

COMMONWEALTH OF PENNSYLVANIA



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April 20, 2009

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Standards and Billing Practices for
Residential Utility Services
Docket No. L-00060182

Dear Secretary McNulty:

Enclosed for e-filing, are the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Should you have any questions, please contact our office.

Respectfully Submitted,

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

INDEPENDENT REGULATORY
REVIEW COMMISSION

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Enclosure

cc: Terrance Buda, Law Bureau – via e-mail only
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Daniel Mumford, Bureau of Consumer Services – via e-mail only

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Standards and Billing Practices
for Residential Utility Services

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Docket No. L-00060182

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: April 20, 2009

TABLE OF CONTENTS

I. INTRODUCTION 1

II. COMMENTS ON SPECIFIC SECTIONS 9

A. Section 56.1—Statement of Purpose 9

B. Section 56.2—Definitions..... 10

 1. Basic Service..... 10

 2. LIHEAP 11

 3. Nonbasic Service 11

 4. Occupant 11

C. Section 56.13—Merchandise Billing..... 12

D. Section 56.14—Previously Unbilled Service 12

E. Section 56.16—Transfer of Accounts..... 13

F. Section 56.25—Electronic Bill Payment 14

G. Section 56.32—Security Deposits 15

H. Section 56.36—Written Procedures..... 16

 1. Preamble 16

 2. Section 56.36(1) – Reasons for denial of credit..... 17

I. Section 56.72—Discontinuation of Service..... 19

J. Section 56.82—Timing of Termination..... 19

K. Section 56.91—Termination Notice 20

L. Section 56.94—Procedures Prior to Termination..... 22

M. Section 56.100—Winter Termination..... 22

 1. Section 56.100(b) –Heat-Related and Non-Heat-Related Distinction..... 22

2.	Section 56.100(j) –Reporting of deaths at locations where public utility service was previously terminated	24
N.	Section 56.114—Medical Certification Renewals.....	27
O.	Section 56.191—Restoration of Service.....	30
III.	CONCLUSION.....	31

I. INTRODUCTION

On February 14, 2007, the Proposed Rulemaking Order of the Pennsylvania Public Utility Commission (Commission) in the above-captioned docket was published in the *Pennsylvania Bulletin*. Through this Rulemaking, the Commission is proposing amendments and modifications to its regulations regarding Standards and Billing Practices for Residential Utility Service found at 52 Pa. Code Chapter 56 (Chapter 56). The primary purpose of the Proposed Rulemaking is to promulgate regulations to implement Chapter 14 of the Public Utility Code. 66 Pa.C.S. §§1401-1418. Chapter 14, also known as the Responsible Utility Consumer Protection Act, was signed into law by Governor Rendell on November 30, 2004. Chapter 14 applies to electric distribution companies (EDCs), large natural gas distribution companies (NGDCs), and water distribution companies. According to the Declaration of Policy in Section 1402, the purpose of Chapter 14 is to seek to eliminate opportunities for customers who are capable of paying to avoid the timely payment of their public utility bills and to provide utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections. 66 Pa.C.S. §1402. In its Proposed Rulemaking Order, the Commission stated the following as to the goal of Chapter 14:

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. 66 Pa.C.S. § 1402.

Proposed Rulemaking Order at 2.¹

Beginning in 2005, the Commission conducted a series of Roundtable Discussions and received comments on the implementation of Chapter 14. Through a series of

¹ The Proposed Rulemaking Order includes two attachments. Attachment 1 is entitled Summary of Comments and Discussion and contains the Commission's substantive discussion of the issues and proposed modifications. The OCA will cite this as Proposed Rulemaking Order, Att. 1 with a page reference. The second attachment is labeled Annex A and contains the proposed regulations. The OCA will refer to the proposed regulations by section number.

Orders, the Commission resolved threshold issues regarding the interpretation, application, and implementation of Chapter 14. On December 4, 2006, the Commission issued an Advance Notice of Proposed Rulemaking Order (ANOPR) to facilitate the completion of the Commission's implementation of Chapter 14. The ANOPR sought input from the affected stakeholders before the Commission reviewed and proposed modification or rescission of provisions of its Chapter 56 regulations that were impacted by Chapter 14.

The Office of Consumer Advocate (OCA) filed Comments on the Commission's ANOPR addressing the topics identified by the Commission and recommending some additional modifications to Chapter 56 to accommodate more recent technological advances that would allow electronic billing and payment as well as the wider availability of budget billing. OCA Comments of February 14, 2007. In its Comments on the ANOPR, the OCA first noted that the Commission's Chapter 56 regulations, enacted in 1978, have provided important, and reasonable, consumer protections while allowing utilities the ability to collect their bills in a timely manner. The OCA, through its Comments, sought to retain the protections of the Chapter 56 regulations, to the extent permitted by Chapter 14, and to ensure that modifications made to conform the Chapter 56 regulations to the requirements of Chapter 14 supported the General Assembly's twin goals of improving collections from customers who can pay while maintaining necessary protections for those who cannot.

The OCA submits that the Commission's resolution of the issues and its proposed modifications to the Chapter 56 regulations contained in the Proposed Rulemaking have, in large part, reached a reasonable balance in achieving the goals of Chapter 14. The Commission's approach to the many issues raised by the parties carries forth both the letter and intent of Chapter 14 while ensuring that customers who are unable to pay their utility bills receive the

protections afforded them under Chapter 14 and the Chapter 56 regulations. While the OCA will not discuss in detail all of the modifications that the OCA supports in the Commission's Proposed Rulemaking, the OCA would note its agreement with some key proposals of the Commission. Initially, the OCA strongly supports the Commission's determination to establish a separate chapter for customers and utilities that are specifically excluded from Chapter 14. The separate Chapters are to retain the existing Chapter 56 regulatory protections and include the Chapter 14 protections where the statute provides a higher level of customer protection. As the OCA noted in its Comments of February 14, 2007, to the extent that the General Assembly chose to modify the existing Chapter 56 protections for some types of utilities and some customer groups, it is equally clear that the General Assembly did not intend to mandate the expansion of those changes to other utilities. The OCA supports the establishment of a separate chapter for wastewater, steam heat, small natural gas distribution utilities and victims of domestic violence with a Protection From Abuse order that continues and enhances the existing Chapter 56 regulations.

