

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Rulemaking to Amend the Provisions of : Docket No. L-2015-2508421
52 Pa. Code, Chapter 56 to Comply with the :
Amended Provisions of 66 Pa. C.S. Chapter 14 :

JOINT COMMENTS OF
TENANT UNION REPRESENTATIVE NETWORK (TURN),
ACTION ALLIANCE OF SENIOR CITIZENS
OF GREATER PHILADELPHIA (ACTION ALLIANCE),
AND COALITION FOR AFFORDABLE UTILITY SERVICE
AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)

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I. INTRODUCTION

These comments are submitted by Tenant Union Representative Network (TURN), Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA). TURN, Action Alliance and CAUSE-PA are referred to herein as the Low Income and Consumer Rights Groups. These comments, which address a number of consumer protections available to low and lower income public utility customers and applicants for utility service, are filed in response to the Pennsylvania Public Utility Commission's (Commission or PUC) July 21, 2016 Notice of Proposed Rulemaking Order (Rulemaking Order), which was published in the Pennsylvania Bulletin on February 18, 2017,¹ in the captioned docket. The Rulemaking Order seeks comments about proposed amendments to the Commission's regulations governing Standards and Billing Practices for Residential Utility Service found at Chapter 56 of the Pennsylvania Code, 52 Pa. Code. §§ 56.1-56.41 ("Chapter 56"). Revisions to Chapter 56 are necessary as a result of Act 155 of 2014 which Act reauthorized and amended Chapter 14 of the Public Utility Code (66 Pa. C.S. §§ 1401-1419) ("Chapter 14").

TURN is a not-for-profit corporation with many low and lower income members whose mission is to advocate on behalf of low and moderate income tenants. Action Alliance of Senior Citizens of Greater Philadelphia is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. TURN and Action Alliance are Philadelphia based

¹ 47 Pa.B. 965.

consumer membership and advocacy organizations who advocate on behalf of low and moderate income residential customers of PUC regulated public utilities in Philadelphia.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

Low Income and Consumer Rights Groups urge the Commission to adopt a number of changes to its proposed rulemaking, which are outlined in more detail in their respective sections below. Where the Low Income and Consumer Rights Groups propose specific language for revision to the Chapter 56 regulations, the proposed language is underlined and removed language is in ~~strike through~~ format. In each case, changes are shown to the regulations as set forth in Annex A to the Notice of Proposed Rulemaking Order.

II. BACKGROUND

Pennsylvania is fortunate to have one of the oldest and most respected residential utility customer regulatory billing and collection procedures. Chapter 56, first enacted in 1978, set forth a series of principles designed to protect the health, safety, and welfare of Pennsylvania's utility consumers.² These principles continue today, and include critically important provisions that,

² See Consumer Standards and Billing Practices for Residential Service, Order, Docket No. 76 P.R.M.D. 10 (April 21, 1978).

for example, enable economically vulnerable households to retain utility services in the winter; prevent untimely termination of households with acute medical needs; provide reasonable terms for the collection of arrears; allow for budget billing; and ensure that households receive reasonable notice of a pending termination.³

In 2004, Pennsylvania enacted Act 201, which added Chapter 14 to the Pennsylvania Public Utility Code, which set forth additional billing, collection, and termination standards and practices. In 2014, the legislature reauthorized and amended Chapter 14 through Act 155. The Act became effective on December 22, 2014 and amended Chapter 14 in several key respects which are the subject of this rulemaking.

Chapter 56 contains the Commission's regulations effectuating Chapter 14, and has the following express purpose:

§ 56.1. Statement of purpose and policy.

- (a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures. This chapter assures adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service 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. Every privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. This chapter will be liberally

³ See *id.*

construed to fulfill its purpose and policy and to insure justice for all concerned.⁴

In revising its regulations the Commission should be mindful of this common purpose as it seeks to clarify, strengthen, and reconcile Chapter 56 with the legislative changes of Act 155. The Commission took initial steps in this regard on January 15, 2015, when it issued a Tentative Order inviting comments on Act 155 amendments concerning medical certificates and reporting requirements. The Commission further invited comments on any other issues regarding implementation of Act 155 that require immediate attention. Following review of comments submitted in response to that Tentative Order, the Commission issued its *Final Order, Chapter 14 Implementation*, Docket No. M-2014-2448824 (Order entered July 9, 2015).

On July 21, 2016, the Commission issued its Notice of Proposed Rulemaking Order concerning changes to 52 Pa. Code Chapter 56 (Standards and Billing Practices for Residential Utility Service). The Commission's Order intends to "address the remaining amended Chapter 14 provisions, including amending the definitions of *applicant*, *customer*, and *public utility*, and clarifying 90-day deposit payment period, revised credit methodology, and the expanded protection from abuse orders (PFAs) to include other court orders." Order at 4. The Low Income and Consumer Rights Groups include comments in support of the appropriate modifications to Chapter 56 to effectuate amended Chapter 14.

In addition, the Commission proposed modifications intended to align the Chapter 56 regulations with other regulatory changes and proposed other revisions and modifications to the regulations. Order at 5. The Low Income and Consumer Rights Groups appreciate the

⁴ 52 Pa. Code § 56.1

Commission’s openness to visiting other provisions of Chapter 56 that may require improvement and modernization, and propose some changes consistent with that effort.

III. DISCUSSION OF ISSUES

A. Definitions

1. Billing Month

Low Income and Consumer Rights Groups are concerned that the Commission’s alteration to the definition of “billing month” may have unintended consequences to CAP programs.⁵ Specifically, the application of CAP credits and/or other CAP discount mechanisms across shorter billing months may result in more rapid exhaustion of CAP credits, provision of unintended discounts, and/or required payments in excess of the affordability targets established in the CAP Policy Statement (52 Pa. Code §§ 69.261 – 69.267). Low Income and Consumer Rights Groups are concerned that the application of CAP credits in this fashion will cause CAP customers to more rapidly exhaust their CAP credits and, in turn, reach their credit maximum earlier in the year due to additional, shorter billing cycles. Just like credit discount programs, CAP programs that provide a discount based on a percentage of a customer’s income will be needlessly complicated if applied over multiple bills in the same month, and may result in energy burdens exceeding Commission affordability guidelines.

⁵ The Commission has recently expressed concern about the growing unaffordability of the energy burdens that low-income households – both within and outside of CAP – face, and has ordered BCS to develop an affordability study to address the issue. *See Energy Affordability for Low-Income Customers*, Docket No. 2587711-CMR (Joint Motion of Vice Chairman Place and Commissioner Sweet, March 16, 2017).

Low Income and Consumer Rights Groups respectfully submit that the Commission has the affirmative duty and obligation to ensure that CAP bills remain affordable,⁶ and are concerned that the unintended consequence of a shorter billing period may work to undermine that duty, leading to confusing bill calculations and deteriorating affordability for the most economically vulnerable Pennsylvanians.

Low Income and Consumer Rights Groups submit that the Commission's proposed regulation is not contemplated or addressed in the amendments to Chapter 14 and, as such, should not be inserted now, particularly in light of the potentially negative impact that such a definitional change will have on the calculation of universal service program benefits and, in turn, on the low income households which rely on those programs to access and maintain affordable utility service. Low Income and Consumer Rights Groups respectfully submit that the Commission's proposed change is likely not necessary because current POR platforms can accommodate mid-month switching with billing for multiple suppliers in a single month. At the very least, if the Commission is going to proceed with this definitional change, it should require utilities to adequately account for these short billing months in the application of CAP credits through amendments to their Universal Service and Energy Conservation Plans.

2. Medical Certificate

Low Income and Consumer Rights Groups note that the proposed regulations would incorporate the definition of "medical certificate" verbatim from 66 Pa. C.S § 1403. Although in most circumstances the adoption of a definition from statute into regulation would be

⁶ See *Coalition for Affordable Util. Servs. & Energy Efficiency in PA (CAUSE-PA) et al. v. Pa. PUC*, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015), *appeal denied*, 2016 Pa. LEXIS 723 and 2016 Pa. LEXIS 724 (Pa. Apr. 5, 2016).

noncontroversial, the statutory definition of “medical certificate” includes language that should be clarified. In particular, the statutory definition states that a medical certificate shall be “in a form approved by the Commission.” Since the Commission’s regulations describe the manner in which a medical certificate may be submitted in Section 52 Pa. Code § 56.113, the Commission’s definition should correspond with that section to avoid any confusion. Furthermore, since the Commission’s regulations permit both customers and applicants to obtain and use a medical certificate, the Commission’s definition should include applicants as well. This is consistent with the provisions of Chapter 14, which unambiguously provide medical certification rights to both customers and applicants.⁷ Low Income and Consumer Rights Groups recommend that the definition of medical certificate be modified as follows:

Medical certificate—a written document, in a form ~~approved by the Commission~~ satisfying the requirements of Section 56.113, that:

- (i) Certifies that a customer or applicant or member of the customer’s or applicant’s household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition.
- (ii) Is signed by a licensed physician, nurse practitioner or physician’s assistant.

Low Income and Consumer Rights Groups also recommend that the Commission consider developing a universally acceptable, widely accessible, and voluntary medical certificate form that complies with the requirements of Section 56.113. This recommendation is discussed more fully, in Part E, below.

⁷ See 66 Pa. C.S. §§ 1406(f), 1407(b).

