22.

[27] Campbell v. UGI Utilities Inc., Gas Division, PUC Docket No. C-20043869, Order entered August 26, 2005 (Commission denies UGI Exceptions and affirms Commission established payment agreement for a former CAP

with the common sense approach which the Commission took in these decisions.

(iii) The subject of Section 1405(c) is current CAP participants, not unpaid rates by past participants.

The proposed interpretation also disregards the actual language of § 1405(c). Section 1405(c) states: **"Customer assistance programs.** – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission." In interpreting this provision, the Commission must give weight to all of the words contained therein, and must avoid assigning meanings which the statutory language will not support.

In interpreting § 1405(c) to preclude the Commission from establishing a § 1405(b) payment agreement for former CAP customers, appropriate weight has not been given to all the words in § 1405(c). The subsection begins with a heading which announces that its subject is "**Customer assistance programs,"** not "**Customer assistance program rates**." Under Chapter 14, "Customer assistance program" is a statutorily defined term which encompasses customers "making monthly payments based on household income and household size" under universal service programs providing protections to assist customers to maintain service.[28] Section 1405(c) thus refers only to treatment of CAP customers at the time when they are actual CAP customers, not when they are former CAP customers seeking payment agreements. The proposed interpretation would place undue emphasis on the parts of the provision which refer to "customer assistance program rates" (emphases added) while ignoring the fact that the beginning of the provision designates its subject as customers making payments in the present tense pursuant to a

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customer with an outstanding balance including non-CAP arrears and CAP arrears from second half of 2003); Lukens v. PECO Energy Company, PUC Docket No. Z-01782246, Order entered December 12, 2005 (Commission directs PECO to provide 60 month payment agreement to Level 1 non-CAP customer for arrearages which contain both missed CAP payments and arrearages that had accumulated after PECO's removal of customer from the CAP program for failure to recertify).

[28] Section 1403 defines "Customer assistance program" as follows: "A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by section 2202 (relating to definitions) or 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program."

plan – in other words, participants. When proper weight is given to the heading, § 1405(c) thus refers only to current CAP customers, not former CAP customers.[29]

Even assuming, for the purposes of argument, that § 1405(c) actually does preclude Commission established payment agreements for CAP "rates" as opposed to CAP "participants," there is no language in § 1405(c) which could possibly be construed to give rise to the conclusion that the Commission is precluded from establishing a payment agreement for the portion of a customer's arrearages which did not arise during the time that the customer was on CAP. Nonetheless, the proposed interpretation appears to require that BCS decline to make a payment agreement if the customer's outstanding balance is derived "in whole or in part" from the application of CAP rates. There can be no justification for interpreting statutory language referring solely to CAP arrears to mean the totality of an outstanding balance containing both CAP and non-CAP arrears.

(iv) The ANOPR creates a conflict between § 1405(c) and § 1405(b).

The proposed interpretation of § 1405(c) creates a conflict with § 1405(b) establishing standards for Commission established payment agreements according to income levels. Section 1405(b) defines the limits on the length of a payment agreement according to the income levels of customers at the time that they apply for the payment agreement. It states that the Commission may not establish payment agreements extending beyond a certain number of months, according to the "gross household income" of the customer. There is no limitation in § 1405(b) based upon prior CAP participation. If a customer has a certain income, and is not presently in a CAP program, § 1405(b) defines the terms which the Commission may prescribe for customers according to income level. To interpret § 1405(c) as the Commission proposes is to produce a conflict with § 1405(b), because non-CAP customers formerly on CAP would be precluded from Commission established payment agreements available to all other non-CAP customers.

[29] Under Pennsylvania law, the Commission may consider a heading in its work of statutory construction. 1 Pa.C.S. §

(v) The legislative intent was to avoid negative impacts on lower income customers.

The proposed interpretation is not consistent with the legislative intent. At the broadest level, Chapter 14 was not intended to impact negatively on the working poor, customers with incomes in the 150%-250%FPL. With regard to this income level, Chapter 14 should be read narrowly, to avoid imposing burdens which were not clearly intended by the legislature. For instance, Chapter 14 maintained the historical protections against winter service terminations for customers in this income level. Even the § 1406(e)(2) provisions allowing winter terminations for PGW customers in the 150%-250%FPL range made exceptions for customers whose payment patterns, while paying less than billed amounts, demonstrated that they were making an effort to pay their winter monthly bills. In § 1402(3), the General Assembly specified that its focus was on "eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills." In §1402(3), the General Assembly also stated its intent "to ensure that service remains available to all customers on reasonable terms and conditions." The proposed interpretation of § 1405(c) is also not consistent with this legislative intent, because it would allow unfair discrimination against former CAP customers. These former CAP customers, alone among all non-CAP utility customers, would not have the right to one payment agreement to assist them in coping with their current arrearages on the basis of their current income.

As the Commission stated in its Reconsideration of Implementation Order, "we now conclude that nowhere does § 1405, or any other provision of Chapter 14 divest the Commission of its authority to establish *one* payment agreement for non-CAP customers."[30] In reaching this conclusion, the Commission determined that to deny a customer even one Commission established payment agreement was "to eliminate a necessary check and balance to the utility's bargaining power... and to eliminate customers' access to the Commission for a reasonable payment agreement."[31] Finally, to interpret § 1405(c) to preclude the Commission from

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1924; Commonwealth v. Lopez, 444 Pa. Super. 206, 663 A.2d 746 (1995).

[30] Re: Chapter 14 Implementation, PUC Docket No. M - 00041802F002 (Reconsideration of Implementation Order, entered October 31, 2005), at 20.

[31] Re: Chapter 14 Implementation, PUC Docket No. M - 00041802F002 (Reconsideration of Implementation Order, entered October 31, 2005), at 21.

establishing a payment agreement for a non-CAP customer whose arrearages were in part derived from some missed CAP payments is contrary to the rule of statutory construction which requires that ambiguously worded provisions be interpreted not to deprive the State of any prerogative or right. MCI Worldcom, Inc. v. Pennsylvania Public Utility Commission, 844 A.2d 1239 (Pa. 2004); Pennsylvania Labor Relations Board v. State College Area School District, 337 A.2d 262 (Pa. 1975).

b. Commission jurisdiction over CAP related disputes, other than payment agreements.

The ANOPR states that the Commission is not barred from considering complaints by CAP customers regarding CAP-related disputes "including but not limited to issues like billing, eligibility requirements and default as part of the Commission's obligation at § 2203(8) and § 2804(9) to ensure that the utility's CAP is operated in a cost-effective manner through compliance with its approved CAP plan, including the proper calculation of a participant's CAP payment amount..." ANOPR, Appendix A, at 6-7. The Commission should specify that the Commission may consider complaints concerning the following matters, including but not limited to: inaccuracy of meter readings; unjustified increase in a CAP budget; incorrect CAP rate for household's income and type of service; improper application of payments including LIHEAP grants; failure to give customer credit for payments made; failure to implement appropriate arrearage forgiveness; and enrollment in CAP when CAP is not most advantageous to customer.

c. Section 56.164 (Termination pending resolution of dispute) should be amended to specify that users without contract may not be terminated when a dispute or complaint is pending concerning their application for service.

