

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA,
TENANT UNION REPRESENTATIVE NETWORK
AND ACORN**

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EXHIBIT A – Verified Statement of Josie B. Hyman, with attachments (18 pages in exhibit)

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, making more accessible and expanding the consumer protections that help 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”) Proposed Rulemaking Order (hereinafter “Order”), published in the *Pennsylvania Bulletin* on February 14, 2009, 39 Pa.B. 7.

Action Alliance of Senior Citizens of Greater Philadelphia is a not-for-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 not-for-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 not-for-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.

The Order proposes amendments to 52 Pa. Code Chapter 56 to comply with 66 Pa.C.S. Chapter 14 and to make certain other changes. In November, 2004, SB 677 or Act 201, was enacted and amended Title 66 by adding Chapter 14 (66 PaC.S. §§ 1401-1418), Responsible Utility Customer Protection. “Act 201 is intended to protect responsible bill paying customers from rate increases attributable to the uncollectible accounts of *customers that can afford to pay their bills, but choose not to pay.*” Order, at 1 (emphasis added). Action Alliance’s comments focus primarily on vulnerable and low income customers who *cannot* afford to pay utility bills at full rates, and often have difficulty paying monthly bills in full and on time.

Every two years after the effective date of December 14, 2004, the Commission must report to the General Assembly and the Governor, pursuant to § 1415, regarding the implementation and application of Chapter 14. The report must address, *inter alia*, the level of access to utility services by residential customers including low-income customers and Chapter 14's effect upon the level of consumer complaints processed by the Commission. On December 14, 2008, the Commission issued the *Second Biennial Report to the General Assembly and the Governor pursuant to Section 1415* (hereinafter "Second Biennial Report").¹ The Commission has so far noted the following concerns relating to low and lower income utility consumers:

- "The Commission is concerned that failure of utilities to fully implement Chapter 14 leads to unlawful or erroneous terminations, which present serious issues of health and safety for both the individuals directly involved and the surrounding community." *Second Biennial Report*, at 37.
- "Terminations increased by 60% for the electric industry and by 21% for the gas industry from 2004-07. This pattern has continued into 2008." *Id.*, at 38.
- "Section 1405(d) of Chapter 14 prohibits the Commission from establishing a second payment agreement if the customer has defaulted on a previous payment agreement;" through October 10, 2008, 47,372 "customers [were] turned away by the Commission because it was determined that the customer was not eligible for a payment arrangement" per Section 1405(d). *Id.*, at 35.
- "Section 1405(c) forbids the Commission from establishing a payment agreement for customers who participate in a utility's CAP [customer assistance program];" through October 10, 2008, 24,144 "customers [were] turned away by the Commission because it was determined the customer was not eligible for a payment arrangement because they were a participant in the utility's CAP." *Id.*, at 35.

¹ Second Biennial Report to the General Assembly and the Governor Pursuant to Section 1415 (December 14, 2008) (accessed April 14, 2009 at http://www.puc.state.pa.us/General/publications_reports/pdf/Chapter14-Biennial121408.pdf).

- “Since the passage of Chapter 14, the Commission has turned away 71,516 customers seeking PARs [payment agreement requests]. Consumer complaint volume has declined by 12% from 2004-07 while PARs declined by 46% over this time.” Id., at 39.
- “Low-income households who are placed into a CAP program and successfully manage to pay their CAP bills represent the success of the safety net that is in place for our poorest households. However, there are low-income households who are payment-troubled and have not yet been placed into a CAP program. In fairness to the companies, this is a diminishing, but still significant, number of such households since the passage of Chapter 14. Consequently, there is still room for CAP programs to grow.” Id., at 39.
- “For CAP customers who fail to meet their obligations under CAP, there is no recourse other than to pay their arrearages and current balances in order to maintain utility service. This is arguably a losing proposition for them. In the Commission’s opinion, these customers are at the greatest risk because they are out of options.” Id., at 39.

Action Alliance makes recommendations, in these Comments, that are consistent with Chapter 14 and at the same time make utility service available based on equitable terms and conditions to consumers at all income levels. Caution should be taken not to adopt Chapter 56 proposals that exceed the already harsh Chapter 14 limitations on customer safeguards and would make utility service unavailable to identifiable categories of residential customers on the basis of prior actions reflecting circumstances beyond their control.

II. COMMENTS ON PROPOSED RULEMAKING

In these Comments, Action Alliance provides brief discussion for each of the proposed rules that it supports and provides more detailed discussion and recommendations for those proposed rules that it does not fully support. Several changes in definitions are proposed in relevant issue sections to make the terms clearer in light of Chapter 14 provisions. Action Alliance’s Comments generally follow the ordering of issues that the Commission provides in

Attachment One, which was attached to the Order and includes a summary of comments along with the Commission's discussion of the proposed regulations. The proposed Chapter 56 regulations are set forth in Annex A of the Order. Action Alliance's proposed regulation changes are shown where noted below in bold font, with capital letters for additions and brackets for deletions.

1. Rules that apply to victims under a protection from abuse (PFA) order as provided by 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

- a. Rules covering victims under a PFA should be in separate chapters.

Action Alliance supports the Commission's proposal to create separate chapters to address the utilities and consumers that are specifically excluded from Chapter 14, under Section 1417 and similar provisions. Action Alliance further supports the Commission's plan to incorporate into the separate chapters those sections of Chapter 14 that provide a higher level of consumer protection than in the current version of Chapter 56. As the Commission notes, the General Assembly certainly did not intend to provide victims with a PFA order with a lesser level of consumer protections than other customers. Order, Attachment One, at 6.

- b. A separate proceeding to establish a Policy Statement relating to victims of abuse.

Action Alliance supports the Commission's proposal to address, in an upcoming, separate proceeding, to establish a Policy Statement relating to the many significant issues of victims of abuse, which may not be appropriately placed in these regulations. A separate proceeding will allow for participation of the various organizations who provide supportive services to victims of abuse and whose staff will provide practical recommendations regarding training, consumer education, record keeping, confidentiality and other related matters. Issues of protection for victims of domestic violence are appropriately a subject of a separate proceeding and separate Policy Statement where these issues can be addressed "in a comprehensive and flexible fashion." Order, Attachment One, at 8.

In the meantime, Action Alliance requests that the Commission provide express interim guidance to the utilities to correct blatantly incorrect interpretations of Section 1417.² Alternatively, Action Alliance urges the Commission to start the process to establish the Policy Statement as soon as possible, or within six months of this submission.

c. Notice of PFA exemptions in all contacts.

Action Alliance supports the Commission's proposed requirements that public utilities provide information about the PFA exemption in all contacts with consumers, including but not limited to, written utility application procedures, credit denial letters, rights and responsibilities summaries, 10-day written termination notices, 3-day personal contact notices, and post-termination notices.

2. Previously unbilled utility service.

a. Make-up bills, pursuant to § 56.14.

Action Alliance supports the Commission's recommendation to retain the obligation to offer an installment arrangement on make-up bills, at § 56.14, since such an arrangement concerns "unbilled" amounts, not "billed" amounts, and as such, are not considered a payment agreement in the context of Chapter 14. To avoid confusion, use of the terms "payment agreement" should be avoided in the context of arrangements to pay a make-up bill. Action Alliance proposes use of the term "installment arrangement" for these make-up bill arrangements.

² For instance, the Commission noted in Attachment One that at least one utility recommended that only a PFA granted under the laws of the Commonwealth of Pennsylvania be defined as valid, which is a dangerously narrow interpretation of section 1417. Section 1417 provides that "[t]his chapter shall not apply to victims under a protection from abuse order as provided by 23 Pa.C.S. Ch. 61 (relating to protection from abuse)." Within this cited Chapter 61 is § 6104 (relating to full faith and credit and foreign protection orders), which provides that "[a] court shall recognize and enforce a valid foreign protection order issued by a comparable court."

Action Alliance supports retaining the current threshold amounts of 50% of current bills or \$50 required for the issuance of make-up bills. The current levels are appropriate and working in an adequate fashion. Any increase in threshold – and resulting immediate demands for full payment below the threshold – would impose significant burdens on utility customers, especially on low income customers.

b. Four-year limit.

The Commission proposes to incorporate into regulation a four-year limit on previously unbilled utility service, for make-up bills in particular. Action Alliance supports such a 4-year limitation, as it reflects the same restrictions found in other sections of Chapter 56 or Title 66, i.e., § 56.35 (relating to payment of outstanding balance), § 56.202 (record maintenance requirements), and 66 Pa.C.S.A. § 1312 (relating to refunds).

3. Credit Standards.

a. Definitions of “applicant,” “customer” and “occupant.”

Interpretation of Chapter 14 requires a clear understanding of the terms “applicant,” “customer,” and “occupant.” These terms and the status that accompanies each one have a bearing on the credit standards that are applied to a particular consumer. Action Alliance proposes clarifying language for each of these terms.