As it concerns the modifications regarding Previously Unbilled Service, the OCA supports the Commission's determination to impose a four-year limit on make-up bills under Section 56.14 and to clearly state that arrangements to pay make-up bills are not considered "payment agreements" under Chapter 14. The Commission notes its long-standing practice to limit the time frame on make-up bills to four years, citing Roderick Berry v. Philadelphia Gas Works, F-001184412 (April 15, 2004). The OCA agrees with the Commission that there is no reason under Chapter 14 to modify this practice. The OCA would also note that the four year period is consistent with the four year limitation on refunds to customers that is contained in 66 Pa.C.S §1312. In Section II.D below, however, the OCA recommends some wording changes to

Section 56.14 to carry through the Commission's determination that an arrangement under Section 56.14 to pay a make-up bill does not constitute a "payment agreement" under Chapter 14.

In the modifications to Credit Standards and Procedures found at §§56.31 – 56.38, the OCA submits that the Commission's proposals have achieved a fair balance in implementing the major changes in credit standards required by Chapter 14. As the Commission correctly notes at the outset, nothing in Chapter 14 changed the underlying policy that utility application and credit policies must be equitable, nondiscriminatory, and transparent, and must reflect the credit risk of the individual without regard to where they live and without regard to race, sex, age, national origin or marital status. Proposed Rulemaking Order, Att. 1 at 17. The Commission has also recognized in its regulation that the risk that must be assessed is that of the individual's utility payment history. Proposed Section 56.32(a)(2). The OCA submits that this provision is critically important as many customers, including many low income and elderly customers, will make utility bill payment the priority over food, medicine and other bills. This must be recognized in the credit process. The OCA also supports the strong notification and information requirements to the customer if the customer is denied service, or required to post a deposit, based on a credit score. As the Commission correctly recognized, credit scoring can be prone to error and these errors could result in the delay or denial of essential utility service. Id. The OCA strongly supports the Commission's determination that customers must be fully informed of why they are being denied credit, what they must do to obtain credit, and how to dispute a credit determination. The Commission's notification regulations ensure that customers are provided the necessary information.

The proposed regulations also greatly simplify the Commission's prior approach to the Payment Period for Deposits. Rather than create different time periods for the payment of deposits based on an individual's status as an applicant, a customer, a customer seeking restoration or an applicant seeking restoration, the Commission has required that the same time period for the payment of deposits be utilized for all non-PGW customers.² Proposed Rulemaking Order, Att. 1 at 21-22. The Commission's proposed regulations at Sections 56.38 and 56.42 require a payment of 50% of the deposit upon a determination that the deposit is required, 25% billed after 30 days and 25% billed after 60 days. Allowing the payment of the deposit to be spread out over a 90 day period will help to address the barrier to establishing, restoring and maintaining service that often results from deposit requirements.

One of the most critical changes brought about by Chapter 14 was to the Commission's Termination Procedures found in Sections 56.81 – 56.131. The Commission's proposed regulations have incorporated the requirements of Chapter 14 as it regards termination, including the provision that allows for termination of service on Fridays. The Commission's proposed regulations specify the obligations of the utility if it wishes to terminate service on Fridays. In particular, the proposed regulations require the utility to have personnel available the day after the termination who are able to accept emergency medical certificates, negotiate payment agreements and restore service. Given that termination of essential utility service can be a matter of life or death, this clarity as to the obligations of the utilities will be important as the new procedures are implemented. In addition, the proposed regulations specify in some detail the information that must be provided to a customer in the notice of termination.

² Chapter 14, in Section 1404(f) provides additional deposit rules for PGW, which are incorporated into the proposed regulations in Section 56.51(b).

Providing customers with full information through the notice process is a critical step in helping customers resolve their arrearages and have service restored.³

In addition to the modifications to implement Chapter 14, the Commission also updated the Chapter 56 regulations to allow for electronic billing and payment. As the OCA discussed in its prior Comments, if properly implemented and with proper protections in place, electronic billing and electronic payment can be a useful option for customers and utilities alike. The proposed regulations adopt the recommended protections offered by the OCA in its prior Comments and establish a sound framework for the wider scale deployment of these measures.⁴ See, OCA Comments of February 14, 2007 at 56-61. The Commission also proposes to amend the regulations to further incorporate guidance on budget billing. This guidance will assist all utilities in developing budget billing programs that are most useful to customers.

While in the OCA's view, the Commission has largely made changes and modifications to the Chapter 56 regulations that follow the letter and intent of Chapter 14, and reasonably balance the goals of Chapter 14, there are two key aspects of the Proposed Rulemaking Order that the OCA would respectfully request the Commission to revise. Of particular concern to the OCA is Section 56.100 regarding winter termination and Section 56.114 regarding the renewal of medical certification.

In Section 56.100 regarding winter termination, the Commission retained the qualification from the existing regulation that only heat-related EDC and NGDC service is protected by the winter termination provision. This qualification is not found in Chapter 14. In

³ The Commission has also implemented a year-round reporting requirement of deaths at locations where utility service has been terminated. The OCA strongly supports such reporting but makes recommendations regarding the regulation in Section II.M.2 below.

