BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations	:	**COMMENTS**
	:	**Docket Number: L-00060182**

COMMENTS OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION
TO THE PROPOSED RULEMAKING ORDER

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

On September 26, 2008 the Pennsylvania Public Utility Commission (the "Commission") entered a Proposed Rulemaking Order (the "Order") in this matter containing proposed revisions to the Commission's Regulations found at 52 Pa. Code, Chapter 56 ("Chapter 56"). The Proposed Rulemaking Order, along with an "Annex A" containing the actual proposed revisions to Chapter 56 was subsequently published in the Pennsylvania Bulletin on February 14, 2009. Upon publication, the Proposed Rulemaking Order stated that interested parties may submit comments relative thereto on or before April 20, 2009.

Thereafter, on March 31, 2009 the Commission sent a Secretarial Letter directing jurisdictional utilities that utilize electronic billing programs to file specific comments relative to those programs. The March 31 Secretarial Letter indicated that the Comments relative to electronic billing programs may be filed along with Comments related to the Chapter 56 Proposed Rulemaking.

National Fuel Gas Distribution Corporation ("NFGDC"), a certificated natural gas distribution company providing service to approximately 213,000 customers in Northwestern and North-central Pennsylvania, appreciates this opportunity to submit comments on this important issue. Given the length of the Proposed Rulemaking, these comments will generally track the proposed changes laid out section-by-section in Annex A. As the Proposed Rulemaking also contains proposed revisions relevant to small natural gas distribution companies (Subchapters L through V) which have limited or no application to NFGDC, NFGDC will not comment on those proposed revisions.

In addition, the Energy Association of Pennsylvania (the "EAPA"), of which NFGDC is a member, is contemporaneously filing Comments at this Docket. NFGDC incorporates herein and supports the Comments filed by the EAPA.

II. GENERAL COMMENTS

On December 14, 2004, Chapter 14 of the Public Utility Code[1] was signed into law with the title "Responsible Utility Customer Protection." The Declaration or Policy set forth by the Legislature in Chapter 14 makes it abundantly clear that the overarching purpose of Chapter 14 is to "provide protections against rate increases for timely paying customers resulting from other customers' delinquencies . . . by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills. 66 Pa. C.S. § 1402(2). In many instances, the revisions proposed to Chapter 56 by the Commission are counter to this purpose.

The Commission, in interpreting and implementing Chapter 14 must properly interpret and give effect to the legislative intent of that statute. See 1 Pa. C.S. § 1921. That is, when promulgating regulations based on a statute, the Commission must do so in a manner that is not contrary to the clear and plain meaning of that statute. Peoples Natural Gas Co. v. Pennsylvania Public Utility Commission, 542 A.2d 606 (Pa. Commw. 1988). Failure to do so is

[1] 66 Pa. C.S. §§ 1401-1408.

an abuse of discretion. Id. In this instance, the Legislature has made its intentions clear through a statement of the scope of Chatper 14, "[Chapter 14] relates to protecting responsible customers of public utilities" (66 Pa. C.S. § 1401) and an even clearer Declaration of Policy:

> [The] [f]ormal service rules . . . adopted in 1978 . . . have not successfully managed the issue of bill payment. Increasing amounts of unpaid bills now threaten paying customers with higher rates[.] Through this chapter, the General Assembly seeks to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 1402.

In NFGDC's opinion, the proposed modifications to Chapter 56 are not wholly consistent with this clear legislative intent. In fact, many of the proposed changes would take away the means the General Assembly provided to public utilities to reduce uncollectible accounts. Further, many of the proposed modifications would significantly increase the costs of providing service without the promise of real benefit to ratepayers. Increases in the cost of service that cannot be shown to have a reciprocal benefit are, by their very nature, inconsistent with the stated intent of Chapter 14 -- to protect responsible ratepayers from potential cost increases. It is pointed out below, in NFGDC's section-by-section comments, which of the proposed modifications fall into this category.

A number of the proposed modifications to Chapter 56 involve changes to the regulations that were clearly not brought about by Chapter 14. That is, many proposed changes appear to have been made on the Commission's initiative alone without guidance from the Legislature. Primarily, NFGDC feels that proposed revisions of this sort are improper within the scope of this rulemaking that had, as its genesis, the implementation of Chapter 14. Secondarily, if these proposed revisions are permitted to take final form, public utilities will need ample time to make necessary business practice changes to implement these changes. Utilities

have taken steps to implement changes based on Chapter 14 since it was enacted over 4 years ago. Time is necessary to implement any changes that are outside the realm of Chapter 14.

Another general comment of NFGDC involves the use of the phrase "Informal dispute settlement agreements" throughout the proposed rulemaking. This phrase is defined in the definition section and is used sporadically throughout the proposed rulemaking. NFGDC is confused by the use of this term as it is used in the proposed rulemaking. In some cases the term is used in conjunction with the phrase "payment agreement" and in other instances it is used alone. NFGDC feels that this phrase and this concept needs to be better explained in the proposed rulemaking as it is unclear whether this phrase applies to any "agreement" between a utility and a customer or whether it simply applies to settlement offers or resolution offers made by a public utility. Given the inconsistent manner in which this phrase is used in the proposed rulemaking it is difficult to provide specific comments thereto. NFGDC asks that this concept be better explained or excluded as it is not part of Chapter 14.

III. COMMENTS TO SPECIFIC SECTIONS

§ 56.1.

The proposed changes to this section involve: (1) adding a Paragraph (b) which discusses the applicability of specific chapters; and, (2) adding language to Paragraph (a) regarding the intent of Chapter 56.

NFGDC has no comment on the addition of Paragraph (b). However, NFGDC believes that the proposed addition to Paragraph (a) should be modified as follows (only the proposed additional language is shown):

> . . . while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills. ~~and protecting against rate increases for timely paying customers resulting from other customers' delinquencies. Public utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages~~.

NFGDC believes that only the first portion of the proposed addition is proper for this statement of purpose and policy. That portion of the proposed language was properly interpreted from the Legislature's Declaration of Policy in Chapter 14 while the remaining language is an improper interpretation.