(i) “*Applicant*”

Action Alliance recommends a change to the proposed definition for “applicant” to clarify exactly when a customer reverts to applicant status after termination of service, and proposes a minor amendment to the Commission’s proposed definition, as follows:

Applicant— [A person who applies for residential utility service.] A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage.

deed or lease of the property for which the residential public utility service is requested. The term does not include a person who[, within 60 days after termination or discontinuance of service,] seeks to transfer service within the service territory of the same public utility or to reinstate service at the same address provided that the final bill for service is not PAST due[and payable].

This modification will synchronize language from this definition of “applicant” with that of the definition of “customer,” which reads in part, “[a] natural person remains a customer after discontinuance or termination until the final bill for service is past due.” Synchronizing these two definitions will make absolutely clear that after termination of service a customer reverts to applicant status again when the final bill is past due, and no sooner.

(ii) “Customer”

To clarify that only adults or emancipated minors can be customers, Action Alliance proposes the following changes to the definition of “customer”:

Customer - A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or an adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested.
ONLY A NATURAL PERSON 18 YEARS OR OLDER, OR AN EMANCIPATED MINOR, MAY BECOME A CUSTOMER. A natural person remains a customer after discontinuance or termination until the final bill for service is past due.

(iii) “Occupant”

To recognize that an occupant can reside at a property where service is not currently being provided, and to clarify that a dependent child occupant should not be made responsible for the bills of a parent, under Section 1407(d), Action Alliance proposes the following additions to the definition of “occupant”:

Occupant—AN ADULT person who resides in the premises to which public utility service is provided **OR REQUESTED.**

b. Procedures for new applicants.

- (i) *“The absence of prior credit history does not, of itself, indicate an unsatisfactory risk.”*

Action Alliance urges the Commission not to adopt the proposed deletion of the current language at § 56.32(3)(i) (“The absence of prior credit history does not, of itself, indicate an unsatisfactory risk.”). Young persons or families who have previously lived with parents or other relatives 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 more likely to have no credit history upon which a credit score could be based. These applicants for service will be just starting out on their own or escaping abuse and are more likely to have limited income. Having already provided a security deposit to a landlord for a new home, these applicants with no negative credit histories should not then be required to pay a two month utility deposit. Chapter 14 does not supersede the current provision at § 56.32(3)(i) nor is it inconsistent with this provision. The risk of utility bill payment cannot be properly assessed without any utility billing history or any credit history. This important provision should not be deleted.

- (ii) *Credit scoring methodology should assess “risk of utility bill payment.”*

Action Alliance supports the clarification at proposed § 56.32(a)(2) that the “credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment.” Bills for life-essential utility service significantly differ in character than bills for many other consumer goods and services, and any credit scoring methodology used by utilities should also make that distinction. A poor payment history on credit card bills, for instance, should not overshadow a perfect utility bill payment history.

- (iii) *Proof of identity of adult applicants without requiring disclosure of social security number.*

Action Alliance supports proposed § 56.32(c) relating to identity of adult applicants and the identification documents that may be required by utilities. Action Alliance agrees that applicants should not be required to disclose or produce social security numbers, unless the applicant wishes to do so for the applicant's convenience. Requiring a social security number would be a *de facto* requirement that applicants possess a certain immigration status and should be avoided, as Action Alliance noted in prior comments.³

(iv) *Payment of outstanding balance “at the property for which service is requested.”*

Proposed § 56.35(b)(1) allows a public utility to demand payment of an outstanding balance or a portion thereof “if the applicant resided at the property ... during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years.” Action Alliance supports the Commission's clarifying language that such liability should not be assigned for service furnished more than 4 years ago. Any longer period would create an unreasonable evidentiary burden and barrier to service for applicants who in fact did not reside at the property for all or part of the time period. Also, as discussed earlier, the 4-year restriction is consistent with other restrictions in relevant regulations and statutes.

Action Alliance notes that § 56.35 sits squarely within procedures for *applicants*. As discussed further later, *customers*, whose applications for service have already been approved, should not later be surprised with third-party charges on their bills and then be placed at risk of termination for nonpayment of such charges.

(v) *Detailed and complete information when denied credit.*

Proposed § 56.36 (relating to written procedures) requires that public utilities obtain Commission tariff approval for “their credit and application procedures along with their credit scoring methodology and standards” and that applicants be provided with detailed and complete

³ Comments of Action Alliance et al., Docket No. L-00060182 (February 14, 2007), at 16-19.

information when they are denied credit for a public utility. Action Alliance supports clear notice to applicants of reasons for denial of credit and of dispute rights if the applicant disagrees with the denial of credit. When such denial is a barrier or cause of delay to essential services, the basis of denial and dispute rights must be communicated clearly and quickly, so that the applicant or customer knows how to proceed with a dispute, if s/he so chooses.

(vi) Notice of tariff filings and public input hearings.

Tariff filings should be served on interested agencies, including statewide and local legal services programs and agencies serving victims of domestic violence in the public utility's service territory. The Commission's tariff approval process should include public input hearings, if requested, so that customers and prospective applicants residing in the service territory can provide comment. Before approval of any such procedures, the Commissions and consumers should be assured that no more than one person can be billed at the same time for a particular outstanding balance and that the unpaid outstanding balance will revert back to the originally named customer who later applies for service at another address. The procedures should also address how such third-party outstanding balances are treated if not completely paid down before the current customer transfers service to another address.

(vii) Three-day processing of applications for service.

The Commission proposes to maintain the 3-day limit between the applicant's submission of application for service and the public utility's turning on of service, but the additional language proposed in § 56.37 should be clarified, as follows:

§ 56.37. General rule.

Once an applicant's application for service is [accepted by] SUBMITTED TO the public utility, the public utility shall provide service within 3 days, provided that the applicant has met all REGULATORY requirements. A longer time frame is permissible with the consent of the applicant. If the investigation and determination of credit status is expected to take or in fact takes longer than 3 business days commencing the date after the application is made, the public utility shall provide service pending completion of the investigation.

The proposed language of “[o]nce an applicant’s application for service is accepted by the utility,” suggests that the utility has discretion not to accept the application. Action Alliance recommends changing the language to “[o]nce an applicant’s application for service is [accepted by] **SUBMITTED TO** the utility,” so that the 3-day clock runs at the time of submission and not at a time that the public utility decides to “accept” the application. The phrase “provided that the applicant has met all requirements” should be modified to the following language: “provided that the applicant has met all **REGULATORY** requirements.” The addition of the word “regulatory” in front of “requirements” prevents public utilities from adding their own additional requirements beyond those provided in regulation.

c. Procedures for existing customers.

Action Alliance is currently experiencing, in Philadelphia, the recent implementation of a public utility’s § 56.41(1) deposit policy. Although this policy has been described as a “late-payer deposit” policy, in actual fact, it appears that the function of this policy is to require a deposit from every delinquent non-CAP customer from whom a deposit might be requested under an excessively broad reading of § 56.41(1). Notifications allegedly satisfying §56.41(1)(i) are being sent to any customer who has a delinquency no matter how small. As a result, customers with small outstanding balances, which either in practice or under regulation (less than \$25) would not result in the utility’s placing them on the collection path, have been served with purported § 56.41(1)(i) notices.

At this time, it is unclear whether the utility recognizes that § 56.41(1) is prospective, and only sanctions with a deposit request the failure, *going forward*, to pay a current bill and the next bill in full and on time and/or three bills which may include the current bill in the next twelve months after notification. Action Alliance submits that two consecutive missed payments or payments which are less than the amount billed, or three such payments in a twelve month period only gives the utility the right to send a § 56.41(1)(i) notification. The right to actually demand a payment must be based on the prospective payment pattern established by the customer’s payments for the current bill and for future bills. A customer’s payment pattern in the months

prior to service of the current bill and notification can not be utilized as the basis for requiring a deposit.

The Commission requires that the customer receive a personal “notification” which assures the customer that a deposit is not required at the time of notification, but that the customer’s past payment delinquencies, if repeated, will result in a request for a deposit. Action Alliance submits § 56.41(1)(i) requires a specific written warning to the customer that his/her conduct will not be allowed to continue in the future without sanction. A non-personal generalized statement of company policy regarding deposit requests to existing delinquent customers included on the “Message Center” part of a customer bill is not an appropriate notification under § 56.41(1)(i).

While the Commission may have historically encouraged utilities to utilize the authority provided by § 56.41(1) as a collection tool to control uncollectibles, the means that have been authorized are limited, and should not allow interpretations which exceed the bounds of reasonableness. Customers whose payment patterns are not likely in practice to result in a termination notice should not be subjected to the § 56.41(1) requests for deposits. Such requests for deposits should sanction behavior that occurs from the time that the customer is informed of the utility’s right to require a deposit, not payment patterns that occurred prior to such notification. Under Commission policy, deposits may be assessed against delinquent customers only after full notification to the customer concerning the reasons for the deposit request to that particular customer. Section 56.41(1) should not be read to authorize deposit requirements by ambush.