⁴ Through a Secretarial Letter, the Commission has requested public utilities using electronic billing and electronic payment to provide certain information as part of this rulemaking process. The Law Bureau and the Bureau of Consumer Services are to compile a report. The OCA looks forward to reviewing this report and the materials to determine if any further recommendations are appropriate.

this one area, rather than adhere to the language of Chapter 14, the Commission retained qualifying language that could result in winter terminations inconsistent with the prohibition contained in Chapter 14. There is no reason under Chapter 14 to limit the protections against winter termination in this manner. Chapter 14 very clearly states:

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

66 Pa.C.S. §1406(e). Chapter 14 does not distinguish between heat-related and non-heat related service, rather it protects all residential service for the identified customers. The OCA submits that the qualification of “heat-related” service must be removed from Section 56.100(b) to conform to Chapter 14.

The OCA also requests that the Commission consider modifications to Section 56.114 regarding the renewal of medical certifications every 30 days. The OCA submits that requiring a medical certification every 30 days can be burdensome (financially and physically) for seriously and/or chronically ill patients and it can be a waste of valuable medical staff time and resources. When a customer has a serious and/or chronic medical condition that is unlikely to improve, the physician or nurse practitioner should be permitted to specify a period of longer than 30 days for the medical certificate.

In Section II of these Comments, the OCA provides recommended edits and modifications to the proposed regulations. The OCA provides these recommendations to add clarity to the regulations, correct minor typographical errors, and to address the few substantive issues that the OCA has identified. In making its edits and additions, the OCA starts by

accepting all changes in the proposed regulations and then shows the OCA's recommendations in underline or strikethrough format. The OCA would also note that any recommendation of the OCA to a specific regulation that is also included in the new subchapters for wastewater, steam heat, small natural gas distribution utilities and victims of domestic violence with a Protection for Abuse Order should be reflected in those subchapter regulations as well.

The OCA appreciates the significant efforts of the Commission Staff and the Commission in this monumental undertaking. The proposed regulations have largely reached a fair balance of the many difficult issues presented by Chapter 14.

II. COMMENTS ON SPECIFIC SECTIONS

A. Section 56.1—Statement of Purpose

In its Comments of February 14, 2007, the OCA recommended that the Commission include specific standards for timely collection by public utilities of amounts owed. As the OCA noted in its Comments, under the existing provisions of Chapter 56 many factors, such as the household's income and necessary expenses, were taken into consideration when negotiating and arriving at a payment agreement that was affordable to the household. These factors were used to establish the monthly payment amount and the repayment period. Now, under Chapter 14, there are narrowly prescribed time limits for the repayment periods. Although the utility can give a customer more time to repay – the Commission cannot. See, OCA Comments of February 14, 2007 at 63-65.

Given the narrow time frames for repayment of arrearages, the OCA in its Comments noted the importance of the utility's own billing and collection procedures to a reasonable implementation of Chapter 14. Procedures that allow large, unmanageable arrearages to accumulate before the utility takes steps to manage the account can cause significant problems for both the utility and the customer. Under the narrow time frames, customers with large arrearages will be at greater risk of termination for nonpayment because they will not be able to make up the arrearages in the time allowed. In light of these provisions of Chapter 14, the OCA recommended that the Commission promulgate regulations that explicitly require utilities to engage in timely collection practices.

In the Proposed Rulemaking Order, the Commission included language in the Statement of Policy at Section 56.1 to remind utilities of their obligation to effectively manage accounts to prevent the accumulation of unmanageable arrearages. See, Proposed Rulemaking

Order, Att. 1 at 76. The OCA supports this addition to Section 56.1. The OCA submits, however, that the language added by the Commission may not completely convey the Commission's stated intent to ensure timely and effective management of accounts to prevent the accumulation of unmanageable arrearages. The OCA offers the following modification to more fully reflect the Commission's intent:

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 be responsible for ~~utilize the procedures in this chapter to~~ effectively managing customer accounts to prevent the accumulation of large, unmanageable arrearages. Every privilege conferred or duty required by this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. This chapter will be liberally construed to fulfill its purpose and policy and to insure justice for all concerned.

The OCA submits that this modification will more clearly state the utility's obligation to manage their arrearages.

B. Section 56.2—Definitions

1. Basic Service

The term basic service is defined as "services necessary for physical delivery of residential public utility service." The use of the phrase "physical delivery" may be too narrow and could be interpreted as referring only to the distribution/transportation portion of the bill. The term "basic service" should also include the provision of default supply service. The OCA recommends that the definition be modified as follows:

Basic services—Services necessary for the physical delivery of residential public utility service and default supply service under 66 Pa.C.S. §2207(a) and 2807(e).

The inclusion of default supply service in the definition of basic service will avoid unnecessary confusion.

2. LIHEAP

The definition of LIHEAP contains an incorrect title of the program. The definition refers to the Low Income “Heating” Energy Assistance Program. The word “Heating” should be “Home.” The definition should be corrected so the name of the program reads “Low Income Home Energy Assistance Program.”

3. Nonbasic Service

Consistent with the change to the definition of basic service, the definition of nonbasic service should reflect not only physical delivery of public utility service but also default service. The OCA recommends the following modification:

Nonbasic services—Optional recurring services which are distinctly separate and clearly not required for the physical delivery of public utility service or the provision of default supply service under 66 Pa.C.S. §2207(a) and 2807(e).

This addition is intended to make the definition of nonbasic service consistent with the OCA’s recommendations regarding the definition of basic service.

4. Occupant

The definition of “occupant” in the proposed regulations refers to the occupant as “a person” who resides in the premises. Since the purpose of the term “occupant” as used in the regulations is to indicate possible responsibility for utility service provided at the residence, or to serve as a contact prior to termination, the term “occupant” should be defined as an “adult” person. It was clearly not the intent of Chapter 14, or of prior Commission regulations, to make a dependent child responsible for the bills of a parent. The current definition of “occupant” could produce such a result. The OCA recommends the following:

Occupant—An adult person who resides in the premises to which public utility service is provided.