The second sentence of the proposed language is incorrect in that it assumes that it is solely the responsibility of the public utility to manage customer accounts. NFGDC submits that, in order to be truly effective, the "procedures" of Chapter 56 must be properly used, implemented, interpreted, and enforced by not only the public utilities but also the Commission as a whole, including the Bureau of Consumer Services and other associated bureaus and offices. It is improper to assume that public utilities are the only entities with a role in the application of the procedures of Chapter 56.

§ 56.2.

The proposed changes to this section modify, remove or add definitions to Chapter 56. With the exception of those specifically identified below, NFGDC has no comment on these proposed changes.

Billing month:

NFGDC has no comment on the proposed changes to the definition of a billing month, however, NFGDC submits that the Commission may want to take this opportunity to address and streamline the process a utility needs to undertake to modify its meter-reading routes. In the past, due primarily to demographic changes in service territories, public utilities need to alter their meter reading routes for purposes of efficiency. In those instances, it is often necessary that the billing month for certain customers may fall outside the guidelines presented. In these cases, the utility must initiate a proceeding with the Commission for a temporary waiver of this provision and § 56.11 regarding billing frequency. It has been NFGDC's experience that the Commission has handled these requests timely in the past and the outcome is always

favorable. The utility would notify the customers in advance and subsequently allow any impacted customer to make an payment agreement on a bill resulting from a meter rerouting.

NFGDC suggests that, given the relatively uniform way these situations are handled, the Commission could enjoy some economy by allowing for them in the regulation. Adding an exception to the billing month definition as follows:

> (iv) A bill resulting from a meter reading rerouting to improve efficiency may be less than 26 days or longer than 35 days. However, in such cases, the public utility shall notify any potentially impacted customers of the change in billing cycle at least (2) months in advance of the change and shall allow any customer the opportunity to amortize a bill impacted by such a rerouting over a period equal to the period covered by the rerouting without penalty.

Customer:

Here, the Commission has proposed a new definition for "customer" based on the language of 66 Pa. C.S. § 1403. In order to be consistent with the language the Legislature used in 66 Pa. C.S. § 1403, NFGDC submits that the proposed phrase "or a adult occupant" should be changed to "or any adult occupant". This change will also eliminate any potential confusion that could arise from use of the less exacting word "an".

Delinquent account:

The language contained in this definition is semantically incorrect as it proposes that accounts that are overdue are not delinquent if they are subject to a payment agreement or the subject of a timely filed dispute. To the contrary, any account that has an arrearage is, in fact, delinquent. To clarify this situation and eliminate any potential conflicts in record keeping or in reporting to other agencies or governmental agencies this language should be changed. NFGDC suggests that, at the least, the phrase "for purpose of this Chapter only" be inserted between "provided that" and "an account" in this definition.

Electronic billing:

NFGDC believes that the second sentence of this proposed definition, which reads "This term also includes any process that permits customers to pay their bills electronically" should not be included in the definition for "electronic billing." First, the act of paying a bill electronically can take many forms, including, but not limited to, making a payment on a company website, making an electronic funds transfer through a third party provider, or making an electronic transfer through a customer's bank. The better definition for the act of paying a bill electronically would be "electronic remittance."

Second, the act of electronic billing is, in many instances, completely separate from the act of electronic payment. In some cases, a customer may elect to receive an electronic bill and not a paper bill and yet still pay their bill with a check or by other non-electronic means. The term "electronic billing" has taken on a meaning unique to the act of delivering the bill to the customer. In order to clarify the differences in electronic billing and electronic payments, these concepts should be divided into two separate definitions.

Electronic notification of payment:

NFGDC suggests that the word "the" in the first sentence of this proposed definition should be changed to "an". That change speaks for itself.

Household income:

The definition proposed by the Commission in this instance clearly goes beyond the definition provided by the Legislature in 66 Pa. C.S. § 1403 by adding two sentences to the statutory language. The italicized portion of the definition below is what was added by the proposed regulation:

> Household income – The combined gross income of all adults in a residential household who benefit from the public utility service. *The term does not include income intended for the use of a minor. Examples of a minor's income include Social security, child support, SSI, earnings and grants from the Department of Welfare.*

These two sentences should be removed from the definition to properly give effect to the clear and obvious legislative intent.

First, the proposed language is confusing as written. There is a distinct difference between the phrases "income intended for the use of a minor" which is used in the first additional sentence and "a minor's income" which is used in the second sentence. "Income intended for the use of a minor" is a phrase that is far too indefinite for use in a regulation. That is, with only a little imagination, any income that comes into a household with minor children could be deeded to be "for the use of a minor." This creates a potential loophole that would be contrary to the stated Legislative intent of eliminating opportunities for customers who are capable of paying their bill to do so.

Second, the intent of the Legislature here is clearly evident. The Legislature chose simple phrasing to include any income of an adult in this definition and in so doing, excluded only income earned directly by a minor from the definition. It is improper to draft a regulation that is clearly inapposite with Legislative intent.

Third, many of the examples provided by the proposed third sentence of the regulation inherently include amounts that are intended, by their very nature, to provide for the cost of utility service. For example, child support awards are made with the mindset that a portion of the money paid is intended to cover the expense of the child's basic needs. Certainly this includes a portion of the cost of utilities in the home.

NFGDC agrees that income that is received wholly by a minor, such as SSI in a minor's name or income derived by a minor should not be included in this definition. This is what the Legislature intended and is exactly what their definition in 66 Pa. C.S. § 1403 has done. The proposed regulation stretches this definition to include monies not intended by the Legislature and, in some instances, monies that were specifically meant to cover basic living needs including utility service, such as welfare grants.

Informal dispute settlement agreements:

NFGDC refers to the General Comments section above for comments concerning this definition.

LIHEAP:

The proposed definition of this term should be modified as follows:

> LIHEAP – Low Income ~~Heating~~ Home Energy Assistance Program. ~~A Federally funded program that provides financial assistance in the form of cash and crisis grants to low-income households for home energy bills and is administered by the Department of Public Welfare.~~

NFGDC's first suggested change corrects the name of the LIHEAP program. NFGDC believes that the descriptive language should be removed from this definition as the LIHEAP program speaks for itself and should not be quantified or defined in these regulations.