In its Second Implementation Order, the Commission confirmed that a properly filed dispute with the utility and/or the filing of an informal or formal complaint with the Commission constituted an automatic stay barring termination of service for failure to pay the disputed amounts. Second Implementation Order, at 35. Under § 56.164, a termination based on alleged

unauthorized use constituted an exception to the automatic stay pending resolution of a complaint or dispute. The Commission should amend § 56.164 to clarify that a user without contract is not within the statutory definition of "unauthorized use," and is protected from service termination pending resolution of a dispute or complaint concerning matters related to his/her application for service, including but not limited to creditworthiness and total outstanding balance.

This clarification is necessary because the status of users without contract has been a contested issue under Chapter 14, and because unlike other applicants, users without contract exist under the imminent threat of termination while they attempt to become record customers. The distinction between "user without contract" and "unauthorized use" existed prior to Chapter 14, and was reaffirmed by the Commission in the first Implementation Order. Implementation Order, at 7-10.

Users without contract often apply for service after receiving a 72 hour notice that service will be terminated unless they apply for service. Issues often arise concerning such matters as the existence and/or amount of an outstanding balance, the amount of service consumed as a user without contract, the amount of the required deposit, etc. Unless such applicants are provided access to the dispute and complaint processes, and a stay on termination, they will suffer unwarranted termination because they are unable to provide requested documentation on such short notice and/or satisfy any unjustified or incorrect financial terms imposed by the utility.

d. <u>Payment restoration terms– clarification of "payment agreement" and "default" in determining whether a utility may require a terminated customer/applicant to pay the "full outstanding balance" as a pre-condition of service restoration.</u>

Section 1407(c)(2)(i) authorizes a utility to require that a terminated customer or applicant with household income below 300% FPL who has "defaulted on two or more payment agreements" pay the full outstanding balance, no matter how large, upfront as a condition of service reconnection. In contrast, a utility is authorized under § 1407(c)(2)(ii) and (iii) to require

a customer/applicant who has not defaulted on more than one payment agreement to agree to pay the outstanding balance in monthly installments over 12 or 24 months, depending on income level. Whether a customer/applicant has defaulted on a previous payment agreement can therefore have an enormous impact upon his/her ability to receive payment terms which allow the amortization of the total amount due over a period of time. Action Alliance submits that there is a need for regulatory guidance to define what constitutes a "payment agreement" and what constitutes a "default" on a payment agreement for the purposes of § 1407)(c)(2)(i).

(i) Clarification of what constitutes a "payment agreement" for § 1407(c)(2)(i) purposes.

In Chapter 14, "payment agreement" is a statutorily defined term. Section 1403 defines a "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." The Commission should specify that the following arrangements do not constitute "payment agreements" for Section 1407(c)(2)(i) purposes: invalid payment agreements; extensions of time to make a payment; payment arrangements for previously unbilled service; budget billing programs, including, but not limited to "true-up arrangements," equitable arrangements pursuant to medical emergency requirements and CAP plans.

Invalid Payment Agreements. A valid "payment agreement" for the purposes of § 1407(c)(2)(i) is different for customers/applicants depending not only on income level, but also on whether it was granted at a time when service was on or off. Section 1405 sets forth standards limiting the Commission's authority to establish payment agreements in terms of both the amount of the monthly payment on arrears and the permissible length of the payment agreement. Section 1407 sets standards limiting the utility's authority to impose payment terms upon customers and applicants whose service has been terminated for non-payment and who seek reconnection of service. These § 1407 standards prescribe that payment terms shall provide for installments over at least a minimum period of months depending on the customer/applicant's income level.

If the payment agreement was established when the customer's service was on, it is a valid agreement if it is equal or more generous to the customer than what the Commission would have provided under §1405(b). The limits set forth in § 1405(b) concerning the length of payment agreements establish the standard for what the Commission would have provided to a customer eligible for a Commission established payment agreement.[32] If the payment agreement was established by the utility when the customer/applicant was off (and no appeal was taken), it is a valid agreement for the purposes of § 1407(c)(2)(i), if it was within the standards set forth in §§ 1407(c)(2)(ii) and (iii). However, defaults by customers/applicants on a utility established payment agreement which exceeded the permissible maximums allowed under §§ 1407(c)(2)(ii) and (iii) for customers/applicants whose service was off, should not be considered to be valid "payment agreements" within the meaning of § 1407(c)(2)(i). If a customer defaults on a payment agreement which is more stringent than the applicable Chapter 14 standards, such a default should not be considered a default for the purposes of § 1407(c)(2)(i).

The Commission should therefore specify that a customer/applicant whose service has been terminated after defaulting on a payment agreement should not be required to pay the full outstanding balance as a condition of reconnection, if that payment agreement was not consistent with applicable Chapter 14 standards. In situations where the most recent payment agreement default occurred on a valid agreement, but the previous default occurred on an invalid agreement, the customer/applicant should not be required to pay the full outstanding balance as a condition of reconnection. The imposition of an invalid payment agreement upon a customer invites the development of even greater delinquencies, and taints all subsequent payment agreements aimed at correcting the problem.

Extensions. It is not uncommon for utilities to grant "as a courtesy" a customer's

[32] Action Alliance opposes the Commission's current practice, which requires that customers with Commission established payment agreements under § 1405(b) must make minimum monthly payments on arrears [$15 (Level 1),$30 (Level 2), $60 (Level 3), and $100 (Level 4)]. Chapter 14 does not authorize this practice, which requires some customers to make larger monthly payments than required. These minimums are especially burdensome for Level 2 customers between 150% and 250% FPL. However, if the Commission authorizes such minimums, then utility established payment agreements which are consistent with these minimums should not be considered "invalid payment agreements" for the purposes of § 1407(c)(2)(i).

request that termination be stayed to allow extra time ranging from a day to several weeks to make a payment after the due date. An extension of time to make a payment is not a "payment agreement" within the meaning of Chapter 14. For customers who are on payment agreements, it does not represent an agreement to pay the "unpaid balance," but only one installment on an unpaid balance. For customers who are not on payment agreements, an extension of several days or weeks would not meet the payment agreement standards of either § 1405 or § 1407. In many cases, termination of this particular customer would not have occurred in any event within the time frame of the requested extension. Moreover, an extension saves the utility the expense of unnecessary termination. Also, an extension of time does not involve a waiver of the utility's right to terminate service within the sixty (60) day life of the termination notice nor any "amortization" of payments. For these reasons, a customer who defaults on a utility established extension should not be considered to have defaulted on a "payment agreement" within the meaning of § 1407(c)(2)(i).