The OCA submits that the addition of the word “adult” will ensure that the use of the term “occupant” throughout the regulations is appropriate.

C. Section 56.13—Merchandise Billing

The proposed regulations delete the requirement that charges for other than basic service, such as merchandise, appliances and special services, appear on a separate bill. Under the proposed regulations, merchandise, appliances, nonrecurring and recurring charges may appear on the utility bill but must be shown “distinctly separate” after the basic service charges. There is no corresponding requirement that the utility separately account for these charges in a manner that will ensure that customers are not subjected to termination, or the threat of termination, based on such charges.

At this time, the OCA does not support this proposed change to Section 56.13. There is nothing in Chapter 14, and no technological advance, that would justify the change to the Commission’s long-standing requirement that merchandise, appliances and special services, if purchased from the utility, be separately billed.

D. Section 56.14—Previously Unbilled Service

As discussed above, the OCA supports the Commission’s proposals regarding the four year limitation on charges for previously unbilled service. The Commission also correctly notes in its Summary of Comments and Discussion that when a customer must pay a make-up bill, and requires an agreement to pay for these previously unbilled amounts, such agreements are not payment agreements in the context of Chapter 14. Proposed Rulemaking Order, Att. 1 at 10. Section 56.14, however, continues to use the phrase “payment agreement” when referring to the arrangement necessary to pay a make-up bill. To avoid any confusion when considering

whether a customer has received a “payment agreement” from the Commission under Chapter 14, the OCA recommends that a different term be used in discussing payment arrangements on a make-up bill. The OCA proposes the use of the phrase “payment plan” in lieu of “payment agreement” in this section. Section 56.14 using this new terminology would read as follows:

When a public utility renders a make-up bill for previously unbilled public utility service which accrued within the past 4 years resulting from public utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make up bill is issued by at least 50% or at least \$50, whichever is greater:

(1) The public utility shall review the bill with the customer and make a reasonable attempt to enter into a payment agreement plan.

(2) The period of the payment agreement plan may, at the option of the customer, extend at least as long as:

(i) The period during which the excess amount accrued.

(ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.

Using the terminology recommended by the OCA makes clear the Commission’s determination that a payment on a make-up bill is not a payment agreement in the context of Chapter 14.

E. Section 56.16—Transfer of Accounts

The Commission proposes modifications to the regulation on transfer of accounts to clarify the basis for final bills when service is discontinued and the public utility has been unable to access the meter for a final meter read. The OCA agrees with this modification but proposes the addition of language to subsection (a) to clarify the public utility’s obligation to obtain a final meter read. It is the OCA’s understanding that the Commission requires reasonable attempts to access the meter for a final reading. The OCA proposes to add that

qualification to the regulation so that there is no misunderstanding. The OCA addition would be as follows:

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. If the public utility is not able to access the meter for discontinuance after reasonable attempts to obtain such access, service shall be discontinued with an estimated meter reading upon which the final bill will be based. The resulting final bill is subject to adjustment once the public utility has obtained an actual meter reading and can determine the actual consumption used by the customer.

Including the standard for reasonable attempts to gain access to the meter for a final meter read clarifies the public utility's obligation so that final bills will not routinely be based on estimated meter readings.

F. Section 56.25—Electronic Bill Payment

The proposed regulations on electronic bill payment, as those on electronic billing at Section 56.11 include the consumer protections that the OCA recommended in its Comments of February 14, 2007. OCA Comments of February 14, 2007 at 56-61. The OCA strongly supports the Commission's proposed regulations in this regard. Upon review of the prior language proposed by the OCA, the OCA would offer the following modification to Section 56.25(1) for the purpose of clarity:

(1) Electronic bill payment shall be voluntary and ~~may not be required in conjunction with a public utility may not require a customer to accept electronic bill payment as a condition of enrolling in~~ electronic billing.

The phrase "in conjunction with" previously utilized in the OCA's Comments was not sufficiently clear. The OCA's recommended modification here helps to clarify the proposed regulation.

G. Section 56.32—Security Deposits

In its Comments of February 14, 2007, the OCA discussed in detail many of the problems with the use of credit scoring methodologies to determine whether a customer or applicant may be required to provide a deposit for service. OCA Comments of February 14, 2007 at 9-14. As the OCA discussed in its Comments, the use of credit scoring can be controversial and fraught with problems. Credit scores are often inaccurate or incorrect and can vary by credit reporting agency. The credit scores can also be affected by circumstances that have nothing to do with a customer's payment history of utility bills and can be adversely affected by even short-lived instances of credit card theft or identity theft. Credit scoring can also disproportionately impact low-income customers and younger customers who may not have a significant credit history and who may have relied upon bill payment through cash or cash-equivalents.

The OCA proposed a number of critical protections that the Commission should include in its regulations, or require in tariff filings, to accompany the use of credit scoring by public utilities.⁵ One of the key protections that the OCA sought was for the Commission to set forth in its regulations what "generally accepted" means when referring to a credit scoring methodology. The OCA recommended that the Commission state that the generally accepted methodology is one that assesses utility bill payment and risk such as Equifax's Energy Risk Assessment Model (ERAM) that is in use in several pilot programs being operated by

⁵ The OCA's recommended protections were reflected in several different provisions of the Credit and Deposit Standards Policy and Procedures and some of those protections should be included in the tariffs filed by the public utilities to implement the credit scoring methodology. The OCA will provide comments on the different provisions of Chapter 56 as they relate to some of the key protections recommended by the OCA. The OCA will address other needed protections in the tariff filings by the utilities to establish their individual credit scoring methodologies and procedures.

Pennsylvania utilities. See, e.g., Petition of Columbia Gas and PPL Electric, Docket Nos. P-0001807, P-0001808 (Order entered February 3, 2001).

