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May 12, 2011

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Rosemary L. Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission (PUC) Final-Form Regulation #57-265  
(IRRC#2743): "Standards and Billing Practices for Residential Utility Services"

PUC Docket No. L-00060182

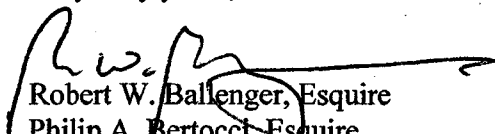
Dear Secretary Chiavetta:

Enclosed for eFiling please find the Comments of Action Alliance of Senior Citizens and Tenant Union Representative Network regarding the PUC's Final-Form Regulation regarding the *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S., Chapter 14; General Review of Regulations.*

It is our current understanding that the PUC is requesting the Independent Review Regulatory Review Commission to take the steps necessary to provide the PUC time to make certain changes in the Proposed Regulation to address objections raised in these Comments. These Comments are being filed in order to cover the record in accordance with regulatory review procedures.

Copies of these Comments have been served upon the parties as indicated on the attached Certificate of Service.

Very truly yours,

  
Robert W. Ballenger, Esquire  
Philip A. Bertocci, Esquire  
Thu B. Tran, Esquire

cc: Certificate of Service

Enclosure

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Comments of Action Alliance of Senior Citizens and Tenant Union Representative Network regarding Pennsylvania Public Utility Commission (PUC) Final-Form Regulation #57-265 (PUC Docket No. L-00060182; IRRC#2743) "Standards and Billing Practices for Residential Utility Service" on the persons listed below:

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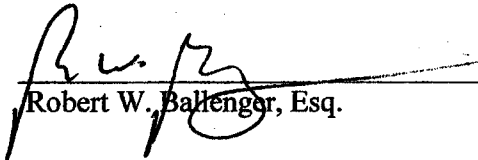
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
AND THE  
INDEPENDENT REGULATORY REVIEW COMMISSION

Review of Pennsylvania Public Utility : PUC Docket: L-00060182  
Commission Regulation No. 57-265 :  
(Standards and Billing Practices for : IRRC # 2743  
Residential Utility Service)

COMMENTS OF  
ACTION ALLIANCE OF SENIOR CITIZENS AND  
TENANT UNION REPRESENTATIVE NETWORK

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May 12, 2011

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## **I. INTRODUCTION**

Community Legal Services, Inc., on behalf of Action Alliance of Senior Citizens and Tenant Union Representative Network (hereinafter, collectively, "Action Alliance"), submits that the Independent Regulatory Review Commission (IRRC) should disapprove the final-form Chapter 56 regulations promulgated by the Public Utility Commission (PUC) on March 22, 2011 (hereinafter "Proposed Regulations").

As described in the sections below, we have identified four major issues (medical certifications, household income, prepaid meters and remote reading devices) in the Proposed Regulations which erode essential consumer protections without sufficient statutory basis in Pennsylvania's Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, et seq. (hereinafter "Chapter 14").

## **II. MEDICAL CERTIFICATIONS**

### **A. Comment Summary.**

Proposed Regulation Sections 56.191(b), 56.191(b)(1) and 56.191(c)(1) abridge and virtually eliminate the medical certification protections historically provided by the Chapter 56 regulations to customers with medical emergencies whose service has recently been terminated for non-payment. In this respect, the Proposed Regulations endanger health and safety, are not authorized by the plain statutory language, do not reflect the legislative intent and are not in the public interest. The Proposed Regulations therefore do not satisfy the IRRC criteria for approval as set forth in the Regulatory Review Act, 71 P.S. § 745.5b.

Chapter 14 Sections 1406(f) and 1407(b), the only Chapter 14 provisions addressing medical certifications, contain no explicit limitation restricting medical certification protection exclusively to customers whose service has not yet been terminated for non-payment. These provisions do not forbid what Public Utility Code Section 1501, 66 Pa.C.S. § 1501, and Chapter 56 Section 56.111 have historically authorized.

Chapter 14 Section 1402 (Declaration of Policy) exhibits no intent to cut back on the health and safety protections historically provided to customers with medical emergencies.<sup>1</sup> The legislature specified that Chapter 14 superseded existing law and regulations only to the extent that existing law and regulations were inconsistent with Chapter 14 provisions. Similarly, the record of debate in the General Assembly evidences the intent to maintain the full scope of medical certification protections historically available to residential utility customers.

**B. Background.**

Chapter 56 Sections 56.111 through 56.118 contain the medical emergency regulations, which, at the time of enactment of the Chapter 14, ensured continued public utility service to customers experiencing medical emergencies who were threatened with shut-off or who had been recently terminated for non-payment. Section 56.111, which assured such protection both to prevent service termination and to provide for immediate

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<sup>1</sup> Chapter 14 manifests a legislative intent to (1) assist utility efforts to reduce uncollectible expense through stricter collections processes and procedures, and (2) combat customer fraud and deception. Neither of these goals necessitates reduction in health and safety protections traditionally provided to customers.

service restoration, became effective in 1978, and at the time of passage of Chapter 14, had been in effect without amendment over 25 years. Section 56.111 states:

A utility may not terminate, or refuse to restore, service to a premise when an occupant therein is certified by a physician to be seriously ill or affected with a medical condition which will be aggravated by a cessation of service or failure to restore service.

52 Pa.Code § 56.111 (emphasis added). The Proposed Regulations abridge and virtually eliminate medical certification protections to customers whose service has been recently terminated and who are experiencing a medical emergency.