For these reasons, Action Alliance requests that the Commission clarify § 56.41(1) as follows:

§ 56.41. General rule.

A utility may require an existing ratepayer [ratepayer] customer to post a deposit to reestablish credit under the following circumstances:

(1) *Delinquent accounts.* Whenever a [ratepayer] customer has been delinquent **BY MORE THAN \$100 OR ONE BUDGET PAYMENT,**

WHICHEVER IS GREATER, in the payment of any two consecutive bills or three or more bills within the preceding 12 months.

(i) Prior to requesting a deposit under this section, the public utility shall give the [ratepayer] **CUSTOMER WRITTEN NOTIFICATION OF ITS INTENT TO REQUEST A CASH DEPOSIT IF THE CURRENT MONTHLY BILL AND THE NEXT MONTHLY BILL, OR THREE MONTHLY BILLS IN THE NEXT TWELVE MONTHS INCLUDING THE CURRENT BILL ARE NOT PAID ON OR BEFORE THE DUE DATE.**

(A) Notification [shall] must clearly indicate **THE FOLLOWING**; that a deposit is not required at this time, **BUT THAT THIS NOTIFICATION IS A WARNING THAT IF THE CURRENT BILL AND THE NEXT MONTHLY BILL ARE NOT PAID ON OR BEFORE THE DUE DATE, OR THREE BILLS IN THE NEXT TWELVE MONTHS INCLUDING THE CURRENT BILL ARE NOT PAID ON OR BEFORE THE DUE DATE, A DEPOSIT WILL BE REQUIRED; THAT THE CUSTOMER'S PRIOR DELINQUENT PAYMENTS IDENTIFIED BY BILLING DATES CAUSED THIS NOTICE TO BE SENT; THAT THE PUBLIC UTILITY MAY REQUIRE A DEPOSIT OF UP TO TWO MONTH'S AVERAGE BILL.**

(B) Notification may be mailed or delivered to the [ratepayer] customer together with a bill for public utility service, **IN A DOCUMENT ENTITLED "WARNING" WHICH IS SEPARATE FROM THE BILL AND CONTAINS NO OTHER INFORMATION NOT RELATED TO THE NOTIFICATION.**

(C) Notification [shall] must set forth the address and phone number of the public utility office where complaints or questions may be registered.

(D) A subsequent request for deposit [shall] must clearly indicate that **THE CUSTOMER MAY ELECT TO PAY THE DEPOSIT IN THREE INSTALLMENTS, THAT THE PUBLIC UTILITY MAY HOLD THE DEPOSIT FOR A MAXIMUM PERIOD OF 24 MONTHS OR UNTIL THE CUSTOMER HAS PAID BILLS IN FULL AND ON TIME FOR 12 CONSECUTIVE MONTHS, WHICHEVER IS SOONER, AND THAT** a [ratepayer] customer should register any questions or complaints about the matter prior to the date the deposit is due in order to avoid having service terminated pending resolution of a dispute. The request [shall] must also include the address and telephone number of the public utility office where questions or complaints may be registered

...

d. Cash deposits.

The proposed language to § 56.51(a) (relating to deposits for applicants) is redundant with the language at § 56.32(a) also relating to deposits for applicants. If this proposed language is adopted, § 56.51(a)(2) should also include as its last sentence the same language already proposed for the last sentence of § 56.32(a)(2): “The credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment.” The methodology used to determine creditworthiness should be uniform throughout Chapter 56 and should be narrowly tailored to assess the risk of utility bill payment and not of payment history of debts of significantly different character.

4. Payment period for deposits.

a. Full 90-days should be provided for payment of deposit.

In situations when a utility may request a deposit, Action Alliance agrees with the Commissions’ proposal “establishing a payment period that requires 50% payable upon the determination by the public utility that the deposit is required, 25% *billed* 30 days after the determination and 25 % *billed* 60 days after the determination.” Order, Attachment One, at 21-22 (emphasis added). This rule would allow for compliance with Section 1404(h) providing for a 90 day time period and corrects earlier rules that only allowed up to 60 days for payment of the deposit. Proposed § 56.42 should be modified to reflect the Commission’s intentions, by correcting those terms that allow for only 60 days to pay the deposit.

b. Customers seeking restoration.

Security deposits, as a condition of obtaining, restoring or maintaining public utility service, can delay or even prevent restoration, especially among low income consumers. Deposits should only be requested and required when clearly authorized. Action Alliance urges the Commission to adopt the OCA’s initial recommendation that *customers* should not be required to pay a deposit to reconnect service since Section 1404(a)(1) uses the terms *applicant*

and “...was a customer.” Since the Commission ruled in the *Implementation Order* that a customer *remains* a customer, so “is a customer,” until the final bill is due and payable, a customer should be able to reconnect service without paying a deposit, absent other grounds for a deposit request. Order, Attachment One, at 20.

Customers, whose public utility service were recently terminated, are already required under Section 1407 (relating to reconnection of service) to pay an upfront reconnect fee and either the full outstanding balance or the first installment of a payment agreement (excluding CAP eligible customers of PGW, who only pay reconnection fee). The relatively small class of customers in distress following a recent service termination should not be required to raise money for a deposit, over and above the reconnect fee and an upfront payment on the outstanding balance, in order to restore life essential service. Because deposits impair access to service, an additional deposit should not be required, where not authorized, for the sake of simplifying deposit procedures. Therefore, Action Alliance recommends that the Commission not adopt the proposed new language in §56.42 that provides for deposits for existing customers, which would include customers seeking restoration of service after a recent termination of service.

c. Notice of option to pay deposit in installments.

The option to pay a deposit in installments, provided at § 56.38 and § 56.42, cannot be elected unless the applicant actually knows of the option. Action Alliance supports the Commission’s proposal at § 56.38 (relating to payment period for deposits by applicants) to require utilities to “advise an applicant of the option to pay the requested security deposit in installments at the time the deposit is requested.” Likewise, utilities should also be required to provide this notice of an option to pay in installments to existing customers who are charged a deposit under § 56.42. To the end of § 56.42, the following sentence should be added: “A public utility shall advise a customer of the option to pay the requested security deposit in installments at the time the deposit is requested.”

d. Maximum deposit hold period.

Proposed § 56.53 provides for maximum deposit hold periods. We recommend insertion to the end of § 56.53(a) the words “whichever is shorter” so that the public utility will not have the option of holding the deposit for 24 months if the timely payment history is established in a shorter period of time.

5. Termination of service.

Action Alliance strongly supports the Commission’s thoughtful proposals to incorporate information on termination notices and in consumer-utility contacts during the termination process that alerts the consumer to programs and options to help them maintain utility service. The Commission proposes including information about the availability of universal service programs, emergency medical procedures, protections against winter service terminations, protections for tenants, and protections for victims of domestic violence with a PFA. Since passage of Chapter 14, consumers have fewer protections available than ever before. Contacts between the utility and consumers must be adjusted to ensure that every last opportunity is provided to the consumer to preserve essential utility service.

a. “User without contract” vs. “unauthorized use.”

The Commission has long recognized that users without a contract, like persons such as widows taking service under their deceased spouse’s name, should be protected from immediate service terminations without prior notice, and that overly broad interpretations of unauthorized use grounds for immediate terminations should be avoided. Action Alliance strongly supports the Commission’s original proposal to maintain the long-standing distinction between “user without contract” and “unauthorized users.” Action Alliance further supports the proposed definition of “user without contract,” at § 56.2, and recommends its adoption, in order to bring further clarity to the regulations. Also, the proposed language at § 56.91(a) relating to termination notices, which effectively provides for a 3-day notice to a user without contract, should be adopted.

b. Interruption and discontinuance of service.

At § 56.72 (relating to discontinuation of service), the Commission proposes to shorten, to 3 days, the 10 day notice that utilities must provide to occupants when a nonoccupant customer seeks discontinuance of service to a premises. Chapter 14 does not require shortening of the time period to 3 days. Absent such statutory requirement, the Commission should give greater recognition to the fact that occupants often have numerous conflicting demands on their time and resources, and need more than just a very few days to complete an application for service and/or make a necessary payment arrangement. Occupants should be provided with at least 10 days to apply for service.

c. Unauthorized grounds for termination.

Action Alliance agrees with the Commission that unauthorized grounds for termination, at § 56.83, should be maintained in their current state as much as possible. However, it is recommended that the proposed language at §§ 56.83(4) and (8) be modified to clarify that terminations based on nonpayment of third-party liability are only permissible in strictly limited circumstances. Chapter 14 Sections 1407(d) and 1407(e), relating to payment of outstanding balance at premises, allow public utilities to “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” (emphasis added). Public utilities should not be allowed subsequent to the application stage to bill customers retroactively for charges accrued under another person’s name. Action Alliance therefore recommends the following amendments:

§ 56.83. Unauthorized termination of service.