3. *Physician Assistant*

The Low Income and Consumer Rights Groups note that the Commission’s proposed definition of “physician assistant” creates a series of qualifications for a physician assistant that may invite dispute that was not intended by the General Assembly. In specifying that a physician assistant could provide medical certificates to assist vulnerable families in maintaining service, the General Assembly did not express any limitations on the scope of that authority. The Commission’s use of additional qualifiers to define “physician assistant,” when the statute authorizes physician assistants to sign a medical certificate without added qualifications, creates a risk that medical certificates will be impeded contrary to statutory intent. In addition, the proposed definition appears to cite to a nonexistent provision of Pennsylvania Consolidated Statutes.

The Low Income and Consumer Rights Groups propose the following, simplified definition, which refers directly to the definition of physician assistant promulgated by the State Board of Medicine:

Physician assistant—An individual licensed by the State Board of Medicine in this Commonwealth pursuant to Title 49, Chapter 18, Subchapter D of the Pennsylvania Code (Physician Assistants), or any successor provision(s). ~~who provides any medical service, as directed by the supervising physician licensed to practice medicine in this Commonwealth, when the service is within the physician assistant’s skills, training and experience, forms a component of the physician’s scope of practice, is included in the written agreement and is provided with the amount of supervision in keeping with the accepted standards of medical practice. See 49 Pa. C.S. § 18.51(b) (relating to the role of physician assistant).~~

4. *Nurse Practitioner*

In line with the recommendations above regarding the definition of “physician assistant”, the Low Income and Consumer Rights Groups suggest similar revisions to the definition of

“nurse practitioner.” Rather than set forth a set of criteria that may or may not be in line with the licensing requirements of a nurse practitioner in Pennsylvania, the Low Income and Consumer Rights Groups suggest that the Commission refer directly to the definition for nurse practitioner used by the State Board of Medicine:

Nurse practitioner—A registered nurse licensed in this Commonwealth by the State Board of Nursing pursuant to Title 49, Chapter 21, Subchapter C of the Pennsylvania Code, ~~in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.~~

B. Advance Payments Regulation.

The subsection of the Commission’s Advance Payments regulation authorizing prepayment meters, 52 Pa. Code § 56.17(3), was first adopted in 1978, at a time when prepayment meters consisted of coin-operated residential gas meter devices that would permit short periods of service.⁸ In 1978, the Commission admitted that it had no knowledge of whether pre-payment meters were in use in Pennsylvania, but reserved the regulation. At the time, 52 Pa. Code § 56.17(3) simply authorized the advance payment of rates for “Gas rendered through prepayment meters.”⁹ Although the regulations expanded, to include the possibility of electric prepayment meters, and protections for certain low income customers, the provision concerning prepayment meters has not, to date, been utilized.¹⁰

⁸ See Consumer Standards and Billing Practices for Residential Service, Order, Docket No. 76 P.R.M.D. 10 at 9 (April 21, 1978) (“Pre-payment meters are coin-operated devices in a residence, which permit short periods of service.”).

⁹ 8 Pa. B. 1658.

¹⁰ A proposed pilot prepayment meter program by PECO is currently in the process of review in an on-the-record proceeding. See PECO Energy Co. Petition for Pilot Plan for Advance Payments Program and for Temporary Waiver of Portions of the Commission’s Regulations, PUC Docket No. P-2016-2573023 (pet. filed Oct. 26, 2016).

In its 2011 Chapter 56 rulemaking order the Commission specifically noted that “no utility has utilized [the advance payments regulations] to offer prepayment metering, so unfortunately we have no practical experience to rely upon when assessing the need to revise [52 Pa. Code § 56.17(3)(i)].”¹¹ However, the Commission specifically rejected proposals to permit low-income customers to use prepayment meter service, citing to “public health and safety concerns involved.”¹² Moreover, the Commission, in reviewing its regulations for compliance with Chapter 14 (prior to amendment by Act 155 in December 2014), was concerned that the General Assembly intended to protect a broader category of low-income customers from prepayment meter service. The Commission noted that:

In Chapter 14, the General Assembly indicates that the protected customers should be those at or below 250% of the federal poverty level. For example, the winter restrictions at Section 1406(e) apply to those at or below 250% of poverty, and the PUC payment agreement formulas at Section 1405(b) are more lenient for those at or below 250% of poverty. Based on these actions of the General Assembly, if anything, the income threshold for this section should be raised to 250% from 150%.¹³

While the Commission ultimately concluded that it would not at that time revise the advance payments regulations to exclude customers between 150% to 250% of the poverty level, the Commission was cognizant of public health and safety issues posed by prepayment meters, and concerned that programs authorized under 52 Pa. Code § 56.17(3) could circumvent essential, statutorily authorized consumer protections.

The Commission was right to be concerned. Prepayment meter programs are designed and implemented to circumvent essential consumer protections. They do so by attracting

¹¹ Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; Gen. Review of Regulations, PUC Docket No. L-00060182, 2011 WL 3001641 (June 9, 2011).

¹² Id.

¹³ Id.

payment troubled customers, who have difficulty maintaining service, and marketing prepayment as a way to pay for service that the customer can afford (evidenced solely by the fact that the customer can only have as much service as he/she can pay for in advance). The National Consumer Law Center, surveying existing prepayment programs, found that prepaid utility service is concentrated among lower-income consumers.¹⁴ In the United Kingdom, pre-payment meter customers are more likely to be low-income.¹⁵ Similarly, in Arizona, the Salt River Project's MPower program, the largest prepayment program in the United States, is heavily comprised of low income, younger households who have low or new credit ratings.¹⁶

Low-income customers face particular hardships with prepayment meter programs. Customer Assistance Programs (CAPs) cannot function in the prepayment environment because there is no mechanism to target monthly bill affordability. The concept of an affordable bill does not exist in a prepayment program because service is provided after, and only to the extent, the customer makes advance payments. Furthermore, under current LIHEAP policy for utility-provided service, LIHEAP Crisis grants, upon which many low-income families rely to ensure adequate heat during the winter, would be unavailable to prepayment meter customers.¹⁷ It is

¹⁴ Nat'l Consumer Law Center, Rethinking Prepaid Utility Service: Customers at Risk, 25 (June 2012), available at https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.

¹⁵ *Id.* at 11, 16 ("Sixty percent of electricity and natural gas customers with prepayment meters in 2010 had annual incomes below . . . \$27,704.").

¹⁶ Electric Power Research Inst., Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program, at 4-6 (Oct. 2010), available at

https://www.smartgrid.gov/files/Paying_Upfront_Review_Salt_River_Project_MPower_Prepaid_Pr_201007.pdf. It is important to note that neither the Salt River Project nor the utilities in the United Kingdom report the number of service disconnections associated with prepayment, making it hard to assess the true harm of their programs. Nat'l Consumer Law Ctr., Rethinking Prepaid Utility Service: Customers at Risk, 16-17 (June 2012), available at https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.

¹⁷ Low Income and Consumer Rights Groups are aware that the Commission's regulations prohibit participation in prepayment meter programs by low income customers. 52 Pa. Code §56.17(3)(i). However, it is unclear how this prohibition could be enforced, since customers who may have income above 150% FPL at the time of enrollment,

noteworthy that LIHEAP eligibility has in the past extended to customers above 150% FPL, who would not be prohibited by the Commission's existing regulations from participation in prepayment meter programs.¹⁸ Crisis grants are only available if the customer incurs or is threatened with utility service termination. Prepayment programs treat loss of service as voluntary discontinuance, which under current program design would be ineligible for remediation through the LIHEAP Crisis program. Similarly, because prepayment programs deem loss of service due to nonpayment to be a voluntary discontinuance, statutory winter termination protection and medical certificate availability are precluded. Low Income and Consumer Rights Groups find there is inadequate policy basis to permit prepayment meter programs to circumvent vital public health and safety protections and agree with the Commission's inclination in its 2011 rulemaking order that, if retained, the income guidelines contained in § 56.17(3) should be increased.

The Low Income and Consumer Rights Groups submit that Chapter 14, as amended, was intended by the General Assembly to establish certain definitive terms and conditions for payment of residential utility service, particularly among those customers most in need of payment assistance and most likely to be attracted to proposals purporting to present alternatives to full payment.¹⁹ Chapter 14 establishes when utility service can and cannot be terminated. It

may suffer hardships resulting in reductions in their income. For such customers, lack of access to LIHEAP Crisis may be an additional, severe financial setback at a time of desperate need.

¹⁸ In fact, section 2605(b)(2)(B) of the LIHEAP statute specifically authorizes states to allocate LIHEAP funds for households up to 60% of area median income. See 42 U.S.C. § 4624(b)(2)(B).

¹⁹ The initial enactment of Chapter 14 is responsible for record levels of utility terminations and is fundamentally poor policy that sacrifices consumer protections to assist utility company collection efforts. See, generally, Daniel Simmons-Ritchie, Powerless in Pennsylvania, Sunday Patriot-News, February 26, 2016, at A1. The 2014 Chapter 14 amendments make certain changes intended to partially restore and rebalance consumer protections. One such example is the elimination of the 2004 Chapter 14 provision permitting Friday service terminations and restoring that prohibition for the purpose of protecting consumers and ensuring access to appropriate protections prior to termination. The elimination, in the context of pre-payment, of the concept of termination in favor of discontinuance

guarantees customers certain rights to restore service, establishes maximum amounts of security deposits, and imposes other obligations, such as reporting requirements, concerning the effect of Chapter 14 on terminations, payment delinquencies, medical certificate use, and other factors. Nowhere in Chapter 14 did the General Assembly authorize a structure for residential utility service that would entail a complete waiver of its consumer protections and a concomitant “escape hatch” for utility company compliance with Chapter 14 requirements.