This provision has formed a critical part of the social safety net which protected all customers, but particularly low income customers who due to their poverty, are more vulnerable to the possibility of non-payment utility service terminations. The medical certification provision has allowed customers with qualifying medical conditions to obtain stay of service termination for non-payment without the requirement that the customer simultaneously meet the financial or other requirements for a payment agreement as a pre-condition of stay of termination. In a similar fashion, customers whose service had been terminated were entitled, so long as they retained customer status, to obtain service restoration without the simultaneous requirement that they meet financial or other requirements for a payment agreement as a pre-condition of service restoration.

The scope of this provision, providing protection both to customers about to be terminated for non-payment, and to recently terminated customers, has proved necessary to avert catastrophic harm stemming from lack of vital utility service at the time that medical emergencies rendered customers most vulnerable. Utility shut-off notices are ten day notices which inform customers that they will be shut off not on a date certain, but



“on or after” a specific date. Examples of customers who need the protections of a medical certification after service termination include but are not limited to: customers who develop a qualifying medical condition only after termination has occurred; customers who are hospitalized at the time of notice and/or service termination and; customers who received a termination notice but mistakenly thought they would be able to make a payment arrangement before shut-off actually would occur.<sup>2</sup>

In Chapter 14, the General Assembly included two provisions touching on certain aspects of the medical emergency provisions.

Chapter 14 Section 1406(f) states:

**Medical certification.**—A public utility shall not terminate service to a premises when a licensed physician or nurse practitioner has certified that the customer or a member of the customer’s household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and shall promptly forward it to the public utility. The medical certification procedure shall be implemented in accordance with commission regulations.

Chapter 14 Section 1407(b) states in pertinent part:

**Timing.** – When service to a dwelling has been terminated and provided the applicant has met all applicable conditions, the public utility shall reconnect service as follows:

- (1) Within 24 hours for erroneous terminations or upon receipt by the utility of a valid medical certification:
- (2) Within 24 hours for terminations occurring after November 30 and before April 1.
- (3) Within three days for erroneous terminations requiring street or sidewalk digging.
- (4) Within three days from April 1 to November 30 for proper terminations.

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<sup>2</sup> Because of the diverse circumstances under which utility service termination occurs for financially vulnerable households and the fact that some medical emergencies arise close to the time of shut-off or shortly after shut-off, Action Alliance disagrees with the PUC’s view that “[c]ustomers with legitimate medical conditions have ample time to provide utilities with the necessary information to ensure the continuation of service.” Order, Attachment 1, at 140. Rather, Action Alliance submits that households overwhelmed with medical emergencies may be incapable of taking, or simply too distracted to take, the steps necessary to avoid shut-off before it occurs.

(5) Within seven days for proper terminations requiring street or sidewalk digging.

In its Final Rulemaking Order, the PUC has proposed regulations which would preclude customers whose service has been recently terminated for non-payment from obtaining service restoration on the basis of a medical certification, without at the same time meeting financial requirements for restoration, including reconnection fees, deposits, upfront payments on payment agreements, if available, and in some cases, full payment of the total outstanding balance. As PUC Commissioner John F. Coleman, Jr. wrote in his dissent from this aspect of the PUC majority's Proposed Regulations, "[r]equiring the payment of reconnection fees or the entire arrearage may effectively nullify the legislature's expressed preference for the rapid restoration of service when a valid emergency medical condition exists."<sup>3</sup>

On the basis of its view that Chapter 14 requires the elimination of essential medical certification protections to customers whose service has been recently terminated, the PUC has excluded reference to restoration of service from Proposed Regulation Section 56.111 and has asserted the applicability of payment requirements for such customers in Proposed Regulation Section 56.191. The relevant Proposed Regulations concerning medical certification requirements for customers whose service has been recently terminated are set forth as follows, with the language which Action Alliance challenges set forth in bold:

**56.111. General provision. A public utility may not terminate service to a premises when a licensed physician or nurse practitioner has certified that the customer or a member of the customer's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The**

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<sup>3</sup> *Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S., Chapter 14; General Review of Regulations, Docket No. L-00060182 (Public Meeting, February 24, 2011) Partial Dissenting Statement of Commissioner John F. Coleman, at 1-2.*

customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

56.191. Payment and Timing.....

(b) *Timing.* When service to a dwelling has been terminated, provided the applicant **or customer** has met all applicable conditions, the public utility shall reconnect service as follows:

(1) Within 24 hours for erroneous terminations or upon receipt by the public utility of a valid medical certification. **The medical certificate must be accompanied by the payments required by this section ....**

(c) *Payment to restore service.*

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service. A public utility shall inform the applicant or customer that conditions for restoration of service may differ if someone in the household is a victim of domestic violence with a protection from abuse order. **The public utility is not required to modify or eliminate the payment required to restore service if a medical certificate is presented.**

(Bold emphases added).

In addition, Action Alliance challenges the related provision regarding the Post Termination Notice to be provided to customers whose service has been terminated for non-payment. That Notice, required by Proposed Regulation Section 56.91(b)(8), and set forth as Appendix B (p.115) informs the customer that the recipient of a medical certification must also “pay the amounts required by the utility to restore your service.”

Action Alliance submits that contrary to the PUC’s Order, neither the words of Chapter 14 nor the General Assembly’s intent supports the PUC’s payment pre-conditions in Proposed Regulation Sections 56.191(b) and 56.191(c) with regard to customers with medical emergencies who have been recently terminated for non-

payment. Chapter 14 does not necessitate elimination of the medical certification protections which have been provided to such customers for over 30 years.

