This definition was not in the NOPR, but is now being included based on the suggestions of NFG, PGW and IRRC in response to the proposed definition of *electronic billing*.

Definition of *Federal poverty level*:

Discussion:

A definition of "Federal Poverty Level" is being added at the suggestion of IRRC. We will use the definition provided by the federal Department of Health and Human Services.

Definition of *Household income*:

Allegheny Power, Duquesne Light, FirstEnergy and PPL state that excluding unearned income intended for minors, such as social security would have a severe impact on their CAP programs. Allegheny Power claims that it would expose Allegheny Power to roughly $2.5 million more in supplemental grant money and an additional $2.0 million in shortfall amortization. It is Allegheny Power's opinion that earned income from a child's employment should be excluded. Furthermore, Allegheny Power submits that as the industry moves toward consolidating applications for all assistance programs, it will be necessary that all parties use the same criteria. Duquesne suggests striking the word "adult" from the definition since money paid to parents should be used to pay utilities. FirstEnergy suggests that if an individual's income is not going to be counted; then the individual should not be included when determining household size. PECO objects to this definition because this change will either cause utilities to have to manage two sets of income data for their customers, or will constitute an unexamined change to low-income programs. Columbia also objects because of the impact on their CAP program and that the proposed change is contrary to the definition of income in the 2009 State Plan for the Low Income Home Energy Assistance Program. PPL suggests changing the definition so that only wage earnings of a dependent child under 18 are excluded. Dominion believes that the definition of household income is clear and unambiguous and needs no interpretation.

Equitable points out that proposed definition is inconsistent with federal and state assistance programs. For example, Equitable submits that the LIHEAP State Plan for 2009 excludes only wage earnings of a dependent child under 18 from household income and the first $ 50 of child support.

NFG believes that the proposed language is confusing as written as there is a distinct difference between the phrases "income intended for the use of a minor" which is used in the first additional sentence and "a minor's income" which is used in the second sentence. According to NFG, "Income intended for the use of a minor" is a phrase that is far too indefinite for use in a regulation; any income that comes into a household with minor children could be deemed to be "for the use of a minor." Therefore, this creates a potential loophole that would be contrary to

the stated Legislative intent. NFG agrees that income that is received wholly by a minor, such as SSI in a minor's name or income derived by a minor should not be included in this definition.

PGW reports that it currently uses the household income requirements of the Pennsylvania LIHEAP program which includes the total earned and non-earned income of all household members. PGW asserts that the LIHEAP income definitions are reasonable and result in the provision of utility service customer assistance based on true household need. By excluding certain types of income, PGW's obligation to offer payment agreements and assistance might dramatically increase. PGW suggests deleting the proposed definition and replacing it with the LIHEAP standard. Phillips agrees that this definition should conform to the LIHEAP definition.

Action Alliance supports the proposed definition at § 56.2 for "household income" that incorporates the Chapter 14 definition that specifies that household income only includes the income of adults. Action Alliance agrees that listing examples of children's income that should be excluded provides helpful clarification to utilities and customers.

PULP supports the Commission's inclusion of a definition of household income that excludes a minor's income from being considered part of the household income total. PULP maintains that this definition tracks the statutory language which clearly intends to include only the income of adult household members.

IRRC notes that Section 1403 defines "household income" as "[t]he combined gross income of all adults in a residential household who benefit from the public utility service." The regulatory definition excludes income intended for the use of a minor from the household income, and includes examples of what would constitute a minor's income. Commentators are concerned that these examples exceed not only the scope of the statute, but also are inconsistent with how the term is used in various programs, such as LIHEAP. IRRC questions what is the Commission's statutory authority for including these changes in the regulation and the need for these provisions.

Discussion:

We disagree with the comments of Duquesne and FirstEnergy that would basically ignore the word "adult" as found in Section 1403. The General Assembly included the term "adult" in the definition of household income and this reference cannot be disregarded. 1 Pa. C.S. § 1921(b). However, it is not entirely clear the intent of the legislature in distinguishing a minor's income from an adult's income. The Commission offered the proposed language in the hope of prompting comments from the parties as to provide some guidance in making these distinctions. We are pleased that the parties submitted helpful comments on this issue and believe that the proposed definition should be revised to reflect the guidance received.

We did not intend to propose changes that would inadvertently expand CAP program eligibility, and must note that, in general, the definitions in § 56.2 are intended to apply to the application of

Chapter 56 provisions, and are not intended to apply to other regulations or other programs, such as CAP or LIHEAP. That being said, we are persuaded by the comments of parties including Allegheny Power, PECO, Columbia, Allegheny Power and PGW that the proposed definition is overly broad in identifying a minor's income. We find merit in PPL's recommendation that the wage earnings of a child under 18 should not be counted as household income and also NFG's guidance that benefits received wholly in a minor's name should not be included.

Definition of *Informal complaint*:

Action Alliance and PULP recommend that the Commission alter its definition of "informal complaint" since the current definition defines an informal complaint as one which is "filed with" the Commission. Since it is current Commission policy to accept informal complaints by telephone, these commentators believe that the phrase "file with" may be confusing, implying that an actual physical, formal filing is required. Additionally, the definition provided by the Commission only refers to a customer. Action Alliance and PULP recommend the Commission delete the reference to customer in the definition since it is possible and likely that an applicant or an occupant might also submit an informal complaint.

IRRC notes that the proposed definition states that an informal complaint is "a complaint filed...by a customer...." IRRC believes that the word "filed" is vague because informal complaints can be made telephonically. It is IRRC's understanding that an informal complaint can be made not only by a customer, but also by an applicant or an occupant. IRRC submits that the final-form regulation should clarify who can make an informal complaint, and the available methods of filing.

Discussion:

This definition is copied verbatim from Section 1403 and it has not been the cause of any confusion or controversy. That being said, we will address the concerns of Action Alliance, PULP and IRRC by removing the word "filed" from the definition. IRRC is also correct in that parties other than "customers" have always had right to file informal complaints. However, we decline to specify just who can file an informal complaint because we do not want to inadvertently exclude any party from this right. We believe the use of "customer" in this definition, and in Section 1403, is intended to declare that customers have the right to file an informal complaint and is not intended to exclude other parties who are technically not customers. Traditionally, any party with an interest in the disputed matter has had the right to file complaints. This can include applicants, occupants and tenants. It can even include parties who have little if any relationship with a utility. For example, a heating oil customer may file an informal complaint against the local gas utility for failing to investigate a possible gas leak in the main which happens to run near his property.

Definition of *Informal dispute settlement agreements*:

Allegheny Power states that this is not a term introduced by Chapter 14 and sees no purpose for it. FirstEnergy agrees that the term is unclear and appears to introduce a third level of dispute. PECO also believes this definition is unclear and appears to create an entirely new, burdensome requirement with no identified benefit or cost-benefit analysis performed. PPL asks that this definition be deleted because the company cannot envision when utilities would use this type of informal dispute settlement agreement, and that the current regulations concerning disputes, payment agreements, informal and formal complaints seem sufficient and effective.

Columbia believes this definition is unnecessary to implement Chapter 14 and will serve to confuse customers who thought they had resolved their disputes, and will unnecessarily increase the number of formal complaint proceedings initiated at the Commission. Dominion believes that the proposed definition is unwieldy and complicated.

NFG feels that this phrase and this concept needs to be better explained in the proposed rulemaking as it is unclear whether this phrase applies to any "agreement" between a utility and a customer or whether it simply applies to settlement offers or resolution offers made by a public utility. PGW also finds the proposed definition unnecessary and confusing because it is unclear how this term is different from a payment agreement.

PAWC asks if the parties fail to reach an agreement on the statement of the claim or dispute, will it prevent the parties from reaching an informal dispute settlement agreement? PAWC also suggests that the regulation set a time period in which the customer or applicant must make known to the public utility that they reject the settlement offer as to eliminate ambiguity and minimize potential confusion.

Action Alliance and PULP recommend several changes to the proposed definition of "informal dispute settlement agreements" to clarify its meaning and place within the Commission's administrative process. Action Alliance and PULP also recommend the Commission use terms in this definition that it has defined elsewhere within Chapter 56. The definition should clarify that the utility is the default party made responsible for reducing the agreement to writing since the utility is more likely to have the expertise and staff necessary to properly write such a document. Also, the definition omits the word "occupant" when listing the parties to whom this definition applies.

IRRC believes that the first sentence is vague, as it refers to a "mutually agreeable statement," but then it only mentions a "customer or applicant" as entering into one. IRRC suggests that the final form regulation should clarify who the parties are in the "mutual agreement" and questions what is the need for including this definition in the regulation?

