

213 Market Street, 9th Floor, P.O. Box 865, Harrisburg, PA 17108-0865
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Deanne M. O'Dell
Direct Dial: (717) 255-3744
Direct Fax: (717) 237-7314
E-mail: dodell@wolfblock.com

February 15, 2007

VIA HAND DELIVERY

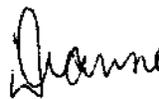
James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and 15 copies of its Comments as well as a CD containing the Comments in Word with regard to the above-referenced matter. Please note the Comments were due yesterday but because the Commission was closed due to the inclement weather, they are being filed today.

Sincerely,



Deanne M. O'Dell

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DMO/lww

Enclosure

cc: Bohdan Pankiw w/enc.
Terry Buda w/enc (via e-mail only)
Cynthia Page w/enc (via email only)
Daniel Mumford w/enc (via e-mail only)

HAR:71358.1/PHI211-150040

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

COMMENTS OF PHILADELPHIA GAS WORKS

Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq
Wolf, Block, Schorr and Solis-Cohen LLP
213 Market Street, 9th Floor
P.O. Box 865
Harrisburg, PA 17108-0865
Tel: (717) 237-7160
Fax: (717) 237-7161

Denise Adamucci, Esq.
Senior Attorney
Philadelphia Gas Works
800 W. Montgomery Ave., 4th Floor
Philadelphia, PA 19122
Ph. 215-684-6745
Fax 215-684-6798

Counsel for Philadelphia Gas Works

Dated: February 15, 2007

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND GENERAL COMMENTS	1
II. FOCUS OF THIS RULEMAKING	2
III. COMMENTS SPECIFICALLY ADDRESSING APPENDIX A OF ANOPR	5
1. Rules that Apply to Victims with a PFA Order and to Customers of Steam Heating, Wastewater and Small Natural Gas Companies.....	5
2. Previously Unbilled Utility Service.....	6
(b) Payment Schedule and Make-Up Bills.....	8
(c) Limitation and Occupant Liability.	8
(d) Restrictions	9
3. Credit Standards.....	10
(a) Identity Theft.....	10
(b) Credit Scoring Methodologies.	12
(c) Other Methods for Applicant Residency Status.	13
(d) Statute of Limitations for Occupant Debt.	14
4. Payment Period for Deposits.....	14
(a) Restoration After § 1404(a)(1) Termination.....	14
(b) Restoration Where §1404(a)(1) Not Applicable.....	15
(c) Deposit Requirements for Existing Customers	15
(d) §56.43 Deposit Method	16
5. Termination of Service	16
(a) Termination of Service.	16
(b) Unauthorized User and User Without a Contract.....	17
(c) Termination Notices and Dispute Procedures.....	19
6. Winter Termination Procedures	20

- (a) **Determining Customer Eligibility for Winter Termination and Customer Obligations.....20**
 - (b) **Non-heating Gas Accounts.....21**
 - (c) **Cold Weather Survey Updates.22**
 - (d) **Incident Reporting.....24**
- 7. Emergency Medical Procedures26**
 - (a) **Nurse Practitioner.....26**
 - (b) **Renewals of Medical Certificates26**
 - (c) **Petition for Waiver of Medical Certification Procedures27**
- 8. Commission Informal Complaint Procedures.....28**
 - (a) **Customer Assistance Programs (CAP)28**
 - (b) **Payment Arrangements for Terminated Service28**
 - (c) **Standard Response Time.....29**
- 9. Restoration of Service.....30**
 - (a) **Occupant Liability and Establishing Prior Occupant.....30**
 - (b) **Service Restoration Timeframes31**
 - (c) **Time of Restoration31**
- 10. Reporting Requirements32**
- IV. APPROPRIATE/NECESSITY OF INCORPORATING PORTIONS OF STATUTE DIRECTLY INTO REGULATIONS.....33**
- V. CONCLUSION35**

I. INTRODUCTION AND GENERAL COMMENTS

Philadelphia Gas Works (“PGW”) respectfully submits these Comments to the Pennsylvania Public Utility Commission (“Commission”) in response to the Advance Notice of Proposed Rulemaking Order (“ANOPR”) entered on December 4, 2005.¹ The purpose of the ANOPR is to gather input from the industry, consumer groups and advocates regarding what regulations the Commission should adopt to implement Section 6 of the Responsible Utility Customer Protection Act (“Chapter 14”).² This Section of Chapter 14 requires the Commission to amend its current Chapter 56 regulations³ governing residential utility service standards to comply with the provisions of Chapter 14. Section 6 of Chapter 14 also permits the Commission, if necessary, to promulgate the other regulations which may be necessary to administer and enforce Chapter 14.

PGW appreciates this opportunity to provide the Commission with its comments and suggestions and looks forward to providing additional feedback once the Commission sets forth its proposed regulatory language. PGW reserves the right to modify the responses set forth in these Comments based upon the proposed regulatory language.

¹ 36 Pa.B. 7614 (December 16, 2006).

² 66 Pa.C.S. § 1401.

³ 56 Pa. Code § 56.1 et. seq.

II. FOCUS OF THIS RULEMAKING

PGW urges the Commission to adopt several basic principles as guidance in this process. First, in the interests of amending Chapter 56 without unnecessary delay, PGW encourages the Commission to seriously reconsider including non-Chapter 14 related amendments in this rulemaking. Chapter 14 has been effective for over two years. During that time period, PGW has implemented and trained its staff on Chapter 14 modifications without the benefit of having Commission regulations in place. While the various implementation related orders have somewhat assisted PGW in this process, the Commission has recognized that such orders are policy statements, and not binding norms.⁴ Similarly, the Commission is engaged in the process of measuring the effectiveness of Chapter 14 even though the utilities do not have the Commission's full regulatory guidance in place. Thus, it is important to get these new rules in place without delay. For this reason, PGW urges the Commission to refrain from including in this rulemaking non-Chapter 14 related amendments, such as those relevant to technological advances, because such inclusion will very likely expand the length of time before this important

⁴ See *Chapter 14 Implementation*, Docket No. M-00041802F0002, Declaratory Order entered November 21, 2005 at 11-13. As part of the adoption of regulations, the Commission should allow for the discontinuance of any processes established in the various implementation orders.

rulemaking process is completed.⁵ A long period of uncertainty will not only create difficulty for PGW, but will also create confusion for PGW's customers.