Arrangements for Previously Unbilled Service. As previously stated, Action Alliance agrees with the Commission that a payment arrangement under § 56.14 (Previously unbilled utility service) is not a "payment agreement" within the meaning of § 1403. The § 1403 definition of "payment agreement" concerns payment agreements concerning billed, not unbilled service. For this reason, the General Assembly anticipated no potential conflict between § 1405 limitations and § 1407 restrictions concerning payment agreements on the one hand, and § 56.14 arrangements on the other. Section 56.14 is not among the Chapter 56 provisions which the General Assembly identified as potentially superseded by Chapter 14.[33] A default on a § 56.14 payment arrangement should not be counted as a default within the meaning of § 1407(c)(2)(i).

Budget Billing and Budget Billing True-ups. Section 56.12(7) requires that utilities provide an "equal monthly billing" procedure which is known as "budget" billing. This "equal monthly billing" procedure and related annual "true-ups" involving provision for credit/payment for over/under billings has been recently reviewed and addressed in a

[33] 66 Pa.C.S. §1401 (Historical and Statutory Notes).

Commission Order.[34] Although budget billing plans at times involve deferment of payment of charges for service rendered, these plans do not constitute "payment agreements" within the meaning of § 1407(c)(2)(i). A participant in a budget billing program, unlike a party to a payment agreement, does not fit within the definition of a payment agreement participant as one "who admits liability for billed service" and "is allowed to pay the unpaid balance of the account in one or more payments." Rather, the participant in a budget billing program pays for billed service as billed, with the understanding that there may be subsequent bills to cover service received but not yet billed. The Commission should specify that neither a budget billing plan, nor Commission rules providing for the payment of annual "true-up" balances in installments shall constitute a "payment agreement" within the meaning of § 1403.

Medical certification "equitable arrangement" to make payment. A customer in a household which has obtained a stay of termination or a restoration of service based upon a medical certification has, under §§ 56.114 and 56.116, a duty to "equitably arrange to make payment on all bills." Action Alliance submits that so long as a customer receiving service under a medical certification pays bills for current service (or complies with an arrangement with the utility concerning the amounts of payment while under a medical certification), the stay of termination or restored service should not be terminated. In the event that a customer defaults on the "equitable arrangement," however, this default should not be considered a default on a payment agreement within the meaning of § 1407(c)(2)(i). Equitable arrangements made within the context of a medical emergency are not payment agreements because they are granted for remedial purposes, outside of the collections process, and because they do not involve an amortization of an unbilled balance for which the customer admits liability.

Customer Assistance Programs. The § 1403 Definitions section treats a "payment agreement" and a "customer assistance program" as two distinct concepts. A "customer assistance program" is not a "payment agreement" under the Chapter 14. Unlike a party to a payment agreement, a CAP customer does not agree to pay the outstanding balance on his account; rather, a CAP customer enrolls in a program in which he/she receives discounted

[34] In re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing, PUC Docket No. M -

bills going forward, makes monthly payments on those bills, and has the opportunity to obtain pre-CAP arrearage forgiveness according to the terms of the particular utility's CAP program. For this reason, a default on a CAP program resulting in termination of service should not be counted as a default on a "payment agreement" for the purposes of § 1407(c)(2)(i). Since the vast majority of CAP customers were "payment troubled" pre-CAP, most will have defaulted on at least one payment agreement prior to learning about and enrolling in CAP. If Section 1407(c)(2)(i) is interpreted to allow utilities to count a default on a CAP program as a defaulted payment agreement, a substantial percentage of CAP customers terminated for non-payment could be required to pay the total outstanding balance, including their pre-CAP arrearages up front, in order to obtain restoration of service. This result would conflict with the legislative intent, expressed in § 1403(3), which was to increase utility collections but also to "ensure that service remains available to all customers on reasonable terms and conditions."

The Commission should specify that a customer who has defaulted on his/her CAP plan has not defaulted on a "payment agreement" for the purposes of § 1407(c)(2)(i).

(ii) Clarification of what constitutes a "default" for the § 1407(c)(2)(i) purposes.

A default which is cured prior to termination is not a "default" for § 1407(c)(2)(i) purposes. Customers on payment agreements sometimes do not make their monthly payment before the due date, but make payments sufficient to bring their payment agreement current prior to the issuance of a termination notice. In other cases, customers on payment agreements make payment sufficient to bring their payment agreement current after issuance of a termination notice and prior to termination. In these situations, where the customer has cured his/her default, the customer should not be deemed to have "defaulted" under a payment agreement for § 1407(c)(2)(i) purposes.

Cure of a default under a payment agreement cancels out the default, and permits a customer to avoid termination. In the Second Implementation Order, the Commission agreed

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00051925 (Orders entered June 2, 2006 and November 14, 2006).

that termination of service could be avoided by payment of the amount past due as claimed on that notice. Second Implementation Order, at 21. Payment of that amount eliminated or nullified the grounds for termination. Similarly, cure of a default therefore should eliminate the default for § 1407(c)(2)(i) purposes. From the point of view of the customer and the utility, an account subject to a payment agreement where there has been a default, and a cure of the default, is no different from an account where there has been no default. In determining whether a customer or applicant who has been terminated for non-payment is eligible for amortization of the outstanding balance, or may be required to pay the full outstanding balance, utilities should not be permitted to count a default which has been cured prior to termination as a default precluding the customer from amortization over time of the outstanding balance.

The Commission should therefore specify that a default on a payment agreement which was cured prior to termination should not be counted as a default for the purposes of determining whether a utility is entitled to require a customer/applicant whose service has been terminated to pay the full outstanding balance as a condition of reconnection.

e. Commission-established payment agreements for "off" customers and applicants.

Action Alliance submits that § 1405 empowers the Commission to establish payment agreements within that section's limitations concerning monthly payment amounts and payment agreement time frames for customers and applicants whose service has been terminated for non-payment.

The ANOPR proposes clarification of the "role of the Commission in establishing payment agreement restoration terms for customers whose service has been terminated...." ANOPR, Appendix A, at 7. The Commission recognizes that its authority to provide Commission established payment agreements to customers and applicants whose service has been terminated was only "partially" addressed in the first Implementation Order and in the Reconsideration of Implementation Order of entered October 31, 2005. These Orders did not specifically consider whether § 1405 empowered the Commission to provide a payment

agreement to a customer or applicant whose service had been terminated. In general terms, without considering whether a customer or applicant had a previous Commission established agreement, the first Implementation Order stated only that the Commission's role in restoration cases should be limited to making sure that the utility is properly applying the provisions of § 1407(c) and that 'life events' are properly considered for those consumers above 300% of the federal poverty level." Implementation Order, at 12.