Discussion:

We agree with Allegheny Power, FirstEnergy, PECO, PPL, Columbia, Dominion, NFG, PGW and IRRC in that the proposed definition is vague, unnecessary, and complicated and will delete it and any reference to it in these regulations.

Definition of *Initial inquiry:*

Action Alliance and PULP recommend that the Commission amend the definition of "initial inquiry" so it more clearly reflects that the administration of universal service and energy efficiency programs may be subject to an inquiry by an applicant, customer, or occupant.

Discussion:

The concerns expressed by Action Alliance and PULP parallel the concerns they expressed about the definition of *dispute*. Again, we are reluctant to list or itemize such things in the regulation because this could be inadvertently interpreted to exclude things not specifically listed. Another reason we are reluctant to itemize disputable issues as it is likely that other new subjects will come along in the future such as hourly metering, remote appliance control and other load management initiatives that may also be the subject of disputes. We must also note that Chapter 56 dispute procedures have been incorporated in other regulations, such as the electric "slamming" regulations at § 57.177 for example. Moreover, it is possible that future regulations on other topics may include similar language.

We shall resolve the issue in the same manner as with definition of *dispute*. We will insert the phrase "but not limited to" after "including" in the first sentence of this definition. This will convey that a disputable issue is not restricted to the few items listed in the regulation.

Definition of *LIHEAP*:

NFG, OCA and PULP suggest correcting the name of the LIHEAP program by replacing "Heating" with "Home". NFG believes that the descriptive language should be removed from this definition as the LIHEAP program speaks for itself and should not be quantified or defined in these regulations.

Discussion:

We agree with NFG that this definition is not necessary. While it is defined in Chapter 14, its use at Section 1406(g) is directed to the Department of Public Welfare. The term is not used in Chapter 56.

Definition of *Natural gas distribution service*:

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

Discussion:

The definition NFG refers to is from Section 2202 as follows:

> *"Natural gas distribution service." The delivery of natural gas to retail gas customers utilizing the jurisdictional facilities of the natural gas distribution company.*

This definition also refers to "retail gas," so we see no compelling reason to alter the definition originally proposed.

Definition of *Nonbasic services:*

The OCA believes that 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 and that the provision of default supply service should also be included.

Discussion:

OCA's comments are analogous to the comments they and IRRC submitted in response to the definition of basic service. We shall address these concerns in a similar manner, by inserting a reference to default service in the proposed regulation.

Definition of *Nurse practitioner*:

The CAC and PULP support incorporating the definition of Certified Registered Nurse Practitioner found at 49 Pa. Code § 21.251 into these regulations. This definition will enable the Commission to be consistent with other statewide definitions and usage.

Definition of *Occupant*:

Action Alliance proposes that the regulation recognize that an occupant can reside at a property where service is not currently being provided, and also clarify that a dependent child occupant should not be made responsible for the bills of a parent, under Section 1407(d). Action Alliance also recommends that the definition should specify "adult" persons and that the phrase "or requested" be added to the end of the definition. OCA also agrees that the word "adult" should precede the word "person" because 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 and the current definition of "occupant" could produce such a result.

PULP makes the same request that the Commission make a minor modification to the definition of occupant by adding the phrase "or requested" to the final sentence. According to PULP, this addition will capture the idea that the public utility's relationship with the household can often extend beyond the time when public utility service is currently provided, i.e. in situations where a customer loses service and the final bill is past due, the public utility may still have interactions with occupants of the household.

IRRC believes that the proposed definition is vague for two reasons. First, while other related terms like "customer" or "applicant" use the descriptor "natural person," this definition uses "person." IRRC suggests that to improve consistency, "person" should be replaced with "natural person." Second, IRRC asks when does a natural person officially become an occupant and when does the natural person cease being one? Finally, IRRC notes that this definition should clarify if someone under 18 can be considered an occupant.

Discussion:

The word "occupant" appears in the following sections of Chapter 56: §§ 56.2, 56.12, 56.17, 56.71, 56.72, 56.83, 56.93, 56.96, 56.97, 56.99, 56.100, 56.111, 56.112, 56.151, 56.201, 56.211 and 56.231. We proposed no substantial changes to this definition in the NOPR and Chapter 14 does not include a revised definition of occupant. Based on past experience and most of the comments, there has been little if any confusion or difficulties with this definition. As such, we are reluctant to tinker with this definition out of concern for inadvertent and possibly serious consequences that could result, especially given the large number of sections where this term appears. For example, under the medical emergency regulations at §§56.111-112, an "occupant" is eligible to file an emergency medical certificate. If we revise the definition of "occupant" to specify an occupant must be an adult, this would serve to strip children of medical emergency protections; clearly an unacceptable outcome.

We prefer to keep with the traditional approach as found in §56.93. When it is important that the occupant be an "adult" the regulation specifies that the occupant concerned must be an "adult." As another example, we believe that our proposed revisions to the definitions of *customer* and *applicant*, which specify that both must be "adults" will address to a large extent the concerns expressed by some of the parties. We also see no problem with IRRC's suggestion that we insert the word "natural" before "person" as to align this definition with the definitions of *customer* and *applicant*.

Definition of *Payment agreement:*

Dominion suggests adding language including balances where the customer is "adjudged liable" in addition to balances where liability is admitted.

NFG suggests including the phrase "or applicant" after the word "customer" in this definition

because it is possible for an applicant to enter into a payment agreement as well as a customer and this definition should recognize that.

Discussion:

While we understand Dominion's concerns, we believe that the liability provisions found in Sections 1403 and 1407 are sufficient to hold a customer responsible for charges accrued in another party's name under certain circumstances and it has not been argued that these charges are never eligible for inclusion in a payment agreement. Therefore, we do not see Dominion's suggested changes as necessary. However, we do find merit in NFG's position that the definition should also mention *applicants* because applicants may be the subject of payment agreements and this would also bring this definition into alignment with Section 1405 that specifies that the Commission can "...establish payment agreements between a public utility, customers and applicants..."

Definition of *Physician*:

The CAC and PULP support the elimination from the definition of physician at § 56.2 the requirement that a physician must be licensed by the Commonwealth of Pennsylvania. Many individuals are treated by out-of-state physicians. Those individuals who live in communities bordering other states or require specialists or treatments located in other states should not be precluded from the intended protection of the statute.

Discussion:

For the reasons cited by CAC and PULP, and the fact no significant objections were raised to this proposed definition, we will retain this definition as proposed.

Definition of *Remote reading device:*

Allegheny Power thinks this definition should specify that automatic meter reading (AMR) technology is excluded, since the AMR definition likewise excludes remote reading devices.

Discussion:

We find merit in Allegheny Power's suggestion as to improve clarity and avoid confusion. This will be in keeping with the intent of Section 1411 that deems automatic meter readings as actual readings. We will also rearrange the sentence structure of this definition to improve readability.

Definition of *User without contract*:

PGW believes that Chapter 14 does not allow a distinction between the terms "user without a contract" and "unauthorized use" because Section 1406 permits immediate termination of service

for all unauthorized use of service and fraud. PGW explains that since unauthorized use is without official authorization, using gas service without a contract is unauthorized use. However, if the Commission maintains this distinction in the regulations, PGW requests that user without contract must be specifically limited to a "reasonable" use of utility service, such as where a customer dies and the spouse continues to use the service for a period of time. PGW suggests that a reasonable period of time be specified as two months or when the utility threatens termination; whichever is earliest.

Phillips asks that this definition be revised to include applicants and customers who have failed or refuse to sign service contracts.

EAP takes the position that the "users without contract" are unauthorized users where service is maintained without customer application and is subject to immediate termination without notice. EAP argues that maintaining a distinction between "user without contract" and "unauthorized user" as the Commission proposes will not minimize uncollectible expenses or encourage timely payments. According to EAP, under the Statutory Construction Act (1 Pa.C.S.A. §1921), the object of all interpretation of statutes is to ascertain and effectuate legislative intent; had the legislature intended to make the distinction between "user without contract" and "unauthorized user" in Chapter 14, it would have done so.

EAP believes that Chapter 14 is very clear in its language mandating when the utility may terminate service and what it shall do prior to termination of service under Section 1406. EAP submits that the Commission's authority to inject itself into the internal management of a public utility is limited and the Commission has no authority to supplant the decision making responsibility of management on matters committed to their discretion. EAP concludes that the Commission, by attempting to inject itself into managerial decisions of the utilities, by proposing regulations inconsistent with Chapter 14, would be acting outside its legislative authority as interpreted by Pennsylvania courts.