**C. Nowhere in Chapter 14 Is There Any Language Suggesting that Medical Certification Protections are Only Available to Customers Whose Service Has Not Been Terminated for Non-Payment.**

The only provisions in Chapter 14 that address the subject of medical certifications are Section 1406(f) and Section 1407(b). The plain language of these Sections does not support the PUC's contention that the "language of the statute is clear and unambiguous that medical certificates, by themselves, are not enough to require a utility to restore service." Order, Attachment 1, at 139.

**1. Section 1406(f).**

Section 1406(f) states:

**Medical certification.** – A public utility shall not terminate service to a premises when a licensed physician or nurse practitioner has certified that the customer or a member of the customer's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and shall promptly forward it to the public utility. The medical certification procedure shall be implemented in accordance with commission regulations.

Chapter 14 Section 1406, which is entitled "Termination of utility service," addresses solely pre-termination procedures.<sup>4</sup> Because Section 1406 addresses pre-termination processes, that section contains no reference to the applicability of medical certification procedures with respect to customers whose service has already been terminated.

Therefore, the PUC impermissibly and wrongly draws a negative inference from Section

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<sup>4</sup> Prior to Chapter 14, the medical certification procedures had no specific statutory basis, but were derived from the PUC's authority under Sections 1501 and 1504(1) of the Public Utility Code to develop and enforce reasonable customer service regulations. 66 Pa.C.S. §§ 1501; 1504(1).

1406(f)'s silence on the availability of identical medical certification protections for customers seeking service restoration after a termination for non-payment.

**2. Section 1407(b)(1).**

Like the words of Section 1406(f), the words of Section 1407(b)(1) contain no explicit restriction precluding customers whose service has been recently terminated for non-payment from obtaining service restoration by means of a medical certification. Section 1407 generally addresses issues related to service reconnection or restoration to customers or applicants whose service has been terminated for non-payment. Section 1407(b) states in pertinent part:

Timing. – When service to a dwelling has been terminated and provided the applicant has met all applicable conditions, the public utility shall reconnect service as follows:

(1) Within 24 hours for erroneous terminations or upon receipt by the public utility of a valid medical certification.

On its face, this provision does not contain any restriction on the rights of a “customer” whose service has been recently terminated for non-payment to obtain service reconnection upon submission of a medical certification.<sup>5</sup> Chapter 14 defines “customer” as a “natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service....” Accordingly, a customer whose service has been terminated continues to be listed for some time as a person in whose name a “residential service account is listed.” That service termination

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<sup>5</sup> This provision would slightly amend Chapter 56 requirements concerning how quickly a public utility must restore service after receipt of a medical certification. Under the current Chapter 56 requirements, a utility is required to make a “diligent effort” to restore service on the day of receipt of the medical certification, and in any event, before the “end of the next working day.” 52 Pa.Code § 56.115.

does not immediately deprive a consumer of customer status is specifically confirmed in Section 1407 itself. Sections 1407(c)(1) and 1407(c)(2) (setting standards for reconnection payment terms) both specifically refer to customers as well as applicants seeking reconnection.

The PUC Order itself recognizes that service termination alone does not extinguish the customer/utility relationship: “the fact that you are not receiving service does not mean you cannot be a ‘customer’. We agree with ... PPL that a residential account can still be listed in the name, for a certain period of time, of the person terminated or discontinued and termination or discontinuance occurs when the final bill is due and payable.” Order, Attachment 1, at 12. Indeed, Proposed Regulation Section 56.2 defines “customer” to specify that “[a] natural person remains a customer after discontinuance or termination until the final bill for service is past due.” Inversely, the definition of “applicant” in Proposed Regulation Section 56.2 specifies that the term does “not include a person who seeks to reinstate service at the same address provided that the final bill for service is not past due.”<sup>6</sup> That person seeking restoration is still a customer.

### **3. Section 1407(b).**

Finally, the PUC points to the requirement in Section 1407(b) that persons seeking restoration must meet “all applicable conditions” as proof that the General Assembly did not intend to “erode” the rights of utilities to collect reconnection fees, deposits and outstanding balances from customers experiencing medical emergencies

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<sup>6</sup> Shortly after service termination for non-payment, customers are provided with a Final Bill for service received up to the time of termination. Under Chapter 56 Section 56.21, the bill may be due no less than 20 days from the date of transmittal. As the PUC Order acknowledges in its insistence that termination of service does not mean immediate extinguishment of the utility/customer relationship, residential utility service has always been held to involve “more than just receiving kilowatts and specifically includes billing.” Order, Attachment 1, at 13.

who have been recently terminated for non-payment. Order, Attachment 1, at 139. However, the term “applicable” means to have a valid connection. On its face, the term “applicable” is used only in reference to “applicants.” There is no indication regarding what requirements might be “applicable” to “customers.” This language provides no support for the PUC’s view that recently terminated “customers” experiencing a medical emergency -- in addition to “applicants” -- must meet not only the requirements associated with submitting a valid medical certification, but also payment requirements set forth in Section 1407(c) for customers without a medical emergency.

**D. A Review of All Indicators of Statutory Intent, Including the Section 1402 “Declaration of Policy,” other Chapter 14 Provisions, the Historical Notes, and the Transcript of the Floor Debate Evidences the Intent to Preserve and Not to Restrict Medical Certification Provisions Long Considered Necessary to Protect Health and Safety.**

The PUC’s Order asserts that Chapter 14 manifests a legislative “purpose” to discontinue medical certification protections for customers whose service has recently been terminated. Order, Attachment 1, at 139. However, that “purpose” is nowhere to be found in the plain statutory words specifically addressed to medical certifications. Furthermore, that “purpose” finds no support in the legislative history of Chapter 14.