Second, the beginning point for this Chapter 56 amendment process must be Chapter 14 and its articulated policies, not derivative, non-binding documents such as implementation orders. The policies that emanate directly from Chapter 14 are: (i) protecting timely paying customers against rate increases due to other customers' delinquencies; (ii) eliminating opportunities for customers capable of paying to avoid timely payment; (iii) providing an equitable means for utilities to reduce their uncollectible accounts; (iv) ensuring that service remains available to all customers on reasonable terms and conditions; and, most importantly to PGW (v) providing additional tools to PGW to recognize the financial circumstances of its operations and to protect its ability to provide natural gas for the benefit of the residents of the City of Philadelphia.⁶ Accordingly, the guidance provided in the implementation orders should not limit the Commission in its efforts to amend the regulations. Instead, the amended regulations should successfully execute Chapter 14's goals.

⁵ In contrast, the Commission adopted new final regulations which substantially revised previous regulations related to the filing and reporting requirements of local exchange carriers within two years after the changes were necessitated by new legislation. This timely achievement was accomplished because the Commission remained focused on the statutory purpose for revising the regulations. *See PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. L-00050176 Order entered August 21, 2006, 36 Pa. B. 7558 (December 16, 2006).

⁶ 66 Pa.C.S. § 1402

Further, as the plain language of Chapter 14 shows, specific provisions and tools have been provided by the Legislature to assist PGW in its ability to provide service to its timely paying customers while also protecting vulnerable customers. For this reason, the revised regulations must adhere to the statutory mandates and should not restrict PGW from fully implementing Chapter 14. For example, in defining the term “timely collections,” the Commission should recognize the limitations experienced by PGW, due to its financial circumstances, and provide PGW with greater leeway than that provided to the other Commonwealth utilities. The Commission must design the revised regulations to be consistent with PGW’s situation and expressly provide PGW with the appropriate tools.

Finally, the Commission should recognize that the regulatory consumer obligations necessitated by Chapter 14 must mandate that the consumer show good faith, honesty and fair dealing with the utility. For example, to the extent that change in income claims are made by a consumer in an informal complaint, the regulations should require documentation of the customer's allegations rather than acceptance on faith. In conclusion, the statutory language and underlying policies of Chapter 14 alone should guide all of the related regulatory amendments, including consumer obligations. By remaining exclusively focused on the statutory purpose of this rulemaking, the Commission will ensure the timely implementation of regulations that effectively achieve the stated goals of Chapter 14 to the benefit of consumers.

III. COMMENTS SPECIFICALLY ADDRESSING APPENDIX A OF ANOPR

1. Rules that Apply to Victims with a PFA Order and to Customers of Steam Heating, Wastewater and Small Natural Gas Companies

The Commission proposes creating a separate chapter to address the utilities and consumers that are specifically excluded from Chapter 14 provisions.⁷ Because the inclusion or exclusion of small steam heat, wastewater, small natural gas distribution, and water utilities from the revised Chapter 56 is not relevant to PGW, PGW declines to offer an opinion on whether such inclusion or exclusion is appropriate.

However, with respect to the inclusion or exclusion of victims protected under a protection from abuse order pursuant to the Protection from Abuse Act (“PFA”)⁸, PGW’s customers will be better served by the inclusion of specific rights and remedies of such victims in the revised Chapter 56. The inclusion of PFA distinctions in revised Chapter 56 will clarify for a customer the defined rights he or she has while under an active PFA. Because the PFA will have an expiration date, it is important that the PFA customer easily understand the nature of the protection actually available and the altered actions a utility might take once the PFA expires. Forcing the PFA customer to refer to multiple chapters of the regulations will increase confusion at a time when the PFA customer needs to easily understand his or her rights. For PGW, the consolidation of PFA requirements into revised Chapter 56 will also provide for more simplified

⁷ ANOPR, Appendix A at ¶ 1.

⁸ 23 Pa.C.S. § 6101, et. seq.

staff training based on the review of one fully incorporated regulation. In addition, if the Commission elects to modify Chapter 56 beyond the required Chapter 14 modifications, the current Chapter 56 rules will require modification in the same areas.

Finally, the term “Protection from Abuse” should be specifically defined in revised Chapter 56 to be clear that it is referring to PFA Orders issued in accordance with Pennsylvania's PFA law. The PFA should be limited to those recognized under Pennsylvania's statute since the law provides for a court to determine the validity of a foreign protection order⁹. By making it clear that PFA protections are provided under Pennsylvania law, the Commission's regulations would disclose exactly what rights apply, without placing burdensome requirements on Pennsylvania utilities to become familiar with the PFA requirements of other jurisdictions.

2. Previously Unbilled Utility Service

The Commission proposes to incorporate into § 56.14 a four year limit on the bills utilities can issue for previously unbilled service.¹⁰ As an initial matter, imposing a regulatory four year limit of liability on any bill is inappropriate and contrary to law since the purposes and provisions of Chapter 14 clearly seek to expand, not limit, a utility's ability to collect debt. In addition, current Pennsylvania law contains statutes of limitations for a variety of matters, including the collection of debt and those limitations should be permitted to apply. Nevertheless,

⁹ “The validity of a foreign protection order shall only be determined by a court.” 23 Pa.C.S. § 6104(a).

¹⁰ ANOPR, Appendix A at ¶ 2.

if the Commission determines that it will seek to impose such limits, PGW sets forth herein some reasonable exclusions and restrictions which should be placed on such liability limits.

Application of a wholesale four year limitation rule is not appropriate for every type of consumer and debt. Because some of the concepts relevant to the imposition of limitations on liability are similar for various types of consumer debt, PGW has included within the response to this question a discussion of the appropriateness or inappropriateness of a four year limitation in various scenarios.

(a) Limitation and Make-up Bills.