In Section 56.32(a)(2), the proposed regulations make clear that any credit scoring methodology used “must specifically assess the risk of utility bill payment.” The OCA strongly supports this provision. As the Commission is well aware from its years of work with customers, including low income customers and elderly customers, utility bill payment is often the priority payment for a household. Households will do without food and medicine, and other bill payments, to meet their obligation to pay for essential utility service. See, National Energy Assistance Directors Association (NEADA) Survey available under Publications at www.neada.org. As such, the credit scoring methodology used to establish deposit requirements that could delay or deny essential utility service must recognize these factors and must be based on the risk of utility bill payment. The Commission’s proposed regulation at Section 56.32(a) does just that.

H. Section 56.36—Written Procedures

1. Preamble

In the introductory portion of Section 56.36, the proposed regulations require a public utility to establish written procedures for determining credit status and for determining responsibility for unpaid balances. The proposed regulations also require that the procedures be made available to the public upon request and included on the public utility’s website. The OCA supports these requirements, particularly the addition of making such procedures available on the website. For those customers with access to the internet, having the information on the public utility’s website will provide easy and efficient access to the information. The OCA recommends that the language of the regulations also make clear that the information be well

marked and prominently disclosed. It is not sufficient, for instance, to make the information hard to find on the website or to only include the information in tariff pages included on the website. To capture this recommendation, the OCA recommends that the last sentence of the preamble in Section 56.36 be modified to read as follows:

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 website in a location that is prominently disclosed to residential customers.

The modification is intended to ensure that the information is easily accessible to customers who may be affected by the credit procedures.

2. Section 56.36(1) – Reasons for denial of credit

In Section 56.36(1), the proposed regulations set forth the information that the public utility must provide to customers when credit is denied and a deposit must be paid. The subsection requires notice orally and through a written denial statement. The requirements for the written denial statement in the proposed regulations are comprehensive and provide a solid foundation for providing necessary information to customers to assist them in addressing issues that arise in the credit scoring process. The OCA has identified three additional pieces of information that should be required in the written denial statement. First, the acceptable credit score should be included in the written denial statement. While the proposed regulation requires the customer's credit score to be provided, the customer may have no means of determining how that credit score compares to the requirement. Knowing one's credit score in relation to the credit score needed to establish credit would assist the customer or applicant in deciding next steps.

Second, the customer or applicant should be provided with information on how to dispute or investigate the accuracy of their credit score. The proposed regulations require that

contact information for the credit scoring agency be provided and that the *ability* to challenge the accuracy of the score be communicated. Information on one's ability to challenge a credit score and information on how to make that challenge may not necessarily be the same. The Commission should make it clear that information on how to challenge the credit score must be provided to the customer or applicant.

Third, the written denial statement should include information on the customer's or applicant's rights under the Fair Credit Reporting Act which governs credit reporting agencies. This Act sets forth consumer rights that the consumer should be made aware of when a credit score is used to determine whether a deposit is required.

The OCA recommends the following changes to Section 56.36(1) to add this additional information:

(1) *Reasons for denial of credit.* If credit is denied, the public utility shall inform the customer or applicant orally and in writing of the reasons for the denial within 3 business days of the denial. The written denial statement shall include the acceptable credit score, the applicant or customer's credit score, the provider of the credit score, information on the customer or applicant's ability to challenge the accuracy of the credit score, information on the procedures to dispute or challenge a credit score with the credit scoring agency, and how to contact the credit score provider, and the rights of the applicant or customer under the Fair Credit Reporting Act as it concerns the credit score. If the public utility is requiring payment of an unpaid balance in accordance with § 56.35, the public utility shall specify in writing the amount of the unpaid balance, the dates during which the balance accrued and the location and customer name at which the balance accrued. The statement must inform the applicant of the right to furnish a third party guarantor in accordance with § 56.33 (relating to third-party guarantors) and the right to contact the Commission. The statement shall include information informing victims of domestic violence with a Protection from Abuse Order that more lenient credit and liability standards may be available.

The OCA submits that adding this additional information will ensure that applicants and customers are provided the necessary information to address issues related to the denial of credit based on a credit score.

I. Section 56.72—Discontinuation of Service

Proposed Section 56.72 sets forth the circumstances and procedures under which a public utility can discontinue service without prior written notice. The OCA would note that the first sentence of Section 56.72(1) seems incomplete or seems intended as a heading. The OCA recommends that the sentence or heading be clarified.

In subsection 56.72(2)(ii), the proposed regulations shorten the notice period prior to discontinuation of service in the situation where there is a single meter multifamily dwelling or the customer requesting discontinuance does not live at the dwelling. The notice period, when the occupants object to such discontinuation, has been shortened from 10 days to 3 days. It is unclear to the OCA why this change was made. The shortened time period seems to provide insufficient time for affected occupants to make alternative arrangements or to pursue their rights and remedies through Sections 1521-1533 of the Public Utility Code if it is a landlord/tenant situation. 66 Pa.C.S. §§1521-1533. The OCA recommends that the Commission restore the 10-day notice period for a single meter multifamily dwelling.

J. Section 56.82—Timing of Termination

One of the major changes included in Chapter 14 was the ability of the utility to terminate service on a Friday. Chapter 14, however, allows for Friday termination only if the public utility can accept payment to restore service on the following day and can restore service consistent with the statutory requirements for reconnection of service. The proposed regulations add these requirements to Section 56.82 and specify the obligations of the utility when service is terminated. The OCA supports the additions to Section 56.82 and has two minor edits for clarity and completeness.

As shown below, the OCA first recommends that when referencing the time period for offices to be open, that the regulation state that offices must be open at the time of termination as well as on the following day. Except for emergency terminations for safety purposes, the OCA expects that terminations of service will occur during the regular business hours of the public utility. The OCA's addition clarifies this point.