In addition, the deeming of a loss of service as a “discontinuance” by the customer who subscribed for prepayment service places other occupants who did not subscribe for that service at risk of loss without their knowledge or consent. In most cases, these other occupants are also “customers” within the meaning of Chapter 14, having many of the same rights and responsibilities as the customer subscribing for service. Unlike the Commission’s regulations concerning voluntary discontinuance, 52 Pa. Code § 56.72 (authorizing discontinuance upon request by the customer), the customer in a prepayment meter arrangement takes no affirmative step to result in the loss of service; the customer simply fails to pay a sufficient amount to maintain the service. Given that households below 300% of the federal poverty level lack the economic means to meet all of their financial needs without assistance,²⁰ the regulation’s premise that failure to re-load funds constitutes a request for voluntary discontinuance pursuant to 56.72 is dubious at least for households lacking economic self-sufficiency.

would negate protections the General Assembly restored by the Chapter 14 amendments.

²⁰ Pennsylvania’s self-sufficiency standard – the income needed to pay for the basic life essentials – ranges from \$25,000 in rural counties to \$45,000 in more affluent counties in Southeast Pennsylvania. See Pa. Pathways, Overlooked and Undercounted: How the Great Recession Impacted Household Self-Sufficiency in Pennsylvania, at 7 (2012), <http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/PA2012.pdf>.

Moreover, prepayment meter arrangements are unnecessary. Customers currently face no barriers to paying for utility bills in advance (e.g., weekly, bi-weekly, or otherwise), in order to avoid a large payment at the end of the month. Nothing prevents a utility from providing consistent reminders in consumer-friendly and technologically innovative ways about upcoming bills and high balance alerts. Utility companies may argue that prepayment meter programs provide conservation/usage signals through new technology that customers appreciate. If that is correct, there is no prerequisite that this technology be tied to or inextricably interwoven with prepayment programs – utility companies are free to structure new technological interfaces that provide customers with information about their consumption, cost, and pattern of utility usage. And they can do so without implementing prepayment programs.

The simple reality is that non-payment is one symptom of utility unaffordability, which must be addressed through statutorily prescribed universal service programs and through a regulatory structure providing affordable energy burdens. Although the Commission's regulations are clear in prohibiting customers whose income is at or below 150% of the Federal Poverty Level from participating in prepayment programs, utilities often have difficulty accurately assessing changing conditions in households, and reductions in income that may make a family ineligible to participate. Moreover, as the Commission recognized in 2011, the threshold for low-income (150% of Federal Poverty Level (FPL)) is not the only income level at which Chapter 14 provides specific income-based consumer rights. Customers at or below 250% of FPL are protected from utility service termination during the winter months. Customers with income at or below 300% of FPL have more generous rights to restore service than those with higher income. The continuation of regulations allowing for prepayment meter programs will

negate the language of Chapter 14 regarding vulnerable populations and side-step these Chapter 14 protections entirely. This is not permissible.

The Low Income and Consumer Rights Groups submit that the prepayment meter regulation, 52 Pa. Code § 56.17(3) is unnecessary, and contrary to statutory intent. As such, it should be eliminated from the Commission's regulations. Accordingly, the Low Income and Consumer Rights Groups recommend that 52 Pa. Code § 56.17(3) be eliminated and that section be reserved for future regulatory use.

In the alternative, if 52 Pa. Code § 56.17(3) is not eliminated, it requires substantial revision in order to ensure that it is consistent with the consumer protections afforded by Chapter 14. These revisions must include, at a minimum, the following:

- A prohibition on enrollment of any household with income at or below 300% of the federal poverty level. This change could be made by replacing the current income guideline contained in §56.17(3)(i) of 150% of the federal poverty income level with 300% of the federal poverty income level.
- An obligation of the public utility to verify income prior to participation and again during the five day period immediately preceding the actual service stoppage.
- An obligation of the public utility to return a customer to standard post-pay billing, with no penalty, and restore service if it has been discontinued, upon learning that the customer has income at or below 300% FPL.
- An obligation that prior to allowing for any winter "discontinuance," the utility verify that the participating customer does not, at the time of such discontinuance, have income at or below 250% FPL.

In addition to these regulatory changes, it is worth noting that prepayment meter program participation presents particular issues in tenant-occupied premises. Voluntary discontinuance by a landlord (within the meaning of 66 Pa. C.S. § 1521) through a prepayment meter program would violate specific tenant protections pursuant to Subchapter B of Chapter 15, Part I of the Public Utility Code (66 Pa. C.S. §§ 1521-1533). In practice, public utilities frequently are unaware that a tenant is protected by Subchapter B until a termination notice is issued and the tenant contacts the utility. Section 56.17(3)(ii) limits prepayment meter participation to individually-metered residential units where the “customer and occupants are the only individuals affected by the installation of a prepayment meter.” This provision does not, on its face, preclude participation by landlord ratepayers of individually-metered dwellings. Accordingly, the Low Income and Consumer Rights Groups submit that if 52 Pa. Code §56.17(3) is retained, in addition to the essential protections noted above, the Commission prohibit participation in such programs by any customer other than customer-occupants of the household so as to avoid the concerns implicated by Subchapter B and require the utility to return the household to standard service promptly upon receiving information that a household is tenant occupied.

C. Deposit Rules for CAP Eligible Customers and Applicants²¹

Act 155 amended Chapter 14 to impose a blanket prohibition on cash deposits for CAP-eligible applicants and customers. Specifically, section 1404(a.1) provides that “no public utility

²¹ The Commission’s current regulations have headings prior to §§ 56.31-56.38 that state they apply only to applicants. In changing the regulations, the Commission should ensure that these headings are also changed to reflect the reality that they also apply to applicants and customers.

may require a *customer or applicant* that is confirmed to be *eligible* for a customer assistance program to provide a cash deposit.”²²

In its Chapter 14 Implementation Order, the Commission noted that section 1404(a.1) imposes an affirmative obligation on the utility to request income information, and set forth some basic guidelines for utilities:

[W]e note that [section 1404(a.1)] does appear to impose an **obligation** upon utilities, when asking for a security deposit from a consumer, to determine whether the customer is exempt from such. It is not unreasonable to think that a utility should first refer to the income information it may have available for the customer, obtained either at the time of application, when negotiating a payment arrangement, or when having previously screened the customer for assistance. If the utility has no income data available for the customer, then it is reasonable for the utility to ask for such data either prior to or at the time it asks for a deposit. For example, the deposit warning letters per 52 Pa. Code §§ 56.41 and 56.291 and credit denial statements per 52 Pa. Code §§ 56.36 and 56.286 that utilities send the customers and applicants could include language asking the consumer to contact the utility to determine their eligibility for assistance programs and the possible waiver of a deposit. Likewise, it seems reasonable to expect that utilities mention possible waiver of a deposit. Likewise, it seems reasonable to expect that utilities mention possible waiver of security deposit requirements in their written procedures that are made available to applicants per 52 Pa. Code §§ 56.36 and 56.286. **Guidance beyond this, however, is best reserved for the upcoming rulemaking where all parties can participate and share their suggestions.**²³

In its Notice of Proposed Rulemaking, the Commission simply incorporated the same general guidance contained in its Implementation Order, but made no specific inquiry into the need for further guidance to ensure proper implementation of the cash deposit prohibition. In relevant part, the Commission’s proposed revisions added the prohibition on cash deposits to sections 56.32(e) and 56.41; required utilities to incorporate the cash deposit prohibition into

²² 66 Pa. C.S. § 1414(a.1) (emphasis added).

²³ Chapter 14 Implementation Order at 44 (emphasis added).

their written credit procedures pursuant to section 56.36(b); and required utilities to inform applicants of the cash deposit prohibition in writing as part of their denial of credit notice pursuant to section 56.32(b)(1).

Low Income and Consumer Rights Groups respectfully assert that the Commission’s proposed revisions – while a step in the right direction – are insufficient to effectuate the intent of the General Assembly to protect low income households from cash deposits.²⁴ As discussed above, the proposed regulation simply mimics the statutory language concerning the prohibition and proscribes insufficient notice of the prohibition to consumers. Changes to the proposed language, as recommended below, are necessary to ensure that public utilities fulfill their statutory obligation to verify income before assessing a cash deposit on an applicant or customer.²⁵

1. Revise Cash Deposit Prohibition to Include Both Applicants and Customers

The plain language of Section 1404(a.1) of the Public Utility Code applies to both applicants and customers.²⁶ In contrast, the Commission’s proposed language in section 56.32(e) (cash deposit prohibition) limits the prohibition to customers, and the general notice and policy requirements in section 56.36(b) (written procedures) apply the prohibition only to applicants. Chapter 14 provides very specific definitions for the terms “applicant” and “customer.”²⁷ The rights and duties that attach to applicants and customers are different, and careful delineation of the two in the promulgation of regulations is critical. To be consistent with the letter and intent

²⁴ See Notice of Proposed Rulemaking Order at Attachment 1, 2-3; see also subsection 1, below.

²⁵ See Notice of Proposed Rulemaking Order at Attachment 1, 2-3

²⁶ 66 Pa. C.S. § 1404(a.1) (“[n]o public utility may require a **customer or applicant** that is confirmed to be eligible for a customer assistance program to provide a cash deposit.” (emphasis added)).

²⁷ 66 Pa. C.S. § 1403.

of the law, the Commission must revise sections 56.32(e) and 56.36(b) to include both applicants and customers. Suggested language to effectuate this and other recommended revisions to the cash deposit prohibition are provided below, in subsection 6.