Unless expressly and specifically authorized by the Commission, service may not be terminated nor will a termination notice be sent for any of the following reasons: ...

(4) Nonpayment of bills for delinquent accounts of the prior [ratepayer] customer at the same address unless the public utility has **PREVIOUSLY**, under

§ 56.35 (relating to payment of outstanding balance), established that the applicant or customer was an occupant at the same address during the time period the delinquent amount accrued **AND HAD REQUIRED PAYMENT ON SUCH AMOUNT, AS A CONDITION OF APPROVAL OF APPLICATION FOR SERVICE OR RESTORATION OF SERVICE.** ...

(8) Nonpayment for residential service already furnished in the names of persons other than the [ratepayer] customer unless a court, district justice or administrative agency has determined that the [ratepayer] customer is legally obligated to pay for the service previously furnished or unless the public utility has **PREVIOUSLY**, under § 56.35, established that the applicant or customer was an occupant at the same address during the time period the delinquent amount accrued **AND HAD REQUIRED PAYMENT ON SUCH AMOUNT, AS A CONDITION OF APPROVAL OF APPLICATION FOR SERVICE OR RESTORATION OF SERVICE.** This paragraph does not affect the creditor rights and remedies of a public utility otherwise permitted by law.

d. Notice procedures prior to termination.

(i) *The right to cure a defaulted payment agreement to avoid termination.*

Section 56.91, relating to general notice provisions and contents of termination notice, should be modified at proposed § 56.91(b)(2), to include “past due of most recent payment agreement,” as follows:

(b) A notice of termination must include, in conspicuous print, clearly and fully the following information when applicable: ...

(2) An itemized statement of accounts currently due, including any required deposit **INSTALLMENT CURRENTLY DUE AND THE AMOUNT PAST-DUE ON THE MOST RECENT PREVIOUS COMPANY NEGOTIATED OR COMMISSION PAYMENT AGREEMENT.**

The Commission proposed similar language at § 56.97(2)(iii) (relating to procedures upon customer or occupant contact prior to termination). However, this default cure amount is critical information that should be provided on all termination notices, as well as in contacts with the utility, if it is the lowest amount required to prevent termination of service. Throughout the Chapter 14 implementation process, the Commission has consistently upheld the customer’s right to cure a default prior to termination and avoid such termination. Utilities must be required to provide the payment agreement catch up amount on termination notices, or the lowest amount

necessary to prevent termination, and their computer systems must be programmed to display this amount to customer service representatives (CSRs) who take customer calls. Otherwise, customers will be misled into trying to raise an unnecessarily large amount of money and, if unsuccessful, will suffer termination of service.

(ii) *Personal contact.*

Action Alliance supports the proposed language at § 56.93(a) relating to personal contact, which clarifies that: “If personal contact by one method is not possible, the public utility is obligated to attempt the other method [home visit].” If the utility is otherwise allowed to just attempt service by one method, then customers without phone service will never receive an attempt at personal contact. At § 56.93(c), Action Alliance again agrees with the Commission’s proposed clear language that, if a home visit is unsuccessful, a written notice must be conspicuously posted.

(iii) *Post-termination notice.*

In the title of § 56.96, the terms “Post-termination” should not be deleted before “notice,” as the section clearly relates to post-termination notices.

(iv) *Contact prior to termination.*

Action Alliance fully supports maintaining the provisions in § 56.97, as they provide for critical procedures for public utilities to follow to assist a customer in preventing termination of service, including full explanations of all available methods for avoiding a termination. Also, the Commission should adopt the two proposed subparagraphs at §§ 56.97(a)(2)(iii) & (iv), which would require public utility employees to fully explain the following methods for avoiding a termination:

(iii) Paying what is past-due on the most recent previous company negotiated or Commission payment agreement.

(iv) Enrolling in the public utility's customer assistance program or universal service program, if the public utility has these programs.

In Action Alliance's experience, these two options are two of the most common methods that low income advocates use in assisting customers to avoid service termination. Unfortunately, some customers receive termination notices that demand payment amounts that are larger than the catch up amount or default cure amount of the last payment agreement; and these larger than necessary amounts are confirmed by utility CSRs that take the customers' calls. See above discussion regarding § 56.91(b)(2). Also, low income customers often only learn for the first time from legal services organizations that CAP programs are available to provide more affordable bills and that CAP enrollment can prevent termination of service. Proposed §§ 56.97(a)(2)(iii) and (iv) should be adopted to provide unambiguous notice to utilities of their obligations during the termination process.

e. Immediate terminations without prior notice.

Proposed § 56.98 (relating to immediate termination for unauthorized use, fraud, tampering or tariff violations) provides little guidance to public utilities and consumers. Action Alliance strongly recommends that immediate terminations should be limited to those situations in which the utility can base the termination on *substantial evidence* of "unauthorized use, fraud, tampering or tariff violations." A typical scenario encountered by legal services organizations involves an immediate termination arising when a consumer calls the public utility because of a possible gas leak at the property, or because of another reason resulting in the consumer's voluntarily allowing public utility personnel to enter the home. The utility worker locks the meter or removes the meter and leaves no explanation for the consumer of the immediate termination. The consumer is instructed to call the utility for restoration terms or to go to a district office. Sometimes, the consumer receives a credit denial letter at the district office with a phone number to call. After days and often weeks, the consumer is quoted a very large amount of money to restore service with no explanation as to how the amount was calculated. Informal complaints to the Commission usually result in a Bureau of Consumer Services (BCS) decision affirming the utility's report without an effort to conduct a more searching investigation by working with the complainant to develop exculpatory evidence. Attached as Exhibit A is the

Verified Statement of Josie B. Hyman with attached Credit Denial Statements and Verified Statements of actual consumers who filed an informal complaint or Formal Complaint involving immediate terminations for alleged unauthorized use.

Action Alliance recommends substantial amendments to proposed § 56.98, as follows:

(a) A public utility may immediately terminate service [for] **BASED ON SUBSTANTIAL EVIDENCE OF** any of the following actions by the customer:

(1) Unauthorized use of the service delivered on or about the affected dwelling.

(2) Fraud or material misrepresentation of the customer's identity for the purpose of obtaining service. **THE TERMS “FRAUD” AND “MATERIAL MISREPRESENTATION” SHALL BE DEFINED UNDER PENNSYLVANIA COMMON LAW.**

(3) Tampering with meters or other public utility equipment.

(4) Violating tariff provisions on file with the Commission which endanger the safety of a person or the integrity of the public utility's delivery system.

(b) Upon termination, the public utility shall make a good faith attempt to provide a post termination notice to the customer or a responsible person at the affected premises, and, in the case of a single meter, multiunit dwelling, the public utility shall conspicuously post the notice at the dwelling, including in common areas when possible.

(c) THE POST TERMINATION NOTICE SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE SPECIFIC GROUNDS FOR IMMEDIATE TERMINATION OF SERVICE, WITH DETAILED INFORMATION CONCERNING THE ALLEGED MATERIAL FACTS.

(2) THE SPECIFIC TERMS FOR RESTORATION OF SERVICE.

(3) THE DIRECT PHONE NUMBER OF THE PUBLIC UTILITY DEPARTMENT THAT CAN ANSWER QUESTIONS AND IMMEDIATELY HANDLE DISPUTES CONCERNING IMMEDIATE TERMINATIONS.

(d) CUSTOMERS SUBJECT TO IMMEDIATE TERMINATIONS, SEEKING COMMISSION REVIEW, SHALL BE PROVIDED WITH EXPEDITED REVIEW AT THE BUREAU OF CONSUMER SERVICES AND EMERGENCY REVIEW WITH AN ADMINISTRATIVE LAW JUDGE OR SPECIAL AGENT, IF NECESSARY.

These provisions are necessary under basic due process and public policy grounds to allow consumers a reasonable opportunity to refute allegations of unauthorized use by the public utility. Without these safeguards, many more innocent consumers will suffer months, and even

years, without life essential services after immediate terminations simply because they are not informed regarding the basis of the utility's allegations and therefore do not know what to refute.

6. Winter termination procedures.

a. No "heat-related" distinction in Chapter 14.

Action Alliance strongly disagrees with the Commission's plan to revoke its earlier proposal to eliminate the heat-related distinction in the context of winter terminations by public utilities. Chapter 14 has already stripped away the longtime winter moratorium that had protected all Pennsylvania public utility consumers for decades. The Commission should not now set unauthorized limits on the winter protections that remain for low and lower income consumers. Chapter 14 clearly provides a basis for providing protection for heating *and* non-heating accounts.