With respect to make-up bills for previously unbilled utility service resulting from utility billing error, meter failure, or four or more consecutive estimated bills, a four year limitation is generally appropriate, assuming that the liability for the entire debt runs back from the issuance of the make-up bill on the relevant account. On the other hand, with respect to a make-up bill for leakage that could not have reasonably been detected, it is unreasonable to restrict the utility's ability to collect this debt since the utility could not have detected the leak. Therefore, the liability for the make-up bill should run back at least four years from the date the leakage stopped—which is the date on which the utility could determine leakage had occurred. With respect to occupants, the liability for the portion of the make-up bill incurred should be consistent with the prior customer's liability, provided however that the occupant will only be liable for the debt incurred during the time period of the occupant's residency. With these conditions applied, a liability limitation may be generally appropriate for these circumstances.

(b) Payment Schedule and Make-Up Bills.

In conjunction with the imposition of a four year limitation of liability for make-up bills, it is reasonable to impose an obligation on PGW to offer a payment schedule based on previously unbilled utility service, but the customer's payment period must be limited to a maximum of four years. Thus, for example, even though the customer's make-up bill was incurred over a six year period, since the customer would be obligated to pay back only four years of bills the customer should have a four year time period for payment, not six years which is no longer relevant. Furthermore, if a customer with a make-up bill has service terminated, the § 56.14 makeup bill repayment schedule is no longer applicable. Instead, the provisions of § 1407 will govern the payment terms for the entire make-up bill and all other debt.

(c) Limitation and Occupant Liability.

A four year limitation on occupant liability is generally appropriate, assuming that the limitation for the entire account debt runs back four years from the date the prior customer's service was terminated. However, PGW does not have occupancy information for all of its accounts. Therefore, up until the time that PGW discovers that the applicant had been a prior occupant, PGW will not have held the occupant liable for the debt and attempted to collect from him or her. A requirement that the limit for applicant liability for former occupancy debt runs back from any time later than the date of termination of the prior customer's account directly

opposes the purposes of Chapter 14¹¹ since it could provide an occupant with debt forgiveness without subjecting the occupant to collection activities for a debt for which § 1407(d) imposes responsibility, to the detriment of timely paying customers.¹²

(d) Restrictions

The liability limitation periods imposed by the Commission should have some restrictions placed upon them. The regulations should recognize that a customer/applicant may agree to pay debt that is older than any limitation established, and should be obligated for such payment. The regulations should recognize or establish a provision which allows for equitable tolling of the limitation period in certain situations. For example, the limitations period should be tolled while the customer/account debtor is protected under a court stay or by statutory prohibition, and when the customer/account debtor has departed from the Commonwealth and remains continuously absent for a specified period of time or resides in the Commonwealth under an unknown false name. Further, a four year limitation on liability is inappropriate for unauthorized usage debt. When a user has engaged in an intentional and possibly hazardous taking from a utility, the user is not entitled to the protection of a four year limitation.

Finally, pursuant to the Municipal Claims and Tax Liens law, PGW municipal liens are valid for 20 years (and subsequently can be renewed).¹³ Thus, at various times, such as when

¹¹ See 66 Pa.C.S. §§ 1402 and 1407(d).

¹² See 66 Pa.C.S. § 1402.

¹³ See 53 P.S. §§ 7101, et seq.

applying § 1414(c), PGW has the lawful right to demand that an applicant enter a into a payment agreement for the payment of debt associated with any municipal liens, which may be for debt from a far longer period than four years and may be significantly aged debt. Any regulations adopted in this area need to be sure to take into account these restrictions that are consistent with existing laws.

3. Credit Standards

(a) Identity Theft.

In its ANOPR, the Commission proposes to revise various sections of Chapter 56 to clarify the acceptable applicant identification requirements, use of social security numbers, and third-party service requests, in the context of preventing fraud and identity theft.¹⁴ PGW is supportive of and shares the Commission's interest in protecting Pennsylvania utility consumers against identity theft. In fact, PGW has various procedures in place to protect the privacy of personal information within its control.

With respect to the specific information PGW may require of an applicant or occupant, the language of § 1407(e) is instructive since it provides for the use of publicly available tools. Consistent with this approach, utilities should have the ability to establish residency through the use of a social security number, a credit check by a nationally recognized credit reporting agency, such as Experian, Equifax or Transunion, any publicly filed document, such as, but not limited to, a filed complaint or bankruptcy petition, and all government issued identification,

¹⁴ ANOPR, Appendix A at ¶ 3.

such as a driver's license, voter registration card or passport. In addition, each utility should have the ability to utilize correspondence provided by the applicant and/or occupant and the utility's own internal records to determine identity.

As part of its strategy to assist in the prevention of identity theft, the Commission should allow the utilities great autonomy in the identification requirements they may impose on an applicant. Placing limitations on the information or documents that PGW could require may prevent PGW from discovering fraud or misrepresentation by an applicant or occupant. Furthermore, setting forth all of the methods used by PGW to determine identity in its tariff may provide a "road map" to avoid detection by those seeking to use someone else's identity for gas service. Those seeking to avoid detection or to use someone else's identity are not the typical customers and are not entitled to protective measures.

With respect to the identification standards that may be applied to an applicant to determine prior occupancy, the plain language of § 1404(d) states that a utility has discretion on whether it will require the name of each occupant at the time it provides utility service. Thus, PGW may elect to analyze an applicant's liability at the time of application by the applicant, instead of at the time of application by a different occupant. The Commission's regulations should reflect this statutory right.

(b) Credit Scoring Methodologies.

In its ANOPR, the Commission proposes to require utilities to include their credit scoring methodologies and standards in the tariffs.¹⁵ Acceptable credit scoring methodologies should be set forth in the regulations rather than in a tariff because of the general applicability of this scoring to all utilities. At this time, there are three nationally recognized credit reporting agencies, Experian, Equifax and Transunion. Upon information and belief, the scoring models of these agencies are proprietary. Including the relevant agency performing PGW's credit scoring in its tariff would prevent PGW from easily switching to a cheaper or more effective agency. The regulations should provide that the use of a utility credit scoring model from any one nationally recognized credit reporting agency is acceptable and, therefore, there is no need to impose this as an additional tariff requirement for utilities.¹⁶

Moreover, the use of a credit score to determine the likelihood of financial responsibility is by its nature nondiscriminatory, since a credit score is objectively based on an individual's financial history. Further, the accuracy and use of such reports has been addressed in various existing laws, such as the Fair Credit Reporting Act¹⁷ and Pennsylvania's Credit Reporting

¹⁵ ANOPR, Appendix A at ¶ 3.