The OCA's second recommendation is an addition to the obligations of the personnel available the day after service termination. The OCA recommends that the obligations specifically include having personnel available who can refer customers to bill payment assistance programs. While this task may be subsumed in the duty to have personnel available to negotiate conditions to restore service, the utility should have the clearly stated obligation to inform and refer customers to agencies that can provide bill payment assistance. The OCA adds this obligation for clarity and completeness.

The OCA modifications Section 56.82 are as follows:

A public utility may terminate service for the reasons set forth in § 56.81 (relating to authorized termination of service) from Monday through Friday as long as the public utility has offices open at the time of the termination of service and on the following day during regular business hours and personnel on duty who can negotiate conditions to restore service, accept emergency medical certificates, refer customers to payment assistance agencies, accept payment to restore service and can restore service, consistent with § 56.191 (relating to the general rule).

These two additions will clarify the obligations of the public utility when terminating service, particularly when terminating service on a Friday.

K. Section 56.91—Termination Notice

In proposed Section 56.91, the Commission sets forth in detail the contents of the termination notice that must be provided to customers. The OCA supports the proposed

regulation and the contents of the termination notice specified in the regulation.⁶ The OCA provides edits to a few subsections for the purpose of clarity. The first recommended edits are intended to clarify some of the timing issues related to a customer's potential enrollment in universal service programs during the termination notice period. The OCA proposes the following clarifications to subsections 56.91(b)(4)(iv), 56.91(b)(6) and 56.91(b)(9):

(b)(4)(iv) The customer initiates application for enrollment is made in a universal service program offered by the public utility.

(b)(6) A statement that the customer shall immediately contact the public utility to attempt to resolve the matter, including the address and telephone number where questions may be filed, payment agreements entered into with the public utility, and questions and instructions for qualification and enrollment applications can be found for any universal service programs offered by the public utility's universal service programs, if these programs are offered by the public utility.

(b)(9) ~~When the public utility has universal service programs, information concerning any universal service programs offered by the utility for customers who need assistance in the payment of utility bills indicating that special assistance programs are available and how to contact the public utility for information concerning qualifications and enrollment, and that enrollment in the program is a method of avoiding the termination of service.~~

In addition, the OCA proposes that 56.91(b)(14) be modified so that it is clear that only adult occupants living at the premises when the bill was incurred are obligated to pay all or a portion of the bill. The modified section would read as follows:

(b)(14) Information indicating that if service is shut off, any adult occupant who has been living at the premises during the time that the unpaid bill was incurred may have to pay all or portions of the bill to have service restored.

The OCA submits that the proposed modifications will clarify that the occupants must have resided in the premises and benefitted from the service that resulted in the unpaid bill.

⁶ In its Comments of February 14, 2007, the OCA recommended that the Commission include the agreed upon notification letters that were developed pursuant to the Chapter 14 Implementation Orders in an Appendix of standardized forms. The Commission declined to adopt this approach so that it could consider necessary modifications to the letters as experience was gained with the process. Proposed Rulemaking Order, Att. 1 at 31. Given the detailed contents contained in the proposed regulation, the OCA agrees with this approach.

L. Section 56.94—Procedures Prior to Termination

Section 56.94(1) sets forth the cases in which termination is prohibited. It is the OCA's understanding that if a customer has applied for enrollment in the universal service program, termination would be prohibited until a disposition of that application. The OCA recommends adding this circumstance to the cases where termination is prohibited.

The OCA's modifications are as follows:

(1) *Termination prohibited in certain cases.* If evidence is presented which indicates that payment has been made, a serious illness or medical condition exists, the customer has applied for and has an application pending for enrollment in a universal service program offered by the utility, or a dispute or complaint is properly pending or if the employee is authorized to receive payment and payment in full is tendered in any reasonable manner, then termination may not occur. However, if the disputing party does not pay all undisputed portions of the bill, termination may occur.

The OCA recommends this modifications to 56.94(1) be adopted.

M. Section 56.100—Winter Termination

1. Section 56.100(b) –Heat-Related and Non-Heat-Related Distinction

Section 1406(e) made significant changes to the Commission's winter termination procedures and necessitated several changes to Section 56.100 regarding winter terminations. In its Second Implementation Order, the Commission noted that, unlike the existing Chapter 56 provisions, Chapter 14 did not make a distinction between heat-related and non-heat related service in regard to winter termination. The Commission proposed to eliminate this distinction in its Advanced Rulemaking. See, Advanced Rulemaking Order, App. A at 4. In this Proposed Rulemaking Order, however, the Commission has reversed its initial position and retained the heat and non-heat related distinction in the winter termination provisions for electric and natural gas distribution companies.

As discussed above, the OCA submits that the heat/non-heat related distinction contained in the proposed regulations should be removed for both statutory and public policy reasons. Initially, Chapter 14 creates no distinction between the use of the public utility service for heating and non-heating purposes when winter termination is involved. Chapter 14 very clearly states:

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

66 Pa.C.S. §1406(e). Chapter 14 does not distinguish between heat-related and non-heat related service. Rather it protects all electric and natural gas residential service for the identified customers, regardless of the nature of the service.

The protection of all winter energy usage is sound public policy. For electric service, the OCA anticipates that any service interruption in the winter will jeopardize the ability of the household to heat the home since, with more modern furnaces that rely on electronic thermostats for control and electronic ignition for operation, a loss of electric service is effectively a loss of heat. Natural gas customers that use natural gas only for cooking have become a smaller portion of an NGDC's customer base, but even those customers may use their natural gas for essential hot water in the winter, and unfortunately, for staying warm as well. Rather than retain the past distinction between heat related and non-heat related service – a distinction that may no longer exist for most customers – the OCA urges the Commission to follow the exact language of Chapter 14 and protect all electric and natural gas service in the winter for those customers meeting the requirements of Chapter 14.