2. *Clarify that the Cash Deposit Prohibition is Based on Household Income*

As set forth in Chapter 14, the statutory exemption applies to any customer or applicant who is confirmed to be “eligible” for a customer assistance program. General guidelines for CAP eligibility are set forth in the Commission’s Policy Statement on Customer Assistance Programs.²⁸ The Policy Statement, while providing general guidelines, does not have the same force and effect as a regulation. Over time, each utility has imposed a range of eligibility requirements, none of which are necessarily connected to an applicant or customer’s ability to pay a security deposit. For example, PPL Electric excludes customers from CAP if they have not “entered into a payment agreement within the last 12 months.”²⁹ Thus, applicants for service are ineligible for PPL’s CAP because they do not have arrears which would necessitate a payment arrangement. In PGW’s service territory, customers are ineligible for CAP if their average bill

²⁸ “The CAP applicant should meet the following criteria for eligibility:

- (i) Status as a utility ratepayer or new applicant for service is verified.
- (ii) Household income is verified at or below 150% of the Federal poverty income guidelines.
- (iii) The applicant is a low income, payment troubled customer. When determining if a CAP applicant is payment troubled, a utility should select one of the following four options to prioritize the enrollment of eligible, payment troubled customers:
 - (A) A household whose housing and utility costs exceed 45% of the household’s total income. Housing and utility costs are defined as rent or mortgage/taxes and gas, electric, water, oil, telephone and sewage.
 - (B) A household who has \$100 or less disposable income after subtracting all household expenses from all household income.
 - (C) A household who has an arrearage. The utility may define the amount of the arrearage.
 - (D) A household who has received a termination notice or who has failed to maintain one payment arrangement.

52 Pa. Code § 69.265(4).

²⁹ PPL Electric Utilities Corp. 2014-2016 Universal Service and Energy Conservation Plan, at 7 (Sept. 30, 2014), available at <http://www.puc.state.pa.us/pcdocs/1318186.pdf>.

amount is less than the customer's applicable percentage of income.³⁰ As a result, customers with low usage are often ineligible for CAP in that service territory. In Columbia Gas, UGI Utilities, and PGW, households who are on CAP, but voluntarily remove themselves from CAP, are ineligible for CAP for a period of one year.

Respectfully, Low Income and Consumer Rights Groups do not believe that nuances of each CAP eligibility requirement were what the General Assembly had in mind when it set out the prohibition, and believe that the Commission's regulations should provide clarity and uniformity concerning the application of this prohibition. An applicant or customer should not be required to pay a cash deposit based on criteria such as the existence of arrears or the customer's average usage levels, as it would categorically exclude applicants from the prohibition. Likewise, an applicant or customer should not be assessed a cash deposit based purely on their geographic location and utility service territory. Such a result would be inconsistent with the General Assembly's intent to alleviate the insurmountable barrier that a substantial upfront payment requirement presents to low income households attempting to establish or maintain water, heat, and electricity service in their homes.

It is similarly important that utilities not require actual enrollment in CAP as a precondition to application of the security deposit exemption. Chapter 14 plainly contemplates that applicants and customers would not need to enroll in the program to be exempt from security deposit requirements, as it refers explicitly to those "eligible" for CAP. Enrollment in CAP has

³⁰ See PGW First Amended Universal Service and Energy Conservation Plan 2017-2020, at 6 (Nov. 16, 2016), available at <http://www.puc.state.pa.us/pcdocs/1488489.pdf>. PGW's First Amended USECP is subject to Commission Approval in an open proceeding before the Commission, where PGW's CAP eligibility criteria is subject to dispute. See PGW Universal Service Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415.

many rights and benefits – but it also comes with several obligations and responsibilities. As such, applicants and customers should not be required to enter the program as a precondition to application of the security deposit exemption. Along the same lines, the period of time which elapses from application to actual enrollment in CAP differs significantly from utility to utility and sometimes differs internally within the utility, depending upon the subcontractor processing the application and other factors. If the applicant or customer has not completed enrollment in public utility’s customer assistance program, the utility should not be permitted to demand a deposit on the basis that the customer’s eligibility has not been “confirmed” for some reason unrelated to income.

The Low Income and Consumer Rights Groups assert that the prohibition on cash deposits should apply to any customer or applicant who is eligible, based on household income, to participate in CAP – meaning they have income at or below the level indicated in the Commission’s CAP policy statement, currently 150% FPL. This proposal is administratively simple, and avoids the inequitable results that would arise if applicants or customers in one service territory are required to pay a deposit while similarly situated applicants and customers in another service territory are statutorily exempt.

To effectuate this proposal, the Low Income and Consumer Rights Groups propose changes to 52 Pa. Code §§ 56.32(e) and 56.41(4) (clarifying household income-based application of deposit prohibition for applicants and customers, respectively), and 56.36(b) (updating utility written procedures to reflect deposit prohibition). These proposed changes are set forth below in subsection 6.

3. *Inform Applicants and Customers of Prohibition When Deposit Is Assessed*

Utilities often do not inform consumers of the prohibition on cash deposits at the time the deposit is requested, leaving many families struggling to scrape together money they do not have – despite the fact that they are statutorily exempt from deposit requirements. The impact of this practice can be severe: Low income households that are unable to pay an assessed cash deposit are often denied access to subsidized or affordable housing units or face termination of service soon after moving in. Indeed, cash deposits often contribute to the transient nature of those living in poverty – piling on added costs for disconnection and reconnection.

The Commission proposes to address that issue, in a limited manner, by requiring the utility's denial of credit letter to contain a statement about the cash deposit prohibition. But consumers are unlikely to read the fine print in a credit denial letter. As a practical matter, credit determinations are often made at the time the customer calls for service, while they are still on the phone. Once assessed or quoted over the phone, customers who are unable to meet the deposit amount often panic - scrambling to come up with the money. It is therefore critical that verbal notice of the exemption, as well as clear instruction for how to verify income for the exemption to apply, should be provided to applicants and customers at the time the security deposit is quoted or assessed. Without verbal notice of the cash deposit prohibition at the time the deposit is quoted or assessed, low income customers are likely to be assessed a cash deposit – in direct violation of the statutory prohibition. Therefore, the Low Income and Consumer Rights Groups submit that utilities should be required to verbally inform applicants and consumers of the cash deposit prohibition *at the time the deposit is quoted or otherwise assessed*. Changes to the proposed language in section 56.36(b) are provided below, in subsection 6.

4. Provide a Simple Process for Income Verification

Currently, the processes in place for applicants and customers to trigger the cash deposit prohibition vary across the state. Some utilities have no process in place. Many other utilities instruct consumers to set up an appointment and attend an in-person meeting at a community based organization to provide their income verification. This in-person process can be onerous to many low income households, requiring the head of household to take time off work, obtain childcare, and arrange for transportation. Of course, these added costs to the household directly detract from the limited funds the household has available to keep up with their utility bills.

The Commission's proposed regulation at section 56.36(b) requires utilities to establish written procedures which state, generally, that there is a cash deposit prohibition, but provides no further guidance to identify key elements of that procedure – such as the method and manner for utilities to verify income for the purposes of the cash deposit prohibition.

The Low Income and Consumer Rights Groups submit that the Commission should set forth basic regulatory parameters for income verification to ensure timely and consistent adherence by utilities to the cash deposit prohibition. Suggested language is provided in subsection 6, below.

5. Refund Previously Collected Deposits

Act 155's prohibition on deposits for CAP eligible customers reflects the General Assembly's clear understanding that low-income customers have limited means to pay for utility service, and are entitled to service without the additional burden of a deposit.

Deposits held by public utilities should be refunded or credited to low-income customer accounts. It is inequitable for a public utility to hold a deposit collected from a customer upon

later discovery that such customer is, or has become, low-income and financially vulnerable.

Indeed, it would be contrary to the premise of Act 155 for a public utility to have permission to hold a deposit it could not lawfully collect.

Accordingly, the Low Income and Consumer Rights Groups propose the addition of a new subsection, 52 Pa. Code § 56.53(f), as outlined in subsection 6, below, to require any applicable deposits to be refunded within two billing periods after the discovery that such deposit could not currently be charged or collected.

6. *Recommended Revisions – Cash Deposit Prohibition and Related Provisions*

§ 56.32. Security and cash deposits.

...

(e) *Cash deposit prohibition.* Notwithstanding subsection (a), a public utility may not require a customer or applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit. For the purposes of this section, an applicant or customer is confirmed to be eligible for a customer assistance program if she or he provides income information to the public utility which verifies that the household income is no greater than 150% of the federal poverty guidelines or such other income eligibility standard as the Commission has approved for the public utility's Customer Assistance Program.

§ 56.36. Written procedures.

...

(b) A public utility shall establish written procedures for determining the credit status of an applicant and for determining responsibility for unpaid balances in accordance with § 56.35 (relating to payment of outstanding balance). The written procedures must specify that there are separate procedures and standards for victims with a protection from abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence. The procedures must also specify that any applicant or customer that is confirmed to be eligible for a customer assistance program will not be required to pay a deposit. The procedure shall set forth with particularity the process that the utility will adopt to assure that no deposit will be required and, at a minimum, shall provide for verbal notice of the cash deposit prohibition at the time a cash deposit is quoted or assessed; the method by which an applicant and customer may submit proof of income to the utility; and the right of applicants or consumers to dispute a cash deposit. A public utility employee processing applications or determining the credit status of applicants shall be supplied with or have ready access to a copy of the written procedures of the public utility. A copy of these

procedures shall be maintained on file in each of the business offices of the public utility and made available, upon request, for inspection by members of the public and the Commission and be included on the public utility's web site.

§ 56.41. General rule.

...