Natural gas distribution service:

NFGDC suggests removing the phrase "retail gas" from this definition to avoid any conflict with the Natural Gas Choice and Competition Act and the related Commission regulations.

Payment agreement:

NFGDC suggests including the phrase "or applicant" after the word "customer" in this definition. It is possible for an applicant to enter into a payment agreement as well as a customer and this definition should recognize that.

§ 56.11.

In the proposed language for this section the Commission has endeavored to include provisions related to electronic billing. NFGDC's comments relative to electronic billing programs and the March 31, 2009 Secretarial Letter are discussed below in IV. Electronic Billing. NFGDC supports the proposed changes to this section.

§ 56.12.

With respect to § 56.12(4)(ii) NFGDC submits that the Commission may want to take this opportunity to recognize the current sophistication of utility estimating algorithms and programs and lengthen the period of actual meter readings to 12 months. This has potential cost savings and customers are protected from any large adjustments by other provisions that require amortization of any such adjustments.

NFGDC suggests the following changes to the proposed changes of § 56.12(7):

> Budget billing. A gas, electric ~~and~~ or steam heating utility shall provide its residential customers, on a year-round rolling enrollment basis, with an optional billing procedure which averages estimated public utility service costs over a 10-month, 11 month or 12-month period to eliminate, to the extent possible, seasonal fluctuations in utility bills. The public utility shall review accounts at least three times during the optional billing period. A resulting reconciliation amount exceeding $25 shall be amortized over a 3 - ~~12~~9 month period if requested by the customer. Payment agreements for heating customers shall be based upon ~~equal monthly~~ budget billing.

The first indicated change ("and" to "or") is self-evident. NFGDC submits that inserting a customer request into the amortization provision will allow for some needed flexibility. As written, any amount over $25 must be automatically amortized even if the customer would rather chose to simply pay the full amount.

§ 56.13.

NFGDC has no comments on the proposed changes to Section 56.13.

§ 56.14.

NFGDC has no comments on the proposed changes to Section 56.14 other than to reiterate its earlier comments filed at this docket regarding an increase to the threshold amounts.

§ 56.15.

NFGDC has no comments on the proposed changes to Section 56.15.

§ 56.16.

NFGDC supports the proposed changes to § 56.16(a) and has no comments regarding the remainder of the proposed changes to Section 56.16.

§ 56.17.

NFGDC has no comments on the proposed changes to Section 56.17.

§ 56.21.

NFGDC has no comments on the proposed changes to Section 56.21.

§ 56.22.

NFGDC submits that if the proposed regulation will cite to the statutory language from which it claims to obtain authority, the statutory section should simply be quoted in its entirety rather than paraphrased or implied. Here, the language of 66 Pa. C.S. § 1409 is clear and concise enough to quote directly. This will ensure that proper effect is given to the Legislative intent.

§ 56.23.

NFGDC has no comments on the proposed changes to Section 56.23.

§ 56.24.

NFGDC has no comments on the proposed changes to Section 56.24.

§ 56.25.

Here, the Commission is proposing a new section addressing electronic bill payment. In addition to the specific comments made here relative to the proposed language, NFGDC incorporates its comments regarding electronic billing and the March 31, 2009 secretarial letter below.

In general, NFGDC feels that these requirements would be better served by splitting apart the concept of "electronic bill payment" from what NFGDC refers to as "direct pay". In "electronic bill payment" a customer must still make an affirmative action, usually through an on-line medium, to effectuate a payment. This is different from "direct pay" where a

customer only signs up for the program once and the billed amount is automatically withdrawn from a financial account on a specified date. "Direct pay" can be accomplished with the customer still receiving paper bills and not receiving any type of electronic bill message. NFGDC believes that the "direct pay" concept should be excluded from this section.

With respect to 56.25(2), NFGDC suggests replacing the phrase "checking account" with "financial account". Types of accounts other than checking accounts are capable of making automatic electronic payments such as a savings account or credit union money market account.

With respect to 56.25(3) NFGDC suggests allowing for an option for a customer to receive relevant notices electronically. Many customers chose the electronic billing option to avoid receiving any paper correspondence at all. Inserting "unless the customer agrees to receive notice of program changes electronically" in the second sentence of 56.25(3) after the phrase "in writing" allows this option while keeping an in writing requirement for any customer who so chooses.

Regarding 56.25(5) NFGDC believes that maintaining system security is critical to an electronic billing and electronic bill payment system. However, the manner in which this requirement is worded could prove untenable and lead to a potential violation even though the public utility has taken reasonable steps to ensure security. That is, the way the proposed regulation is worded assumes a violation in any instance of a security breach, regardless of the amount of security implemented. NFGDC suggests changing this section to read "(5) the public utility shall take all reasonable steps to maintain system security in order to protect all customer information and prevent unauthorized access to customer accounts."

Subchapter C. Credit and Deposits Standards Policy – Procedures for New Applicants.

NFGDC suggests removing the word "New" from this title. "Applicant" is a defined term and the qualifier "New" is no longer necessary and may lead to confusion.

§ 56.31.

NFGDC has no comments on the proposed changes to Section 56.31.

§ 56.32.

NFGDC questions why the proposed language of § 56.32(a) differs from the language of 66 Pa. C.S. § 1404(a). As a majority of this proposed language is taken verbatim from the statutory language, NFGDC suggests that this paragraph also track the statutory language in order to give full effect to the legislative intent.

Likewise, NFGDC suggests changing the proposed language of § 56.32(a)(1)(vii) by adding the phrase "but not limited to" after "including" and before "bypassing a meter" to comport with the language of 66 Pa. C.S. §1404(a)(1)(vii).