Action Alliance notes that the Commission has long recognized that users without a contract, like persons such as widows taking service under their deceased spouse's name, should be protected from immediate service terminations without prior notice, and that overly broad interpretations of unauthorized use as grounds for immediate terminations should be avoided. Action Alliance strongly supports the Commission's original proposal to maintain the long-standing distinction between "user without contract" and "unauthorized users." Action Alliance further supports the proposed definition of "user without contract," at § 56.2, and recommends its adoption, in order to bring further clarity to the regulations. Action Alliance also agrees that the proposed language at § 56.91(a) relating to termination notices, which effectively provides for a three-day notice to a user without contract, should be adopted.

CAC and PULP support the Commission's decision to maintain the distinction between "user without contract" and "unauthorized use." These commentators agree that the inclusion of a new

definition of "user without contract" in the new regulations provides needed clarity and assistance to consumers and utilities in recognizing the distinction between a "user without contract" and "unauthorized use." According to CAC and PULP, common sense and equity require that these two situations should be treated differently. PULP explains that a widow continuing to use the service provided to her in her deceased husband's name is markedly different from someone who has illegally tampered with a meter to avoid paying for service. PULP also supports the Commission's decision to craft the regulations in a manner that recognizes this difference.

IRRC notes that this definition includes "unauthorized use" as an exception to what would be considered a "user without contract." Given that the existing regulation already includes a definition for "unauthorized use," IRRC suggests that the Commission considered simply amending this definition to include the substance of this proposed definition for "user without contract"?

Discussion:

The Commission has formally addressed "user without contract" in recent years, and the arguments against the Commission's long-standing position on this matter are basically the same that have been presented in these previous proceedings. *See* the first *Chapter 14 Implementation Order,* M-00041802F0002 (March 3, 2005) and the follow-up *Chapter 14 Implementation – Petitions of the Energy Association and the Philadelphia Gas Works for Clarification and/or Reconsideration of the Implementation Order,* M-00041802 F0002 (June 2, 2005).

We have seen nothing in these comments that persuades us to change the long-standing distinction between *user without contract* and *unauthorized use*, and we are still of the opinion that nothing in Chapter 14 changes this important distinction. Therefore, given the Commission's paramount responsibility to protect public health and safety, no other interpretation can be responsibly arrived at. As the Commission declared in the March 3, 2005 *Implementation Order*:

> We disagree with the EAP and PGW's position on this issue. It is important from a safety standpoint to maintain the distinction between a user without contract and unauthorized use of service. The Commission historically has viewed unauthorized use of service and user without contract as separate and distinct issues. Unauthorized use of service usually refers to meter tampering, diversion of service, or some other means of stealing utility service from the company. Whereas a user without contract involves situations where the customer has not been identified.
>
> The Chapter 56 definition of unauthorized use of utility service does not conflict with any provision in Chapter 14. The Commission's Regulations have historically permitted the immediate termination of service in these unauthorized use cases where there is an obvious threat to human safety and/or the utility delivery system. While

Chapter 14 does not contain a definition of unauthorized use, the context of §1406(c) indicates that the Legislature intended utilities to have the authority to immediately terminate service that was obtained through theft or fraud. Immediate termination in these instances is warranted. Indeed, our regulations already permit termination without advance notice in these situations. We must, however, caution utilities to use this authority judiciously and only under circumstances that address clear safety concerns. *See, e.g.*, 52 Pa. Code §§56.98, 59.24(b).

User without contract, on the other hand, refers to using utility service without the knowledge or approval of the utility. While in the strictest sense this may be an unauthorized use of service, user without contract generally implies no intent to deceive on the part of the customer. A user without contract situation normally arises when the utility company chooses to let the service remain on after a ratepayer vacates a property and discontinues service. This is not an uncommon occurrence in utility operations. *See, e.g., Pat Marioni v. PECO Energy Company*, C-00968276 (July 7, 1997).

When a new occupant moves into the property, the new occupant is a user without contract until completing an application for service and having an account initiated. The utility can easily prevent these situations by physically disconnecting the utility service between customers. Most companies, however, try to reduce costs by avoiding repeated trips to the property. The Commission supports these efforts to reduce costs but believes that customers should not be subjected to immediate termination as a result. If a new customer does not apply for service in a timely manner, the utility company should be able to detect usage on an inactive account and should pursue termination, minimizing the potential losses to the company.

Another principal cause of user without contract situations is having a ratepayer move from a property without advising the utility or officially requesting discontinuance of the account. Another customer may move in without requesting service, thereby creating a user without contract situation. Under these circumstances, Section 56.16(a), which has not been superseded by Chapter 14, places the responsibility for the service on the ratepayer. Other user without contract situations can arise when one ratepayer moves from a property and a roommate remains at the premises, or when a ratepayer dies and the family remains at the property.

User without contract situations are covered by 66 Pa.C.S. §1503(b) which states that except when required to prevent or alleviate an emergency or except in the case of danger to life or property, a utility may not terminate service for any reason without personally contacting the customer at least three days prior to such termination. Since user without contract is not specifically defined or addressed in Chapter 14, the Commission sees no inconsistency between §1503(b) and Chapter 14, and finds that a 3-day notice prior to terminating these accounts is still required.

> Requiring a 3-day notice prior to termination may also minimize losses to the utility company. Many customers, when faced with the threat of termination, will come forward and formally apply for service. This reduces the utility's costs associated with terminating and reconnecting the account.
>
> If utilities are allowed to treat users without contract the same as unauthorized use, an unnecessary tragedy may occur. The Commission finds that it is always the customer's responsibility to contact the company and to apply for utility service when the customer begins to use the service. There is a possibility of fraud, but common sense dictates that not all of these customers are attempting to avoid paying for their utility service. Customers must act responsibly to insure that the utility has the proper billing information and utilities must implement and follow appropriate tracking procedures. Diligent maintenance of accounts by the utility company can prevent or reduce lost revenues due to these types of billing problems.

The Commission discussed this further in the follow-up order from the June 2, 2005 Public Meeting:

> Unquestionably, as a practical matter, there is a distinction between a customer who obtains service through "unauthorized" means and a "user without a contract" which can be either a customer who is receiving service because they have moved into a residence and not yet submitted an application for service or there has been a change of the customer of record. "Unauthorized use of utility service" is defined in Chapter 56 as an "[u]nreasonable interference or diversion of service," 52 Pa. Code §56.2, as opposed to a situation where the customer has not been identified. The phrase "unauthorized use of utility service" is not defined in Chapter 14 and the Chapter 56 definition is not inconsistent with any provision in Chapter 14. Moreover, our decision to require a three-day termination notice for a "user without contract" is not inconsistent with Chapter 14, as we find that "user without contract" is not included within activities identified under Section 1406 (c) (1). Although, we acknowledge that a user without contract receives service without the explicit approval of the utility, this situation may not be the result of any overt action taken by the occupant. Actually, the utility company can prevent these situations by disconnecting utility service after the previous customer has vacated the premises and discontinued service.
>
> In Chapter 56, Section 56.91 specifically addresses situations where an occupant takes or accepts utility service without the knowledge or approval of the utility. There is no provision in Chapter 14 that identified this type of situation and allows a utility to immediately terminate service. A utility, pursuant to Section 1406 (c) (1) (I), (II), (III), and (IV), can immediately terminate service for unauthorized use, fraud, tampering, and violating a tariff provision. These actions by a customer essentially involve interference

or diversion as contemplated in the Section 56.2 definition of "Unauthorized use of utility service".

An occupant of a building or rental unit that has a soft "off" is not interfering with or diverting utility service. A distinction exists between the outright theft of utility service versus the unintentional use of such service without the knowledge or approval of the utility. It appears even more obvious that the safety concerns are not the same between theft or diversion and user without contract since the former assumes that someone other than an authorized utility employee has tampered with the system, rather than the soft "off" that is a practice of the utility. One consequence of this practice is that some occupants moving in to such locations may be truly unaware of their obligations surrounding the utility service that they find when they move in. The three-day notice requirement for such situations minimizes revenue loss while providing an opportunity for an occupant to come forward and apply for service. In this way, the three-day notice also helps avoid possible tragedies that might otherwise result from cessation of service without any notice. Moreover, the utility may well have a meter reading from the old customer so no revenue is lost.

To repeat what the Commission declared on June 2, 2005, "If utilities are allowed to treat users without contract the same as unauthorized use, an unnecessary tragedy may occur." Also, given the importance of this distinction and its prominence, we believe it is important to define *user without contract* with a separate, distinct definition in this subsection. Therefore, after careful consideration, we decline IRRC's suggestion that this definition be incorporated into the definition of *unauthorized use of utility service*. We feel this is also unnecessary given that the definition of *user without contract* immediately follows the definition of *unauthorized use of utility service* in the regulations. We will make a minor revision by inserting the word "utility" in the definition to make clear the reference to the definition of *unauthorized use of utility service*. We will also clarify that a user without contract is a "person" as defined at 66 Pa.C.S.§102.