¹⁶ In addition, 52 Pa.Code § 56.36 already provides that a utility must establish written procedures for determining credit status. Upon request, these procedures are made available to members of the public for inspection. 52 Pa.Code § 56.36

¹⁷ 15 U.S.C. § 1681, et seq.

Agency Law.¹⁸ The consistent application of a utility credit scoring model of one of the three nationally recognized agencies ensures equal treatment of every person scored. Consequently, the Commission only needs to permit the use of these agencies in its regulations to ensure that consumers are treated fairly.

(c) Other Methods for Applicant Residency Status.

Section 1407(e) of Chapter 14 lists various ways for utilities to identify the liability of an applicant for debt incurred at a premise.¹⁹ The section also permits utilities to use "other methods approved as valid by the Commission." In its ANOPR, the Commission proposes that Chapter 56 regulations be modified to require a utility to identify these "other methods" in their tariffs.²⁰ The "other methods" used to establish an applicant's residency history should be set forth in a regulation because these methods are general in nature and are applicable to all utilities. Furthermore, the regulation should provide the utility with the ability to adopt and utilize new identification methods as they arise. In addition to the methods provided by § 1407(e), this regulation should allow for the use of certain other generally recognized legitimate tools, such as the use of a social security number, a credit report by a nationally recognized credit reporting agency, such as Experian, Equifax or Transunion, any publicly filed document, such as,

¹⁸ Act No. 163, Senate Bill 180 (PN 2238) approved by the Governor on November 29, 2006.

¹⁹ 66 Pa.C.S. § 1407(e).

²⁰ ANOPR, Appendix A at ¶ 3.

but not limited to, a filed complaint or bankruptcy petition, all government issued identification, such as a driver's license, voter registration card or passport, correspondence provided by the applicant and/or occupant, and the utility's own internal records. Similar to applicant identification, placing limitations on the information or documents that a utility could, or must, require to determine residency history may prevent a utility from discovering fraud. Furthermore, setting forth all of the methods used by PGW to determine residency in its tariff may provide a "road map" to avoid detection of gas debt liability. The flexibility of a regulation in this regard will best serve consumers.

(d) Statute of Limitations for Occupant Debt.

The Commission proposes to include regulations which would only allow a utility to hold an applicant liable for four years of service to a property where the utility previously terminated service.²¹ PGW has addressed this issue in its response to Appendix A, No. 2.²²

4. Payment Period for Deposits

(a) Restoration After § 1404(a)(1) Termination

The Commission proposes clarifying its regulations regarding deposit payment timeframes when an applicant whose service was terminated pursuant to § 1404(a)(1) seeks restoration.²³ PGW agrees with adopting regulations clarifying that utilities shall have authority

²¹ ANOPR, Appendix A at ¶ 3.

²² See discussion *supra* Section III,2.

²³ ANOPR, Appendix A at ¶ 4.

to seek, from applicants and customers seeking restoration of service after termination for any of the grounds found in § 1404(a)(1), 50% of the deposit up front, with the balance due up to 90 days thereafter.

(b) Restoration Where §1404(a)(1) Not Applicable

The Commission proposes requiring applicants whose service was terminated outside of the reasons set forth in § 1404(a)(1) to pay the full amount of the security deposit as a condition of restoration.²⁴ PGW agrees that when an applicant or customer seeks restoration, in situations outside of the grounds found in § 1404(a)(1), PGW is not required to restore service per § 1404(e) if the customer or applicant does not pay the full amount of the security deposit prior to restoration. Instead, PGW may elect to require the full amount up front as a condition of restoration. The Commission should modify the regulations consistent with these requirements.

(c) Deposit Requirements for Existing Customers

The Commission proposes to maintain existing rules at §§56.41-42 for customers who are required to pay a deposit.²⁵ PGW agrees that when an active customer is required to pay a deposit under § 56.41(1) or §§ 1404(a)(2) or (3), some of the language in the existing rules at §§ 56.41(1) and (2) is satisfactory. However, as one example, § 56.41(1) does not include the creditworthiness requirements of § 1404(a)(2). Therefore, when the Commission drafts its regulations it must incorporate this and other Chapter 14 requirements.

²⁴ ANOPR, Appendix A at ¶ 4.

²⁵ ANOPR, Appendix A at ¶ 4.

(d) §56.43 Deposit Method

PGW also suggests that the Commission should modify § 56.43 while addressing customer required deposits. For deposits required of existing customers under §§ 1404(a)(2) or (3), the Commission should delete the language “becoming a member in good standing of a composite group” in § 56.43 since it is not authorized under Chapter 14.

5. Termination of Service

(a) Termination of Service.

The Commission proposes including in § 56.81 the reasons listed in §1406(a) for which a public utility may terminate a customer's service.²⁶ PGW supports this proposal. Similarly, PGW supports the Commission's proposal to incorporate into § 56.98 the reasons for immediate termination set forth in § 1406(a). Below is PGW's proposed language for the incorporation of § 1406(c) into § 56.98 (new language in bold):

(a) Notwithstanding any other provision of this chapter, the utility may **immediately, and at any time considered reasonable to the utility when considering the circumstances regardless of the day of the week,** terminate service without written notice **in the event of any of the following actions or events:**

(1) an occurrence which endangers the safety of any person or may prove harmful to the energy delivery system of the utility,

(2) unauthorized use of utility service on or about the affected premises,

²⁶ ANOPR, Appendix A at ¶ 5.

(3) identity theft or fraud, or material misrepresentation of identity, for the purpose of obtaining or continuing utility service,

(4) tampering with meters or other public utility equipment, or

(5) violating public utility's tariff provisions so as to endanger the safety of a person or the integrity of the energy delivery system.