In the Reconsideration of Implementation Order, however, the Commission definitively concluded that the legislative intent underlying § 1405 was not to inordinately limit the authority of the Commission to provide appropriate protections to customers and applicants – specifically when those customers or applicants had not previously had even one Commission established payment agreement for their outstanding balance. The Commission pointed out that historically, BCS had long provided payment agreements for utility customers. Reconsideration of Implementation Order, at 18. It concluded that to the extent that § 1405 contained any ambiguity, it should be interpreted in a manner which favors the public interest in consumer protection, not the private utility interest in maximization of revenues. Id., at 21-22.

The Commission accordingly declared that § 1405 should not be interpreted to eliminate the Commission's authority to provide a payment agreement for customers and applicants who have not had one Commission established payment agreement involving the outstanding balance. In rejecting the view that the Commission was powerless to establish a payment agreement for such customers or applicants, the Commission stressed that such a narrow interpretation would violate the rule of statutory construction that bars any interpretation that would deprive the state of any prerogative unless such legislative intent is clearly manifest in the statutory language. Reconsideration Order, at 22; MCI Worldcom, Inc. v. Pennsylvania Public Utility Commission, 844 A.2d 1239 (Pa. 2004); Pennsylvania Labor Relations Board v. State College Area School District, 337 A.2d 262 (Pa. 1975).

The Reconsideration of Implementation Order did not reach the issue whether the authority of the Commission under § 1405(a) to establish one payment agreement for a customer

or applicant who had not previously had a Commission established agreement for any portion of his outstanding balance extended to customers or applicants whose service had been terminated for non-payment. On its face, § 1405 is very broad in scope. Section 1405(a) states that the "commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established by this chapter." (Emphases added). This authority therefore extends to both customers who are receiving service, customers who are not receiving service who have been recently terminated, and applicants who were formerly customers. Sections 1407(c)(2)(i), 1407(c)(2)(ii) and 1407(c)(2)(iii), concerning reconnection terms, establish the most stringent terms that a utility may require without fear of Commission sanction, but do not limit the authority of the Commission, on consideration of individual cases involving customers or applicants who have not had a previous payment agreement, from establishing a payment agreement according to the less stringent standards of § 1405.

It is anticipated that the utilities may argue that § 1405 allows Commission established payment agreements only between utilities and "customers."[35] This argument cites the terms of §§ 1405(b), 1405(d), 1405(e) and 1405(f), which define the standards for Commission established payment agreements with reference to "customers" without mention of "applicants." In contrast, § 1407, it may be argued, addresses persons without service, who by definition are said to be "applicants." This interpretation, however, is incorrect for at least two reasons.

First, if §§ 1405(b) and 1405(d) through 1405(f) are interpreted to apply only "customers," then the word "applicants" in § 1405(a) would have no meaning, because none of the standards set forth in § 1405 could be read to apply to applicants. Read in context, these subsections impose significant restrictions on the dollar terms and time lengths of payment agreements that the Commission establish. The omission of the word "applicant" in § 1405(b), (d), and (f) does not reflect an intent to limit the authority of the Commission to establish

[35] These arguments are summarized in the two Initial Decisions upholding the utility position that the Commission does not have the authority under § 1405 to make a payment agreement for customers or applicants whose service has been terminated for non-payment. See Lavrusky v. Columbia Gas of Pennsylvania, Docket No. C-20066425 (Initial Decision dated September 12, 2006); Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348 (Initial Decision dated October 12, 2006). No exceptions were taken to these decisions which became final without Commission review or endorsement pursuant to 52 Pa.Code §5.536.

payment agreements for applicants, beyond the limitations which § 1405 imposes for customers. Such a significant deprivation of Commission authority should not be left to implication, but must be manifest in the statutory language. Moreover, if these subsections are read to not apply to "applicants," then the specific reference to "applicants" in § 1405(a) would be meaningless. Such an interpretation would violate the rule of statutory interpretation which requires that meaning be given to every word in a provision. Lukus v. Westinghouse Electric Corp. 276 Pa.Super. 232, 419 A.2d 431 (1980).

Second, this interpretation ignores the fact, as the Commission has already determined, that § 1407 applies not just to applicants as non-customers without service, but also to customers without service. For this reason, § 1405 payment agreements can not be characterized as applying only to customers receiving service, while § 1407 restoration terms apply only to non-customers and therefore may not be subject to § 1405 Commission established payment agreements. As the Commission held in the first Implementation Order, until a final bill has become past due, a customer whose service has been terminated remains a customer. Implementation Order, at 22. The statutory definition of "customer" set forth in § 1403 defines a "customer" as one in "whose name a residential service account is listed." Also included within this definition of customer is "any occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested." An occupant who is requesting reconnection of service under § 1407 is also included within the definition of a "customer." To the extent that § 1405 allows the Commission to establish one payment agreement for applicants and customers, such payment agreements are available not only to current customers and applicants receiving service but also to customers and applicants whose service has been terminated and who are requesting service reconnection.

It is also anticipated that utilities may argue that the § 1405 payment agreement standards are in conflict with the § 1407 restoration standards. However, this position ignores the fact that § 1405 establishes standards for Commission ordered agreements, while § 1407 gives utilities permission, without fear of Commission citation for an "infraction" or violation of statutory or regulatory rules, to demand the maximums allowed in § 1407. In many cases, utilities are

authorized under § 1407 to demand full payment of the total outstanding balance, a reconnection fee, and a deposit equal to one month's budget bill as a precondition of service restoration. When these requirements are unaffordable, households will endure extended periods of time without necessary service.

The numbers of households without service, as reported in the Commission's Cold Weather Survey, demonstrates that such requirements are often unaffordable. Thousands of households have been required to endure extended periods of in the cold weather period without necessary service. Especially in the October to April period, deprivation of heat related service will inevitably have tragic results.

It is inconceivable that the legislature would have chosen to deprive the Commission of the ability to intervene in this situation, subject to § 1405 limitations concerning payment agreement terms, for terminated customers and applicants who have not had a previous Commission established payment agreement. Chapter 14 does not exhibit a manifest legislative intent to deprive the Commission of any ability, however circumscribed, to provide a Commission established payment agreement to customers whose service has been terminated. In accordance with the rule of statutory interpretation that requires a clear legislative intent to deprive the state of a prerogative which it has historically exercised, the Commission should specify that it has the authority under Chapter 14 to make Commission established agreements for "off" customers and applicants who have not previously had such an agreement for their outstanding balance. MCI Worldcom, Inc. v. Pennsylvania Public Utility Commission, 844 A.2d 1239 (Pa. 2004); Pennsylvania Labor Relations Board v. State College Area School District, 337 A.2d 262 (Pa. 1975).

f. Protections for victims of domestic violence.