(4) *Cash deposit prohibition.* Notwithstanding paragraphs (1), (2) and (3), a public utility may not require a customer or an applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit. For the purposes of this section, an applicant or customer is confirmed to be eligible for a customer assistance program if she or he provides income information to the public utility which verifies that the household income is no greater than 150% of the federal poverty guidelines or such other income eligibility standard as the Commission has approved for the public utility's Customer Assistance Program.

§ 56.53. Deposit hold period and refund.

...

(f) A public utility shall refund a deposit (with applicable interest) as soon as practicable, but no later than two billing periods after discovering that the customer or applicant from whom such deposit was collected is not subject to payment of a deposit under § 56.41(4).

D. Electronic Notification of Termination

Act 155 authorized customers to agree to obtain electronic notification of proposed termination, under specific terms and conditions to be established by the Commission. As set forth in 66 Pa. C.S. § 1406(b)(1)(ii)(C), attempted contact for purposes of delivering termination notice may be “by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.” However, 66 Pa. C.S. § 1406(b)(1)(ii)(D) requires that the customer “affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.”

In its proposed changes to section 56.93 (Personal contact), the Commission refers directly to the Commission's “privacy guidelines” and notes that electronic notice is voluntary

and may only be used “if the customer has given prior consent approving the use of a specific electronic message format for the purpose of notification of a pending termination.”³¹

Low Income and Consumer Rights Groups submit that the Commission’s proposed regulation must be further revised to ensure that applicants or customers provide *knowing and informed* consent to receive electronic notice of termination and, in turn, that reasonable safeguards are in place to help ensure that customers who provide consent will actually receive the electronic notice.

First, with regard to the manner in which consent for electronic notification is obtained, the Low Income and Consumer Rights Groups submit that - given the extraordinary consequences of termination - the Commission’s regulations should require public utilities to ensure that consent is in writing and given after customers have been provided clear information concerning the effect of such consent, i.e., the utility will not attempt personal contact by any other method prior to termination of service. As such, the process that a utility uses to request consent from an applicant or customer must be distinct from other information routinely provided or requested by a utility, and should not be buried within an application for service or within the contact information routinely collected when a customer applies for service. Specifically, Low Income and Consumer Rights Groups submit that the public utility should be required to develop a separate written consent form that includes plain language information about the effect of consent to electronic notice and conspicuous notice informing customers that they may freely revoke such consent at any time. The Low Income and Consumer Rights Group believe it would be appropriate for the Commission to explore the development of a model form,

³¹ Notice of Proposed Rulemaking, Annex A, at 20.

in collaboration with interested stakeholders and BCS personnel, in order to ensure adequate consent for electronic notice of termination.

Second, in addition to having a separate and distinct consent form, utilities should be required to periodically update the consumer's approved electronic message format. The Low Income and Consumer Rights Groups believe that this consent should be updated at least annually. Economically vulnerable households often have unreliable access to advance communication tools, and regularly rely on pre-paid telephone and internet services as their sole source of technology. As a result, these households frequently change their telephone number or run out of available minutes in a given month, which means that these households are at high risk of missing electric notifications. In addition, many customers at all income levels rely on email and electronic messaging services provided through their workplace or school, which may be inactivated with a job change or if the person withdraws or completes an education program. Realistically, it is not always feasible for consumers to update a utility with their new email address, text-capable phone, or other electronic device information. Most consumers are unlikely to be aware that failure to update their electronic contact information will impact their ability to receive notice of termination. Thus, in light of the distinct possibility that consumers will change their electronic messaging platforms, public utilities must take precaution to periodically confirm the customer's consent to receive electronic notification and verify the contact information necessary to deliver termination notices.

Finally, it is critical that public utilities be required to attempt contact through another method (in person or by phone) if the utility knows or reasonably should know that electronic notice failed. As noted above, electronic contact information is subject to change – especially for low income populations that have unreliable access to telecommunication and internet

services. Of course, even when the customer has the same electronic contact information, there remains a risk that electronic communication may otherwise fail because of a strong firewall, junk-mail settings or filters, or other technological hurdles. Each and every one of us can likely relate to this problem – wherein a critically important message is never received. The Low Income and Consumer Rights Groups submit that a public utility cannot disregard information it acquires which reasonably indicates that notice was not received. Electronic notices that result in delivery failure and error messages, for example, should not be considered sufficient attempts to contact the consumer. Rather, public utilities should be required to attempt to contact consumers about termination through an alternative method if they know or reasonably should know that electronic notice was unsuccessful.

To adequately protect customers, and ensure that electronic notice of termination is effective to the greatest degree possible, the Low Income and Consumer Rights Groups propose the following changes to 52 Pa. Code §§ 56.93 and 56.97 :

§ 56.93. Personal contact.

(a) Except when authorized under § 56.71, § 56.72 or § 56.98 (relating to interruption of service; discontinuance 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 or electronically with the customer's written consent, to provide notice of the proposed termination at least 3 days prior to the scheduled termination using one of the following methods in this section. If personal contact by one method is not possible, or the public utility knows or reasonably should have known that the notification method was unsuccessful, the public utility is obligated to attempt another method.

* * * * *

(3) Contact by email, text message or other electronic messaging format consistent with the Commission's privacy guidelines and approved by Commission order. The electronic notification option is voluntary and shall only

be used if the customer has given prior written consent approving the use of a specific electronic message format for the purpose of notification of a pending termination. Electronic contact shall be deemed incomplete if the public utility fails to obtain written consent; fails to periodically affirm the customer's continuing consent or the continued accuracy of the information previously provided; or receives a response to an attempted electronic notification indicating that the customer did not contemporaneously receive the notification.

Upon receiving consent, a public utility shall have the obligation to periodically affirm the customer's continued consent and the approved electronic message format. Written consent shall be obtained on a form dedicated to such purpose, and shall contain the following:

(1) The customer's signature, affirming that the customer may be contacted through a specified electronic message format for the purpose of delivering notice of termination of public utility service.

(2) Conspicuous notice of the customer's right to freely revoke such consent, at any time, by contacting the public utility.

§ 56.97. Procedures upon customer or occupant contact prior to termination.

(a) If, after the issuance of the initial termination notice and prior to the actual termination of service, a customer or occupant contacts the public utility concerning a proposed termination, an authorized public utility employee shall fully explain:

* * * * *

(5) That if the customer has given written consent to electronic notification of proposed termination pursuant to § 56.93, the customer may freely revoke such consent. The authorized public utility employee must confirm the accuracy of the email, text message or other electronic messaging information previously provided by the customer.

* * * * *

E. Emergency Provisions

In its Notice of Proposed Rulemaking, the Commission clarifies a number of issues with respect to the application of medical certificates. In short, the Commission amended the definition of medical certificate to be consistent with the statute and amended the required content of a medical certificate to better shield sensitive medical data from unnecessary and

unwarranted disclosure. The Commission did not propose language to clarify the payment obligations of consumers during the pendency of a medical certificate, but invited interested parties to comment on the issue, and specify whether the Commission has the authority to require a payment arrangement for customers subject to a medical certificate in light of the limitations on payment arrangements in 66 Pa. C.S. § 1405.³²

The Low Income and Consumer Rights Groups support the Commission's determination that a medical certificate does not need to be on a proscribed form, and could be any writing that contains the requisite content. The Commission is correct to focus on ensuring that the specific information required by Act 155's definition is provided, regardless of whether it is submitted in a doctor's letter; on a form developed by a public utility, the PUC, or a consumer advocate; or even on a prescription pad. Low Income and Consumer Rights Groups also recommend that the Commission consider adopting a form that utilities could implement as a safe harbor that complies with the requirements of Section 56.113. While the Commission made it clear in its *Chapter 14 Implementation Final Order* that Chapter 14 does not require a specific form, it left open the possibility of developing a single, statewide form that could be made publically available for use by any public utility consumer:

As for [the] suggestion that a collaborative develop a single, statewide standard form – this idea may have merit but it is premature. Any such collaborative should await the promulgation of the Chapter 56 medical certification regulations.³³

Low Income and Consumer Rights Groups believe that the Commission's recommendation has merit. We have heard from medical providers that it would facilitate their

³² Notice of Proposed Rulemaking Order, Attach. One, at 9.

³³ Final Order: *Chapter 14 Implementation*, Docket No. M-2014-2448824, at 10 (July 9, 2015).

ability to issue medical certificates if there were a form that was available for download either on the utilities' website or the website of the Commission. This standard, statewide form would allow providers to feel more knowledgeable about the medical certificate process and the rights and duties that attach for their patients, and would allow for easy access for hard-to-reach and busy medical professionals. Low Income and Consumer Rights Groups support the Commission's interpretation that such a form should not be the only means through which a medical certificate can be provided; nevertheless, its development and public access on the Commission and utility websites would be of significant value.

Because the details associated with the development and implementation of such a form are unlikely to be resolved in the context of this rulemaking, Low Income and Consumer Rights Groups recommend that the Commission convene a work group of interested stakeholders to develop a standardized form that complies with the requirements of section 56.113, and that the Commission place this form on its website as well as encourage the utilities to place this form on their public websites.

The Low Income and Consumer Rights Groups further support the Commission's proposal to eliminate language in section 56.113 which required medical certificates to include the "nature...of the affliction" and "the specific reason for which service is required."³⁴ The Low Income and Consumer Rights Groups commend the Commission for recognizing the sensitivity of medical information, which is protected from disclosure under State and Federal law.

³⁴ Notice of Proposed Rulemaking Order, Attach. One, at 8 & Annex A at 25-26; see also Chapter 14 Implementation Order at

Despite their support for several of the changes, the Low Income and Consumer Rights Groups have a number of concerns, addressed below, about the medical certification process, and make a number of recommendations for further amendment to the proposed rules to better align with the statute and the realities facing medically vulnerable households.