(b) At the time of termination, the utility shall make a bona fide attempt to deliver a notice of termination to a **customer or** responsible person at the affected premises and, in the case of a single meter, multi-unit dwelling, shall conspicuously post the notice at the dwelling, including common areas when permissible.

Regarding § 56.83, the Commission proposes to maintain it to the extent it is consistent with Chapter 14.²⁷ It is appropriate to delete and/or modify all inconsistent requirements. An example of a provision inconsistent with Chapter 14 is § 56.83(8). Both must be amended consistent with § 1407(d) to affirm that a utility may terminate a customer for nonpayment of bills for delinquent accounts of the prior ratepayer at the same address if the customer resided at the property during the time the outstanding balance accrued.

(b) Unauthorized User and User Without a Contract

The Commission proposes to maintain the Commission's distinction between "user without contract" and "unauthorized use" in the Chapter 56 regulations.²⁸ The language of §

²⁷ ANOPR, Appendix A at ¶ 5.

²⁸ ANOPR, Appendix A at ¶ 5.

1406(c) unmistakably allows for immediate termination of service for all unauthorized use of service and, therefore, regulations establishing any distinction between these two phrases is inconsistent with the statute and impermissible. The common definition of “unauthorized” is “not endowed with authority...without official authorization.”²⁹ This definition encapsulates usage of utility service without applying for service, agreeing to be responsible for the bill for such service and having such application accepted by the utility, often referred to by the Commission as “user without a contract.” However, PGW respectfully acknowledges that the Commission noted in its *Implementation Order* that it has historically viewed such usage as distinct from “unauthorized” usage since the Commission concludes that there is no “intent to deceive on the part of” the user.³⁰

With this distinction in mind, PGW proposes that if the Commission does define “user without a contract,” the term should be limited in time, and subject to a requirement that the user show good faith, honesty and fair dealing with the utility. As an example of such dealing, once a user without a contract has been using gas service for longer than two months without becoming the customer of record, the user has had sufficient notice, either through receipt of bills in another person’s name or by failing to receive bills for usage, and he or she should know that

²⁹ AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, <http://www.thefreedictionary.com/unauthorized> (4th ed. 2006).

³⁰ *Chapter 14 Implementation*, Docket No. M-00041802F002, Implementation Order entered March 4, 2005 at 9.

service in his or her name must be arranged. The failure to place service into his or her name after two months, or the user's refusal to cooperate in good faith with the utility after two months, should convert such user, via regulations, into an unauthorized user. Without such guidelines, the Commission's regulations would not ensure that utilities have the appropriate tools to address those "users without a contract" who really are or eventually become "unauthorized users" manipulating the system through fraud or theft. Such guidelines would ensure that the Commission's regulations further some of the goals of Chapter 14, to provide utilities the necessary means to reduce their uncollectible accounts and protect timely paying customers.³¹

(c) Termination Notices and Dispute Procedures.

The Commission proposes to incorporate the termination process set forth in § 1406(b) into Chapter 56 regulations.³² PGW is supportive of this proposal and has already updated, with the approval of BCS, its termination notices to comply with § 1406(b).

With respect to dispute procedures, some of the dispute regulations disallow termination if a complaint is pending. The Commission should amend sections such as these to state that a customer who fails to pay undisputed bills, even when a termination dispute or complaint is active, is subject to termination under Chapter 14. Sections 1410(2) and 1405(f) require payment of undisputed amounts pending the outcome of a dispute and a complaint filed with the

³¹ 66 Pa.C.S. § 1402(3).

³² ANOPR, Appendix A at ¶ 5.

Commission, and § 1406(a)(1) authorizes termination for failure to pay undisputed delinquent amounts. Therefore, the regulations must maintain that the filing of a complaint alone does not prohibit termination where undisputed amounts remain unpaid and uncontested.

6. Winter Termination Procedures

(a) Determining Customer Eligibility for Winter Termination and Customer Obligations.

The Commission seeks input regarding the regulations that should be promulgated to address winter termination and, specifically, the statutory provisions exclusive to PGW.³³ The regulations should provide that PGW has made a good faith attempt to determine and confirm a customer's income level if:

(i) PGW uses income and household information, if any, input by PGW into its system within the past twelve months to prevent the issuance of termination notices to households that fall into the income categories listed at §§ 1406(e)(1) and (2) and the life event categories listed at § 1406(e)(2); and,

(ii) PGW has complied with the notice requirements of § 1406(b)(1).

In recognition of the special financial circumstances facing PGW, the Commission should not place requirements on PGW which are more burdensome than those imposed on other regulated utilities.

The notice requirements of § 1406(b)(1) place an obligation on the customer to cooperate and contact PGW if he or she wants to attempt to avoid termination. In fact, § 1406(b)(2)

³³ ANOPR, Appendix A at ¶ 6.

recognizes that the Commission cannot impose any further obligations on PGW. Failure to contact PGW and/or provide income and household information after PGW has complied with the Chapter 14 notice requirements constitutes a lack of good faith, honesty and fair dealing by the customer and the customer should be deemed to have an income exceeding 300% of the Federal poverty level, to not be experiencing a life event and to be subject to termination.³⁴

(b) Non-heating Gas Accounts.

The Commission proposes to eliminate the distinction between heat and non-heat accounts which would prohibit the termination of either without Commission approval.³⁵ There is no reasonable basis on which to interpret Chapter 14 as abolishing termination of non-heating gas accounts in the winter. Termination of non-heating gas accounts in the winter has been allowed in the Commonwealth since at least the adoption of § 56.100 in 1983. One of the main goals of Chapter 14 is to allow utilities to protect timely paying customers from other customer's delinquencies.³⁶ With respect to PGW, Chapter 14 also seeks to provide PGW with specific collection tools to protect PGW's ability to provide service for the benefit of the residents of the

³⁴ See *Chapter 14 Implementation*, Docket No. M-00041802F0002, Declaratory Order entered November 21, 2005 at 11-13. As part of this proceeding, PGW should be treated on par with the other regulated utilities and thus should not longer be bound by this Declaratory Order.

³⁵ ANOPR, Appendix A at ¶ 6.

³⁶ 66 Pa. C.S. § 1402(1).