As discussed in Section 1 (f) of these Comments, 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, including information collected in the process

of handling both informal and formal complaints. Such measures are essential to protect victims of abuse from risk of further abuse, either in retaliation or as a result of disclosure of the victim's current address or other pertinent data. Section 1(f) of these comments contains proposed regulatory language.

In addition, the "Checklist Before Filing A Complaint with the PUC" currently provided on the Commission's website and in its Informal Complaint materials needs to be revised. The Checklist currently states "If a Protection From Abuse Order has been issued against you, are you willing to admit to this when filing this complaint?" This is problematic in two respects. First, it erroneously refers to Orders issued against the individual filing the complaint, rather than Protection From Abuse Orders issued to protect the individual filing the complaint or her household members (as discussed in section 1(b) of these comments). Second, the language "are you willing to admit to this" is likely to inappropriately discourage victims from disclosing.

Action Alliance urges the Commission to instead state, as it does in the informational page concerning Informal Complaints on its website "If you have a Protection From Abuse (PFA) Order, please indicate that ….when you provide a summary of your problem …so that we can make sure your account receives the special protections provided under law." (http://www.puc.state.pa.us/general/informal_complaint.aspx). The Informal Complaint Instructions, which do not currently discuss Protection From Abuse Orders at all, should be amended to include this information as well. This information is needed so that victims will understand the intent and consequences of the request for information. In addition, the Informal Complaint form should be amended to specifically ask if the individual (or a member of the individual's household) has a Protection From Abuse Order (and to explain that the purpose of asking this question is that special protections are provided), rather than expecting the individual to add this information into the summary of the problem.

Similarly, the Formal Complaint Form and accompanying Instructions (item number 8 on the instructions and item number 6 on the complaint form) should be amended in several respects. First, the Commission should add "or for the safety of a member of your household" to

the question "Has a court granted a "Protection From Abuse" order for your personal safety?" Second, the documents should explain that the purpose of asking this question is that special protections are provided. Without this explanation victims of domestic violence may not feel comfortable disclosing. We urge the use of language along the lines of "If you or someone in your household is a victim of domestic violence who has a Protection From Abuse Order, there are some additional protections available to you concerning your utility service. If you want us to consider whether these protections apply to you, please answer this question."

Action Alliance also urges the Commission to revise all of its documents concerning informal and formal complaints to assure victims of domestic violence that their information will be kept confidential. We believe that domestic violence victims will be more likely to feel safe enough to disclose the existence of a Protection From Abuse Order if the Checklist, Instructions and Informal and Formal Complaint forms all stated that information concerning individuals with Protection From Abuse Orders will be kept confidential.

9. Restoration of Service.

a. Mandatory enrollment in CAP of eligible customers/applicants whose service has been terminated.

Section 1407(c) governs payments that a utility may require from customers or applicants whose service has been terminated as a condition of reconnection of service. This section authorizes a utility to require a reconnection fee, and defines maximum payment terms that a utility may demand without fear of being cited for an infraction by the Commission. Section 1407(c)(2)(iii) requires that a city natural gas operation (PGW) restore service to a low income customer or applicant, upon payment of the reconnection fee only, if that person had not previously been enrolled in a CAP program.

The Commission should specify that all utilities, not just PGW, must restore service on these terms. In the first Implementation Order, the Commission affirmed the continued viability

of § 56.97 (Procedures upon ratepayer or occupant contact prior to termination), thereby affirming the utility's obligation to inform a customer/occupant of all "available means for avoiding termination." Implementation Order, at 12-5. For a CAP eligible customer, enrollment in a CAP program is necessarily one of those "available means." When a CAP eligible customer's service is terminated for non-payment, that termination is necessarily the result of a failure in pre-termination processes which are intended to ensure that CAP eligible customers understand that termination may be avoided through enrollment and that utilities take affirmative actions to assist them in the enrollment process.

b. State-wide regulatory guidance is necessary for the implementation of §§1407(d) and 1407(e).

Section 1407(d) provides that a "utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there." Section 1407(e) describes the documents and methods by which a utility may "establish" that the applicant had previously resided at the property.

Chapter 14's revision of Chapter 56 rules concerning responsibility for bills for service provided in the name of third parties was a specific response to the so-called "name-game" by which a customer avoided payment of an outstanding utility balance while continuing to benefit from service to the account premises, by allowing another occupant to open a new account starting with a zero balance in the occupant's name for service to those same premises. In the brief legislative debate preceding passage of Chapter 14, a Philadelphia representative justified his support for the legislation stating that it "gives utilities tools to combat the name game, which is where persons avoid paying utility bills until terminated and then get service reconnected in another name."[36] In enacting this provision, the legislature recognized that this provision could produce unjust results. For example, § 1417 exempted persons under a Protection from Abuse Order from this provision, in recognition that it would not be equitable to require a victim of

[36] *Pennsylvania Legislative Journal-House,* November 19, 2004, at 2224.

spousal abuse to assume responsibility for a bill in the name of the abuser. This exemption suggests that this anti-name game provision should be interpreted narrowly to avoid unjust results.

Action Alliance agrees that the Commission is correct to focus on how the specific Chapter 14 "anti-name-game" provisions, § 1407(d) and 1407(e) are to be implemented. As the Commission suggested in the Second Implementation Order, Chapter 14 was not intended to inaugurate a system of blanket liability for adults receiving public utility service in Pennsylvania, regardless of whether the adult was the person who applied for service or other owners, lessees or occupants. Second Implementation Order, at 44. Thus, the ANOPR states that Section 1407 allows utility to:

> also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there." This section is elaborated on by the section that follows it at § 1407(e), *i.e.,* [a] public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission.

ANOPR, Appendix A, at 7.

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

While utilities should be required to set forth in their Commission-approved tariffs the procedures and standard to be used to determine residency issues pursuant to § 1407(e), Action Alliance submits that the Commission should provide the following uniform standards regarding implementation of §§ 1407(d) and 1407(e) in Chapter 56.

(i) Section 1407(d) issues requiring state-wide regulatory guidance.

Liability of minors. If the applicant for service resided at the property as an unemancipated minor, this applicant should not be required to pay or arrange to pay the portion of the outstanding balance that accrued at the property while the applicant was a minor. As an unemancipated minor, the applicant could not have been held responsible for the service during the time that it was being received. It is inconsistent and unfair to hold a former minor responsible for service he/she received as a prior resident, at a time when he/she could not have been a customer.