1. License Numbers Should Not be Required

The Commission's Order specifically invited comments concerning whether medical professionals should be required to provide their license number in connection with a medical certificate. Order at 9. The Low Income and Consumer Rights Groups submit that requiring a physician, nurse practitioner or physician assistant to supply a license number in completing a medical certificate goes beyond the letter or intent of the amendments to Chapter 14, is unwarranted and unwise.

As a threshold matter, the Commission has never requested such information before for the submission of a medical certificate, and in the decades of accepting medical certificates, the presence or absence of a license number has not been an issue. The Low Income and Consumer Rights Groups are not aware of a single proven instance of a fraudulently submitted medical certificate, nor is there any indication in the legislative history that the possibility of such event was ever raised as an issue of concern. Although the General Assembly could easily have required that medical certificates include the license number of the person authorized to sign, it did not.

Furthermore, implicit with a requirement of disclosing a license number is the suggestion that submitting a medical certificate is somehow within the authority of, or subject to review by, the state agency issuing the license. An implicit threat of licensure review is not supportable.

Submission of a medical certificate is a matter of sound professional judgment entrusted to certain authorized medical providers. To the extent any legal review were commenced by a public utility concerning a medical certificate, it is at best unclear whether that matter could implicate the authority or jurisdiction of the board or agency overseeing licensure. Certainly, the validity of a medical professional's licensure is not within the Commission's jurisdiction to review.

Finally, the Low Income and Consumer Rights Groups note that imposing needless formality to the process of submitting a medical certificate is certain to deter medical professionals from freely exercising their professional judgment and assisting customers, if appropriate, to maintain vitally important service based on a patient's medical health needs.³⁵ For all of these reasons, the Low Income and Consumer Rights Groups maintain that medical certificate forms must not require physicians, nurse practitioners or physician assistants to include their license numbers. The Joint Parties' recommended revisions to section 56.113 are provided below in subsection E.5.

2. Length of Affliction and Duration of Medical Certificate

In the Notice of Proposed Rulemaking, consistent with guidance from its previous Implementation Order, the Commission proposed to continue requiring that medical certificates identify the "anticipated length of the affliction" which forms the basis of the medical

³⁵ The Low Income and Consumer Rights Groups have heard from many consumers who have been unable to access medical certificates for which they are eligible due to confusion on the part of medical professionals who misread or misunderstand the Commission's medical certificate regulations. The Commission should ensure that its regulations do not contribute to confusion that could result in a medical professional denying a medical certificate to an eligible patient.

certification.³⁶ The Commission explains that it retained this provision because the utility “needs to know this information so as to determine the duration of a medical certificate.”³⁷

The Low Income and Consumer Rights Groups submit that further clarification regarding the duration of a medical certificate should be incorporated into the Commission’s regulations. Indeed, the Commission’s regulations have imposed a de facto length of at least 30 days in the event a medical provider fails to specify a duration.³⁸ Given that medical professionals may, in the course of treatment, determine that a chronic or life-threatening illness is anticipated to extend beyond a period of 30 days, it is appropriate to provide for the certification of a medical need for service that corresponds to the affliction.

Obtaining a medical certificate is not easy, and requires customers to expend their limited financial resources *every 30 days* to pay expensive co-pays, secure transportation and childcare, and take time away from work to attend a medical appointment with a physician, physician assistant, or nurse practitioner. For someone with a short-term condition which is likely to improve, the shorter time-frame may be reasonable; but for those with a chronic illness, the arbitrarily imposed 30 day limitation, which may have no relation to the underlying illness or condition, poses a “Catch 22” – as it detracts from the resources that the customer can pay toward their utility bill.

Roger Colton, a nationally recognized expert in utility affordability, explained the need for extended medical certification periods, noting that “It is unreasonable to require low-income

³⁶ Notice of Proposed Rulemaking Order, Attach. One, at 8 & Annex A at 25-26; see also Chapter 14 Implementation Order at 13.

³⁷ Notice of Proposed Rulemaking, Attach. One, at 8.

³⁸ See 52 Pa. Code § 56.114(1) (establishing a minimum duration of at least 30 days).

customers to renew their medical certificates every 30 days when customers have difficulty scheduling medical appointments that frequently.”³⁹ He explains that the average wait time for a medical appointment is much longer – especially for those who rely on Medicare or are uninsured.⁴⁰ The simple reality is that “[e]xpanding the certification period for medical certificates also helps to mitigate the inherent financial conflict between requiring low-income households to make continuing bill payments while at the same time requiring those households to seek continuing medical care.”⁴¹ This conflict, he notes, “is not theoretical.”⁴² According to the National Energy Assistance Directors’ Association (NEADA), “37% of LIHEAP households with a member who had a serious medical condition went without medical or dental care because of their home energy bills.”⁴³ NEADA also reports that “nearly half (47%) of households with a member that relied on medically necessary equipment went without medical or dental care due to home energy bills.”⁴⁴ To remedy this problematic issue, Mr. Colton recommends that the duration of medical certificates be extended to better account for the realities facing medically and financially vulnerable households.⁴⁵

Accordingly, the Low Income and Consumer Rights Groups assert that the regulations should be further revised to clarify that, although a medical certificate shall be effective for a minimum of thirty days, in the cases in which the medical practitioner indicates the anticipated length of the affliction to be greater than 30 days, the length of the protection provided should

³⁹ Colton, Roger. Fisher, Sheehan & Colton: *FSC's Law and Economics Insights*. Sept/Oct. 2009 at 1. Available at: http://www.fsconline.com/downloads/FSC%20Newsletter/news2009/n2009_0910.pdf

⁴⁰ Id. at 1-2.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id. at 3.

correspond to the length of the affliction. In the event of a serious illness without specific ending date, the duration of the medical certificate protection should be extended for a period of up to 6 months.

3. *Affirm Obligation to Pay Only Current Charges During Pendency of Medical Certificate*

As the Commission noted in its Notice of Proposed Rulemaking, utilities and advocates for customers have in the past argued about the proper interpretation of the Commission’s regulations on payment obligations during the period of time when termination cannot occur due to the issuance of a medical certificate or renewal. The Commission invited interested parties to comment on the medical certificate payment obligations, and specifically requested that commenters provide an analysis “of the ability of the Commission to order payment arrangements be negotiated in these situations in the context of the restrictions upon the Commission found in section 1405.”⁴⁶

In its Implementation Order, the Commission expressly continued its long-standing interpretation of sections 56.114 and 56.116, which allows households to renew a medical certificate for as long as is medically necessary provided the customer pays their current charges or budget bill amount as it comes due, irrespective of any arrears on the account at the time the medical certificate is first obtained.⁴⁷ The Commission explained in its last rulemaking, when this policy was codified into Chapter 56, that the current bill / budget bill payment requirement “recognizes the disruptive nature of serious illness on customers” by allowing continuation of

⁴⁶ Notice of Proposed Rulemaking Order, at 9.

⁴⁷ Chapter 14 Implementation Order at 15.

medical certificates beyond a cap of 90 days.⁴⁸ The Commission explained that the existence of underlying arrears is not an issue because staying current on the current or budget bills during the pendency of a medical certificate “prevent[s] the accumulation of additional arrearages while a customer is under the protection of a medical certificate.”⁴⁹

If customers were required to pay more than current, undisputed charges, the purpose of medical certificates and renewals would be thwarted. A household requiring service for health-related purposes is extraordinarily vulnerable, and loss of service is often catastrophic to health and safety of the customer or the customer’s household member. Maintaining essential utility service during a time of medical need is of vital importance and was correctly recognized by the General Assembly in Chapter 14 as a public health and safety matter having priority over a utility’s collection effort. Requiring a customer in a time of illness and increased vulnerability to make payments in excess of current charges would fail to effectuate the fundamental purpose of a medical certificate – to interrupt the utility’s termination-collection path while a medical need for service exists.

As mentioned above, the Commission previously acknowledged that households experiencing conditions warranting medical certificates should be required to pay only current charges, in recognition of the “disruptive nature of serious illness.”⁵⁰ At the same time, the Commission sought to balance the needs of the utility, by ensuring that the ability of a customer to maintain service beyond a limited period (one medical certificate and two renewals), would

⁴⁸ See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*, Docket No. L-00060182, at 149 (Mar. 22, 2011).

⁴⁹ *Id.*

⁵⁰ Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*, Docket No. L-00060182 at 149.

only be available if the customer were able to compensate the utility for the cost of service rendered during that period – hence avoiding the accumulation of additional arrears during that time. The Low Income and Consumer Rights Groups submit that the Commission’s interpretation of the availability of medical certificate renewals reflected in the PECO USECP decision should not be disturbed, and instead should be more clearly reflected in regulations.