**1. Chapter 14 Declaration of Policy.**

In enacting Chapter 14, the General Assembly’s intent, expressed in Section 1402 (Declaration of Policy) was to “achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.” 66

Pa.C.S. § 1402(2). At the same time, the General Assembly intended “to ensure that service remains available to all customers on reasonable terms and conditions.” 66 Pa.C.S. § 1402(3).<sup>7</sup> While Chapter 14 exhibited a legislative intent to tighten collection processes and procedures, and to combat fraud and deception, it reflected no desire to narrow the scope of protection that PUC regulations have been providing for decades to recently terminated customers with medical emergencies which would be aggravated by the loss or continued deprivation of utility service.

## 2. Legislative History.

Review of the sole discussion of Chapter 14 which occurred on the floor of the House of Representatives on November 19, 2004, shortly before the decisive votes, confirms that the legislators did not intend to reduce the level of medical certification protections then being provided under Chapter 56. Representative Dwight Evans was the lawmaker tasked with explaining the most recent version of Chapter 14 to his colleagues. In response to a direct question on the floor of the House concerning how Chapter 14 would affect the medical certification protections currently available, he replied: “if you look on page 9, 24, (f), it is consistent with current law” (emphasis added).<sup>8</sup> This exchange reflects a legislative intent to preserve, not abridge, historical medical certification protections. Moreover, the emphasis in the House of Representatives was on changing the behavior of customers capable of paying who were utilizing “fraud and deception”, particularly the so-called “name game” in order to avoid payment of their

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<sup>7</sup> The PUC expresses its understanding of the overall legislative intent as follows: “This legislation works to eliminate opportunities for customers capable of paying to avoid paying their utility bills, and to provide utilities with the means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections. The goal of these changes is to increase timely collections while ensuring that service is available to all customers based on equitable terms and conditions.” Order, at 2.

<sup>8</sup> *Commonwealth of Pennsylvania Legislative Journal*, Friday, November 19, 2004, No. 72, at 2222.



utility bills.<sup>9</sup> There were no allegations that customers were abusing the PUC's medical certification processes.

Neither the explicit Declaration of Policy at the beginning of Chapter 14 nor the legislative history exhibit any intent to restrict the protections traditionally provided under Chapter 56 both to customers with medical emergencies facing service termination and/or whose service has been recently terminated.

### **3. Other Statutory Indications of Legislative Intent.**

Consistent with the legislative intent set forth in Section 1402, the principal provisions of Chapter 14 impose stricter collection standards on customers and applicants with respect to deposits, applicant liability for previous service received, payment agreements for customers seeking to avoid termination and restoration terms for customers seeking service reconnection. No provision of Chapter 14 explicitly evidences a legislative judgment that the health and safety of customers experiencing medical emergencies should be sacrificed to reduce public utility uncollectible expense.

In addition, as the PUC itself notes, Chapter 14 was not intended entirely to supplant Chapter 56.<sup>10</sup> Rather, the General Assembly intended that Chapter 14 requirements were to supersede Chapter 56 requirements only to the extent that the Chapter 56 requirements were inconsistent with the specific Chapter 14 requirements.<sup>11</sup>

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<sup>9</sup> Ibid., at 2218, 2223, 2224.

<sup>10</sup> Order, at 2.

<sup>11</sup> See 66 Pa.C.S. §1401, Historical and Statutory Notes, Act 2004-201 legislation. For example, Chapter 14 superseded specific inconsistent Chapter 56 requirements regarding the role of nurse practitioners in the medical certification process and restoration timing requirements.

For the Chapter 56 regulations to be inconsistent with Chapter 14, they must permit what the statute forbids.<sup>12</sup>

However, that Section 1406(f) specifically confirms the availability of medical certifications for customers whose service is threatened with termination in no way forbids the continuation of the full medical certification protections that Chapter 56 Section 56.111 has historically provided for customers whose service has been terminated. There is also no inconsistency between the fact that Section 1407(b)(1) may be interpreted to impose “applicable [payment] requirements” on applicants seeking restoration, and the continuation of the full, historical medical certification protections for customers seeking service restoration.<sup>13</sup> The medical certification provisions in Section 1406(f) and Section 1407(b)(1) are not inconsistent with the existing Chapter 56 provisions regarding restoration terms for recently terminated customers, because these Chapter 14 provisions do not preclude or forbid the provision of medical certification benefits which have been historically authorized.

In connection with medical certifications, the General Assembly further recognized the expert role of the PUC elaborating upon the medical certification provisions set forth in Chapter 14. Section 1406(f) expressly provides that “[t]he medical certification procedure shall be implemented in accordance with commission regulations.” This language at the very least signals the General Assembly’s expectation

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<sup>12</sup> *City of Philadelphia, Police Department v. Gray et al.*, 534 A.2d 467, 474, 633 A.2d 1090, 1093 (1993) (statute is inconsistent with an ordinance when statute forbids that which ordinance permits).

<sup>13</sup> The PUC states that the use of the term “applicant” (as opposed to “customer”) in Section 1407(b)(1) “should not be disregarded to ascertain intent.” Action Alliance agrees that the General Assembly intended to bar applicants with outstanding utility balances seeking new, initial service from utilizing a medical certification “to bypass the credit screening of the utility.” Order, Attachment 1, at 140. However, the use of the term “applicant” does not mean that the General Assembly intended that recently terminated customers should also be barred, by the same provision, from obtaining reconnection solely by means of a medical certification.

that whatever changes might be made in medical certification procedures would build upon, not reduce, the *existing* regulations authorizing full medical certification protections to prevent termination and to restore service that had been recently terminated.