With respect to the proposed language of § 56.32(a)(2), NFGDC again questions why the proposed language makes changes to the statutory language. Specifically, the proposed language quotes the statutory language through the first sentence, then adds a second sentence stating "The credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment." This sentence is inappropriate for two reasons. First, if the legislature intended to include such a requirement it could have easily added such a sentence to the statute. It did not and the Commission cannot then assume that it was the legislative intent to make such a requirement. Second, in many instances, a potential applicant who poses a significant credit risk may have no history of utility payment. This does not lessen the impact of the credit risk. If the overarching intent of Chapter 14 is to protect accountable ratepayers, customers who pose a credit risk, of any type, should be required to establish creditworthiness through a deposit.

66 Pa. C.S. § 1404 also included a third instance where the Commission may not prohibit a public utility from seeking a deposit before initiating service – where a **customer** has failed to comply with a material term or condition of a settlement or payment agreement. While the proposed regulations include this concept in § 56.41(3), it should not necessarily be removed from this section. Removing that language from this section could lead to a potential loophole.

§ 56.33.

NFGDC has no comments on the proposed changes to Section 56.33.

§ 56.34.

NFGDC has no comments on the proposed changes to Section 56.34.

§ 56.35.

The proposed language of § 56.35(2) is inconsistent with the other language contained in this section and other sections of the proposed regulations. Other sections, and Chapter 14, provide that any adult occupant is considered an applicant for purpose of applying for service. As such, if any of those individuals is "legally responsible" for a balance, the public utility **may** require that balance to be paid before it will furnish service to a residence where such a person is an applicant and will be a customer. The proposed language of § 56.35(2) does not allow for this possibility and should be removed to maintain consistency.

The proposed language of § 56.35(c) purports to require public utilities to include in their tariffs the procedures and standards used to determine an applicant's liability for an outstanding balance. NFGDC reiterates the arguments made by itself and others in earlier comments at this docket stating that this material is not proper for a tariff. Due to the fact specific nature of these situations they, in some instances, must be handled on a case-by-case basis. In some instances they will require a legal opinion or determination regarding whether an applicant is "legally responsible." It is next to impossible to draft reasonable tariff language to address every such situation. Further, such language is like to be subject to change constantly

depending on experience in evaluating situations. As a result, any potential tariff language will be either too cumbersome to be of value or too general to have any actual applicability.

§ 56.36.

Similar to § 56.35, the proposed language of this section would require public utilities to include in there tariffs: (1) credit and application procedures; and, (2) credit scoring methodology and standards. NFGDC reiterates that credit scoring methodology and standards are not appropriate for a tariff. NFGDC incorporates herein the arguments presented by the Energy Association of Pennsylvania regarding this issue.

This proposed section also would require a utility to establish written procedures for determining responsibility for unpaid balances in accordance with § 56.35. For all of the reasons stated in its comments regarding the inclusion of this information in a tariff, it is NFGDC's position that formal written requirements are not appropriate for these fact specific situations.

§ 56.37.

The proposed changes to this section establish a time frame for providing service. NFGDC believes the proposed language should be changed as follows (only the proposed language is shown):

> Once an ~~applicant's~~ application for service is accepted by the public utility, the public utility shall make a bona fide attempt to provide service within 3 business days, provided that the applicant has met all requirements. A longer time frame is permissible with the consent of the ratepayer.

NFGDC feels that these changes recognize that, in some cases, despite the best efforts of the public utility, circumstances prohibit providing service in three days. The requirement should be that the utility makes a bona fide effort to initiate service. Further, for utilities who do not perform service work on Saturdays, limiting the time frame to 3 calendar days could be burdensome.

§ 56.38.

The proposed language of this section establishes a time frame for completion of payment of a security deposit. NFGDC joins the Energy Association of Pennsylvania in its comments regarding why this language is inappropriate.

§ 56.41.

NFGDC has no comments on the proposed changes to Section 56.41.

§ 56.42.

NFGDC has no comments on the proposed changes to Section 56.42.

§ 56.43.

The Commission proposes to remove this Section in its entirety. NFGDC agrees that § 56.43 should be removed from the regulations.

§ 56.51.

NFGDC has no comments on the proposed changes to Section 56.51.

§ 56.53.

NFGDC has no comments on the proposed changes to Section 56.53.

§ 56.54.

NFGDC has no comments on the proposed changes to Section 56.54.

§ 56.55.

The Commission proposes to remove this Section in its entirety. NFGDC agrees that § 56.55 should be removed from the regulations.

§ 56.56.

NFGDC has no comments on the proposed changes to Section 56.56.

§ 56.57.

NFGDC has no comments on the proposed changes to Section 56.57.

§ 56.58.

NFGDC has no comments on the proposed changes to Section 56.58.

§ 56.71

NFGDC has no comments on the proposed changes to Section 56.71.

§ 56.72.

NFGDC does not agree with the addition of the proposed language of § 56.72(1) requiring a customer to state that all other customers in the household consent to the cessation of service. As written, this proposed language is unwieldy and could lead to potential abuse. To address situations where one customer is leaving a household and other customers remain, or otherwise ceasing to be a customer at a specific address, the individual that is no longer a customer should simply be removed from the account after demonstrating they are, in fact, no longer a customer. Requiring a utility to post a notice at the premises, as the proposed regulation indicates, would lead to significant cost increases with little return value.

§ 56.81.

With respect to the proposed language of § 56.81(3) NFGDC submits that the language be amended to read as follows:

> Failure to permit, or arrange, access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

Customers with meters inside or within a locked fence or the like have an affirmative obligation to assist the utility in gaining access to the equipment of the utility in order to continue to receive safe and reliable service. While customers may not affirmatively refuse access they are often times ambivalent to a public utilities attempts to work with them to gain access. Inserting a provision of this nature would give a utility an affirmative tool to assist them in the necessary access to their equipment.

§ 56.82.

NFGDC has no comments on the proposed changes to § 56.82.

§ 56.83.

NFGDC supports the proposed changes to § 56.83(1) and has no comments on the remainder of the proposed changes to this section.

§ 56.91.

NFGDC suggests changing the word "accounts" to "amounts" in the proposed language of § 56.91(b)(2) as well as adding the phrase "at the time of the notice" after the word "due". These changes will provide clarification.