Opponents of the Commission’s longstanding medical certificate rules may submit that the Commission lacks the authority to authorize a customer to continue service using medical certificates, and that doing so somehow overreaches the statutory limitations on payment arrangements. Such assertions should be flatly dismissed.⁵¹ The limitations on the Commission’s ability to grant payment arrangements are separate and distinct from the obligation of a utility to continue service when a medical certificate has been issued. Indeed, as described above, a medical certificate is intended to interrupt the termination-collection path, while a payment arrangement is intended to supersede it. A “payment arrangement” is defined as “[a]n agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa. C.S § 1403. At no point in the process of submitting a medical certificate does such an agreement arise. In

⁵¹ That these opponents also desire customers to make payments toward arrears during the period of a medical certificate highlights the fallacy of their argument. Requiring customers to make payments on arrears during a period covered by a medical certificate, would, in fact appear to create some form of payment arrangement which could potentially implicate the provisions of 66 Pa. C.S. 1405 (limiting the availability of Commission-granted payment arrangements). This proposal was most recently made by PECO, and the Commission correctly rejected it. See PECO Energy Co. Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Final Order, Docket No. M-2015-2507139, at 20-21 (Aug. 11, 2016) (citing Chapter 14 Implementation Order at 15).

fact, a medical certificate may be utilized by a customer before, after or while participating in a utility payment arrangement.⁵²

4. Recommended Revisions to Sections 56.111 - 56.116

For all of the foregoing reasons, the Low Income and Consumer Rights Groups submit that the Commission should approve the following changes to its regulations in 52 Pa. Code §§ 56.111-56.116 to implement the statutory medical certificate protections:

§ 56.111. General provision.

A public utility may not terminate service to a premises, or refuse to restore service to a customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) at a premises, ~~to a premises when the customer or applicant customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing)~~ has submitted a medical certificate to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician, nurse practitioner or physician assistant and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

§ 56.113. Medical certifications.

All medical certifications must be in writing. Physicians, nurse practitioners, or physician assistants may utilize medical certificate forms developed by public utilities or the Commission ~~Public utilities may develop a medical certificate form, but~~ The use of the public utility's or Commission's medical certificate form may not be mandatory. Any medical certificate form developed by the public utility shall be made readily available and placed on the public utility's web site. Medical certificates may be electronically transmitted and electronic signatures are valid. A medical certificate must include the following:

* * * * *

⁵² For utilities concerned about the validity of a medical certificate or about a customer's failure to make payments on current or undisputed bills, the provisions of § 56.118 are sufficient safeguards to ensure that bills are not needlessly increasing.

(3) If longer than 30 days, the ~~The~~ anticipated length of the affliction.

§ 56.114. Length of postponement; renewals.

Service may not be terminated for the time period specified in a medical certification; the minimum ~~maximum~~ length of the certification shall be 30 days.

* * * * *

(2) *Renewals.* Certifications may be renewed in the same manner and for the same time period as provided in §§ 56.112 and 56.113 (relating to postponement of termination pending receipt of certificate; and medical certifications) and this section ~~if the customer has met the obligation under § 56.116 (relating to duty of customer to pay bills).~~ A customer or applicant shall be entitled to renew a medical certificate a minimum of two times, regardless of payment. Thereafter, a customer or applicant shall be entitled to successive medical certificate renewals if the customer or applicant has paid current basic charges or budget bill charges for the billing period covered by the bill or bills issued since the medical certificate was submitted. A customer or applicant submitting a medical certificate will retain the obligation under § 56.116 (relating to duty of customer to pay bills). ~~In instances when a customer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. In these instances the public utility is not required to honor a third renewal of a medical certificate and is not required to follow § 56.118(3) (relating to right of public utility to petition the Commission).~~ The public utility shall apply the dispute procedures in § § 56.151 and 56.152 (relating to public utility company dispute procedures). When the customer eliminates these arrearages that caused the notice of termination prior to the issuance of the customer's medical certificate, the customer is eligible to file new medical certificates.

§ 56.116. Duty of customer to pay bills.

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 basic charges bills or budget ~~billing amount~~ charges for the billing period covered by the medical certificate as determined under § 56.12(7) (relating to meter reading; estimated billing; customer readings).

F. Deaths at Premises Where Utility Service Was Terminated

Annex A to the Commission's Order includes the following language, at 52 Pa. Code § 56.100(j) (reflecting the Commission's proposed modification):

Information submitted to the Commission in accordance with this subsection will be treated in accordance with 66 Pa. C.S. §1508 (relating to reports of accidents) and may not be open for public inspection except by order of the Commission, and may not be admitted into evidence for any purpose in any suit or action for damages growing out of any matter or thing mentioned in the report.

The Low Income and Consumer Rights Groups submit that this language should be removed. As a threshold matter, Section 56.100(j) addresses circumstances in which public utilities learn, "in the normal course of business," about a fatality caused by a household fire, incident of hypothermia, hyperthermia, carbon monoxide poisoning, or other event following a *termination* of utility service.

The Low Income Consumer Groups submit that the language limiting public access to information about deaths occurring where utility service had been terminated should be removed. As a threshold matter, Section 56.100(j) addresses circumstances in which public utilities learn, "in the normal course of business," about a fatality caused by a household fire, incident of hypothermia, hyperthermia, carbon monoxide poisoning, or other event following a *termination* of utility service. Such occurrences are tragic and are overwhelmingly the effect of poverty or mental disabilities which have prevented the household occupant from maintaining or restoring service following termination. It was exactly such an event that occurred almost 40 years ago, was publicly reported, and preceded the establishment of a winter termination protections.⁵³ It

⁵³ See Philadelphia Bulletin, January 22 and January 26, 1976, Harrisburg Patriot January, 24, 1976 articles

was also the more recent public reports of tragedies following Friday service terminations which led to the amendments of Chapter 14 restricting Friday terminations and which are included as part of this rulemaking.

It is clearly in the public interest in protecting the health and welfare of Commonwealth residents (neighbors as well as the customers and building occupants) that any structural or systemic failures or gaps in protecting the impoverished and other vulnerable populations are revealed. These may be related, for example, to the functioning of the service termination protections provided during the winter, to the processing of medical certificates, to the functioning of universal service programs, the winter cold weather survey effectiveness, or to some other attempt to assist customers in maintaining service and public health and safety.

Certainly, in cases of households living in poverty, access to affordable utility bills should prevent the need to resort to unsafe alternatives to utility service. Fatalities subject to the provisions of Section 56.100(j) are horrific examples of desperation, typically by low income customers without the means to raise adequate funds to prevent or restore service. They may

regarding the death of Sophia Easer of Munhall Pennsylvania. See also Western Union telegram dated January 23, 1976 from U.S. Senator Hugh Scott (PA) to Lewis J. Carter, Chairman, PA PUC stating :

URGE IMMEDIATE ACTION TO PREVENT UTILITIES FROM CUTTING OFF SERVICE UNTIL THEY MAKE PERSONAL CONTACT WITH DELINQUENT CUSTOMERS.

AS REPORTED TODAY IN PHILADELPHIA PRESS, MISS SOPHIA EASER OF MUNHALL PA, WHO WAS IN HER EIGHTIES, FROZE TO DEATH AFTER HER HEAT WAS SHUT OFF BECAUSE OF AN UNPAID BILL.

THIS INCIDENT RAISES SERIOUS QUESTIONS ABOUT THE RESPONSIBILITY UTILITY COMPANIES HAVE WHEN THEY DISCONTINUE SERVICE DURING THE WINTER, PARTICULARLY WHEN THEY TAKE SUCH [sic] ACTION AGAINST THE POOR OR ELDERLY.

GOVERNMENT—AT ALL LEVELS—MUST RECOGNIZE THAT THE WELL BEING OF THE INDIVIDUAL MUST COME FIRST—AND ACT ACCORDINGLY.

indicate broader and more significant issues, but they do not necessarily implicate incidents within the purview of 66 Pa. C.S. §1508 relating to an accident or event under the control of the utility. In contrast, events within the meaning of 66 Pa. C.S. §1508 are accidents occasioned in the delivery of utility service, or repairs of facilities for that purpose, and require specific and detailed reporting by the utility of what caused the accident. These accidents typically directly involve utility personnel, and events largely within the control of the utility. However, Section 56.100(j) incidents are related to *incidents following termination of service*. The Commission's regulation erroneously shields from view information that is vital to the representation of the public interest in ensuring that there are neither gaps nor flaws in safeguarding life and in ensuring universal service.

Recent investigative journalism appears to confirm that if the Commission does not make this information available, it will not otherwise come to light.⁵⁴ For example, a database maintained by the Office of the State Fire Commissioner cannot readily produce this information, and firefighters reporting the cause of a fire may categorize it in different ways, without regard to whether the utility service was on or off. Notably, the same article revealed that the chief of the Harrisburg Bureau of Fire, while unable to say whether fires caused by unsafe heating sources had increased, generally worried that increased utility service terminations created additional risk of fire.

The Low Income and Consumer Rights Groups submit that other sources of law are adequate to protect the privacy interests of customers and utilities. The Commission's existing

⁵⁴ Daniel Simmons-Ritchie, Powerless in Pennsylvania: 'It's Definitely Not Safe', Sunday Patriot-News, February 26, 2016, at A13.

regulations concerning the privacy of customer information, e.g., 52 Pa. Code § 56.11, require a utility to employ reasonable measures to protect customer information. Similarly, the Pennsylvania Right-to-Know Law (and case law interpreting it) would permit redaction of sensitive information, if necessary, to protect families affected by a casualty. Disclosure of fatalities following from the loss of utility service would help the Commission and interested stakeholders evaluate the possibilities for new interventions and universal service enhancements that can benefit low-income customers and avoid catastrophe. Section 56.100(j) should be removed.

G. Commission Informal Complaint Procedures

The Commission proposed to modify the informal complaint procedure regulations to authorize the Complainant to request a copy of documentation submitted by the public utility in response to an informal complaint. As explained in the Order, this opportunity is intended to protect the complainant's due process rights. Order at 9. The Commission further proposes that the utility redact information referring to third parties, in order to protect their privacy or personal security. The Low Income and Consumer Rights Groups appreciate the Commission's concern for customers' due process rights and the privacy of third parties. However, the Low Income and Consumer Rights Groups are aware of circumstances in which the redaction or unavailability of information concerning third parties may impede the due process rights the Commission seeks to protect.