Applicants subject to liability under § 1407(d) may make a payment arrangement for the "outstanding balance or portion of outstanding balance." Section 1407(d) requires an applicant to pay "any outstanding balance or portion of an outstanding balance" when applying for service at a property where service has been terminated, when the applicant had previously resided at the property. The Commission should specify that an applicant who is subject to this requirement is not required by § 1407(d) to pay the outstanding balance upfront, as a condition of service or to pay a reconnection fee. Unlike § 1407(c), which requires "[f]ull payment of any outstanding balance"(emphases added), § 1407(d) requires only "payment of any outstanding balance or portion of an outstanding balance." An applicant who is a prior resident and liable under § 1407(d) should have the same rights as applicants for service who are not subject to § 1407(d) liability, including the right to enter into a § 1407 utility established payment agreement or a § 1405 Commission established payment agreement for the outstanding balance.

(ii) Section 1407(e) issues requiring statewide regulatory guidance.

Appearance of the applicant's name on a mortgage, deed, or lease does not establish a presumption of prior residency. The Commission should specify that the appearance of a name on a mortgage, deed or lease does not establish an irrebuttable or rebuttable presumption that a mortgagor, owner or lessee resided at the property to which service was provided. To provide 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 that the applicant was an occupant of account premises where there is an outstanding

balance from the effective date of the mortgage, deed or lease.

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 create burden shifting associated with the creation of a rebuttable presumption.

If the legislature had intended to establish any type of presumption on the basis of the presence of a name on a mortgage, deed or lease, it would have done so explicitly. Moreover, establishment of a presumption linking mortgage, deed or lease information to financial liability is inconsistent with the facts of daily experience. 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. In sum, the provision does not establish a presumption, but only authorizes a utility, in the absence of other evidence, to rely on specified written documents – a mortgage, deed or lease – in the utility's 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.

An oral lease does not meet the "mortgage, deed or lease" requirement for establishing a permissive inference of prior residency. The Commission should specify that a utility is not entitled to establish that an applicant is a prior resident who may be held liable for utility service provided in the name of another person, on the basis of information concerning the existence of an oral lease. A utility is statutorily entitled to rely initially only on the specified documentary mortgage, deed or lease evidence. Both the definition of "Customer" and "Applicant" in § 1403 authorize reliance on mortgage, deed or lease information when the alleged occupant's name "appears" on the "mortgage, deed or lease." To "appear" according to Webster's is "to be or come in sight."[37] A name does not "appear" on an oral lease, because

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

obviously, an oral lease can not be seen with the eyes.

Conclusory statement of credit reporting service, without more, not sufficient to establish prior residency. The Commission should also specify that whatever information may be available from a "commercially available consumer credit reporting service," the utility must provide the customer not merely with a written statement providing the ultimate conclusion, but with a reasonable summary of the factual basis for the conclusion. The Commission has addressed the adequacy of consumer credit reports in another context. In the Bookstaber v. PECO Energy Company, PUC 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 an occupant of the account premises for a particular period of time must provide the reasons for this conclusion.

Utility position concerning § 1407(d) liability must be in writing and inform applicant of dispute/appeal rights. The Commission should mandate that an applicant who is required by a utility to assume responsibility for an outstanding bill at the account premises pursuant to § 1407(e) must be provided with a written explanation of the reasons for this requirement and a description of the means by which he/she may dispute this requirement, including an appeal to the Commission.

c. Statute of limitations.

The ANOPR proposes that the Commission adopt a four year statute of limitations governing the length of time for which an occupant applying for service may be held responsible when obligated under § 1407(d) to assume liability for the bill of service provided in the name of another person. ANOPR, Appendix A, at 7. Action Alliance submits that some limitation must be imposed, to protect the applicant from having to defend against a stale claim. However, in these circumstances, the four year statute of limitations is not appropriate.

As an alternative, Action Alliance proposes the commonwealth's two year statute of limitations, for a "taking, detaining or injuring personal property, including actions for specific recovery thereof." 42 Pa.C.S. § 5524(3). This statute of limitations covers actions for conversion and unjust enrichment. Kingston Coal Company v. Felton Mining Company, Inc., 456 Pa.Super. 270, 690 A.2d 284 (1997).

A utility claim based on § 1407(d) is based on the allegation that the occupant resided at premises to which utility service was provided, but not paid for by the customer primarily responsible. Under § 1407(d), an occupant applying for service at premises to which service has been terminate may be required to assume liability for the unpaid service provided during the time that the occupant resided at the premises. The fact that occupants, whether or not they are on the mortgage, deed or lease can be held liable for unpaid utility service pursuant to § 1407(d) underscores that the utility's claim is one for unjust enrichment, not a claim based on any contractual relationship with the utility. A two year statute of limitations is also reasonable, because occupants, especially low and lower income occupants, may not have the means readily to establish where they were living more than two years previously.

d. Notice of more lenient terms for victims of domestic violence.

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 concerning restoration of service, denying credit, requiring a deposit, or listing the payments which must be made as a condition of the utility restoring service, and in any oral conversations with applicants or customers concerning restoration of service. Again, 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 Protection from Abuse Order because it would be too dangerous to do so, as discussed in section

1 (d) of these Comments.

10. Reporting Requirements.

Action Alliance supports the PULP Comments with regard to Reporting Requirements and incorporates them herein by reference.

In addition, 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. Action Alliance urges the Commission to require utilities to report:

(a) 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;

(b) 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;

(c) 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 provide alternative verification;

(d) 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.

11. Other Chapter 14 Issues.

a. <u>Customers with Limited English Proficiency.</u>

In the Second Implementation Order, the Commission expected the Chapter 56

rulemaking process to address the issues of Limited English Proficient (LEP) customers. Second Implementation Order, at 46. The Commission noted that § 56.201 – a section not inconsistent with Chapter 14 – addresses the LEP issues to a "limited extent." Second Implementation Order, at 46. Section 56.201 requires provision of "billing information" in Spanish as well as English. "Billing information" is defined at § 56.15 as thirteen (13) distinct items, including, in addition to the amount due and the due date, reconnection terms, security deposit amounts, and inquiry or complaint procedures. Section 56.15 has not been superseded by Chapter 14. Action Alliance urges the Commission to develop regulations and procedures concerning measures to ensure that LEP customers receive effective communications.

The increasing numbers of LEP individuals in the Commonwealth who speak languages other than Spanish, along with the requirements of Title VI of the Civil Rights Act of 1964 (which apply to entities receiving LIHEAP funds), compels the Commission to revisit the issue of language access, particularly in the context of possible winter terminations. Census data from 2000 indicates significant populations who speak English "less than very well" across the state, including 8% in Philadelphia, 9% in Norristown, 13.8% in Reading, 16.9% in Lancaster, 11.7% in Allentown, 5.3% in State College, 18.6% in York, and 7.7% in Harrisburg. These figures make the provision of language accessible services a matter of common sense and good business practice in addition to compliance with federal law. Guiding the utilities in the provision of language access is consistent with the Commission's policy of creating "fair and equitable residential utility service standards" to be "liberally construed...to ensure justice for all concerned," under §56.1.