**4. Inconsistency with Legislature's Public Health and Safety Concerns.**

In light of the critical public health and safety implications of eliminating historical medical certification protections to recently terminated public utility customers, it is unthinkable that the General Assembly would have taken such action only indirectly, by implication and not explicitly. The Public Utility Code requires that all public utilities provide such service as is reasonably continuous and without unreasonable interruptions or delay, and as is "necessary for the ... safety of its patrons, employees and the public." 66 Pa.C.S. §1501.

In this very proceeding, the PUC Order expressly recognizes that "termination of utility service can be a matter of life and death and [it] is central to the PUC's obligations to protect the health and safety of all citizens of the Commonwealth." Order, Attachment 1, at 132-33.<sup>14</sup> The General Assembly did not intend that the PUC should abolish or even narrow the medical certifications available to customers experiencing medical emergencies whose service has recently been terminated.

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<sup>14</sup> It is noteworthy that the PUC has, in other respects, added health and safety measures in the Proposed Regulations, including, e.g., a utility reporting requirement regarding deaths resulting from a "household fire, incident of hypothermia or carbon monoxide poisoning or other event" occurring when utility service is off (Order, Annex A, Section 56.100(j)) and a requirement that utilities respond within five days to Bureau of Consumer Services inquiries made pursuant to informal complaints filed by utility customers whose service is off. These measures reflect the PUC's recognition of the "inherent public health and safety issues" posed by even brief utility service terminations regardless of the vulnerability of the affected household (Order, Attachment 1, at 158).

**E. IRRC Should Not approve the Proposed Regulations Because Sections 56.191(b), 56.191(b)(1) and 56.191(c)(1) Thereof are Not in the Public Interest as Defined by Regulatory Review Act Section 745.5b.**

In this proceeding, the IRRC is called upon to review a regulation which will materially impact health and safety for the most vulnerable utility customers. The Regulatory Review Act, §§ 745.1, et seq. (hereinafter “RRA”) provides that before a regulation may take effect, it must be approved by the IRRC as “in the public interest.” In order for a regulation to obtain IRRC approval, the IRRC must “first and foremost” satisfy itself that the state commission proposing the regulation has the “statutory authority to promulgate the regulation and ... that the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based.” 71 P.S. § 745.5b(a). Even when the regulation appears consistent with the underlying statute and with the legislative intent, IRRC must also consider, *inter alia*, the effect of the regulation on the “protection of the public health, safety and welfare.....” 71 P.S. § 745.5b(b)(2). For the foregoing reasons, Proposed Regulation Sections 56.191(b), 56.191(b)(1) and 56.191(c)(1) abridging and virtually eliminating medical certification protections for utility customers whose service has been recently terminated are inconsistent with Chapter 14, and are not consistent with the intent of the General Assembly nor in accordance with the public interest. The IRRC must therefore disapprove the Proposed Regulations.

### III. HOUSEHOLD INCOME

#### A. Comment Summary.

Chapter 14 defines “household income” as “the combined gross income of all adults in a residential household who benefit from the public utility service.” 66 Pa.C.S. § 1403. The PUC’s definition of the term “household income” in the Proposed Regulations (Sections 56.1 and 56.252) introduces ambiguous terminology which undermines and is inconsistent with the General Assembly’s intent in limiting household income to income of resident adults.

The definition of “household income” is of fundamental importance in establishing each of the following:

- When a “change in income” or “significant change in circumstance”<sup>15</sup> has occurred that would allow a customer an additional PUC-ordered payment agreement or a PUC-ordered extension of an existing payment agreement.<sup>16</sup>
- The amount of cash deposit an applicant may have to pay to establish service with a city natural gas distribution operation.<sup>17</sup>
- The period over which a customer may resolve an unpaid balance pursuant to a PUC-approved payment agreement.<sup>18</sup>
- The application of the prohibition on winter utility service termination.<sup>19</sup>
- The amount an applicant or customer may be required to pay to restore utility service after shut off.<sup>20</sup>

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<sup>15</sup> 66 Pa.C.S. § 1403.

<sup>16</sup> 66 Pa.C.S. § 1405(d), (e).

<sup>17</sup> 66 Pa.C.S. § 1404(f); Proposed Regulation § 56.51(b).

<sup>18</sup> 66 Pa.C.S. § 1405(b).

<sup>19</sup> 66 Pa.C.S. § 1406(e); Proposed Regulation § 56.100.

- Those delinquent customer accounts regarding which the PUC may order a waiver of late payment charges levied by the public utility.<sup>21</sup>

By modifying, and introducing ambiguity to, this definition, the PUC risks upsetting the balance sought to be struck by the General Assembly that would assure that utility companies, and the services they provide, are not unduly burdened by customer nonpayment, while providing appropriate protections to the public health, safety and welfare of those low and lower-income Pennsylvanians who are most at risk of losing and being unable to restore utility service.

**B. The PUC's Definition of "Household Income" Introduces Ambiguous and Unworkable Language that Undermines the Clear Language and Intent of the General Assembly in Chapter 14.**

The definition of "household income", as modified by the Proposed Regulations, states:

Household income--

(i) The combined gross income of all adults in a residential household who benefit from the public utility service.