§ 56.11. Billing Frequency:

Allegheny Power claims that it would cost $228,000 annually to provide duplicate paper and electronic bills. Columbia reports that it would cost them $6,000 monthly. FirstEnergy, PPL and PGW also oppose a requirement to provide both paper and electronic bills to the same customer as being unnecessary and negating the benefits of electronic billing.

FirstEnergy supports the inclusion of regulations regarding electronic billing and agrees that this option should be voluntary and at the customer's option. FirstEnergy also believes § 56.11(b)(7) should be deleted because maintaining a system to ensure delivery of electronic bills would be difficult and that it should be the customer's obligation to notify the company of a change in e-

mail address.

PPL opines that since hardship funds are voluntary and the Commission has no regulatory authority over them, that the proposed language at § 56.11(b)(5) should omit "must" and replace it with "should." PPL also suggests revising §56.11(7) by adding language specifying that the customer shall be responsible for informing the utility of changes to e-mail addresses within 30 days.

PECO recommends that the Commission not attempt to regulate the format of electronic bills. PECO believes that an electronic bill can include the same information as a paper bill but that utilities should be allowed flexibility to utilize evolving web technologies to present information in ways that fully utilize those technologies.

Columbia suggests revising 56.11(b)(1) to clarify that a public utility will be required to process a request to revert to paper billing "one billing cycle after the request is made" because depending upon when such a request would be made within a particular customer's billing cycle, it could take longer than one month's notice to process such a request.

Citizen's notes that it has received very positive feedback from consumers regarding their electronic billing program. It is very convenient and allows customers to receive early notification of their electric bills. Citizen's uses a password protected website with firewalls and secured servers to ensure that information over the internet is encrypted and cannot be intercepted and customer data is protected from unauthorized access.

NFG believes that the language in Chapter 56, as originally written, is broad enough to include the electronic transmission of bills. However, if the Commission decides otherwise, NFG suggests that a blanket waiver permitting electronic billing would be appropriate.

UGI fully supports appropriate revisions to the Chapter 56 regulations to permit electronic billing without the necessity of seeking a waiver from the Commission. UGI notes that in case of a failed e-mail delivery, a paper bill is automatically generated and sent to the customer along with a note that they will be removed from e-billing unless correct e-mail information is provided and five days is added to the payment deadline.

Columbia reports a similar procedure. However, FirstEnergy and PGW differs by declaring that it cannot realistically assure customer privacy or ensure the delivery of e-bills and that the burden of ensuring that e-mail addresses are valid should be placed entirely on the customer, and that the utility should not have to contact the customer to try to find out the correct e-mail address.

PGW suggests that electronic billing provisions must acknowledge the realities of processes for electronic methods of communication. PGW reports that it cannot realistically assure customer privacy or ensure the delivery of e-bills and that the utility should not have to contact the

customer to try to find out the correct e-mail address. PGW claims that it is customers who control and can change e-mail addresses without the knowledge of the utility and that the burden should be placed on the customer to inform the utility of any changes. PGW asks that if the Commission is going to specify cancellation timeframes, it should specify at least one billing cycle instead of specifying "months" since calendar months and billing cycles do not necessarily coincide. PGW also asks the Commission to consider expanding electronic notification options to include all notices, such as termination notices, by e-mail through the e-billing process.

EAP agrees that the Chapter 56 rulemaking process provided a satisfactory vehicle for addressing electronic billing and further agrees that certain protections should be in place, such as voluntary participation, a visual format that mirrors the paper bill including messages, bill inserts, assurance of customer privacy, etc. EAP disagrees, however, with § 56.11(b)(1) because this proposed provision goes against the rationale of providing electronic billing services. A provision that was put into place to streamline the billing process for both the customer and the utility has now essentially doubled the processes and costs. EAP members estimate that at current electronic billing enrollment levels, requiring utilities to provide the additional paper bill to its electronic billing customers will range anywhere from thousands to hundreds of thousands of dollars per utility each year.

United notes that there are many positives to electronic billing from a customer service, environmental and cost perspective. United encourages companies to choose electronic billing partners carefully and ensure that they have integrated solid security measures and also visible and real-time tracking mechanisms.

York agrees with the Commission's comments that electronic billing and payment will save customers and utilities time and expense and create significant environmental benefits. If a customer elects electronic billing, York will provide all of the text that is currently printed on a water bill plus a link to view any bill stuffers. York believes that the shift towards electronic billing will continue until it is the norm and paper bills are the exception.

Action Alliance supports the recommendations of the OCA with regard to electronic billing and payment options and incorporates by reference those proposed regulations that reflect the OCA's recommendations. Action Alliance supports the proposed language, at § 56.11(b)(5), which requires that electronic bills include the option for the customer to contribute to the utility's hardship fund, so that such important contributions to assist low-income customers can be maximized.

PULP recommends modifying § 56.11(b)(1) which states that a customer must provide the utility with one month's notice if the customer wants to revert from electronic billing back to paper billing because there may be circumstances that prevent a customer from giving one month's notice. For example, if the internet service provider or the provider of e-mail services goes

bankrupt, out of business, or experiences unforeseen technical difficulties, the customer will not have the time to provide one month's notice to the utility.

IRRC raises three issues concerning electronic billing. First, subsection (b)(l) states that a customer must provide the public utility with one month notice to revert to paper billing. Commentators for both public utilities and consumer groups question whether a one month notice is an appropriate amount of time. The Commission should consider adding language suggested by a commentator that the request for paper billing be processed "one billing cycle after the request is made." Second, subsection (b)(5) requires an electronic bill to: "include the option for the customer to contribute to the utility's hardship fund." Does this requirement also apply to paper billing? If not, why is it being added to electronic billing requirements? Finally, Subsection (b)(8) requires the public utility to maintain a "sufficient system security." The Commission should explain this requirement.

Discussion:

Electronic billing and payment hold great promise in increasing customer convenience while lowering costs, in addition to the obvious environmental benefits. It must be implemented in a way that does not impose costly restrictions on the utilities while at the same time protect and assure consumers that these methods are safe and helpful. It is not our intention to specify and regulate every feature in detail of these programs. We recognize that such a level of detail is over-reaching and that such micromanagement can lead to inflexibility and unintended results. This is especially true with evolving technologies, where such over-specificity may discourage innovation.

We believe that it is important that electronic bills contain the same information as paper bills and this includes any bill inserts and newsletters. Again, the point is to encourage the use of these programs by assuring customers that they will be receiving the same information electronically that they have always received on paper. However, we agree with PECO that while we should require the same information on electronic bills, we should not specify a format. As PECO points out, one of the advantages of electronic communication is the technological possibilities of presenting information in new, more interactive and innovative ways. Mandating a set format may well stifle these creative possibilities. We will make a minor revision to paragraph (3) to remove a redundant word; "required."

We agree with Action Alliance that it is critical that, whatever the format, the electronic bill must include an option that the customer can easily utilize to contribute to the utility's hardship fund. These funds rely on customer contributions and are of urgent importance to the customers that need them. Going back to the 1992 PUC report on *Investigation of Uncollectable Balances*, where recommendation 27 (page 31) urged "...all major gas and electric companies' should adopt the 'dollar check-off' provision or a similar provision on utility bills to enable customer to make contributions with minimal effort." This was followed by the General Assembly's

enactment of the Natural Gas Choice and Competition Act in 1999 which included the provision at 66 Pa. C.S.A. § 2205(c)(6):

> *(6) Natural gas distribution companies and natural gas suppliers shall take reasonable steps to allow retail gas customers to contribute via their bill to hardship energy funds which benefit low-income residential retail gas consumers.*

In addition, this is a component of some of the major utility's universal service plans that are filed with and approved by the Commission. For example, PPL's *Universal Service and Energy Conservation Plan For the Period (2008 – 2010)* includes this provision:

> *Begun in March 1983, Operation HELP was one of the first utility-sponsored hardship funds in the nation. Through its annual promotional campaign, PPL Electric encourages customers to contribute by adding an extra $1, $2, or $5 to their monthly electric bill or by sending in onetime, lump-sum checks. Over 20,000 customers give to Operation HELP via their electric bill payments. PPL Electric's customer service system has the flexibility to allow customers to give any amount to the program and to choose a specific period of time (over the winter months).*

Another example is *PECO Energy Company Universal Services Three-Year Plan, 2007 to 2009, February 2009 Revision, Revised to Reflect the Settlements Approved by the Commission on October 29, 2008 in Docket No. R-2008-2028394 and on December 23, 2008 in Docket No. M-00061945* which includes this provision:

> *The Matching Energy Assistance Fund (MEAF) is PECO's hardship fund program. There are two components, MEAF contributors and MEAF grants. Contributors – Ratepayers can pledge donations through monthly bill payment, or a one time donation.*
>
> *Monthly Bill Check-Off and bill inserts options - Beginning in the 4th quarter of 2006, customers will have the ability to contribute to MEAF through a check-off box on their monthly bill stub.*

However, to address the concerns expressed by PPL and IRRC, we will revise the proposed regulation to specify that a hardship fund contribution feature only needs to be provided if the utility has a hardship fund and collects contributions through regular customer billings.