Title VI requires that recipients of federal financial assistance provide oral interpretation in all languages encountered (by use of telephone or in-person interpreter, as appropriate) and provide written translations of vital documents where the geographic service area includes 1,000 individuals or a proportion of 5% or more in a particular language population. LIHEAP funds assigned to PGW and other utilities are federal financial assistance, just as Medicaid payments to health care providers. The Department of Health and Human Services Administration for Children and Families issued a federal LIHEAP "Policy Guidance on Serving Persons with

Limited English Proficiency." That Guidance states:

> All entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance...Examples of covered entities include but are not limited to...public and private contractors, subcontractors and vendors....

LIHEAP- IM-2001-2 (dated 10/10/00), http://www.acf.dhhs.gov/programs/liheap/im01-02.htm> (emphasis added).

Action Alliance urges the Commission to require the use of contracted (telephone or in-person) oral interpretation providers, and to establish telephone systems which allow access by those customers who will need oral interpretation.

The Commission should require the use of "taglines" with every outgoing termination notice. A tagline is a short statement, translated into several common languages on one document or insert. Taglines should, at a minimum, inform LEP customers that their utilities service is about to change, of a means by which to contact the utility to resolve the issue, and that free interpretation will be provided. Taglines should always include a telephone number staffed by someone trained to access the contracted telephone interpretation provider. Action Alliance urges the Commission to require utilities to assess and record what languages are spoken by their customers and to provide written translation of notices into those languages, including information on how to prevent winter termination.

Finally, Action Alliance urges the Commission to require that utilities provide notice to their customers of the availability of free, professional interpreters or bilingual staff to assist LEPs.[38]

b. Equal Monthly Billing.

Section 56.12(7) requires that utilities provide an "equal monthly billing" procedure

[38] The termination notice, approved by the Commission in November 2005 for use by utilities, contain an English sentence that states "If you have trouble understanding or speaking English, please call us at xxx-xxx-xxxx for free interpretation." This text is placed in the middle of a page full of English text. The sentence should be placed in a

which is known as "budget" billing. Although budget billing plans involve deferment of payment of charges for service rendered, these plans do not constitute "payment agreements" within the meaning of § 1407. A participant in a budget billing program, unlike a party to a payment agreement, does not fit within the definition of a payment agreement participant as one "who admits liability for billed service" and "is allowed to pay the unpaid balance of the account in one or more payments." Rather, the participant in a budget billing program pays for billed service as billed, with the understanding that there will be subsequent bills for service received, but not yet billed, or, in the alternative, a credit for bills paid when less service is provided.

Last year, in an effort to clarify how Chapter 56.12(7) should be implemented, the Commission issued an Interpretative Order concerning budget billing.[39] Part of that Interpretative Order addressed how utilities should bill for the annual "true-up" necessary when the total billed over the previous twelve months under the budget billing plan does not fully recover the amount of service provided. The Commission sought to address the customer affordability problem which may occur once a year when customers are required to pay a "true-up" amount in addition to their standard budget bill, in order to allow the utility to recover for previously unbilled service. The Commission proposed that in cases where the "true-up" amount was less than 100% of the budget amount, customers should be allowed 3-6 months to pay off this amount in monthly installments. In cases where the "true-up" amount was 100% or more of the budget amount, the Commission proposed that customers should be given twelve months to pay off this amount in monthly installments.

In response to this request, some utilities asserted that this proposal would in some cases violate Chapter 14, because it would require utilities to provide a customer with a second or subsequent utility established payment agreement, or with a second or subsequent Commission established payment agreement. On reconsideration, the Commission amended its Final Interpretative Order, eliminating the provisions concerning billing for "true-up" amounts. In so doing, the Commission indicated that it was not its intent at that time to "resolve interpretational

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more eye-catching area of the notice and translated into the relevant languages.

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

issues that will be the subject of the rulemaking required at Section 6 of Act 201 to amend Chapter 56."[40]

As has been demonstrated, budget billing itself is not a payment agreement within the meaning of § 1403. A "true-up amount" is a derivative of a budget billing plan which was not impacted by Chapter 14. It may not, therefore, be treated as a "payment agreement" for Chapter 14 purposes. Moreover, a true-up amount involves an agreement not for "billed service" but for "unbilled service." Payment agreements for the purposes of §§ 1403, 1405 and 1407 all involve agreements to pay for "billed service." For that additional reason, a "true-up" agreement does not constitute a "payment agreement" for Chapter 14 purposes, and is therefore not subject to § 1405 limitations on the number of Commission established payment agreements.

c. Household Income.

Chapter 14 establishes standards for payment agreements, winter terminations, deposit terms, late payment waivers and utility established reconnection terms which are based upon the "household income" of the customer or applicant. § 1403 defines "household income" as "[t]he combined gross income of all adults in a residential household who benefit from the public utility service." This definition excludes income from children. In calculating household income, the income of any children in the household, including but not limited to a child's SSI, Social Security, welfare, child support, or earnings, must be excluded. Utilities must therefore distinguish between income of adults in the household and income of any children in the household in determining how a household may be treated for purposes of payment agreements, winter termination and service reconnection.

[40] In re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing, Docket No. M - 00051925 (Order entered November 14, 2006), at 10.

III. CONCLUSION.

For all the foregoing reasons, Action Alliance of Senior Citizens, Tenant Union Representative Network and the Association of Community Organizations for Reform Now (ACORN) request that the Commission issue Proposed Regulations which are consistent with the recommendations contained in these Comments.

Respectfully submitted,

_____

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February 14, 2007

ATTACHMENT "A"

Protection From Abuse Order Delayed Verification Form

Name: _____ Utility Account Number: _____

I,_____, request that I be permitted to provide alternative or delayed verification of the Protection From Abuse Order to protect me or a member of my household.

☐ I hereby verify that a Protection From Abuse Order was entered on behalf of me or a member of my household. Due to circumstances caused by the abuse, I am unable to provide a copy of the Order at this time. I request that I be given further time to obtain a copy of the order when I am able to do so.

OR

☐ I hereby verify that I have applied for a PFA Order but have not yet received it. I am awaiting a hearing and /or decision by the Court. Once the Court decides the matter, I will provide a copy of the Order as soon as I am able to do so.

The above information is true and correct to the best of my knowledge.

Date: _____ _____

Signature

ATTACHMENT "B"

Domestic Violence Alternative Verification Form

Name: _____ Utility Account Number: _____

I, _____, request that I be permitted to provide alternative verification of the abuse experienced by me or a member of my household. I hereby verify that I have not been able to safely obtain a Protection From Abuse Order.