Section 1406(e). Winter termination.—

(1) Unless otherwise authorized by the commission, *after November 30 and before April 1, an electric distribution utility or natural gas distribution utility shall not terminate service* to customers with household incomes at or below 250% of the Federal poverty level except for customers whose actions conform to subsection (c)(1). The commission shall not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance with this section to customers with household incomes exceeding 250% of the Federal poverty level.

(2) In addition to the winter termination authority set forth in paragraph (1), *a city natural gas distribution operation may terminate service to a customer* whose household income exceeds 150% of the Federal poverty level but does not exceed 250% of the Federal poverty level, and starting January 1, has not paid at least 50% of his charges for each of the prior two months **unless** the customer has done one of the following:

(i) Has proven in accordance with commission rules that his household contains one or more persons who are 65 years of age or over.

(ii) Has proven in accordance with commission rules that his household contains one or more persons 12 years of age or younger.

(iii) Has obtained a medical certification in accordance with commission rules.

(iv) Has paid to the city natural gas distribution operation an amount representing at least 15% of the customer's monthly household income for each of the last two months.

(3) At the time that the notice of termination required by subsection (b)(1)(i) is provided to the customer, the city natural gas distribution operation shall provide notice to the commission. The commission shall not stay the termination of service unless the commission finds that the customer meets the criteria in paragraph 2(i), (ii), (iii) or (iv).

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

The term “heat-related” or the like is nowhere found in § 1406(e). The subsection’s title of “Winter termination” refers to the time period covered by this provision and should not be erroneously construed to somehow limit the type of service that is protected therein. For instance, while natural gas service may not be considered strictly heat-related if not the primary source of a home’s heat, it is often the source of energy for hot water and cooking. Hot water is important for a household’s health and sanitation, especially to avoid wintertime illnesses through proper cleaning, bathing, handwashing and laundering. Many households rely on cooking gas to provide affordable healthy hot meals, year around. Such cooking ability should be protected in wintertime for low and lower income households (often with children and elderly members) that have limited means and ability to buy prepared hot meals from outside the home. The Commission would be acting contrary to its much emphasized duty to protect health and safety if it adopts the current proposal to limit winter termination protections to heat-related accounts. Therefore, the language “heat-related” should be omitted from § 56.100 (relating to winter termination procedures), as such limitation is statutorily prohibited and contrary to health and safety.

b. Notice of protections from winter-time terminations.

Action Alliance supports the Commission’s proposal to require the provision of information on termination notices that inform victims of domestic violence with a PFA, low-income customers and tenants of the special protections from winter-time termination that are available for them. Particularly important is the inclusion of the federal poverty guidelines by household size, at proposed § 56.91(b)(10), so that customers know exactly whether they are

protected or not because of income level. Income charts are an important once-a-year update that are not too burdensome for a public utility to revise.

c. Cold weather survey.

Action Alliance requests that cold weather survey results be categorized by 5-digit postal codes and not just by first 3-digits, as proposed. All addresses in Philadelphia have postal codes with the same first three digits of “191” so data about the first three digits would provide little additional assistance to social service organizations in analyzing termination data of the public utilities serving Philadelphia. There is no reason not to make public this data which is easily accessible to the utility.

Action Alliance supports the Commission’s proposal to require three reports, on December 15, January 15 and February 15. The surveys provide important information about how many households are without service during winter and provide the Commission, policymakers and low income advocates with the basis for relevant policy recommendations, if needed.

d. Reporting of hospitalizations and property damage, as well as, deaths at locations where utility service is off.

Action Alliance supports the Commission’s proposal, at § 56.100(j), to require utilities to report incidents of household fire, hypothermia or carbon monoxide poisoning occurring at addresses where utility service was off at the time of the incident. However, the Commission omits any non-winter cause of fatalities such as hyperthermia. Action Alliance recommends that the term “hyperthermia” be inserted after the term “hypothermia” and that the Commission clarify that the reporting requirement applies all year.

Also, the Commission limits this reporting requirement to incidents that “resulted in a death.” Action Alliance, in its February 14, 2007 comments, recommended that the reporting

requirement include incidents involving injury and property damage, as well as, deaths.⁴ If the terms “injury or property damage” seem too broad, Action Alliance would here recommend that the terms “hospitalizations or property damage” be inserted after the phrase “resulted in a death” within proposed § 56.100(j). Hospitalizations and property damage are different degrees of the same harm that the Commission should seek to monitor and prevent. An incident should not be required to result in death before the utility must report it to the Commission, because incidents resulting in hospitalizations and property damage could have easily resulted in death but for the fortunate circumstances of the individuals who were able to escape such fate.

7. Emergency medical procedures.

Implementation of medical certification protection varies from utility to utility, including inconsistent policies of yearly limitations or lifetime limitations on a consumer’s right to assert medical protections. The Commission’s proposed modifications in this area will provide much helpful clarification for customers, utilities and agencies serving vulnerable consumers.

- a. Only physicians or nurse practitioners may determine whether a medical condition qualifies.

Action Alliance strongly supports the Commission’s proposed language at § 56.111, as follows:

The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. The utility may not impose any qualification standards for medical certificates other than those specified in this section.

This language is important to prevent utilities from imposing qualifications that may deter consumers from seeking medical certificates or doctors from providing medical certificates.

⁴ Comments of Action Alliance at al., Docket No. L-00060182 (February 14, 2007), at 42-43.

b. Maintaining the 3-day stay and 7-day period to produce written confirmation.

Action Alliance supports the Commission’s plan to maintain the important three-day stay of termination to obtain written or oral certification at § 56.112 (relating to postponement of termination pending receipt of certificate) and the seven-day window to provide written confirmation at § 56.113 (relating to medical certifications). Illness, hospital stays and circumstances surrounding the medical emergency can prevent a household from being aware of imminent utility termination. The first time that a consumer may learn of the impending termination is when the utility worker appears at the home. Three days is the minimum period of time that should be allowed to consumers to contact a medical professional to submit a verbal or written medical certification to the utility. If the utility requires a written certification, maintaining the 7 day window, after verbal certification, for submission recognizes the demanding schedules of medical offices and provides a reasonable opportunity for consumers and their treating medical practitioners to comply.

c. Restrictions on renewals of certifications.

Action Alliance supports the Commission’s proposed language at §§ 56.114 and 56.116 that bring important clarification to when the restrictions on renewals of medical certifications apply. The Commission has amended § 56.114 to clarify that the limit of two renewal certifications only applies if the customer is not making equitable efforts to pay utility bills per §56.116, which specifies that at least current bills should be paid in order to be considered an equitable effort at payment. Action Alliance agrees that the current § 56.116 language “to equitably arrange to make payment” has not given adequate guidance to utilities and consumers alike. The Commission’s proposed language brings long-awaited and proper clarification. Action Alliance, therefore, agrees with the proposals at § 56.116 (relating to duty of customer to pay bills) and § 56.118(a)(2) (relating to right of public utility to petition the Commission) to replace the language “to equitably arrange” with “to make payment on all current undisputed bills” When payments on current bills are not being made, only then do the restrictions at § 56.114 apply.

- d. Section 1406(f) prohibits termination of customers with medical certifications.

Action Alliance disagrees with the Commission’s proposal to allow utilities to refuse to honor medical certifications without petitioning the Commission, when the utility determines that the renewal restrictions have been reached under § 56.114. Chapter 14, at Section 1406(f), clearly prohibits termination of utility service “when a licensed physician or nurse practitioner has certified that the customer or a member of the customer’s household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service.” The statute provides no restrictions on renewals. Any determine that renewal limits have been met should be made by the Commission, not the utility. These most vulnerable consumers, whose medical practitioners have provided multiple certifications of a serious condition, should be afforded all the consumer protections available, including Commission review prior to service termination.

- e. Longer than 30 day certification for serious and chronic illness.

Consumers with serious and chronic conditions that are not likely to improve within 30 days should not be burdened with a requirement to renew medical certifications every 30 days. Medical certification renewals often require that the patient make and attend an appointment with the treating medical practice and pay accompanying fees for the appointment and completion of medical certification for the utility. These perfunctory efforts are financially and physically burdensome for seriously ill consumers with chronic conditions. Action Alliance urges the Commission to adopt a rule similar to that adopted in the state of Massachusetts which allows for six-month chronic illness certification and certification of infancy until the child reaches 12 months of age.⁵

⁵ The Code of Massachusetts Regulations (CMR) provides in relevant part at 220 CMR: Department of Public Utilities:

25.03: Termination of Service to Customers During Serious Illness, Infant, and Winter Protection

...

(4) Renewal of Certification. In all cases where service is continued or restored pursuant to a claim under 220 CMR 25.03(1), the customer shall renew the financial hardship form quarterly. If the financial hardship is shown to be ongoing for the period November 15th to March 15 , renewal shall be waived for that period. However, the provisions of 220 CMR 25.03(3) shall govern where certification of financial hardship occurs due to participation in a fuel assistance program the prior winter.