We agree with EAP, NFG, Columbia, FirstEnergy and PGW in that we should not require a utility to provide redundant paper and electronic bills to the customer at the same time. We are not convinced that requiring duplicate bills is of any substantial benefit especially since we propose requiring both electronic and paper bills to provide the same information. Requiring such redundancy may defeat some of the purposes of electronic bills, such as the environmental benefits and cost savings.

We commend utilities such as UGI and Columbia that have put in place procedures to address instances where an e-mail delivery fails. We believe that if a utility is going to rely on billing a customer electronically, failed e-mails should not be ignored, especially since, as noted by PULP, not all failures are necessarily the fault of a customer. While we agree that failed delivery of an e-mail cannot be ignored and should be addressed by the utility, we will not require a specific method or procedure for handling such. The evolving technologies and differences in each utilities program make the mandating of a specific procedure problematic. However, utilities should be directed to have some procedure in place and for guidance may want to look at the procedures utilized by UGI and Columbia that are discussed in their comments.

PPL, PGW and UGI reported that customers are free to cancel electronic billing at anytime. We believe that this is an important feature that will encourage participation in these programs. However, we agree that a cancellation should require advance notice of at least one billing cycle as opposed to one calendar month because as parties like Columbia and PGW point out, billing cycles do not necessarily coincide with calendar months. As for the amount of notice that must be provided prior to cancellation, parties such as PULP suggest the proposed period is too much; while some parties suggest it may be too little notice. We believe that a "one billing cycle" period is a reasonable middle ground.

To further reinforce the message that security is important, especially in the context of heightened concerns with identity theft and data theft, we believe we should remind utilities of their obligations to secure their systems. However, we should avoid specifying the precise methods that a utility should employ in protecting customer information from unauthorized access; ever-changing technology would make this impossible and might inhibit new and innovative security arrangements. We agree with Phillips in their comments responding to the proposed § 56.25 that we should simply indicate that utilities should employ "all reasonable measures to protect customer information from unauthorized disclosure and to prevent access to customer account records by persons who are not properly authorized to have such access."

PGW suggests that the Commission permit the electronic transmission of other notices, such as termination notices. We see merit in allowing this as to accomadate customer's who may be more comfortable with electronic means of communication, and in keeping with our intent to update these regulations as to accomadate technological advances. However, we believe this should only be allowed with the prior consent of the customer, and that the electronic notices will complement the normal notice process - not replace it. As anyone with experience with e-mail knows, an e-mail inbox can easily be filled with a variety of spam and other unsolicited e-mail. An important notice from a utility can be easily overlooked. As such, we believe providing termination notices through the traditional methods should continue, with the electronic termination notice augmenting the procedure, not replacing it.

§ 56.12. Meter reading; estimated billing; customer readings.

Allegheny Power states that § 56.12(2)(i) be amended to accommodate electronic and telephonic methods for submitting meter readings in lieu of paper postcards.

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

PULP recommends the Commission amend the final sentence of Section 56.12(5)(i), by replacing the word "occupant" with "applicant or customer." PULP explains that given that the word "occupant" has taken on a specific meaning under these regulations, that word choice may now be inapt and confusing.

Columbia notes that the proposed definition of "AMR (Automatic meter reading)" in § 56.2 correctly excludes remote reading devices. However, Columbia thinks that the proposed additional language that would refer to AMRs in 56.12(5) confuses that distinction. While the proposed language appears to be designed to reinforce that AMR reading are actual readings, Columbia thinks the way the language is inserted may be misconstrued as an indication that 56.12(5) applies to AMR readings. If the definition of AMR in 56.2 were to be amended as suggested above in these comments, no reference to AMRs would be necessary in 56.12(5).

Allegheny Power suggests language requiring mandatory 12-month stay in and stay out provisions to prevent customers from participating in budget billing only when their budget bill amounts are less than their actual monthly usage amounts.

FirstEnergy does not support the provision requiring amortization of any anniversary bill amounts exceeding $25. According to FirstEnergy, if the customer is already on a payment agreement, this provision would require adding a second payment agreement onto the account; presenting problematic and expensive programming and bill presentment changes. Moreover, this could also be inconsistent with Section 1405(d) of Chapter 14 which prohibits the Commission from ordering the establishment of a second payment agreement.

PPL generally agrees with the Commission's suggested revision, but suggests adding language indicating that a reconciliation amount exceeding $25 shall, depending upon the amount and the customer's ability to pay, be amortized over a 3-12 month period at the discretion of the utility.

Columbia opposes the proposed changes to 56.12(7) that would require any reconciliation amount under budget billing that exceeds $25 to be amortized over a three to twelve month period. Columbia contends that the proposed changes conflict with the policies of Chapter 14, explaining that the 3-12 month amortization requirement will result in public utilities incurring additional expenses in the form of carrying costs which must be financed through borrowed money, and which will ultimately be passed onto other customers who should not be required to

subsidize unnecessary payment plans. Columbia also finds no support anywhere in Chapter 14 to the proposed additional language in 56.12(7) that would require payment agreements for heating customers to be based upon equal monthly billing. Finally, Columbia submits that the reference to "payment agreements" has no place in a subsection that addresses budgets.

NFG suggests changing "and" to "or" in the first sentence of §56.12(7). NFG also requests that the amortization period be changed to no longer than 9 months and that amortization be made only necessary at the request of a customer.

PGW believes that the proposed requirement to amortize budget reconciliation amounts in §56.12(7) is contrary to Chapter 14's prohibition on the Commission from ordering second payment agreements because many of PGW's customers on budget billing have already received and broken payment agreements. Without waiving this position, PGW is amenable to setting a reasonable dollar amount over which a reconciliation amount could be amortized if the customer requests such. PGW suggests that amounts between $100 and $300 could be amortized over 6 months with amounts in excess of $300 amortized over 12 months. However, PGW asserts that the customer should have the option to pay the bill in full.

Phillips recommends that the minimum budget billing reconciliation amount requiring amortization be increased from $25 to $100 so as to avoid logistic and administrative burdens of having to monitor transactions involving small amounts.

Concerning § 56.12(7), EAP believes that the Commission, despite statutory language, has extended repayment periods or granted second or subsequent payment agreements to many customers who defaulted on previous payments. EAP explains that by ordering a utility to defer payment, for example, for 12 months for a customer with a gross monthly household income of 300% of the federal poverty level, the Commission overlooks Section 1405(b)(4) which provides that the maximum period of time is only 6 months. EAP submits that allowing a customer to make payment of $26 over a 12-month period simply delays full payment unnecessarily, thereby compounding a utility's cash flow difficulties. Moreover, to comply with this regulation, EAP believes that the utilities would need to increase programming and other collection tracking, which comes at a cost, all contrary to the spirit of Chapter 14.

Action Alliance supports the proposed requirement, at § 56.12(7), that reconciliation of budget bills not cause sudden jumps in payment requirements, which would defeat the purpose of budget billing to provide equal monthly bills. Action Alliance requests that the term "payment agreements" in the new language should be changed to a different term such as "amortization" to avoid confusion with the Chapter 14 defined term "payment agreement" that can count toward the maximum number of payment agreements that a customer may receive for a particular balance.

PULP supports the Commission's choice in Section 56.12(7) to require year-round, rolling enrollment into the budget billing program, where this means that at no time in the year would a

customer be denied enrollment into the program. PULP explains that budget billing enables a customer to have fairly consistent bills each month of the year, reducing the billing volatility caused by seasonal changes in energy use and builds a consistent payment history.