City of Philadelphia.³⁷ Eliminating PGW's right to terminate non-heat accounts in the winter would unequivocally be contrary to the specific purposes of Chapter 14, would damage the ability of PGW to provide natural gas, and would threaten PGW's ongoing efforts to improve collections. Since regulations having these consequences would be contrary to the intent of Chapter 14 and would threaten to have a negative impact on timely paying consumers, the Commission should not pursue this concept in its Chapter 56 rulemaking. Furthermore, Chapter 14 does not require that the law's winter termination limitations must be applied to non-heating customers. Section 1406(e) states that the winter termination restrictions apply "unless otherwise authorized by the Commission."³⁸ This phrase gives the Commission the legal authority to exempt non-heating customers from restrictions - just as occurs today.

(c) Cold Weather Survey Updates.

The Commission proposes that utilities more frequently provide updated information regarding households without service.³⁹ PGW is aware that the Commission places high importance on Cold Weather Survey updates and voluntarily complies with providing BCS an additional cold weather survey update on an informal basis when requested. PGW may be amenable to providing one additional update in accordance with the Commission Final Order of

³⁷ 66 Pa. C.S. § 1402(4).

³⁸ 66 Pa.C.S. § 1406(e).

³⁹ ANOPR, Appendix A at ¶ 6.

July 20, 2006 re: *Biennial Report to the General Assembly and Governor Pursuant to Section 1415*.⁴⁰

However, PGW objects to updating the Cold Weather Survey throughout the winter period to the extent that any update requires re-surveying consumers already surveyed once or surveying consumers terminated post-Cold Weather Survey/update. Requiring PGW to perform more surveys throughout the winter is redundant and requires a substantial expenditure of time, personnel and money for PGW that could be best utilized in ensuring safe service. PGW's policies provide aggressive and proactive measures in an attempt to protect customers against winter terminations. Currently, under these policies, PGW would send a letter, make two phone call attempts at different times of the day and then, if necessary, personnel will follow-up with a visit prior to terminating service. Also, PGW mails flyers to former customers with information regarding energy assistance programs, payment arrangement options and how to contact PGW to restore service. This same information and documentation is to be provided to those whose service is terminated in connection with, and subsequent to, the Cold Weather Survey. PGW is very concerned about terminated consumers and, in addition to the above, undertakes extensive outreach throughout the winter in the form of print, radio, TV and billboard ads to inform consumers about how to reconnect service and obtain energy assistance. Any requirement to re-

⁴⁰ *Biennial Report to the General Assembly and Governor Pursuant to Section 1415*, Docket No. M-00041802F0003, Order entered July 24, 2006, 36 Pa.B. 3414 (August 5, 2006).

survey will impose a significant burden on PGW and will reduce the amount of time and money available to devote to safety and other consumer related efforts.

Further, the current policy of surveying only those terminated in the past year should continue.

(d) Incident Reporting.

The Commission proposes requiring utilities to report to the Commission anytime they become aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service.⁴¹ Commissioner Pizzingrilli specifically asked utilities to comment on what situations should be reported and the need to establish a requisite time frame linking an incident and lack of utility service.⁴²

PGW does not support this proposal. Often a utility will not know the cause of death at a premise, will not know whether the relevant premise utilized other heating methods or dangerous practices, and will not have sufficient facts to determine whether there is a link between a prior utility termination and a death. Requiring a utility to report under these circumstances is a violation of due process--essentially forcing a utility to concede liability without the benefit of fully investigating and analyzing the relevant facts, and without the benefit of a final, litigated decision. Moreover, providing unsubstantiated and incomplete information to the Commission

⁴¹ ANOPR, Appendix A at ¶ 6.

⁴² *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, Statement of Commissioner Kim Pizzingrilli, dated November 30, 2006.*

only serves to exacerbate the misinformation and confusion that typically surrounds such traumatic events. The Commission already has the general statutory authority to request this type of information from utilities on a case-by-case basis⁴³ and, in the event of a death, can use this authority to work informally with utilities to uncover the facts surrounding the event. In addition, reportable accidents are adequately addressed in § 59.11. Mandating an incident reporting requirement will not best serve the needs of the Commission or the public and should not be implemented.

If, however, the Commission does incorporate a new incident reporting requirement unrelated to safety, PGW respectfully submits that it be limited as follows:

"Each public utility shall submit a report of each reportable incident involving termination of heat related service in this Commonwealth as provided in this section. Such reports shall not be open for public inspection and shall not be admitted in evidence for any purpose in any suit or action for damages (or otherwise) related to or growing out of any matter or thing mentioned in such report. The reports shall be addressed to the Secretary of the Commission.

(i) *Reportable incidents.* Reportable incidents are those involving termination by the utility of heat related service to a premise, where the utility discovers that there has been the death by fire, asphyxiation due to fire, or hypothermia of an occupant within 30 days of the date of termination at the relevant premises.

(ii) *Telegraphic reports.* A report shall be made by telephone or email in the event of the occurrence of a reportable incident."

⁴³ 66 Pa.C.S. § 501.

7. Emergency Medical Procedures

(a) Nurse Practitioner

The Commission proposes the amendment of all of the emergency medical provisions in Chapter 56 to include "nurse practitioner."⁴⁴ PGW supports amending the emergency medical provisions, consistent with Chapter 14, to allow for nurse practitioner certification for the first medical certificate. In order to make Chapter 56 consistent with Chapter 14, the Commission must also modify § 56.113 to require that the certification must be provided in writing by a physician to the utility.

(b) Renewals of Medical Certificates

Additionally, the Commission proposes making non-Chapter 14 related modifications to the medical certification regulations of Chapter 56.⁴⁵ In the event that the Commission decides to amend Chapter 56 at this time to address non-Chapter 14 requirements, PGW agrees with the Commission that it is appropriate to limit the number of renewals on a medical certification to two for the same set of arrearages for the entire household, provided however that the customer must meet his or her obligation to arrange for and timely pay arrearages prior to the expiration of the medical certification or renewal. Thus, if the customer has already broken one or more payment agreements, the customer must fulfill the requirements of Chapter 14 prior to the expiration of the medical certification.

⁴⁴ ANOPR, Appendix A at ¶ 7.