(ii) The term does not include income intended for the use of a minor. Examples of a minor's income include Social Security, child support, SSI, earnings and grants from the Department of Public Welfare WAGE EARNINGS OF A

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<sup>20</sup> 66 Pa.C.S. § 1407; Proposed Regulation § 56.191. We note that the PUC has not consistently used the term "household income" where warranted. For example, in Proposed Regulation Section 56.191(c)(2), the PUC alternates between the use of "household income" and "income" for purposes of determining the applicable amounts customers or applicants at varying low and lower-income levels have to pay to restore service. Accordingly, the Proposed Regulations may require further review to ensure that the term "household income" is properly included in those sections intending to benefit those consumers who, due to their challenging financial circumstances, are most vulnerable to the loss of and inability to restore life-sustaining utility service.

<sup>21</sup> 66 Pa.C.S. § 1409; Proposed Regulation § 56.22(d).

MINOR OR GOVERNMENT BENEFITS THAT ARE RECEIVED WHOLLY  
IN THE NAME OF A MINOR.<sup>22</sup>

Action Alliance previously supported the PUC's proposed language in clause (ii) (shown in strike-through format above) because it listed nonexclusive examples of children's income that would be helpful to utilities and customers.<sup>23</sup> The PUC's attempt to clarify the meaning of "household income" in clause (ii) of the definition in the Proposed Regulations appears to impose limitations unintended by the General Assembly.

There are two principal faults with clause (ii) of the definition of "household income" in the Proposed Regulations: the use of the phrases "government benefits" and "wholly in the name of a minor."

**1. "Government Benefits"**

It is not clear what the term "government benefits" is intended to subsume. Based upon the PUC's prior proposed definition, it is reasonable to conclude that the PUC intended this term to include "Social Security...SSI, earnings and grants from the Department of Public Welfare."<sup>24</sup> In contrast, it appears that child support payments would not be treated as government benefits. Rather, they would be treated as household

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<sup>22</sup> Proposed Regulation §§ 56.2; 56.252.

<sup>23</sup> Comments of Action Alliance, PUC Docket L-00060182 (April 20, 2009), at 42 ("Action Alliance supports the proposed definition at § 56.2 for 'household income' that incorporates the Chapter 14 definition that household income only include income of adults. Listing examples of children's income that should be excluded provides helpful clarification to utilities and customers.").

<sup>24</sup> The Social Security Administration publishes fact sheets regarding benefits available for children and disabled children, available at <http://ssa.gov/pubs/10085.html> and <http://ssa.gov/pubs/10026.html>, respectively. Information regarding Temporary Assistance for Needy Families (TANF) and Pennsylvania's General Assistance Program is available online at <http://www.dpw.state.pa.us/forchildren/cashassistance/index.htm>.

income under this definition because child support payments are court-ordered payments from the non-custodial parent directly to the custodial parent.<sup>25</sup>

The PUC has also overlooked significant sources of income which are not government benefits, but which are nonetheless dedicated to minors, for example, private disability insurance payments and structured tort and product liability settlements. Given the General Assembly's clear definition of "household income" in 66 Pa.C.S. § 1403, these limitations appear to frustrate the intent of the legislature and, accordingly, lack support under Section 1903 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1903, requiring words and phrases to be construed according to their common and approved usage.

## **2. "Wholly in the Name of a Minor"**

The phrase "wholly in the name of a minor" introduces an unreasonable and impracticable standard for determining when income intended for the benefit of a minor should be excluded from household income. For example, in most circumstances, Social Security<sup>26</sup> and Department of Public Welfare<sup>27</sup> grants made to or for the benefit of a child are in fact paid electronically to an account of the child's custodial parent. By requiring that payments be "wholly" in the name of a minor, the revised definition of "household income" invites the misinterpretation that such payments, although intended for the benefit of a minor but paid or addressed to a custodial adult, should be included in

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<sup>25</sup> A description of Pennsylvania's Child Support Program and a Pennsylvania Child Support Handbook are available at [https://www.humanservices.state.pa.us/CSWS/home\\_controller.aspx](https://www.humanservices.state.pa.us/CSWS/home_controller.aspx)

<sup>26</sup> The Social Security Administration encourages the use of direct deposit for benefit recipients; a beneficiary may only receive such deposit with an existing bank account, which would generally be unavailable to a minor. See, e.g., [http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/106](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/106).

<sup>27</sup> Pennsylvania's Department of Public Welfare generally issues a single Electronic Benefits Transfer Access Card to each household (not each household member) to access cash and other DPW benefits. See <http://www.dpw.state.pa.us/foradults/supplementalnutritionassistanceprogram/electronicbenefittransferebt/index.htm>.



household income. Accordingly, this phrase undermines the General Assembly's intent in drafting a clear definition of household income and lacks support under Section 1903 of the Statutory Construction Act, 1 Pa.C.S. § 1903, requiring words and phrases to be construed according to their common and approved usage.

#### **IV. PREPAYMENT METERS**

##### **A. Comment Summary.**

Chapter 56 Section 56.17(3) addresses the terms under which a public utility may require advance payment for the provision of gas or electric utility service through the use of prepayment meters. Due to the financial vulnerability of low income households who often are not able to pay for utility service in full and on time, this provision has historically specifically precluded the offering of prepayment meters to residential customers whose household income is at or below 150% of the federal poverty line (FPL). In its Proposed Rulemaking Order, the PUC did not propose material changes to this Chapter 56 section. Now, at the eleventh hour, without the opportunity for interested parties to comment, the PUC proposes to eliminate the exclusion on the offering of prepayment meters to low income residential households.