IRRC has three concerns with paragraph (7) which specifically addresses the budget billing process. First, the proposed paragraph changes the billing mechanism from "equal monthly" to "budget billing," yet the Commission does not explain the reason for the change. As a result, many commentators expressed concerns that changing the method was inappropriate. Second, IRRC explains that paragraph (7) allows a public utility, as part of budget billing, to amortize over a 3 to 12-month period any amount exceeding $25 resulting from reconciliation. IRRC questions how the Commission determined that both the amount triggering amortization and the time periods were reasonable. Finally, IRRC questions the need for the last sentence of paragraph (7) that states that: "payment agreements for heating customers shall be based upon equal monthly billing."

Discussion:

We agree with Allegheny Power and have proposed allowing electronic and telephonic methods to comply with § 56.12(2). We disagree with NFG however and do not believe it is appropriate to expand the number of consecutive months that estimated bills would be permitted. We note that the current regulations require only one utility-obtained meter reading annually in cases where meter access is an issue. Given the advances in AMR and remote metering, we would expect the instances of meter access problems and estimated bills to diminish over time; not increase. Therefore, loosening these already lenient requirements is not needed at this time. We also disagree with PULP that the word "occupant" in the final sentence of § 56.12(5)(i) is a possible problem. The new "occupant" may not necessarily be a "customer" or an "applicant" and that person's status as such is not of any relevance in providing access to the utility for the purposes of obtaining a meter reading. We agree with Columbia in that with the new definition of "AMR – Automatic Meter Reading" at § 56.2, the inclusion of AMR language in § 56.12(5) is redundant and no longer needed. And in keeping with our intent to modernize the regulations, we will remove the references to "postcards" from paragraph (ii) as to accommodate other, technology-driven methods of submitting customer meter-readings.

Most of the comments about this section were specifically related to § 56.12(7), commonly referred to as the budget billing rules. Budget billing has been the subject of previous Commission proceedings with many stemming from a Motion of then Vice Chairman Cawley in *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing,* M - 00051925, (November 10, 2005). The Motion described the importance of these programs to both consumers and utilities:

> "*...and budget billing has become a key tool for customers to mitigate spikes in utility bills and for utilities to manage account receivables. Now is the time to ensure that*

utility budget billing programs optimize both the customers' and companies' ability to manage higher prices this winter…"

The Motion also asked interested parties to comment as to what should be the elements of an acceptable budget billing program. Based on the comments received, the Commission issued two subsequent orders; *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing*. M-00051925 (June 1, 2006), and *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing,* M-00051925 (November 9, 2006). In the June 1, 2006 Order, the Commission declared that an acceptable budget billing program should include the following elements:

- Budget billing must be available, on a rolling enrollment basis, to all utility customers with residential end use irrespective of the rate the account is billed.
- Based on well-established case history, budget billing must be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility.
- Budget accounts are to be routinely monitored and adjusted at least three times per year, consistent with the Commission's regulations to prevent over or under collections to the extent possible.
- Natural gas utilities should adjust budget bills at least four times per year, in conjunction with their Purchased Gas Cost (PGC) rate adjustments.
- The budget billing payment period must be a minimum of 12 months, with no annual true-ups occurring during the winter heating season.
- If the true-up amount is less than 100% of the budget amount, customers should be given 3-6 months to pay off that amount.
- If the true-up amount is 100% or more of the budget amount, customers should be given 12 months to pay off that amount.
- Any tariff provision that is inconsistent with the Commission's interpretation of its regulation is deemed null and void.

The Commission concluded the Order by stating that:

> "By allowing rolling enrollment in budget billing programs and mandating adjustments to the budget billing amount at least three times per year, we reduce the likelihood of having large true-ups at the end of the budget year. Given the utilities' obligation to review budget billing amounts 3-4 times per year, large true-ups should be the exception. By doing this we are providing a way for companies to smooth customer bills and decrease

> their exposure to uncollectible expenses. We strongly encourage utilities that do not presently have these elements in place to work with BCS to ensure that their new system contains the elements that comply with the letter and intent of this Final Interpretive Order. The Commission will incorporate this Final Interpretive Order in the next Chapter 56 rulemaking."

However, this was not the Commission's final declaration on this subject. In response to petitions for reconsideration filed by various parties, the Commission followed up with additional guidance and clarification in a November 9, 2006 Order. Among other things, the Commission deferred to the rulemaking process some of the interpretational issues raised by some parties:

> PPL argues that the prohibition against winter true-ups is overly broad since it includes all customers, not just heating customers. We agree. In the discussion section of the Final Interpretive Order, we stated that two commentators found winter true-ups for heating customers undesirable during the winter. However, when we enumerated the list of essential elements for an acceptable budget billing program, we did not limit that element to heating customers. Moreover, as explained by PPL, if the budget billing amount is reviewed and adjusted periodically, the true-up amount should not be substantial. Under these circumstances, we shall delete the prohibition on winter true-ups from the interpretive rule. Nevertheless, we reiterate what was stated in our Final Interpretive Order. We expect utilities to exercise good judgment in dealing with these situations, and to manage their budget billing programs in a manner designed to avoid large winter true-ups for heating customers.
>
> We also agree with the commentators that there appears to be a conflict between Section 56.12(7) and the enumerated element that the budget billing period "must be a minimum period of 12 months..." In addition, NFG stated that some of its customers are satisfied with a 10 month budget billing program that allows customers to experience two months of lower current bills during the summer months. As stated in our Final Interpretive Order, the purpose of that order was to provide guidance. Since our intent was not to change or modify the current regulation, we will modify the fifth bullet on page 19 of our Final Interpretive Order to more closely track the existing regulation. Accordingly, we do not intend to prohibit 10 or 11 month budget billing programs that suit the needs of some customers and utilities.
>
> Finally, we agree with NFG and Columbia that bullet numbers 6 and 7, pertaining to how long customers should be given to pay off true-up amounts, raise interpretational issues with Chapter 14 payment arrangement limitations. The purpose of our Final Interpretive Order was to provide guidance as to how budget billing programs are managed, not to resolve interpretational issues that will be the subject of the rulemaking required at Section 6 of Act 201 to amend Chapter 56. Accordingly, we will delete bullet numbers 6

and 7 from these guidelines. However, we emphasize that we expect utilities to exercise good judgment in dealing with true-up amounts in their budget billing programs. The remaining elements enumerated are guidelines on how to set up budget billing programs and what common elements we expect to see in budget billing programs. These guidelines should have no effect on customer assistance programs and existing payment agreements. Moreover, the use of "should" for bullet numbers 4-7 is intended to communicate what the Commission would like to see practiced by utilities. Nevertheless, the elements listed as acceptable budget billing components are guidelines, not a mandate. As stated in our Final Interpretive Order the goal of budget billing is to allow new customers, and existing customers not previously enrolled in a budget billing program, to obtain the maximum benefits from the program, while benefiting utilities by reducing their exposure to uncollectible expenses. A properly designed and managed budget billing program will achieve these goals and benefit both the customer and the utility.

The Commission then modified the list of elements that an acceptable budget billing program should include:

- Budget billing must be available, on a rolling enrollment basis, to all utility customers with residential end use irrespective of the rate the account is billed.
- Based on well-established case history, budget billing should be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility.
- Budget accounts are to be routinely monitored and adjusted at least three times per year, consistent with the Commission's regulations to prevent over or under collections to the extent possible.
- Natural gas utilities should adjust budget bills as often as necessary, but not less than three times per year. Rate changes such as increases in the Purchased Gas Cost (PGC) are examples of indicators that budgets may need adjustment.
- The budget billing payment period should average service costs over a 10, 11 or 12 month period.
- Any tariff provision that is inconsistent with the Commission's interpretation of its regulation is deemed null and void.

As noted above, the Commission in 2006 declared that budget billing would be addressed in this rulemaking; and that the interpretational issues concerning Chapter 14, specifically Section 1405(d) would also be addressed.

We disagree with EAP, FirstEnergy and Columbia that the Commission's proposal to require the amortization of reconciliation amounts conflicts with Chapter 14's limits on Commission – mandated payment agreements found in Section 1405(d). A "true-up" or "reconciliation" amount results when a utility, at the end of the budget billing "year" reconciles the customer's billed amount with the amount of service the customer actually used. This could be a positive amount (meaning the customer has a credit) or a negative amount (meaning that the customer will be billed to recover the difference). If the utility has been properly reviewing the account throughout the budget year, large reconciliation amounts should be rare. However, it can occur, especially with new customers, customers who are recent budget enrollees, or customers with highly erratic usage patterns. Such large reconciliation amounts defeat the purpose of budget billing, which is to provide the customer with a somewhat consistent, predictable bill amount that will facilitate regular payment; thus reducing a utility's uncollectible debt problems. When we discuss amortization of such bills, we are instructing the utility to adjust the future budget billing amounts to cover not only current average usage, but also to include a portion of the reconciliation amount from the previous budget year.