8. Commission informal complaint procedures.

- a. Public utility must provide conspicuous notice of PUC informal complaint rights.

Action Alliance supports the Commission's proposed language at § 56.152(8)(ii) (relating to contents of the utility company report) that requires the utility to provide conspicuous notice ("in a bold font that is at least two font sizes larger than the font used in other sections of the utility report") to the customer of the deadline to file an informal complaint in order to avoid termination of service. Customers will not know when and how to exercise appeal rights to the Commission unless they receive clear information of such rights from the utility.

- b. Time limits for public utility response to informal complaint.

Action Alliance agrees with the Commission's proposal to require a response to the informal complaint from the utility within a limited time period. Action Alliances agrees that public utilities should have a general deadline of 30 days to respond to an informal complaint, and that the deadline should be 5 days when the complainant is without service. However, in emergency situations, including winter-time complaints involving loss of heat, Action Alliance urges the Commission to adopt a 24 hour standard, initially recommended by the OCA. Action Alliance's proposed language to § 56.163(1) (relating to review techniques) is provided as follows:

Information and documents requested by Commission staff as part of the review process shall be provided by the public utility within 30 days of the request. If the complainant is without public utility service, **[or in other emergency situations as identified by Commission staff,]** the information requested by Commission staff shall be provided by the public utility within 5 days of the request. **IF THE COMPLAINT ARISES FROM LOSS OR ABSENCE OF HEAT DURING THE PERIOD OF DECEMBER 1 THROUGH MARCH 31, OR IN OTHER**

Certifications of serious illness shall be renewed quarterly, except that where illness is certified as chronic, the serious illness certificate shall be renewed every six months.

Certification of infancy shall remain in effect without renewal until the child reaches 12 months of age.

220 CMR 25.03(4) (emphasis added) (accessed April 19, 2009 at <http://www.lawlib.state.ma.us/220CMR25.pdf>).

EMERGENCY SITUATIONS IDENTIFIED BY COMMISSION STAFF, THE INFORMATION REQUESTED BY COMMISSION STAFF SHALL BE PROVIDED BY THE PUBLIC UTILITY WITHIN 24 HOURS OF THE REQUEST.

c. Internal procedures.

The Commission has reconsidered its original proposals concerning the handling of CAP-related payment agreements and accounts where service has been terminated, and now refers those issues to be addressed in Commission internal procedures that are developed under § 56.211 (now proposed § 56.166). When complete, Action Alliance requests that such procedures be readily available for review by the public.

Since Commission internal procedures must comply with statutory law and Commission regulations, the definitions and provisions finally adopted in this rulemaking will be binding on the Commission and its internal procedures. Action Alliance, therefore, provides comments and recommendations in the next subsection on relevant Chapter 56 proposals that relate to informal complaints.

d. Definitions related to informal complaints.

(i) *“Customer assistance program”*

Action Alliance recommends that the Commission specifically include within the definition of “customer assistance program” the requirement that a monthly CAP payment be set at a level that is affordable for the customer. To qualify as affordable, the payment should be set in accord with the maximum energy burdens listed at 52 Pa. Code § 69.265(2). Sample language is provided as follows:

Customer assistance program - A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined in 66 Pa.C.S. § 2202 or 2803 (relating to definitions), in which customers make monthly payments based on household income and household size, **SUCH PAYMENTS TO BE AFFORDABLE AND SET IN ACCORD WITH THE**

MAXIMUM ENERGY BURDENS AT 52 PA. CODE § 69.265(2), and under which customers shall comply with certain responsibilities and restrictions to remain eligible for the program.

A requirement of this kind is necessary because only if CAP bills are affordable will low income customers have a realistic chance of being able to pay them. It is undisputed that Chapter 14 intends to eliminate opportunities to avoid paying for utility service by individuals *capable of paying*. However, it is also clear that Chapter 14 intends to maintain protections for low income customers who are not capable of paying at full rates. This is clearly illustrated by the references to 66 Pa. C.S. §§ 2202 and 2803 in the Chapter 14 definition of customer assistance programs. When the General Assembly eliminated the ability of the Commission to provide payment agreements to CAP customers, under Section 1405(c), it must have understood and expected that CAP rates and bills would be affordable for low income families. That is, the General Assembly must have believed that multiple payment agreements would be unnecessary because CAP bills would be affordable for low income customers. Depriving the Commission of the power to provide payment agreements based on CAP rates can only be understood rationally if the need for those payment agreements is alleviated by the provision of affordable CAP bills. To hold otherwise would result in an inconsistent and absurd result that the General Assembly and the Governor clearly would not have intended. The definition of customer assistance programs should therefore clearly reference the affordability standards set forth in 52 Pa. Code § 69.265(2).

As noted in the Introduction of these Comments, in the Second Biennial Report regarding Chapter 14 implementation, the Commission opined that CAP customers were at the “greatest risk because they are out of options.” Section 1405(c) forbids the Commission from establishing a payment agreement for customers who participate in a utility’s CAP. Through October 10, 2008, 24,144 customers seeking review of their CAP budgets were turned away by the Commission because it was determined the customer was not eligible for a payment arrangement because they were a participant in the utility’s CAP.⁶ In light of these dismal findings, the Commission is urged to adopt the above proposed definition.

⁶ Second Biennial Report to the General Assembly and the Governor Pursuant to Section 1415, at 35, 39 (accessed April 14, 2009 at http://www.puc.state.pa.us/General/publications_reports/pdf/Chapter14-Biennial121408.pdf)

Action Alliance also recommends that the Commission adopt procedures to establish a payment agreement for former CAP customers whose arrearages include missed CAP bills, as well as non-CAP bills. As noted in Action Alliance's prior Comments on February 14, 2007, a Commission policy to prohibit any payment agreement in such circumstances would be an unnecessarily punitive measure and an overly expansive reading of Section 1405(c).⁷

(ii) *"Dispute"*

Action Alliance recommends modifications to the definition of the term "dispute" to clarify aspects of its meaning and its use within the Commission's administrative processes, particularly in light of Chapter 14 changes. Action Alliance requests that the Commission amend the definition of "dispute" so it more clearly reflects that the administration of universal service and energy efficiency programs may be subject to a dispute by an applicant, customer, or occupant. These important programs are essential to the well-being of low income customers, and the Commission has a statutory obligation to provide oversight of them. Furthermore, the programs are quite complex to administer, factually sensitive, and often subject to differences of opinion between participants and utility companies. Given this complexity and the Commission's obligation to provide oversight, informing applicants, customers, and occupants that they have a right to dispute a utility's decision is an important procedural safeguard.

To clarify the definition of dispute, Action Alliance recommends that within the definition the Commission replace the terms "initial contact" and "contact" with the terms "initial inquiry" and "inquiry," respectively. This change will harmonize the definitions of dispute and initial inquiry and will clarify that a dispute may begin as an initial inquiry.

According to the definition of dispute, the trigger that converts an initial inquiry into a dispute is the level of satisfaction felt by the applicant, customer, or occupant regarding the resolution of the issue forming the basis of their initial inquiry. Therefore, it is important that public utilities carefully discern that satisfaction level. However, at the end of a contact with an

⁷ Comments of Action Alliance et al., Docket No. L-00060182 (February 14, 2007), at 46-52.

applicant, customer, or occupant, a general question by a utility representative, such as “Are you satisfied with this call?” may be misleading. It is important that applicants, customers, and occupants understand that their level of satisfaction with the customer service (i.e., the public utility representative’s politeness or responsiveness) is not the significant meaning behind this question. Rather, the satisfaction that matters regards the customers agreement with the resolution of the underlying issue. It is incumbent upon the public utility to ensure that its representative makes this difference clear to the applicant, customer, or occupant during the contact.

Action Alliance provides proposed language to the definition of “dispute,” as follows:

Dispute - A grievance of an applicant, [ratepayer] customer or occupant about a public utility’s application of a provision covered by this chapter, including subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts, **THE ADMINISTRATION OF UNIVERSAL SERVICE AND ENERGY CONSERVATION PROGRAMS**, or the proper party to be charged. If, at the conclusion of an initial [contact] **INQUIRY** or, when applicable, a follow-up response, the applicant, [ratepayer] customer or occupant indicates satisfaction with the resulting resolution or explanation, the [contact] **INQUIRY** will not be considered a dispute. **PUBLIC UTILITIES MUST ENSURE APPLICANTS, CUSTOMERS, AND OCCUPANTS UNDERSTAND THAT THEIR SATISFACTION IS TO BE BASED UPON THE RESOLUTION OF THEIR GRIEVANCE, NOT WITH THE PERSONAL QUALITIES OR CONDUCT OF THE CUSTOMER SERVICE REPRESENTATIVE.**

(iii) *“Informal complaint”*

Action Alliance recommends that the Commission alter its definition of “informal complaint.” The current definition defines an informal complaint as one which is “filed with” the Commission. Since it is current Commission policy to accept informal complaints by telephone (52 Pa. Code § 56.162), the phrase “file with” may be confusing, implying that an actual physical, formal filing is required. Additionally, the definition provided by the Commission only refers to a customer. It is possible and likely that an applicant or an occupant might also make an informal complaint. To capture this aspect of informal complaints, Action Alliance recommends the Commission delete the reference to customer in the definition. The proposed language for the definition of “informal complaint” is as follows:

Informal complaint - A complaint filed with the Commission, **ORALLY OR IN WRITING**, [by a customer] that does not involve a legal proceeding before a Commission administrative law judge or a mediation under the management of a Commission administrative law judge.