NFGDC believes that the phrase "if applicable" should be added to the end of the proposed language of § 56.91(b)(4)(iii) as, based on these proposed rules, a payment agreement or informal dispute settlement agreement will not always be available to a customer to avoid termination. Likewise, NFGDC believes that the phrase "if eligible" should be added to the end of the proposed language of § 56.91(b)(4)(iv) because not all customers will be eligible to enroll in a universal service program. These two changes will work to prevent customer confusion upon reading the notice.

The proposed language of § 56.91(b)(9) may create confusion relative to universal service programs or lead to potential abuse. NFGDC recommends removing the phrase "and that enrollment in the program is a method of avoiding termination of service" from the end of the proposed language. In the alternative, the language should at least be changed to state "If you are eligible, enrollment in a universal services program may preclude termination of service."

The word "threatening" in the proposed language of § 56.91(b)(10) is unnecessary and contrary to the notion that termination should not be used solely as a collection device. This word should be removed. Changing the proposed language to read:

"Termination notices, sent by electric and gas utilities in the months of . . ." is a sufficient statement.

In the proposed language of § 56.91(b)(15), the phrase "the customer" should be removed to prevent any potential confusion given the fact that "customer" is a defined term that may not be applicable in all situations. § 56.91(b)(15) should read:

> (15) Information indicating that if service is shut off, an amount greater than that listed on the notice may be required to have service turned back on.

§ 56.92.

NFGDC has no comments on the proposed changes to Section 56.92.

§ 56.93.

In its proposed changes to § 56.93, which addresses personal contact prior to termination, the Commission has, in several instances, clearly gone beyond the legislative intent of 66 Pa. C.S. § 1406, the statute dealing with the same issue. Here, the proposed regulations attempt to place more restrictions and requirements on the public utilities than the Legislature intended in the statutory language. NFGDC submits that the proposed language should be modified as follows (only the proposed language is shown):

> § 56.93(a): Except when authorized by § 56.71. § 56.72 or § 56.98 (relating to interruption of service discontinuation of service; and immediate termination for unauthorized use, fraud, tampering or tariff violations), 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.~~

Here, the proposed language adds the final sentence to the langue the Legislature used in 66 Pa. C.S. § 1406(b)(1)(ii). Not only did the Legislature not include or intend this concept, the proposed language is vague and ambiguous making it impractical for a regulation. Whether or not telephone contact is "not possible" is unclear. For instance, if a utility makes several calls to

a working number that go unanswered is telephone contact "not possible"? This language is inappropriate and should be removed.

With respect to § 56.93(b) NFGDC submits that the proposed language should be changed as follows:

> (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~~.

Here again, the proposed language adds an unnecessary qualifier to the Legislative language of 66 Pa. C. S. § 1406(b)(1)(ii) with the last phrase. Had the Legislature intended to further define the viable time periods for telephone notification it could have easily done so. Rather, the Legislature saw it fit to leave that discretion to the public utility under the utility's right of self-management. See Pennsylvania Public Utility Commission v. Philadelphia Electric Co., *et al.*, 561 A.2d 1224 (Pa. 1989). In some instances, public utilities have already updated their electronic systems to trigger these notice calls consistent with Chapter 14. To further define the requirements at this point will result in significant expenditures by the public utilities with limited beneficial potential.

NFGDC believes that the proposed language of § 56.93(d), stating that the content of the 3-day personal contact notice must contain all of the information that was contained in the 10-day notice of § 56.91, should be removed or refined. As proposed, this requirement is unnecessary, difficult to implement and contrary to the purpose of the 3-day notice.

Anyone receiving a 3-day notice will have already received a 10-day notice pursuant to 66 Pa. C.S. § 1406(b)(1). The Legislature intended the 10-day notice to be the written notice to the customer that would explain the potential termination situation and all the rights and responsibilities that are involved. The 3-day notice is not intended to be a reiteration of all of the language of the 10-day notice. Rather, it is intended to be an acute reminder that

the situation described in the 10-day notice has yet to be remedied and that termination action is imminent. As such, the 3-day notice should be a short and concise warning notice that will effectively communicate the serious nature of the situation. Including, again, all of the information of § 56.91 would defeat this purpose.

Moreover, both Chapter 14 and the proposed language of § 56.93, propose that the 3-day notice may be delivered telephonically. Under the proposed language, the 19 items of the 10-day notice of § 56.91 would need to be incorporated into this telephone notice. This would inhibit the public utility making the 3-day notice via telephone to effectively communicate the serious nature of the immediate termination. It is easy to envision such a telephone notice becoming a rote and mechanical checklist of items, most of which will not be absorbed or understood by the customer. It would be extremely difficult for public utilities to generate effective 3-day telephone notices that would incorporate the multitude of requirements from § 56.91.

Further, public utilities will incur significant expenses in altering current 3-day notices to the extent they do not incorporate the numerous § 56.91 requirements. As discussed above, these changes will be of limited benefit since anyone receiving a 3-day notice will have already received a 10-day notice fully listing all of the § 56.91 items. Further, it is likely that listing all of these items will, in practice, lessen the impact and effectiveness of a concise 3-day notice. For these reasons, the proposed language of § 56.93(d) should be removed.

§ 56.94.

NFGDC has no comments on the proposed changes to Section 56.94.

§ 56.95.

NFGDC has no comments on the proposed changes to Section 56.95.

§ 56.96.

The proposed language of this section would require public utilities to amend their post termination notices to include all of the requirements of the 10-day notice of § 56.91.

NFGDC disagrees with this proposed change for the same reasons it disagrees with the proposed changes to § 56.93. NFGDC incorporates, in its comments to this section, its comments to § 56.93 as all of the arguments applicable to that section are applicable here.

§ 56.97.

In order to avoid any potential confusion to a ratepayer or customer, NFGDC suggests that the phrase "if applicable" be added to both § 56.97(a)(2)(ii) and (a)(2)(iv). A payment agreement or enrollment in a customer assistance program will not be available to every customer in every instance. As stated, the proposed language may lead to confusion as it is unclear that these options will not always be available.

§ 56.98.

NFGDC has no comments on the proposed changes to Section 56.98.

§ 56.99.