The OCA submits that Section 56.100(b) must be modified as follows:

(b) *Electric distribution and natural gas distribution utilities.* Unless otherwise authorized by the Commission, during the period of December 1 through March 31, an electric distribution utility or natural gas distribution utility may not terminate ~~heat-related~~ service to customers with household incomes at or below 250% of the federal poverty level except as provided in this section or in § 56.98 (relating to immediate termination for unauthorized use, fraud, tampering or tariff violations). The Commission will not prohibit an electric distribution utility or natural gas distribution utility from terminating ~~heat-related~~ service in accordance with this section to customers with household incomes exceeding 250% of the federal poverty level.

This change will bring Section 56.100(b) into conformity with 66 Pa.C.S. §1406(e).⁷

2. Section 56.100(j) –Reporting of deaths at locations where public utility service was previously terminated.

In proposed Section 56.100(j), the Commission requires public utilities to report to the Commission when, in the normal course of business, they become aware of a fire, incident of hypothermia, or carbon monoxide poisoning that result in a death in a household in which utility service was shut off at the time of the incident. The OCA strongly supports the Commission's efforts to obtain this critical information. As the Commission correctly recognized in its Proposed Rulemaking Order, termination of essential utility service can be a matter of life or death, and it is central to the Commission's obligations to protect the health and safety of all citizens of the Commonwealth. Proposed Rulemaking Order, Att. 1 at 43. The information sought by the Commission will be critical to the Commission, members of the General Assembly, and interested stakeholders as they consider and evaluate Chapter 14 and the procedures developed to implement Chapter 14.

⁷ Section 56.100(a) addresses winter termination of water service. This provision also retains the heat-related qualifier. The OCA does not oppose retaining the qualifier for water distribution utilities since Chapter 14 did not modify the Commission's existing regulations regarding winter termination of water service.

While the OCA is supportive of the Commission's efforts, the OCA submits that the proposed regulation may fall short in certain ways. First, the focus of the reporting requirements is on winter terminations. Terminations can certainly have serious public health and safety consequences, however, even in the non-heating months. Hyperthermia in the elderly during the summer from the lack of air conditioning can be as fatal as hypothermia in the winter from lack of heat. Fires caused by candles can happen year round. The Commission should make it clear that the reporting applies all year and should include an incident of hyperthermia in the summer heat as a reportable event.

Second, the reporting requirement should include injuries as well as deaths. The Commission, in declining to include injuries in the reporting requirement, expressed concern about the definition of injuries and possibly creating a much larger obligation on the public utility. Proposed Rulemaking Order, Att. 1 at 43. The OCA submits, however, that injuries are equally important to report. To suggest, for example, that a child that was severely burned in a fire is deserving of less regulatory attention and investigation because the child survived is untenable. Injuries are a matter of public health and safety and should be included in the reporting requirement. If, after a period of reporting, there is concern with the determination of the extent of injuries that should be reportable, the Commission can address that concern based on full information as to the problem through a Secretarial Letter process.

Finally, the OCA objects to the Commission's proposed language that would result in the information received from these reports being kept from public view. The OCA also questions the proposed language that seeks to keep the reports from being admitted into evidence in a court of law. The OCA submits that these provisions should be removed from the regulations. The Commission is requiring factual reports in furtherance of its obligations under

Chapter 14 and its obligations to protect the public health and safety. This information should be available to the public and to policymakers as it has a bearing on whether Chapter 14 has been successfully implemented and whether the health and safety of the public has been adequately protected. In the alternative, if the Commission is concerned with the release of all information due to the sensitive nature of some of the information or the need for privacy of the customer, the Commission could develop a report of the key information to be made available to the public on a regular basis. An annual report of the necessary information for the public that protects any sensitive or private information would still assist the public and policymakers in understanding the implementation of Chapter 14.

As to the language that seeks to keep the reports from being admitted into evidence in a court of law, this language presents several problems in the context of a regulation. While the OCA understands the concern regarding possible admission of liability, the OCA submits that a *factual* report required by Commission regulation does not constitute an admission of liability. The Commission should seek to obtain the relevant facts to meet its regulatory obligations but must leave to the Courts whether such a factual report is admissible if a suit or action for damages is filed. The OCA understands that the Commission relied on the language in 66 Pa.C.S. §1508 in drafting this regulation, but 66 Pa.C.S. §1508 is a statute enacted by the General Assembly for a specific type of accident reporting. The OCA questions whether the Commission has the same authority as the General Assembly to make such a determination for the Courts.

The OCA proposes the following modifications to Section 56.100(j):

(j) *Reporting of deaths or injuries at locations where public utility service was previously terminated.* Throughout the year, public utilities shall report to the Commission when, in the normal course of business, they become aware of a household fire, incident of hypothermia or hyperthermia, or carbon monoxide

poisoning that resulted in a death or injury and that the utility service was off at the time of the incident. Within 1 business day of becoming aware of an incident, the public utility shall submit a telephone or electronic report to the Director of the Bureau of Consumer Services including, if available, the name, address and account number of the last customer of record, the date of the incident, a brief statement of the circumstances involved, and, if applicable, the initial findings as to the cause of the incident and the source of that information. The Bureau or Commission may request additional information on the incident and the customer's account. ~~Information submitted to the Commission in accordance with this subsection shall be treated in accordance with 66 Pa. C.S. § 1508 (relating to the 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 OCA submits that these changes are necessary so that the public and policymakers are fully aware of the public health and safety issues that may be presented.