⁴⁵ ANOPR, Appendix A at ¶ 7.

PGW agrees that once the arrearages are eliminated, the customer should again be eligible for another medical certification and two related renewals. However, entitlement to renewal and additional certifications must be linked directly to arrearages. Accordingly, if a prior occupant establishes service in his or her name, and arrearage relevant to a medical certification or renewal is imposed on the prior occupant's account, the Commission should not entitle the household to another medical certification/renewal until the arrearage has been paid in full. Furthermore, if the customer of record moves and establishes service at a new premise, and arrearage relevant to a medical certification or renewal remains from the prior account, the household should not be entitled to another medical certification until the arrearage has been paid in full.

In addition to the modifications identified by the Commission, the renewal dates for a medical certification should occur on the termination date of the initial medical certification or, if applicable, of the first renewal certification.

(c) Petition for Waiver of Medical Certification Procedures

The Commission proposes to eliminate the requirement that utilities petition the Commission to enforce the restrictions on medical certificates identified in § 56.114.⁴⁶ PGW supports this proposal.

⁴⁶ ANOPR, Appendix A at ¶ 8.

8. Commission Informal Complaint Procedures

(a) Customer Assistance Programs (CAP)

The Commission proposes to adopt regulations clarifying that while balances comprised of CAP rates will not be the subject of payment agreements negotiated or approved by the Commission, the Commission will still address CAP-related disputes.⁴⁷ PGW supports the Commission's proposal on this issue. Further input, if necessary, will be provided once regulatory language is proposed.

(b) Payment Arrangements for Terminated Service

The Commission proposes clarifying its role in establishing payment agreement restoration terms for customers whose service has been terminated.⁴⁸ As detailed in the first *Implementation Order*,⁴⁹ The Commission's role in restoration cases is limited to ensuring that the utility has properly applied § 1407(c). Commission imposed payment agreements under § 1405 are inapplicable for terminated consumers. For example, the regulations should state that when a customer defaults on two or more utility payment agreements and the utility has terminated service, the utility may demand payment of the entire outstanding balance and reconnection fees prior to reconnecting, even if the applicant has never had a Commission issued payment agreement. As various decisions from the Office of Administrative Law Judge have

⁴⁷ ANOPR, Appendix A at ¶ 8.

⁴⁸ ANOPR, Appendix A at ¶ 8.

⁴⁹ *Implementation Order* at 12.

correctly concluded, § 1407(c) is applicable only to a “public utility,” not the Commission.⁵⁰

The Commission’s authority to issue payment agreements under § 1405(a) does not allow for the issuance of a payment agreement for a terminated account which is inconsistent with the plain language of § 1407(c).⁵¹

(c) Standard Response Time

The Commission proposes imposing standard response times upon the utilities for responding to consumer informal complaints filed with the Commission.⁵² PGW is not opposed to imposing a standard response time upon utilities for consumer informal complaints. However, a 5 day response to complaints where service was terminated prior to the filing of the informal complaint is too short a time period. In addition, regardless of whether service has been terminated, in order to avoid providing one group of customers benefits not provided to all customers, the response time should be consistent for all types of complaints. A 30 day response

⁵⁰ George Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348, Initial Decision, entered October 12, 2006. This ID is currently the subject of a Petition for Clarification Pursuant to 52 Pa. Code § 5.572 filed by National Fuel Gas Distribution Corporation on December 8, 2006 which specifically asks the Commission to address the legal/precedential effect of ALJ decisions. Other ALJ decisions have interpreted the applicability of § 1407(c) similarly. See John Lavrusky v. Columbia Gas of Pennsylvania, Inc. Docket No. C-20066425, Initial Decision dated September 12, 2006, made final pursuant to 66 Pa. C.S. § 332(h) on October 26, 2006.

⁵¹ The Chapter 14 definition of the term “Payment agreement” specifically defines a payment agreement as an agreement by a “customer.” 66 Pa.C. S. § 1403. If a person is entering into an agreement by which terminated service is to be restored, that person is not a “customer” and, thus, § 1405 cannot apply.

⁵² ANOPR, Appendix A ¶ 8.

time for all complaints is reasonable, provided however that there is a good faith exception in the event the utility cannot meet the 30 day requirement.

Assuming standard response times are imposed on the utilities, it would be beneficial to the complainant and the utility if the same response times are also imposed on the BCS. Thus, BCS should be required to comply with a standard response time of 30 days from the date the utility provides its report to BCS. Furthermore, if BCS receives a complaint over which it does not have jurisdiction, such as a CAP customer requesting a payment agreement, or a commercial account complaint, the regulations should require the immediate dismissal of the complaint, without the need for a utility report. Absent such immediate dismissal, the consumer could remain unaware that the complaint is outside of the BCS' jurisdiction for an extended period of time. Further, during the pendency of the complaint, utilities are placed in the position of needing to decide whether they can terminate service without reprisal from the Commission. Choosing to continue service because a complaint remains active at BCS even though the Commission does not have authority to adjudicate the complaint can result in unnecessary financial burden to the utility and timely paying customers.

Finally, the Commission should require that informal complaint decisions issued by the BCS remain valid for three months from the date of the decision. Placing a time limitation on these decisions will ensure that the utility has the ability to collect arrearage incurred after the issuance of the decision.

9. Restoration of Service

(a) Occupant Liability and Establishing Prior Occupant

The Commission proposes requiring utilities to include in their tariffs the procedures and standards that will be used to determine whether an applicant or customer has previously resided at a property, whether the applicant or person is responsible for any unpaid account balance, and

the means utilities will use to require proof.⁵³ PGW has addressed limits on occupant liability and establishing prior occupant residency in its response to ANOPR Nos. 2 and 3.⁵⁴

(b) Service Restoration Timeframes

The Commission proposes incorporating the restoration timeframes of § 1407(b) into the regulations and indicating that the timeframes refer to "calendar" and not "business" days.⁵⁵ A regulation providing that the hours and days set forth in § 1407(b) are "calendar," not "business," days and hours should also provide that a day, as set forth in §§ 1406(b)(3), (4) and (5), is an entire day. Thus, the three/seven day time period will start the next business day after restoration requirements have been met. This is important because keeping track of the time of each customer's phone call to determine what precise hour by which a utility must restore the service for the individual customer is administratively burdensome. By stating that the deadline to act is based on a full calendar day, the timeframes are more easily established and administratively manageable.