NFGDC has no comments on the proposed changes to Section 56.99.

§ 56.100.

Through the proposed language of this section, the Commission proposes major changes to the winter survey provisions of the current § 56.100. However, many of these changes improperly broaden the scope of Chapter 14 and impose requirements upon public utilities that are not expressed in the statute. See Fireman's Relief Association of Washington v. Minehart, 241 A.2d 745 (Pa. 1968).

The proposed language at § 56.100(e) is beyond the scope of the legislative intent and unnecessary. Nowhere in Chapter 14 did the legislature include language directing public utilities on how they must determine whether an account is permitted to be terminated during the winter months. The Commission is exceeding the extent of its authority and expanding the scope of Chapter 14 in doing so. It is enough to delineate which accounts are protected from termination during the winter, it is unnecessary to prescribe precisely how a public utility must make that determination. This proposed subsection should be removed.

Likewise, the proposed language of § 56.100(i) is beyond the scope of Chapter 14. Here, the Commission proposes to expand the currently existing cold-weather survey into three separate surveys. This expansion is clearly beyond the scope of Chapter 14 and attempts to impose a duty upon public utilities that was not intended by the Legislature. Moreover, in order to comply with this proposed language, public utilities will expend a great deal of assets with dubious potential benefit.

The proposed language of § 56.100(j) is even more egregious of an attempt to go beyond the intent of Chapter 14. Here the Commission proposes to require public utilities to report "when, in the normal course of business, they become aware of a household fire, incident of hypothermia or carbon monoxide poisoning that resulted in a death and that the utility service was off at the time of the incident." The problems with this proposed language are numerous.

First, there is absolutely no legislative authority, be it in Chapter 14 or elsewhere, for the Commission to place this requirement on public utilities. Administrative agencies do not have the power to make law, only the power to adopt regulations that carry into effect the will of the Legislature as expressed by statute. Harrisburg Area Community College v. Pa. State Employees Retirement System, 821 A.2d 1225 (Pa. Commw. 2003).

Second, the proposed language has substantial questions related to its fundamental fairness. Based on the proposed language, liability could be imputed to a public utility for incidents where otherwise none would exist. This has substantial due process implications that have not been addressed.

Furthermore, the proposed language itself is vague, ambiguous and open to potentially broad interpretation. It requires reporting of incidents that utilities discover "in the normal course of business" without defining what that means. Who at a utility would this apply to? How much evidence of a situation would a utility need to discover before the reporting requirement is triggered. This ambiguity could lead to disparate interpretations of such a regulation and is patently unfair. In addition, there is no timeframe or limitation attached to the

potential language regarding the fact that the utility service was off at the time of the incident. This is far reaching and broad. As written, service could have been turned off at a customers request ten years prior to an incident and a utility with no facilities or service at an address would still have an obligation to report an incident.

Also, the proposed language would require the utility to provide a "brief statement of the circumstances involved and, if applicable, the initial findings as to the cause of the incident and the source of that information." Public utilities are certainly not experts or in any way capable of making a determination as to the cause of such incidents. It is improper to require this information. Any other information would be unreliable hearsay information and of no benefit.

All in all, the proposed language at §56.100 (j) is wrought with problems and should be removed.

§ 56.101.

The Commission proposes to remove this Section in its entirety. NFGDC agrees that § 56.101 should be removed from the regulations.

§ 56.111.

NFGDC incorporates the comments of the Energy Association of Pennsylvania regarding this section.

§ 56.112.

NFGDC supports the proposed addition to the language of Section 56.112.

§ 56.113.

NFGDC has no comments on the proposed changes to Section 56.113.

§ 56.114.

NFGDC recommends that the proposed language in § 56.114(2) be expanded to include applicants as well as customers. In addition, the last sentence of the proposed language, regarding public utility company dispute procedures should be removed. There is no

dispute in these cases since the proposed language of this section is clear as to whether or not a medical certificate is to be honored.

§ 56.115.

NFGDC has no comments on the proposed language of Section 56.115.

§ 56.116.

NFGDC does not oppose the proposed language of this section. However, in order to simplify this section and make it more understandable NFGDC suggests modifying the proposed language as follows:

> Whenever service is restored or termination postponed under the medical emergency procedures, the customer shall retain a duty to make payment on all current undisputed bills[.] ~~or equal monthly billing amount as determined by § 56.12(7) (relating to meter reading; estimated billing; ratepayer readings).~~

Generally speaking, for customers on a equal monthly billing program, the amount they see on their monthly bill is the equal monthly billing amount. The primary purpose of this provision is to require customers to continue to pay current undisputed bills. Removing this excess language as NFGDC proposes will communicate that point more clearly.

§ 56.117.

NFGDC has no comments on the proposed changes to Section 56.117.

§ 56.118.

This section explains the right of a pubic utility to petition the Commission regarding a medical certificate it feels is invalid or improperly renewed. NFGDC has two general comments regarding this section.

First, § 56.118(a)(2) should be removed. This section states that a public utility has a right to petition the Commission for the right to terminate service for a customer's failure to make payments on current undisputed bills. Public utilities should not have to petition the Commission in these situations. As stated in § 56.116, customers retain an affirmative duty to

pay undisputed current bills. Failure to do so would subject them to the general termination procedures contained in the remainder of this chapter. A public utility need not petition the Commission in these circumstances.

Second, it has been NFGDC's experience that, due to the time frames involved in any petition under this section, the process has become mostly obsolete. That is, an original medical certification is valid for 30 days and is limited to two renewals. Thus, there is generally a 90-day period under which a medical certificate and its renewals can be active. As there is no language in § 56.118 requiring a medical certificate petition to be addressed within a specific timeframe, more often than not, by the time a determination is made, the issue has passed. If this Section is to have any real world applicability, a time frame for a final Commission adjudication should be required. It would not be unreasonable for such an adjudication to be performed in 10 days or less.

§ 56.131.

NFGDC has no comments on the proposed revisions to Section 56.131.

§ 56.140.

NFGDC has no comments on the proposed revisions to Section 56.140.

§ 56.141.