Frankly, Chapter 14's limits also do not apply because we are not talking about past-due charges. The definition of *payment agreement* in Chapter 14 at Section 1403 specifically refers to the amortization of an "unpaid balance of the account." In the Commission's proposal, we are not discussing "unpaid" amounts; in fact, we are discussing amounts that the customer has not even been billed for. Thus, we cannot accuse a customer of having an "unpaid balance" when in reality the customer has never been billed for the balance in question. If we were to accept EAP's arguments concerning Section 1405(d) and unreasonable rate preferences, we would also be acknowledging that budget billing itself is contrary to law and not permissible. Therefore, we find that these amortization requirements are not "payment agreements," and we agree with Action Alliance in that we should avoid using the term "payment agreement" to describe these amortizations.

In any event, having said the above, we do find merit in the comments of PPL, NFG, PGW and Phillips in that the Commission's amortization proposal should be modified to reflect a more reasonable dollar trigger amount. We find a $100 trigger amount more reasonable than the proposed $25 amount, and also that this should not be an absolute requirement; customers should have the option of paying in full if so desired. Amounts between $100 and $300 can be amortized over 6 months; with amounts exceeding $300 amortized over at least a year. We will also include language permitting shorter amortization periods if the customer requests such. This amortization schedule should not result in payments that are overly burdensome for the customer; while providing a reasonable timeframe for the utility to collect on the unbilled charges.

This amortization requirement is intended to encourage customer participation in budget billing programs. For this same reason, we must reject Allegheny Power's suggestions about mandatory stay-in/stay-out provisions. We believe that such provisions would discourage customers from

participating in budget billing programs. Regarding Allegheny Power's concerns with customers leaving budget billing when their actual usage is less than their monthly budget amount, we note that there is nothing to prevent a utility in this situation from removing the customer from budget billing and then billing the customer for unpaid actual usage. The above discussed amortization requirement only applies to customer's at the end of their budget year. To further make these programs more consumer-friendly, we are proposing changing the name of this subsection from *Equal Monthly Billing* to *Budget Billing*. Budget billing is the term that utilities and consumers commonly use to discuss these programs and the regulatory language should reflect this. This is merely a change in the terminology; it is not a change in the methodology used to calculate budget billing amounts.

Finally, we agree with Columbia and IRRC that the directive that "payment agreements for heating shall be based upon equal monthly billing" would be better placed elsewhere in the regulations. We propose placing it in § 56.97, which addresses the negotiation of payment agreements with customers facing the termination of service. This requirement dates back to the Commission's order in *Mary Frayne v. PECO Energy Company,* C-20029005 (July 17, 2003) where the Commission declared (page 7):

> "Budget billing should be the norm for all payment arrangements rather than current billing. Budget billing was designed to aid customers who are experiencing financial difficulties by ensuring a level, predictable payment amount from month to month. The level payment amount will better enable the customer to plan for his or her utility bills and budget accordingly. Therefore, customers should not be provided with the option of choosing current billing when budget billing is a more beneficial option."

This guidance was again reiterated in the June 1, 2006 and November 6, 2006 budget billing orders discussed above where the Commission twice declared that "[b]ased on well-established case history, budget billing should be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility." In conclusion, including this guidance in the regulations is simply codifying a well-established Commission expectation that has been the subject of the previously mentioned Commission formal proceedings.

§ 56.13. Billings for merchandise, appliances and nonrecurring and recurring services.

Phillips asks that this requirement be made clearer by adding the phrase "which requirement shall be satisfied where the charges for nonbasic services appear on lines of the customer bill which are different or separate from those which address basic services" to the end of this proposed section.

The OCA is concerned that while the proposed change in this regulation will allow charges for merchandise, appliances, etc. to appear on the utility bill, 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 based on such charges. The OCA does not support the proposed change because there is nothing in Chapter 14 and no technological advance that would justify the change to the long-standing requirement that these services be billed separately.

IRRC notes that rather than have a separate billing, the proposed regulation would now include miscellaneous merchandise as part of the bill for basic service. According to IRRC, a commentator suggests there is no justification for this change, and that it could unfairly result in termination of service if termination is based on overdue miscellaneous merchandise charges. If a utility is able to terminate a customer's basic service as a result of unpaid miscellaneous merchandise charges, then the Commission should clarify in the final-form regulation that basic service cannot be terminated as a result of unpaid miscellaneous merchandise charges.

Discussion:

The changes proposed by the Commission to this section were intended to reflect the electric and gas bill formal regulations found in the customer information regulations for electric and gas; the relevant portions as follows:

§ 54.4. Bill format for residential and small business customers.

(a) EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement.

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The default service provider will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

(1) EDC charges must appear separately from EGS charges.

(2) Charges for basic services must appear before charges for nonbasic services, and appear distinctly separate.

(3) Customer bills must contain the following charges, if these charges are applicable, and these charges must appear in a distinct section of the bill. The designation or label of each charge as either a basic charge or nonbasic charge appears in parenthesis following the name of the charge. This label of either basic or nonbasic is not required to accompany the name of the charge on the bill.

(i) Generation charges (basic).

(A) Generation charges shall be presented in a standard pricing unit for electricity in actual dollars or cents per kWh, actual average dollars or cents per kWh, kW or other Commission-approved standard pricing unit.

(B) Generation charges shall appear first among the basic charges with one exception. EDCs may place the customer charge first among the basic charges.

(ii) Transmission charges (basic).

(iii) Distribution charges (basic).

(iv) Customer charge or basic charge (charge for basic service in § 56.15 (relating to billing information)) (basic).

(v) Advanced metering charges (basic).

(vi) Transition charges (basic).

(vii) Taxes (comply with § 56.15) (basic).

(viii) Late payment charges (basic).

(ix) Security deposit (basic).

(x) Reconnection fee (basic).

(xi) Itemization of nonbasic charges (nonbasic).

(xii) Overall billing total.

§ 62.74. Bill format for residential and small business customers.

(a) NGS billed prices shall reflect the marketed prices and the disclosure statement prices.

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, and to the extent that the charges are applicable. Duplication of billing for the same or identical charges by both the NGDC and NGS is not permitted.

(1) NGDC charges shall appear separately from NGS charges.

(2) Charges for basic services shall appear before charges for nonbasic services, and appear distinctly separate.

(3) Customer bills shall contain the following charges, if these charges are applicable, and these charges shall appear in a distinct section of the bill. The designation or label of each charge as either a basic charge or nonbasic charge appears in parentheses following the name of the charge. This label of either basic or nonbasic is not required to accompany the name of the charge on the bill.

(i) Commodity charges (basic).

(A) Commodity charges shall be presented in the standard pricing unit for natural gas of the NGDC in actual dollars or cents per standard pricing unit or actual average dollars or cents per standard pricing unit.

(B) Commodity charges shall appear first among the basic charges with one exception. NGDCs may place the customer charge first among the basic charges.

(ii) Distribution charges (basic).

(iii) Customer charge or basic charge (charge for basic service in § 56.15 (relating to billing information)) (basic).

(iv) Gas cost adjustment charges (basic).

(v) Interstate transition cost surcharges (basic).

(vi) Taxes (Comply with § 56.15) (basic).

(vii) Late payment charges (basic).

(viii) Security deposit (basic).

(ix) Reconnection fee (basic).

(x) Itemization of nonbasic charges (nonbasic).

(xi) Overall billing total.

The above cited regulations were promulgated subsequent to the most recent revision of Chapter 56 in 1997, and these regulations clearly permit the billing of nonbasic and basic charges on the same utility bill, as long as the charges are labeled and properly separated. The main reason for the Commission's proposed changes to § 56.13 is to simply update this section and make it consistent with the customer information regulations. We must disagree with the OCA that the requirement that nonbasic charges be billed separately is "long-standing." In fact, this requirement was dispensed with upon the adoption of the above-noted customer information regulations.

We share OCA and IRRC's concerns that termination for nonbasic charges should never be permitted, and have elected to address this in the proposed § 56.83(3) which prohibits termination of service for unpaid "in whole or in part: of nonbasic charges for leased or purchased merchandise, appliances or special services including but not limited to merchandise and appliance installation fees, rental and repair costs; of meter testing fees; of special construction charges; and of other nonrecurring or recurring charges that are not essential to delivery or metering of service, except as provided in this chapter." We believe this provision provides sufficient protection against the termination of essential utility service for nonpayment of nonbasic charges. In addition, we have proposed definitions of both *basic* and *nonbasic* services in the definitions at § 56.2 to help make clear how charges should be classified and to avoid confusion on this point. The definitions reflect the definitions found in the above mentioned customer information regulations with additional language added, per the suggestion of OCA and IRRC, that addresses default service.