(iv) “*[Informal] dispute settlement agreements*”

Action Alliance recommends several changes to the proposed definition of “informal dispute settlement agreements” to clarify its meaning and place within the Commission’s administrative process. The word “informal” may mistakenly lead individuals to believe that this agreement pertains to an informal complaint with the Commission, which seems not to be the case, and the term “claim” is not one used in the definitions of dispute or initial inquiry. Action Alliance recommends the Commission use in this definition terms it has defined elsewhere within Chapter 56. The definition should clarify that the utility is the default party made responsible for reducing the agreement to writing since the utility is more likely to have the expertise and staff necessary to properly write such a document. Also, the definition omits the word “occupant” when listing the parties to whom this definition applies. Action Alliance recommends changes to the proposed definition of “informal dispute settlement agreement,” as follows:

[Informal] dispute settlement agreement - A mutually agreeable statement of a [claim or] dispute by a customer, **OCCUPANT**, or applicant including a proposed resolution of the [claim or] dispute. A[n informal] dispute settlement agreement is a written document that is provided to the parties or their representatives **BY THE UTILITY**. A[n informal] dispute settlement agreement offered by a utility must contain the following statement: “If you are not satisfied with this agreement, immediately notify the utility that you are not satisfied. You may file either an informal complaint or a formal complaint before the Public Utility Commission without making yourself subject to retaliation by the **PUBLIC** utility.” The [informal] dispute settlement agreement must also contain the information necessary to contact the Commission either in writing or by telephone.

(v) “*Initial inquiry*”

Action Alliance recommends that the Commission amend the definition of “initial inquiry” so it more clearly reflects that the administration of universal service and energy

efficiency programs may be subject to an inquiry by an applicant, customer, or occupant. As noted above regarding the definition of “dispute,” these important programs are essential to the well-being of low income customers. Given the complexity of these programs and the Commission’s obligation to provide oversight of them, informing applicants, customers, and occupants that they have a right to inquire about their administration is an important procedural safeguard. Action Alliance proposes changing the first sentence of the definition of “initial inquiry,” as follows:

Initial inquiry - A concern or question of an applicant, [ratepayer] customer or occupant about a public utility’s application of a provision covered by this chapter, including subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts, **THE ADMINISTRATION OF UNIVERSAL SERVICE AND ENERGY CONSERVATION PROGRAMS,** or the proper party to be charged. ...

9. Restoration of service.

- a. Proposed § 56.191(c)(2)(i), full payment of outstanding balance; defaulted on two or more payment agreements.

Under Chapter 14 Section 1407(c)(2)(i), a utility may require that a customer or applicant whose service has been previously terminated for non-payment pay the full outstanding balance if he/she has previously “defaulted on two or more payment agreements.” If the customer or applicant has not “defaulted on two or more payment agreements,” he/she will qualify for a payment agreement, with a greatly reduced upfront payment. Access to a payment agreement in these circumstances is a substantial benefit, and ensures that the customer/applicant will be able to minimize the period of time without a life-essential utility service.

Action Alliance requested that the Commission include in its regulation more expansive definitions of the words “payment agreements” and “defaulted” for Section 1407(c)(2)(i) purposes.⁸ Without such clarification, it is to be feared that utility overreaching in interpreting these terms will unreasonably deny access to service restoration to customers or applicants who have been shut off for non-payment.

⁸ Comments of Action Alliance et al. , Docket No. L-00060182 (February 14, 2007), at 53-58.

The Commission only partially responded to Action Alliance’s request for greater regulatory definition of these terms. In proposed § 56.191(c)(2), the Commission has indicated that neither a payment agreement intended to amortize a make-up bill under § 56.14 or an initial bill covering more than 60 days constitutes a “payment agreement” for Section 1407(c)(2)(i) purposes.

In addition, the Commission proposes that any defaults on a “payment agreement that has been paid in full” should not be considered a defaulted agreement for the purposes of Section 1407(c)(2)(i). Action Alliance is uncertain what is intended by this proposed formulation. In its original Comments, Action Alliance submitted that a customer who had defaulted on a payment agreement, had been served a termination notice, and then cured the default prior to termination should not be considered to have “defaulted” for Section 1407(c)(2)(i) purposes.

It is not clear from the Commission’s provision whether the regulatory intent was to adopt Action Alliance’s position. The reference to a “payment agreement that has been paid in full” would appear to refer to a payment agreement where the customer defaulted on the agreement, cured the default, and then over time, paid off the total outstanding balance due under the payment agreement. While that clarification does have some value, it addresses only one simple cured default scenario; few utilities are likely to punish a customer for a default on a payment agreement that was ultimately fully paid off. Action Alliance’s attention, however, was focused on the customer who might have defaulted on a payment agreement in month six, been placed on the collection path, cured the default, and now, in month thirteen of the same payment agreement, defaulted again, and was terminated. Do these facts present one or two defaults? Action Alliance submits that the Commission should adopt the position that when a customer cures a default on a payment agreement, by bringing the payment agreement current prior to termination, the default that has been cured should not be counted as a “defaulted” payment agreement for Section 1407(c)(2)(i) purposes. The customer in this example should not be precluded, with only one default, from obtaining service restoration pursuant to a payment agreement.⁹ Action Alliance therefore proposes that the phrase “**nor a payment agreement**

⁹ *Id.*, at 57-58.

that has been paid in full by the customer” be amended to read: “NOR A DEFAULT ON A PAYMENT AGREEMENT IN WHICH THE DEFAULT WAS CURED PRIOR TO TERMINATION”.

Consistent with earlier Comments, Action Alliance submits that the Commission should go further in enumerating instances which do not qualify as a defaulted payment agreement within the meaning of Section 1407(c)(2)(i). Having enumerated a few of these instances, the Commissions should also list defaulted “invalid payment agreements,” “extensions,” budget billing and budget billing true-ups, medical certification equitable arrangements, and customer assistance programs. Also, Action Alliance recently learned that a public utility serving Philadelphia has been counting defaulted payment agreements of the prior named customer against the new customer who agrees to an assignment of liability of an outstanding balance at the service address. Section 1403 defines "payment agreement" as “[a]n 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.” Action Alliance requests that the Commission clarify that one person may not admit liability for another person and that defaulted payment agreements of a prior named customer cannot be counted against a newly named customer who is assigned the outstanding balance. The newly named customer should be allowed a reasonable chance to fulfill his/her own payment agreement opportunities.

In the event that the Commission does not choose to expand on the enumerated instances, it should consider specifying that the enumerated instances do not represent a comprehensive list of all defaults that might be excluded.

b. Proposed § 56.191(d), payment of outstanding balance at premises.

In § 56.191(d) devoted to restoration of service, the Commission proposes to provide greater guidance concerning interpretation of Chapter 14 Section 1407(d), regarding the liability of applicants for outstanding bills in the name of another person applying for service at premises where service has been terminated for non-payment, in the situation where the applicant previously resided at the same premises. The Commission specifies that an applicant may be

held responsible for the outstanding balance accrued, “for the time the applicant resided there, not exceeding 4 years, except for instances of fraud and theft.”

Although a two year statute of limitations might be more appropriate in this situation, Action Alliance nevertheless appreciates the Commission’s recognition of the need to apply a statute of limitations standard, in order to assure that this type of applicant has at least the same protections as other customers against stale claims. At the same time, Action Alliance submits that applicants should also be afforded the benefit of the same standard when the outstanding balance includes in whole or in part a claim for utility service obtained by fraud or theft. In considering this situation, it is important to remember that the applicant was not the customer of record at the premises, or even, in some cases, a person with a property interest in those premises via a mortgage, deed or lease. Such persons usually would not be directly responsible for the unauthorized use, did not themselves tamper, by-pass or illegally turn on service, or direct anyone else to do same. In short, they are very similar to the persons for whom the Commission proposes to recognize a four year statute of limitations.

It is not reasonable to expect low and lower income persons who move relatively frequently, and are not likely to keep documentary evidence of their prior addresses to be able to establish where they resided more than a few years into the past. As it is, they are given the heavy burden of proving negatives – that in the past, they were not residing at the property where theft or fraud occurred and/or that they were not responsible for the fraud or theft. It is appropriate that some limit be placed by means of a statute of limitations on the scope of their potential liability for service previously provided at the address for which they are now applying for service. For these reasons, Action Alliance requests that the Commission eliminate the exception in proposed § 56.191(d) expressed by the words “except for instances of fraud and theft.”