Date: _____ _____
(signature)

☐ I submit one of the following types of records, if available:

- ☐ Law enforcement records
- ☐ Court records
- ☐ Participation card from Office of Victim Advocate Address Confidentiality Program
- ☐ Other _____

OR

☐ Because I cannot safely obtain or provide any of the types of records listed above, I authorize _____to complete the verification below and to provide it to the Utility for the purpose of verifying the abuse and my inability to safely obtain a Protection From Abuse Order.

Date: _____ _____
Signature

This Statement is submitted by:

_____ (Name)
_____ (Title)
_____ (Organizational Affiliation)
_____ (Address)

I am (check one):

☐ A domestic violence service provider
☐ A medical, psychological or social service provider
☐ A law enforcement professional
☐ A legal representative
☐ A relative, friend or neighbor
☐ Other (specify) _____

I have knowledge of the claimant's experience with and/or steps to escape domestic violence and submit this statement to verify that the claimant or a member of the claimant's household has been a victim of abuse and is unable to safely obtain a Protection From Abuse Order.

Date: _____ _____
Signature

ATTACHMENT "C"

IMPORTANT TO KNOW

If you or a member of your household has a **Protection from Abuse Order (PFA)**, you have the following protections, regardless of your income:

- Company Name cannot shut off your gas or electric service during the winter without PUC permission.
- Depending on your income, a special payment arrangement may be available.
- Service may not be terminated on a Friday.
- You may not be held responsible for a bill in someone else's name.
- You may not be required to pay a security deposit. If you are required to pay a security deposit, you may be able to pay it over three payments.
- You will receive additional notice prior to termination.

What is a Protection from Abuse Order (PFA)?

A PFA is an order from the court that protects you and your children from your abuser. It is a civil order that you can request on your own behalf against a family or household member, sexual or intimate partner, or the other parent of your child who is abusing you. Under the law, abuse is considered:

- Bodily injury or rape, or attempted bodily injury or rape. This includes hitting, slapping, kicking, pushing, shoving, or forcing you to have sex when you do not want to. Criminal charges do not need to be filed.
- Reasonable fear of imminent serious bodily injury. This includes threatening to hurt you.
- False imprisonment, including being kept or held for a short period of time or being grabbed by the arms and not allowed to move or leave.
- Child abuse, including physical or sexual abuse.
- Stalking, including being followed or watched at home or at work, and/or being sent unwanted letters, gifts, email or telephone calls.

Domestic Violence Programs

Your local domestic violence hotline is available 24 hours a day, and all services are free and confidential. For more information, look in the blue pages of your local phone book, or call 1-800-799-SAFE for contact information.

Note: In order to receive these protections from NAME COMPANY, you will be required to provide NAME COMPANY with a copy of your PFA Order. However, NAME COMPANY will keep your information confidential. 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 a copy of the Order.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

ENERGY ASSISTANCE AFFIDAVIT

COUNTY ASSISTANCE OFFICE	DATE

AFFIDAVIT

I, _____ of _____
(NAME) (ADDRESS)

_____, this _____day of

_____, having made application to the Department of Public Welfare for financial assistance pursuant to the Energy Assistance Program, and

Recognizing that the Department of Public Welfare has requested my Social Security Number to cross check for fraud or duplication of payments, do hereby swear or affirm that

☐ To the best of my knowledge I do not have a Social Security Number and am, therefore, unable to comply with the Department's request.

☐ I am exercising my rights under Section 7 of the Privacy Act of 1974, and refuse to disclose my Social Security Number.

_____
Signature of Applicant

_____
Signature of Worker

PWEA 4 11/03

ATTACHMENT "D"

ATTACHMENT "E"
[Proposed attachment to PGW termination notices.]

URGENT!
ACT NOW TO STOP A SHUT-OFF!

Under the new law, there are special rules that protect certain households from being shut off between December 1 and March 31. We need to know if you fit into one of the groups listed below. **If any of these cases applies to you, check the box and return this form to PGW immediately:**

☐ The income of the adults in your household is below **150%** of the federal poverty level. Use the chart below to see if you fit into this group.

Note: If you are in this group, you may be eligible for PGW's Customer Responsibility Program (CRP). If you are eligible for CRP and apply, your shut-off will be cancelled. Once enrolled in CRP, you can receive discounted bills going forward and have your back balance forgiven over time. Call PGW or come to a district office to find out if you are eligible.

Monthly Adult Income – 2007 Federal Poverty Guidelines

Household Size (including children)	1	2	3	4	Each Additional Person
150% of Poverty	$1,197	$1,605	$2,012	$2,420	+$408
250% of Poverty	$1,994	$2,673	$3,352	$4,031	+$679

☐ The income of the adults in your household is between **150% and 250%** of the federal poverty level. Use the chart above to see if you fit into this group. Only the following households in this group have protection from winter shut-off. Check if any of these boxes applies to your household:

☐ A person in your household is 65 years old or more.
Name of the person:_____. Date of birth of the person: _____.

☐ A person in your household is 12 years old or less.
Name of the person:_____. Date of birth of the person: _____.

☐ You have paid half of your last two monthly gas bills. Check the box on the left and (1) pay at least the amount in the box below, OR (2) show us why our records are wrong.

Our records show that you have paid less than half of your last two bills. Your last two monthly bills were for $XX.xx together. We think you have paid $XX.xx toward those bills. You need to pay $XX.xx to protect yourself from shut-off.

☐ You have paid 15% of the income of the adults in your household for the last two months. Check the box on the left and (1) pay at least the amount in the box below, OR (2) show us that your income in the past two months was less than $XX.xx total.

Our records show you paid less than 15% of the adult household income for the last two months. We think your income in the past two months was $XX.xx total. We think you have paid $XX.xx in the past two months. You need to pay $XX.xx to protect yourself from shut-off. Or you can protect yourself from shut-off by showing us that your income in the past two months was less than $XX.xx total.

☐ If you or someone in your household is a victim of domestic violence who has a Protection from Abuse order, there are some additional protections available to you. If you want us to consider whether these protections apply to you, please check here.

We may ask you for proof of what you have told us.

Keep in mind:

- The winter termination period ends April 1. We will be able to shut off your gas service after that date, even if you fit into one of the above categories. **If you are having trouble paying your bill, please call us immediately to arrange for payment, so we do not have to shut off your service.**

- We may shut off your gas in the winter if we get permission from the Public Utility Commission, even if you fit into one of the above categories.

If you need notices or phone calls in another language, write your language here:

_____

[This last line should be printed in six languages: Spanish, Russian, Vietnamese, Chinese, Cambodian, and French.]