N. Section 56.114—Medical Certification Renewals

The Proposed Rulemaking makes several changes to the medical emergency provisions at Sections 56.111 through 56.118 to reflect the changes required by Chapter 14, to provide additional guidance to the utilities, and to provide additional clarity to the provisions. Proposed Rulemaking Order, Att. 1 at 51-52. In general, the OCA submits that the proposed changes to the Emergency Medical Provisions have clarified and strengthened these critical provisions. The Commission, however, declined to adopt the OCA's recommendation regarding Section 56.114 as to the term for a medical certificate.

In its Comments of February 14, 2007, the OCA urged the Commission to allow for a medical certificate with a term of greater than 30 days. As the OCA noted in its Comments, medical certificates are available for both short term, acute situations and for longer term, chronic illnesses. It can often present a burden for a seriously ill individual to go to a medical appointment every 30 days to obtain the medical certificate renewal. Such requirement can also be wasteful of the customer's limited financial resources and wasteful of valuable medical staff

time when the medical condition is unlikely to change in 30 days. See, OCA Comments of February 14, 2007 at 46. The OCA requested that the Commission allow a physician or nurse practitioner to specify a period of longer than 30 days for the medical certificate if they certify that the condition is unlikely to change or improve significantly in that time and the individual is not scheduled for a follow-up appointment in that time.

The Commission declined to adopt the OCA's recommendation, but urged the utilities to work with customers with long-term illnesses to arrange methods in which they can maintain utility service. Proposed Rulemaking Order, Att. 1 at 52. The OCA agrees that utilities should work with customers with long-term illnesses to assist them in maintaining utility service, but the Commission's approach does not address the burden placed on individuals to obtain a medical certificate every 30 days during the renewal period. The OCA respectfully requests that the Commission reconsider this issue and allow for medical certificates that exceed the 30 day time frame so that medical certificates are fully available on reasonable terms to Pennsylvania's most vulnerable citizens. The OCA is recommending that the Commission allow for medical certificates with a 90 day term if the physician or nurse practitioner certifies a serious or chronic illness.⁸ This 90 day term will reduce the burden on seriously ill and chronically ill individuals as well as avoid the wasteful use of medical resources when an individual's condition is unlikely to improve.

The Commission also added language to Section 56.114(2) that is intended to relieve the utility of petitioning the Commission to terminate a customer with a medical certificate pursuant to Section 56.118 if the utility is only enforcing the existing restrictions at

⁸ In Massachusetts, medical certificates for serious illness are renewed on a quarterly basis and medical certificates for chronic illnesses need to be renewed every six months. See, 220 CMR 25.03(4). The OCA recommends that the Commission provide at least the quarterly time frame for individuals as is done in Massachusetts.

Section 56.114(2). The OCA is concerned with this addition. Chapter 14 provides a strict prohibition against terminating customers with medical certificates that is not reflected in the Commission's proposal. Section 1406(f) states:

A public utility shall not terminate service to a premise 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.

66 Pa.C.S. §1406(f). The OCA submits that given this prohibition, and the need to protect Pennsylvania's most vulnerable citizens, a utility should petition the Commission for any termination when the medical certificate procedures have been utilized. The use of a petition process will better assure the Commission that all avenues for retaining service have been explored, all circumstances considered, and that the customer is fully aware of the impending termination even in light of their medical condition. Termination of customer households with serious medical conditions requires that all consumer protections available be in place.

The OCA provides the following modifications to Section 56.114 to implement its recommendations:

Service may not be terminated for the time period specified in a medical certification; the maximum length of the certification shall be 30 days, unless the physician or nurse practitioner certifies that the illness is serious or chronic and unlikely to change in 30 days. In such circumstances, the physician or nurse practitioner can certify a time period of up to 90 days.

(1) *Time period not specified.* If no length of time is specified or if the time period is not readily ascertainable, service may not be terminated for at least 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). 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 that concern medical

certificates filed for the same set of arrearages and same termination action. When the customer eliminates these arrearages, the customer is eligible to file new medical certificates. ~~In these instances the public utility is not required to honor a third medical certificate and is not required to follow § 56.118(3) (relating to the right of public utility to petition the Commission). The public utility shall apply the dispute procedures at §§ 56.151 and 56.152 (relating to public utility company dispute procedures).~~ In the instance where a the customer has not met the obligation in Section 56.116 to equitably make payments on all bills and the limitation on medical certificates for the same set of arrearages and same termination action has been met, the public utility may petition the Commission for permission to proceed with the termination process.

The OCA submits that the Commission should review all terminations that are undertaken when the medical certification procedures have been invoked to ensure that the termination only proceeds after providing the maximum protection to the household. Additionally, the medical certification procedure should ensure that individuals with chronic or long term illnesses are not required to make wasteful expenditures for medical appointments, and take up valuable medical staff time, for conditions that are unlikely to improve.

O. Section 56.191—Restoration of Service

In Section 56.191(b) regarding the timing of the restoration of service following a termination, the Commission sets forth the time requirements specified in Section 1407(b). To make clear that those time periods are the longest time frame allowed, the OCA recommends the following addition to Section 56.191(b):

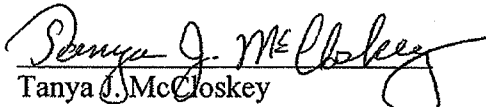
(b) When service to a dwelling has been terminated, provided the applicant has met all applicable conditions, the public utility shall reconnect service promptly but no later than as follows:

This addition is intended to capture the intent that customers be restored as soon as reasonably possible with the time frames provided in the statute being the longest time allowed for restoration.

III. CONCLUSION

The OCA thanks the Commission Staff and the Commission for its efforts in addressing the many difficult issues presented by the implementation of Chapter 14 and in reaching a fair and reasonable balance on these complex and difficult questions. The OCA submits that the proposed Chapter 56 regulations, with the modifications recommended by the OCA in these Comments, should fairly achieve the twin goals of Chapter 14 of improving collections from customer who can pay, while maintaining necessary protections for those who cannot.

Respectfully Submitted,



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