##### **B. Elimination of the Prohibition on Use of Prepayment Meters in Low-Income Households has No Basis in Chapter 14.**

This change was not required by the statutory language of Chapter 14, which nowhere mentions either advance payments or prepayment meters. Chapter 56 Section

56.17 is not listed among the 25 Chapter 56 sections which the legislature identified as subject to some modification.<sup>28</sup>

Similarly, the express focus of Chapter 14, as set forth in Chapter 14 Section 1402(2), is upon customers who are capable of paying but refuse to, rather than upon low income customers who are not always capable of timely, full utility bill payments. The legislative history, also, is absolutely silent on the issue of advance payment or prepayment meters.

**C. The PUC's Proposed Change Regarding Prepayment Meters is a Policy Shift that Cannot be Reconciled with Existing Standards for Utility Service in Pennsylvania.**

The lifting of the long standing prohibition on public utilities' offering prepayment meters to low income residential customers would constitute a major change in policy. As the National Consumer Law Center has explained in discussing prepayment meters and low-income utility consumer protections:

A fundamental danger associated with prepayment meters is that they are intended to serve as a means of replacing the termination procedures governed by the existing regulatory framework with a technology-based termination procedure that does not involve regulators. As such the technology poses a threat to the ideal of universal access to affordable utility service.

Harak & Wein, eds., Access to Utility Service, 4<sup>th</sup> Edition (2008), at 140.

For households with low and unstable incomes, the ability to purchase utility service on credit is an important benefit and customer protection which facilitates the maintenance of continuous utility service. In 1994, when Section 56.17(3) was drafted, IRRC recognized the important public policy implications associated with prepayment

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<sup>28</sup> See 66 Pa.C.S. §1401, Historical and Statutory Notes, Act 2004-201 legislation.

meters. As approvingly cited in the PUC statement issued when Section 56.17(3) was promulgated, “IRRC believes that since many low income individuals do not have the funds necessary to prepay for service, *as a matter of public policy*, the program should be limited to nonlow income individuals.” (Emphasis added).<sup>29</sup>

The PUC’s proposed lifting of this prohibition also is inconsistent with standards set forth in the Public Utility Code. Such a change exposes any financially troubled household to an increased risk of loss of essential utility service; for low income customers, who are often if not chronically payment troubled, the change would essentially impair their right set forth in Section 1501 of the Public Utility Code to utility service which is “reasonably continuous and without unreasonable interruptions....” Exposing low income customers to the perils of prepayment meters also would be inconsistent with the guarantees set forth in the in the Electricity Generation Choice and Competition Act, 66 Pa.C.S. § 2802(10) and the Natural Gas Choice and Competition Act, 66 Pa.C.S. § 2203(7), which require that the Commission and utilities maintain, at a minimum, the universal service protections existing prior to electric and natural gas deregulation.<sup>30</sup>

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<sup>29</sup> Title 52-PUBLIC UTILITIES. PENNSYLVANIA PUBLIC UTILITY COMMISSION. Residential Service Regulations, 25 Pa. Bull. 145, 146 (January 14, 1995).

<sup>30</sup> For electricity service, see also 66 Pa.C.S. §§ 2804(9) and 2807(d). For natural gas service, see also 66 Pa.C.S. §§ 2206(a) and 2207(b).

**D. The PUC's Proposed Allowance of the Use of Prepayment Meters in Low-Income Households Exceeds the Scope of this Rulemaking Because it is Not Based on the PUC's Experience or Technological Advancements.**

It is particularly troubling that the PUC should undertake to lift this prohibition even though in the fifteen years since prepayment meters were authorized for non low-income households, no such program has been actually implemented. As the PUC admits, "to date, no utility has utilized these provisions to offer prepayment metering, so unfortunately we have no practical experience to rely upon when assessing the need to revise this section." Opinion and Order, Attachment 1, at 57. The PUC has no actual supporting empirical data even from a pilot project upon which to base its judgment whether prepayment meters are appropriate either for payment troubled non low income customers or for chronically payment troubled low income customers.

Moreover, Action Alliance submits that in proposing to lift the exclusion of low income residential customers from prepayment meter programs, the PUC has impermissibly enlarged the scope of the Proposed Rulemaking Order. Under Section 1202 of the Commonwealth Documents Law, 45 P.S. §1202, the PUC may not "enlarge the original purpose" of its Proposed Rulemaking Order. In this case, the PUC declared in that Order that in addition to amending Chapter 56 to comply with the statutory Chapter 14, it was conducting a review of the "entire Chapter 56" to make "revisions when necessary given our experience and the technological advances in the industries." The lifting of the prepayment meter exclusion for low income customers is beyond the scope of the PUC's stated purpose. The PUC has conceded that this change is not based on the PUC's "experience." By the same token, the PUC does not identify and can not

identify any technological advance which might justify lifting the prepayment meter exclusion for low income customers.

## V. REMOTE READING DEVICES

### A. Comment Summary.

Chapter 14 added Section 1411 to the Public Utility Code, 66 Pa.C.S. § 1411. This section, entitled “Automatic meter readings,” provides that “[a]ll readings by an automatic meter reading device shall be deemed actual readings for purposes of this title.”<sup>31</sup> If read literally, this statutory language would supersede and override all existing statutory provisions and PUC regulations designed to ensure accurate billings when a public utility utilizes remote reading and automatic meter reading devices.<sup>32</sup> To interpret Section 1411 to override such long-settled consumer protections would cause an unreasonable and absurd result, contrary to the presumption against such a result set forth in the Statutory Construction Act, 1 Pa.C.S. § 1922(1). Moreover, such an interpretation would constitute an unwarranted repeal by implication, contrary to well-settled case law in Pennsylvania.