(c) Time of Restoration

The Commission proposes applying the timeframes set forth in § 1407(b) in the winter period based on the time of year when the customer or applicant has met all applicable

⁵³ ANOPR, Appendix A ¶ 9.

⁵⁴ See discussion *supra* Section III, 2 and 3.

⁵⁵ ANOPR, Appendix A ¶ 9.

restoration conditions.⁵⁶ Contrary to the Commission’s interpretation, PGW respectfully submits that the 24 hour reconnection requirement set forth in § 1407(b)(2) is applicable only to the time of termination.

Section 1407 specifically allows for reconnection of service within 24 hours for “*terminations occurring after November 30 and before April 1.*”⁵⁷ The plain and ordinary meaning of this language is that 24 hour restoration is required only if the termination occurred between December 1 and March 31. The statute does not mandate a 24 hour restoration for a customer who merely satisfies reconnection requirements from December 1 through March 31. Instead, § 1407(b)(4) requires a three day reconnection “from April 1 to November 30 for proper terminations.” PGW contends that when a proper termination has occurred between April 1 to November 30 a 3 day reconnection is required regardless of the date when the customer satisfies reconnection requirements.

10. Reporting Requirements

The Commission proposes requiring Class A water utilities to comply with the monthly collections data reporting requirements of § 56.231 and to incorporate the *Interim Guidelines for Residential Collection Data Reporting Requirements of the Electric, Natural Gas, and Water*

⁵⁶ ANOPR, Appendix A at ¶ 9.

⁵⁷ 66 Pa.C.S. §§ 1407(b)(2) (emphasis added).

*Distribution Companies in Accordance with the Provisions of §1415(2) ("Interim Guidelines").*⁵⁸

Again, because the inclusion or exclusion of water utilities from the revised Chapter 56 is not relevant to PGW, PGW is not qualified to offer an opinion on whether such inclusion or exclusion is appropriate.

At this time, PGW does support the incorporation of a number of the *Interim Guidelines* into revised Chapter 56, but believes that the reports should be streamlined to reduce duplicate reporting, e.g. some of the *Biennial* reporting questions are included in Universal Services reporting requirements. Once the *Interim Guidelines* are set forth in the proposed regulatory language, PGW may have additional and more focused feedback.

IV. APPROPRIATE/NECESSITY OF INCORPORATING PORTIONS OF STATUTE DIRECTLY INTO REGULATIONS

Commissioner Pizzingrilli has requested that the utilities address whether it is appropriate or necessary to incorporate portions of Chapter 14 directly into the regulations.⁵⁹ In accordance with the directive of Chapter 14, Section 6, the Commission has been authorized to amend the provisions of Chapter 56 to “comply with” Chapter 14 and other regulations to “administer and

⁵⁸ ANOPR, Appendix A at ¶ 10. *Biennial Report to the General Assembly and Governor Pursuant to Section 1415*, Docket No. M-00041802F0003, Order entered July 24, 2006, 36 Pa.B. 3414 (August 5, 2006). Appendix A of this Order contains the *Interim Guidelines*.

⁵⁹ *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*, Statement of Commissioner Kim Pizzingrilli, dated November 30, 2006.

enforce” Chapter 14.⁶⁰ Although Chapter 14 provides very specific language in many instances,⁶¹ PGW generally opposes copying verbatim statutory language into the regulations since regulations are intended to provide guidance on how to apply the law. Instead of incorporating the statutory language, the Commission should focus on prescribing any reasonable rules and regulations necessary to make Chapter 56 compliant with Chapter 14, and on effectuating the will of the Legislature as expressed in Chapter 14.⁶² Importantly, restating the law into the regulations does not assist regulated entities in understanding what they need to do to be in compliance with the law.

However, in instances where the language of Chapter 14 is particularly specific and clear and, thus, rules and regulations are unnecessary, a restatement of some of the statutory language in the regulation may be prudent. For example, § 1406 specifically sets forth the situations for which a utility can terminate service to a customer. Restating these situations in the regulations may be appropriate to provide clarity regarding this important issue. Therefore, while PGW generally believes that the regulations should serve as guidelines and not restate statutory language, PGW recognizes that in instances where the statutory language is detailed and specific, some restatement of it in the regulations may be warranted.

⁶⁰ 66 Pa.C.S. § 1401.

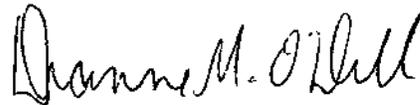
⁶¹ *See* 66 Pa.C.S. § 1406(e).

⁶² *See Pennsylvania Association of Life Underwriters, et al. v. Commonwealth of Pennsylvania, et al.*, 29 Pa. Commw. 459, 371 A.2d 564 (Pa. Commw. 1977), *affd.*, 482 Pa. 330 (1978).

V. CONCLUSION

PGW appreciates the opportunity to provide comments regarding this rulemaking. To ensure the timely and effective implementation of these new regulations the Commission's Chapter 56 amendment process should focus on Chapter 14 and its articulated policies, particularly those pertinent to PGW and its ability to provide service to its customers. The amended regulations which result from this process must adhere to Chapter 14's statutory mandates and underlying policies in order to fully implement Section 6 of Chapter 14. PGW's comments have been proffered with this goal in mind and PGW looks forward to continued input regarding this regulatory process.

Respectfully submitted,



Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq.
Wolf, Block, Schorr and Solis-Cohen LLP
213 Market Street, 9th Floor
P.O. Box 865
Harrisburg, PA 17108-0865
Tel: (717) 237-7160
Fax: (717) 237-7161

Denise Adamucci, Esq.
Senior Attorney
Philadelphia Gas Works
800 W. Montgomery Ave., 4th Floor
Philadelphia, PA 19122
Ph. 215-684-6745
Fax 215-684-6798

Counsel for Philadelphia Gas Works

Date: February 15, 2007