For example, in the case of a tenant seeking to demonstrate that a utility has wrongfully terminated service in violation of Subchapter B, Chapter 15, Title I of the Public Utility Code, the complainant is specifically asserting a right as a non-customer and must divulge his or her information in order to do so. In such circumstance, the third party, the tenant's landlord or its

agent, may be the utility's customer, and information about that third party is material to the complaint. Redaction of that information would impede the complainant's right to due process, because the complainant would not be able to verify the existence of a landlord account. Similarly, 52 Pa. Code § 56.72 requires specific utility notices upon request for discontinuance by a customer who doesn't reside at the premise where service is provided. An occupant who is not provided that notice may be deprived from meaningful review if information about the request for discontinuance is redacted and unavailable. Certainly, there may be other circumstances than these in which the Commission's determination hinges on information concerning third parties and such information should not be categorically unavailable to an affected complainant under the Commission's regulations.

The Commission has previously considered the need to balance privacy rights against the Commission's obligation to provide adequate administrative due process. The Commission has observed that "disclosure could be warranted in those cases in which private and state interests prevail over a...privacy right."⁵⁵ In recognition of this need for balancing rights, the Low Income and Consumer Rights Groups propose the following modest revision to 52 Pa. Code § 56.163:

§ 56.163. Commission informal complaint procedure.

* * * * *

(1) *Review techniques.* Review will be by an appropriate means, including, but not limited to, public utility company reports, telephone calls, conferences, written statements, research, inquiry and investigation. Procedures will be designed to ensure a fair and reasonable opportunity to present pertinent evidence

⁵⁵ See Riordon v. Bell Telephone Co. of Pa., 1993 WL 855879, Docket No. C-881874 (September 9, 1993).

and to challenge evidence submitted by the other party to the dispute, to examine a list of witnesses who will testify and documents, records, files, account data, records of meter tests and other material that the Commission staff will determine may be relevant to the issues, and to question witnesses appearing on behalf of other parties. Information and documents requested by Commission staff as part of the review process shall be provided by the public utility within 30 days of the request. If the complainant is without public utility service, or in other emergency situations as identified by Commission staff, the information requested by Commission staff shall be provided by the public utility within 5 business days of the request. Upon request of the complainant or Commission staff, the public utility shall provide the complainant with a copy of the documents submitted to Commission staff in response to the informal complaint. If so ordered by the Commission, the public utility shall redact any documents to omit information concerning an individual other than the complainant which is not relevant to the Commission's decision or the disclosure of which would compromise the personal security of such individual. ~~The public utility shall redact any documents to omit information that would possibly compromise the privacy or personal security of any individual other than the complainant.~~

* * * * *

H. Implementation of Section 1417 Domestic Violence Exemptions

In clear recognition of the fact that victims of domestic violence are often uniquely vulnerable to physical and financial harm – especially during times of separation from a violent intimate partner, Chapter 14 contains an explicit exemption for victims of domestic violence:

§ 1417. Nonapplicability.

This chapter shall not apply to victims under a protection from abuse order as provided by 23 Pa. C.S. Ch. 61 (relating to protection from abuse) or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer.⁵⁶

This statutory exemption is an expansion from the prior section 1417, which limited the exemption to victims with a Protection From Abuse Order (PFA).

⁵⁶ 66 Pa. C.S. § 1417.

As the Pennsylvania Coalition Against Domestic Violence has explained to the Commission in the past, the Chapter 14 exemption is “designed to prevent further harassment, physical harm, and mental anguish for the service recipient.”⁵⁷ Those who are exempt pursuant to section 1417 fall under the former Chapter 56 regulations, which are codified at subchapters L through V.⁵⁸ These provisions provide critical protections for victims of domestic violence, who face extreme physical safety and economic instability when separating from an abusive intimate partner. For example, a victim cannot be held responsible for debts and arrearages accrued by an abuser,⁵⁹ and they are provided with additional flexibility in negotiating a payment arrangement based on the individual’s unique facts and circumstances – rather than falling within the rigid timeframes established in Chapter 14.⁶⁰ Indeed, the exemption from Chapter 14 provides essential help for victims struggling to establish a safe, violence-free home.

In its Proposed Rulemaking Order, the Commission tracked language from the statute, without providing additional clarification on the scope of order that could be affected.⁶¹ However, there are inherent ambiguities in the statute – which are now incorporated into the proposed regulatory language – which must be resolved to fully implement the Chapter 14 exemption for victims of domestic violence in a manner consistent with the intent of the General

⁵⁷ Retail Markets Investigation, *Comments of the Pennsylvania Coalition Against Domestic Violence Regarding the March 21, 2012 En Banc Hearing*, PUC Docket No. I-2011-2237952, at 4 (2012).

⁵⁸ 52 Pa. Code, Ch. 56, Subsections L-V.

⁵⁹ “A utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant unless a court, district justice or administrative agency has determined that the applicant is legally obligated to pay for the service previously furnished.” 52 Pa. Code § 56.285.

⁶⁰ “An outstanding residential account with the utility may be amortized over a reasonable period of time. Factors to be taken into account include the size of the unpaid balance, the ability of the applicant to pay, the payment history of the applicant and the length of time over which the bill accumulated.” 52 Pa. Code § 56.285.

⁶¹ See Notice of Proposed Rulemaking at Attachment One (revisions to §§ 56.36; 56.91, 56.191, 56.201; 56.331; 56.333; 56.421; 56.431).

Assembly. For example, there are a number of “orders” that may contain “clear evidence of domestic violence” – including a broad range of civil and criminal orders, such as divorce, custody, child protection, criminal convictions, and sentencing. Moreover, many court orders contain clear evidence of domestic violence, but lack critical facts necessary for the utility to interpret the order. A criminal charging order for assault by an abuser against a victim, for example, contains clear evidence of domestic violence; however, the charging order itself is unlikely to contain an attestation of the relationship between the offender and their victim. There is also potential for conflicting interpretation by utilities about when a court order is from “a court of competent jurisdiction in this Commonwealth.” For example, protection orders issued by a court from another jurisdiction are explicitly recognized and enforced by Pennsylvania’s courts, pursuant to the Protection From Abuse Act.⁶² And, the Full Faith and Credit provision of the United States Constitution explicitly ensures that court orders issued in one state are recognized and enforceable in all other states.⁶³

In its Chapter 14 Implementation Order, the Commission recognized the complexity of the issues surrounding implementation of the Chapter 14 exemption, and stated:

We urge all utilities to make sure that they have revised their procedures to take into account this expansion of Section 1417 exemptions. As CAUSE notes, these matters may be beyond the usual expertise of the utilities and the Commission. Accordingly, we advise utilities, when encountering questions and difficulties with the new requirements of Section 1417, to carefully consult their in-house counsel and, if needed, to consult with outside experts. For example, CAUSE identifies the Legal Department at the Pennsylvania Coalition Against Domestic Violence. We encourage the utilities to engage in a dialogue with the community

⁶² See 23 Pa.C.S. § 6104(a) (relating to general enforceability in Pennsylvania of protection orders entered by courts outside the Commonwealth)

⁶³ U.S. Const. Article IV, Section 1 (“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.”).

organizations that deal with domestic violence issues, especially if they have questions or problems with implementing Section 1417. Finally, we advise consumers, community organizations or utilities to contact the Commission with any Section 1417 exemption problems to contact the Commission. **This matter will of course be addressed more fully in the upcoming rulemaking.**⁶⁴

Full implementation of the Chapter 14 exemption for victims of domestic violence is complicated, and requires the input and advice of professionals who are not often before the Commission. Unfortunately – beyond the incorporation of the language from the statute into the regulations as noted above – the Commission has not provided any proposed guidance for utilities in its pending rulemaking that would help them interpret the statutory language or appropriately implement a process and procedure for applying protections appropriately and consistently across utility service territories.

At this stage in the rulemaking proceeding, providing specific recommendations regarding the appropriate interpretation of the exemption – as well as a suggested process and procedure for appropriate implementation of the exemption – would not allow all interested stakeholders to appropriately respond with additional input and comment, as there is no opportunity to submit reply comments or to otherwise provide further input to ensure that the Commission’s ultimate proposals do not create unintended consequences for this vulnerable population of utility consumers. As such, rather than making specific suggestions for regulatory revisions, the Low Income and Consumer Rights Groups recommend that the Commission commit to launching a work group comprised of representatives from BCS, Law Bureau, the utilities, statutory advocates, advocates for victims of domestic violence (such as PCADV), representatives of consumer groups, and other interested stakeholders. The purpose of this work

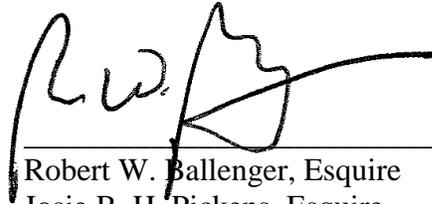
⁶⁴ Chapter 14 Implementation Order at 44 (emphasis added).

group would be to provide specific recommendations to the Commission regarding necessary guidance and interpretation of the statutory exemption that could be developed into a policy statement to be universally applied across utility service territories.

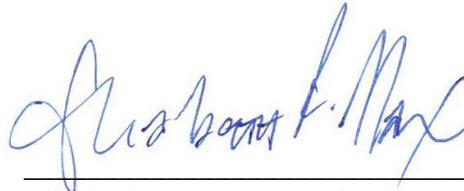
IV. CONCLUSION

In consideration of their comments above, Low Income and Consumer Rights Groups urge the Commission to approve changes to its regulations as set forth herein.

Respectfully Submitted,



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