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<sup>31</sup> The term “actual reading” appears only in Section 1411, and is not used anywhere else in Title 66 of Pennsylvania Statutes. The term “automatic meter reading” appears in Section 1404(a) (permitting a public utility company to demand a deposit from a customer who tampered with an automatic meter reading device) and Section 1411 of Title 66. The legislative history to Chapter 14 does not include any discussion of Section 1411. Accordingly, there are very few clues available to determine the General Assembly’s intent in enacting this specific provision.

<sup>32</sup> In fact, the PUC has recognized that the right of customers to receive accurate bills is of such importance that it is set forth in the PA Energy Consumer Bill of Rights, available at [http://www.puc.state.pa.us/general/consumer\\_ed/pdf/Consumer\\_Bill\\_Of\\_Rights.pdf](http://www.puc.state.pa.us/general/consumer_ed/pdf/Consumer_Bill_Of_Rights.pdf).

**B. Chapter 14 Does Not Impinge Upon the PUC's Authority to Ensure that Customers Receive Accurate Utility Bills and the PUC Should Continue to Require Periodic Manual, Physical Meter Readings in Order to Protect Customers.**

The authority to establish standards of service and facilities is granted to the PUC by Section 1504, 66 Pa.C.S. § 1504, providing the powers to “[p]rescribe reasonable regulations for the examination and testing of [utility] service, and for the measurement thereof” and to “[p]rescribe or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and for measurement.” Consistent with this authority, the PUC established Section 56.12(5) of the Chapter 56 regulations to require public utilities billing on the basis of remote reading devices to ensure the accuracy of bills by obtaining an actual meter reading every 5 years and to make a bona fide attempt to obtain an actual meter reading upon a change in customer.<sup>33</sup> In this context, “actual meter reading” means a manual, physical meter reading and requires such to be conducted from time to time to ensure that technological advances in meter reading and transmitting technology do not adversely affect consumers.<sup>34</sup> As modified by the PUC, Section 56.12(5) of the Proposed Regulations now requires no manual, physical meter reading to ensure accuracy because, by definition, a remote reading obtained through an AMR is an actual meter reading for all purposes. Such an absurd result cannot reasonably have been intended.

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<sup>33</sup> See current 52 Pa. Code § 56.12(5). Although the Proposed Regulations now separately define “remote reading device” and “AMR” as mutually exclusive devices there appears to be no reasonable basis to do so. Remote reading devices, like automatic meter reading devices, serve a common function of permitting the utility company to obtain a meter reading without manual, physical inspection of a meter.

<sup>34</sup> See *Shyu v. PPL*, 2008 WL 5786606 wherein the PUC affirmed the continuing validity of Section 56.12(5), but concluded the complainant had not satisfied his burden of proof.

The legislative history and Declaration of Policy are devoid of any indication that the General Assembly intended to relieve public utilities from their responsibility to ensure accurate billing. Similarly, at no time has it been specifically asserted that Chapter 14 was intended to limit the PUC's authority under 66 Pa.C.S. § 1504. Accordingly, in order for Section 1504 and the PUC's regulations designed to ensure accurate billing to have been repealed by Chapter 14, there must be a "positive repugnancy" between Chapter 14 and Section 1504<sup>35</sup>; in other words, there must be an irreconcilable conflict between the different statutory provisions.<sup>36</sup> There appears to be no such conflict or repugnancy. Section 1504 and the PUC's authority to adopt reasonable regulations to ensure the accuracy of utility bills does not conflict with any provision of Chapter 14. Given the statutory presumption that the General Assembly intends to favor the public interest as against any private interest (1 Pa.C.S. § 1922(5)), and the absurd result that would obtain from interpreting Section 1411 to override the PUC's rulemaking authority, there appears to be no justifiable basis to eliminate the valid and meaningful consumer protection requiring periodic manual, physical readings to ensure the accuracy of utility bills.

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<sup>35</sup> As the Commonwealth Court has stated, and the Pennsylvania Supreme Court affirmed, "[r]epeal of a statute by a later enactment by implication is never found in the absence of a positive repugnancy between the two statutes." Township of Middleton, v. Institution District of the County of Delaware, 293 A.2d 885 (1972), *aff'd by* 299 A.2d 559 (Pa. 1973).

<sup>36</sup> See 1 Pa.C.S. § 1971(c).

**VI. CONCLUSION.**

For all of the foregoing reasons, Action Alliance respectfully requests that the IRRC not approve the Proposed Regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. W. Ballenger", is written over a horizontal line.

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May 12, 2011



Cooper, Kathy

2743

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**From:** Phil Bertocci [PBertocci@clsphila.org]  
**Sent:** Thursday, May 12, 2011 4:23 PM  
**To:** IRRRC; Totino, Michaele  
**Subject:** IRRRC Review of Pa.PUC Regulation No. 57-265; PUC #L-00060182; IRRRC #2743  
**Attachments:** Chapter56\_Rulemaking\_IRRCcomments\_051211.pdf

Attached please find a copy of the Comments of Action of Alliance of Senior Citizens and Tenant Union Representative Network regarding the IRRRC Review of the above-captioned matter (Standards and Billing Practices for Residential Utility Service), which was filed electronically today with the PUC. Hard copies are being served today on the parties listed on the Certificate of Service by First Class U.S. Mail. If you have questions concerning this filing, please do not hesitate to contact me at 215-981-3702 or Robert W. Ballenger at 215-981-3788. This is the our third attempt to e-mail this document to IRRRC. The first two were misaddressed. Please accept our apologies for any confusion.

Sincerely,

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