10. Reporting requirements.

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

11. Other issues raised by the parties.

a. Formal Complaints

The Commission proposes a 30 day time frame, from the time of receipt of Formal Complaint forms from the Commission, within which the Formal Complaint must be filed. The Commission also proposes, at § 56.174, a procedure in which certain BCS documents obtained during the informal complaint proceeding will be incorporated into the record of the Formal Complaint proceeding, in cases involving “ability to pay.” Absent a valid evidentiary objection from the parties, the BCS’ documents will become part of the formal complaint record. Also, the Commission appears to propose regulatory changes in Annex A that would eliminate “*de novo*” review of informal complaints at the Formal Complaint level, except in cases involving “ability to pay,” at proposed §§ 56.173 and 56.174.

Action Alliance does not oppose the proposed § 56.172 Formal Complaint filing deadline of 30 days following the mailing of Formal Complaint forms to the parties, so long as there is conspicuous notice to the parties of the deadline including language that explains that any automatic stay on the informal complaint decision can be lifted or waived, if the deadline is missed, and could result in termination of service.

Proposed § 56.173 (relating to review from informal complaint decisions of the Bureau of Consumer Services) has been modified so as to appear to eliminate *de novo* review of BCS decisions. Action Alliance does not believe it was the Commission’s intent to eliminate *de novo* review of informal complaints and suspects that it was a clerical error to delete the words “*de novo*” from the proposed regulations. However, if it was indeed the Commission’s intent to eliminate *de novo* review, except for ability to pay proceedings, Action Alliance takes this

opportunity to register opposition to such a proposal. The BCS informal complaint process is by definition very informal, usually involving *pro se* consumers against public utilities with the full backing of legal departments. The record developed at the informal complaint level should not be used to prejudice the consumer at the Formal Complaint level.

Notably, the Commission proposes to preserve *de novo* review in ability to pay proceedings, at § 56.174(c)(ii). It is unclear why *de novo* review is preserved here and not in other types of cases. It is also unclear what efficiency is being sought at proposed § 56.174(c), which presents a specific rule of evidence for ability to pay proceedings, although there are already rules of administrative practice and procedures governing Formal Complaints at 52 Pa. Code, Chapters 1, 3 and 5.

b. Limited English Proficient (LEP) consumers.

Action Alliance supports the Commission's proposed language at § 56.91 (b)(17) and §56.331(b)(13) requiring that termination notices include information in, not only the Spanish language, but also "in other languages when census data indicates a significant population using that language resides in the public utility's service territory." Action Alliance requests that this provision for other languages also be included in § 56.201 and § 56.431, both relating to public information. Action Alliance recommends that the Commission provide greater guidance in the regulations to clarify the meaning of "significant population using that language," and to provide instruction as to written translation and spoken interpretation in contacts with customers.

The Commission should require written translations of vital documents for each eligible Limited English Proficient (LEP) group that constitutes 5% of persons eligible to be served or 1,000 members of the language group, whichever is less. In addition, if there are fewer than 50 persons in a language group that reaches the 5% threshold, the utility may comply by providing written notice in the primary language of the LEP language group of the right to receive competent oral interpretation, free of cost. Action Alliance proposes the following amendments to the regulations at § 56.91 (b)(17) and §56.331(b)(13):

Information in Spanish, directing Spanish-speaking customers to the numbers to call for information and translation assistance. Similar information shall be included in other languages when census data indicates a significant population using that language resides in the public utility's service territory. **A SIGNIFICANT POPULATION CONSTITUTES 5% OF PERSONS ELIGIBLE TO BE SERVED OR 1,000 MEMBERS OF THE LANGUAGE GROUP, WHICHEVER IS LESS.**

Action Alliance proposes amendments to § 56.201 and § 56.431. as follows:

... A public utility which serves a substantial number of Spanish-speaking [ratepayers] customers shall provide billing information in English, [**and**] in Spanish, **AND IN OTHER LANGUAGES WHEN CENSUS DATA INDICATES THAT A SIGNIFICANT POPULATION USING THE PARTICULAR LANGUAGE RESIDES IN THE PUBLIC UTILITY'S SERVICE TERRITORY. A SIGNIFICANT POPULATION CONSTITUTES 5% OF PERSONS ELIGIBLE TO BE SERVED OR 1,000 MEMBERS OF THE LANGUAGE GROUP, WHICHEVER IS LESS.**

The proposed regulations at § 56.93 and § 56.333, both relating to personal contact, should be amended to require the personal contact, whether in person or by phone, be in the primary language of the customer. In-person and phone contact can occur through bilingual staff or the use of interpreter services, including telephonic interpreter services. Posted written notice should be translated into Spanish and into the customer's primary (non-Spanish) language, if known. In the alternative, written notices should include a short statement translated into the other non-Spanish languages that meet the "5% or 1,000" threshold rule discussed above, explaining that this is a written notice of termination of utility service and that the customer should contact the utility company for free interpretation of the entire notice.¹⁰ Because this personal contact section contains important legal rights, the Commission should ensure that utilities uphold these rights for all consumers and not intentionally or inadvertently deny consumers' rights by failing to make appropriate contact with the consumer in the consumer's primary language. Action Alliance proposes amendments to § 56.93, as follows:

¹⁰ The "5% or 1,000" threshold rule was adopted from the federal Department of Energy's policy guidance on nondiscrimination in federally assisted programs as prohibited by Title VI of the Civil Rights Act of 1964. 69 Fed. Reg. 50366 (Aug. 16, 2004). This guidance clarifies how recipients of financial assistance from the Department of Energy (DOE) can meet their obligation to ensure that persons with limited English proficiency have meaningful and timely access to their programs and services.

... a public utility may not interrupt, discontinue or terminate service without ...
attempting to contact the customer or responsible adult occupant, either in person or by telephone, to provide notice of the proposed termination at least 3 days prior to the scheduled termination. If personal contact by one method is not possible, then the public utility is obligated to attempt the other method.

(b) Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between the hours of 7 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m and at least 2 hours apart.

(c) If contact is attempted in person by a home visit, only one attempt is required, but the public utility shall conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant.

(d) The content of the 3 day personal contact notice must comply with the requirements in § 56.91 (relating to general notice provisions and contents of termination notice), INCLUDING THE LANGUAGE REQUIREMENTS AT § 56.91 (b)(17).

(e) PERSONAL CONTACT, WHETHER IN PERSON OR BY PHONE, SHALL BE IN THE PRIMARY LANGUAGE OF THE CUSTOMER THROUGH BILINGUAL UTILITY STAFF OR THE USE OF INTERPRETER SERVICES, INCLUDING TELEPHONIC INTERPRETER SERVICES.

Comparable amendments should be made to the parallel personal contact provision at § 56.333.

c. Equal monthly billing (budget billing).

Action Alliance supports the proposed requirement, at § 56.12(7), that reconciliation of budget bills not cause sudden jumps in payment requirements, which would defeat the purpose of budget billing to provide equal monthly bills. The term “payment agreements” in the new language should be changed to a different term such as “amortization” to avoid confusion with the Chapter 14 defined term “payment agreement” that can count toward the maximum number of payment agreements that a customer may receive for a particular balance.

In § 56.41(1)(ii), the term “equal monthly billing plans” should be changed to “budget billing plans” to be consistent with a related proposed change at § 56.12(7). Also, within §56.41(1)(ii)(A), the terms “payment agreement” in the context of § 56.14 (make-up bills) should be replaced with the term “installment arrangement.” As discussed above, a “payment agreement” is a specialized arrangement that is very limited in availability in Chapter 14, so the terms should not be used for arrangements that do not fit strictly within its definition.

d. Definition of household income.

Action Alliance supports the proposed definition at § 56.2 for “household income” that incorporates the Chapter 14 definition that household income only include income of adults. Listing examples of children’s income that should be excluded provides helpful clarification to utilities and customers.

e. Electronic billing and payment options.

Action Alliance supports the recommendations of the OCA with regard to electronic billing and payment options and incorporates by reference those proposed regulations that reflect the OCA’s recommendations. Action Alliance supports the proposed language, at § 56.11(b)(5), which requires that electronic bills include the option for the customer to contribute to the utility’s hardship fund, so that such important contributions to assist low income customers can be maximized.

III. CONCLUSION

Action Alliance of Senior Citizens of Greater Philadelphia, Tenant Union Representative Network, and ACORN appreciate this opportunity to provide comments on the Proposed Rulemaking to amend 52 Pa. Code Chapter 56, respectfully submit these Comments to the Commission for consideration, and request that Final Regulations be adopted consistent with the Comments submitted herein.

Respectfully submitted,

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