NFGDC has no comments on the proposed revisions to Section 56.141.

§ 56.142.

NFGDC has no comments on the proposed language of Section 56.142. However, the Commission should consider adding a requirement to this section that would spell out the time frame that BCS has to respond to an informal complaint.

§ 56.143.

This Section deals with he consequences of failing to timely file an informal complaint. The Commission has proposed to remove the following language from this section

"and may constitute a waiver of rights to file an informal complain in accordance with this chapter." NFGDC does not agree with the removal of this language.

An essential component of any regulatory proceeding, informal or otherwise, is that time is of the essence. There are many good reasons for this requirement, chief among them is the need to prevent the stagnation or loss of evidence. The language that is marked for removal makes it clear that failure to comply with necessary time requirements may lead to the inability to prosecute an informal complaint. In order to give structure to the process and promote economy in the processing of informal complaints, this language should remain. The time requirements contemplated by the informal complaint process are not overly burdensome. Also, complainants who miss a time deadline for good cause have the opportunity to demonstrate that reason and be relieved from default. For these reasons, this language should remain.

§ 56.151.

NFGDC has no comments on the proposed revisions to Section 56.151.

§ 56.152.

NFGDC has no comments on the proposed revisions to Section 56.152.

§ 56.161.

The Commission proposes to remove this entire Section. This Section establishes a time frame in which an informal complaint may be filed with the Commission if the informal complaint was based on a utility company report. NFGDC believes that this Section should not be removed.

While the proposed changes to §56.142 would establish a time frame in which an informal complaint must be filed if it involves a potential termination of service there remains the potential for informal complaints to be filed where there is no prospect of termination of service. For the reasons discussed above in NFGDC's comments on the proposed changes to §56.143, these instances also need the structure that is provided by clearly enumerated time deadlines.

Thus, NFGDC believes this section should not be removed from Chapter 56. In the alternative, the 10-day filing timeframe could be added to the end of the proposed language of §56.143 for instances where an informal complaint does not involve the termination of service.

§ 56.162.

This Section contains a listing of information that must be included in an informal complaint. NFGDC suggests that an additional item be added to the information that must be included in an informal complaint: a statement or verification that the complainant has contacted the public utility regarding the subject matter of this complaint.

66 Pa. C.S. § 1410(1) states that "the commission shall accept complaints only from customers who affirm that they have first contacted the public utility for the purpose of resolving the . . . complaint." Indeed, the language proposed by the Commission at §56.166 includes this statutory requirement. In order to provide an affirmative means for the Commission to enact this requirement, this information should be expressly included in that which is required when the informal complaint is filed.

§ 56.163.

NFGDC has no comments on the proposed language of Section 56.163. However, the Commission should consider adding a requirement to § 56.163(1) that would mandate a time frame for BCS to respond to an informal complaint. Leaving this open has, in the past, led to inequities where informal complaints will remain pending for a long period of time often exacerbating the circumstances which led to the filing of the complaint. It is not unreasonable to limit the timeframe for a decision.

§ 56.164.

NFGDC has no comments on the proposed revisions to Section 56.164.

§ 56.165.

NFGDC has no comments on the proposed revisions to Section 56.165.

§ 56.166.

Here, the Commission has proposed an entirely new section relative to informal complaints. The new language proposes three paragraphs with the first being a general statement delegating authority to the Bureau of Consumer Services to address informal complaints and the second two paragraphs addressing the fact that the Commission should only accept complaints from customers who have first contacted the relevant public utility.

NFGDC first suggests that this section should be separated into two separate new sections the first containing only the first paragraph and the second containing the remaining two paragraphs. The two concepts addressed are disparate enough to warrant separate sections. This is especially true since the Legislature has specifically enumerated the need for a customer to first contact a public utility. 66 Pa. C.S. § 1410. Creating two separate sections will eliminate potential confusion.

Assuming that the first paragraph of proposed § 56.166 remains as such, NFGDC has no comments on that language.

NFGDC would propose the following language (changes indicated) for a new section relative to the second two proposed paragraphs:

> § 56.167. Requirement to contact the public utility.
>
> (1) The Commission will accept complaints only ~~from customers who~~ with an affirmation that the complainant ~~they~~ hasve first contacted the public utility for the purpose of resolving the problem about which they ~~customer~~ wishes to file a complaint. This affirmation will first be confirmed with the public utility. If the ~~customer~~ complainant has not contacted the public utility, the Commission will direct them ~~customer~~ to the public utility.
>
> (2) Only after the potential complainant ~~customer~~ and the public utility have failed to resolve the dispute will BCS initiate an investigation.

First, as stated above, NFGDC believes this section is important and accurately depicts the language drafted by the Legislature in 66 Pa. C.S. § 1410. NFGDC has removed the reference to customer due to the fact that other potential individuals may file informal

complaints. While the legislature did use the term "customer" in the statute, that term has been given specific meaning in these proposed regulations that was not likely the original intent of the legislature. Changing this term to "complainant" is more true to that intent.

Second, NFGDC has experienced instances since the implementation of Chapter 14, despite the contact requirements of § 1410, where individuals were permitted to file and prosecute informal complaints without first contacting the public utility. In some cases, these complaints can be quickly resolved if the customer first contacts the utility. In the interests of efficiency and economy NFGDC suggests that there be a requirement that the affirmation that the public utility has been contacted be verified with the public utility.

§ 56.171.

No modifications are proposed to Section 56.171.

§ 56.172.

The possible time frame created for a party to request a review of a Bureau of Consumer Services decision by § 56.172(a) – (c) is entirely too long. The way the proposed language of these sections work would, in essence create a 50 day (or longer if there is a delay in mailing the formal complaint form (subsection b)) "appeal" period for these decisions. A party would have 20 days to file a request for review (subsection a) then an additional 30 days to actually file a formal complaint form (subsection c). In NFGDC's opinion, this time period is too long and could lead to prejudice, stagnation of evidence or issues, and potential exacerbation of the issues that lead to the informal complaint. This period should be shortened. A total of thirty days from the date the BCS decision was issued is not unreasonable.

The proposed language of § 56.172(2)(e) is inappropriate. If failing to request a review of a BCS decision within the timeframe established under this section does not prohibit the filing of a formal complaint regarding the same issue, the time frames established in this section are irrelevant. In addition, after a BCS decision is rendered, there needs to be some

sort of procedural closure to the complaint. Allowing an issue to remain open indefinitely is improper.

§ 56.173.

NFGDC supports the changes proposed to Section 56.173.

§ 56.174.

NFGDC supports the addition of the language in proposed section (a) regarding assignment of ability to pay cases to a special agent.

NFGDC does not feel that the addition of language in proposed section (c) regarding what documentation shall be entered into evidence at a hearing is necessary or proper for a regulation. This chapter is not the proper place for evidentiary rules and such rules are better left to the presiding officer to handle in a prehearing memorandum or otherwise.

NFGDC has no comments on the remaining proposed revisions to Section 56.174.

§ 56.181.

NFGDC has no comments on the proposed revisions to Section 56.181.

§ 56.191.

With respect to the proposed revision to § 56.191(b)(1) NFGDC submits that the proposed language should be modified as follows:

> (b)(1) within 24 hours for erroneous terminations or upon receipt by the public utility of a valid medical certification. ~~Erroneous termination include instances when the grounds for termination were removed by the customer paying the amount needed to avoid termination prior to the termination of the service.~~

The Legislature in 66 Pa. C.S. 1407(b)(1) did not feel it necessary to include the language that NFGDC recommends removing from the Commission's proposed language. If the Legislature wanted to include specific instances in this language it could have easily done so. In addition, as written, the proposed language is ambiguous. For instance, it could be interpreted that the

specified types of termination are the only erroneous terminations to which this language applies.

The proposed language of subsections (b)(3) through (b)(5) adds the descriptor "calendar" to the 3 and 7-day time frames for restoration. These time frames are taken from 66 Pa. C.S. (b)(3) – (b)(5) which include no descriptor to the word "days". NFGDC submits that this period should be "business" days. Requiring restoration for instances that require street or sidewalk digging in three calendar days would be impractical, especially given the Pennsylvania One Call requirements that would need to be met.

§ 56.192.

NFGDC has no comments on the proposed revisions to Section 56.192.

§ 56.201.

NFGDC has no comments on the proposed revisions to Section §56.201 other than the proposed addition of: "(13) Information indicating that additional consumer protections are available for victims of domestic violence." NFGDC does not feel that section should be included as written. First, it is misleading as the non-applicability language of 66 Pa. C.S. § 1417 specifically refers to "victims under a protection from abuse order as provided by 23 Pa. C.S. Ch. 61." There is a potential legal difference between such an individual and "victims of domestic violence." This difference could lead to potentially exploitable confusion.

Second, Chapter 14 does not actually provide any "additional consumer protections" for victims under a protection from abuse order. Rather, Chapter 14 does not apply to these individuals. Stating that there are "additional consumer protections" may also lead to confusion.

§ 56.202.

NFGDC has no comments on the proposed changes to this section.

§ 56.211.

The Commission has proposed to remove this section in its entirety. Presumably, the intent is to replace this section with proposed Section 56.166. As such, NFGDC incorporates its comments relating to proposed Section 56.166 above.

§ 56.221.

NFGDC has no comments on the proposed revisions to Section 56.221.

§ 56.222.

NFGDC has no comments on the proposed revisions to Section 56.222.

§ 56.223.

There are no modifications proposed to Section 56.223.

§ 56.231.

NFGDC's only comments regarding this section are with respect to § 56.231(a)(17) – (a)(20). In late 2007, various public utilities worked in collaboration with the Commission to develop a "Data Dictionary" similar to Appendix C of the proposed rulemaking. The breakdowns of sections (a)(17) through (a)(20) are different from those established though the collaborative process and in the current Data Dictionary. Public utilities spent a good deal of time and money to update their systems to be compliant with the collaborative terms. The proposed language would again change the breakdowns and result in another expenditure of time and money for compliance. This seems unnecessary.

IV. Comments on Electronic Billing and the March 31, 2009 Secretarial Letter

NFGDC has, in place, an electronic billing program where customers can chose to receive, in lieu of a paper bill, an electronic copy of their bill. The electronic copy that is presented to a customer is essentially identical to the paper bill that they receive. All of the information contained on a paper bill is included on the electronic bill, including any bill inserts. The appearance of the electronic bill is essentially the same as the paper bill.

NFGDC began its electronic billing program in 2005 and currently has 27,492 customers enrolled in electronic billing of which 4,310 have chosen not to receive a paper bill. In essence, the only difference between how electronic billing customers function from other customers is that, in lieu of getting an envelope in their mailbox each month with monthly billing information, they get an e-mail containing the same information. NFGDC has not made any significant changes to its electronic billing program since it was implemented.

It is not entirely clear whether, under existing regulations, a paper bill mailed via the U.S. Postal Service is actually required. There is no statement in Chapter 56 that would seem to require the "mailing" of a paper bill. Rather, the usual language is that a utility must "render" a bill once each billing period. Granted, when Chapter 56 was originally written, mailing the bill was the only practical way to communicate the required information to a customer. However, given the broad language in Chapter 56 regarding how a bill is presented, it could be argued that a company is complying with Chapter 56 by sending a bill electronically. That said, if it is determined to be necessary, a blanket waiver permitting e-billing would be proper.

NFGDC would like to point out that any potential regulations regarding e-billing should be written so as not to require a continued paper billing or paper communication with a ratepayer. Many ratepayers opt for electronic billing because they affirmatively do not want to continue to receive paper bills or notices from their utility company. Customers should maintain the option of receiving a paper bill but such should not be required. Eliminating paper bills when requested would allow utilities to achieve significant savings.

V. Conclusion.

National Fuel Gas Distribution Corporation appreciates the opportunity to provide comments regarding the proposed modifications to 52 Pa. Code, Chapter 56 and looks forward to working with the Commissioners and their staff to further draft and implement rules that effectuate the legislative intent of Chapter 14 of the Public Utility Code.

Respectfully submitted,

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