§ 56.14. Previously unbilled public utility service.

Duquesne suggests adding language to § 56.14 that would exclude situations involving fraud or theft. Equitable also suggests that theft and fraud be expressly excluded from the proposed four-year rule and that a utility should be permitted to recover the amount previously unbilled without regard to the timeframe. However, PECO understands that as the regulation is currently written and also proposed, neither fraud nor theft are triggering events, and thus not considered make-up bills under § 56.14. PECO supports the Commission proposal to limit make-up bills to four years and the Commission's decision not to mandate a 20 percent discount on such billings.

Columbia opposes the establishment of a four-year limit on make-up bills. Columbia believes that the proposed four-year limit would serve to increase uncollectible accounts and, as such, would conflict with the General Assembly's stated policies in Chapter 14. Furthermore, Pennsylvania statutory law requires utilities to charge the approved rate for services provided, and makes no exception for any vintage of previously unbilled service (66 Pa.C.S. § 1303). Furthermore, Columbia submits that the $50.00 threshold for providing a customer with the option of entering into a payment agreement should be removed. Over a period of four or more prior billing periods, the $50.00 limit will almost always be exceeded. Columbia submits that, absent information that a $50.00 make-up bill would cause undue hardship to a particular customer, a payment agreement for such a low make-up payment is not necessary. Columbia states that the proposed regulation should be amended so that the 50% threshold for excess of the otherwise normal estimated bill should be the only threshold for whether a payment agreement will be made available. NFG also recommends increasing the threshold amount.

Action Alliance supports the Commission's recommendation to retain the obligation to offer an installment arrangement on make-up bills since such an arrangement concerns "unbilled"

amounts, not "billed" amounts, and as such, are not considered a payment agreement in the context of Chapter 14. To avoid confusion, Action Alliance recommends the use of the term "payment agreement" should be avoided in the context of arrangements to pay a make-up bill. Action Alliance proposes use of the term "installment arrangement" for these make-up bill arrangements. Action Alliance also supports retaining the current threshold amounts of 50% of current bills or $50 required for the issuance of make-up bills because the current levels are appropriate and working in an adequate fashion. Any increase in the threshold, and resulting immediate demands for full payment, would impose significant burdens on utility customers, especially on low-income customers. Action Alliance also supports the proposed four-year limitation on make-up bills as it reflects the same restrictions found in other sections of Chapter 56 or Title 66, *i.e.*, § 56.35 (relating to payment of outstanding balance), § 56.202 (record maintenance requirements), and 66 Pa.C.S.A. § 1312 (relating to refunds).

The CAC continues to support the proposal to establish a four-year limit on billings for previously unbilled service. CAC also recommends, consistent with its position in the NOPR, that arrangements to pay previously unbilled utility service not be subject to the constraints and limitations which apply under Chapter 14 "payment agreements". The CAC continues to support this approach and further supports the Commission determination to retain the current threshold amounts of 50% of the current bills or $50 required for the issuance of make-up bills. According to CAC, an increase above current levels would pose significant burdens on many utility customers, most particularly on low-income consumers.

The OCA supports the Commission's determination to impose the four-year limit on make-up bills under § 56.14 and to clearly state that arrangements to pay make-up bills are not considered "payment agreements" under Chapter 14. OCA argues that the four-year limit is a long-standing practice and is consistent with the four-year limit in Section 1312 and there is no reason under Chapter 14 to modify this practice. However, to avoid any confusion when considering whether the customer has received a payment agreement from the Commission under Chapter 14, the OCA recommends that a different term, like "payment plan" be used in discussing payment arrangements on make-up bills.

PULP supports proposed § 56.14's retention of the current threshold amounts required to trigger the issuance of make-up bills. The current levels are appropriate and presently working in an adequate fashion; any increase would pose significant burdens on many utility customers, most particularly on low-income consumers. PULP also supports the Commission's recognition that Chapter 14 does not apply to § 56.14 make-up bills. PULP submits that the definition of payment agreements contained in §1403 relates specifically to amounts previously billed to the consumer which have gone unpaid; make-up bills, not having been billed to the consumer, fall outside the parameters of Chapter 14.

PULP also requests that the Commission eliminate references to the term "payment agreement" in § 56.14. The proposed definition of payment agreement contained in § 56.2 states that a

payment agreement refers to a "liability for billed service"; however, § 56.14 deals with previously unbilled service. Therefore, it seems inappropriate and potentially confusing to use the term "payment agreement" to refer to the repayment methodology of § 56.14.

IRRC recognizes that this section allows for a utility to render a make-up bill for previously unbilled public utility service which accrued within the last four years. However, IRRC notes that Section 1303 appears to require utilities to charge the approved (tariff) rates for services provided.

Discussion:

First we must address the comments of Duquesne and Equitable that request an exception be inserted into this provision exempting instances of fraud and theft. This is not needed because as PECO correctly points out, the regulation as it is currently written and also proposed does not include fraud and theft as triggering events. This means a bill seeking to recover amounts that were previously unbilled because of theft or fraud have never been considered make-up bills under § 56.14 and this will continue to be the case under the proposed revisions to this section.

We must also reject Columbia and NFG's suggestion to raise the triggering dollar amounts found in this section. As Action Alliance and PULP point out, the current triggering amounts are appropriate and currently working adequately and any increase may pose burdens on many utility consumers, especially low-income consumers.

We agree with CAC, OCA, Action Alliance and PULP that the payment agreements mentioned in this section are not payment agreements as defined by Section 1403. The definition of *payment agreement* at Section 1403 clearly refers to an "unpaid balance" and § 56.14 concerns charges that have not even been billed as yet, let alone unpaid. As a result, these arrangements entered into under § 56.14 should not be counted toward the payment agreement restrictions and standards found in Sections 1405(d) and 1407(c). To avoid confusion on this point, we agree with CAC, OCA, Action Alliance and PULP that we should refrain from using the term *payment agreement* in this section and instead simply refer to amortization.

Concerning the proposed four-year limit on make-up bills issued under this section, except for Columbia, the four-year limit on make-up bills is not opposed. As emphasized by the Active Alliance, this limit of four years reflects the same restrictions found in other sections of the Public Utility Code and Chapter 56 regulations. The General Assembly under Section 1312 of the Public Utility Code determined that when a utility had to pay back or refund excess amounts, the period that this covers is also limited to the previous four years. This four-year time period is also consistent with the time limitations for civil actions, proceedings and other matters generally. 42 Pa. C.S.A. § 5525. Furthermore, the Commission's regulations have a long-standing practice of requiring payment of outstanding residential accounts with the utility that have also accrued within the past four-year period. Moreover, the Commission's record keeping

regulations at § 56.202 require a utility to preserve written or recorded disputes and complaints for a minimum of four years.

Finally, in 2004 the Commission addressed the issue of whether there should be a time limit on make-up bills and what is the appropriate period. In *Roderick Berry v. Philadelphia Gas Works*, F-01184412 (April 15, 2004), Pages 8-9, the Commission made the following disposition on the issue:

> We also must address the appropriate period for the make-up bill, if any is found to be warranted. The ALJ found that pursuant to Section 3314(a) of the Code, 66 Pa.C.S. § 3314(a), the Commission's statute of limitations is three (3) years from the date at which liability arose. (I.D. at 5). However, that is not the proper timeframe for make-up billing. In *Angie's Bar v. Duquesne Light Company*, 72 Pa. PUC 213, 1990 Pa. LEXUS 4 (1990), (*Angie's Bar*) we stated the following on the issue of make-up billing generally:
>
> > Section 1312 of the Public Utility Code permits ratepayers to seek rate refunds when certain findings are made, up to a four-year past period measured from the date that the improper billing was discovered. Parity and equity warrant that a utility should likewise be limited to a four-year past period for recoupment of under billings. ...*Accordingly, we shall limit backbillings to a four-year period in cases where the customer has no culpability*, and as such, Duquesne, in this proceeding, is permitted to backbill the Complainant for estimated unmetered usage for a period of April 10, 1982 to May 28, 1986.
>
> 72 Pa. PUC 217; 1990 Pa. PUC LEXIS 12-13. (Emphasis added). (Footnote omitted)

The Commission continued its analysis noting that prior decisions provide for a four-year period where "theft of service or other culpable acts" did not lead to the under billing. *Roderick Berry* at page 9.

As indicated in our discussion, the issue does not involve a determination of the appropriate tariff rate. The issue involves a resolution of the appropriate period for the make-up bill or the length of time a utility can go for recoupment of under billings. Therefore, the adherence to tariff requirement under Section 1303 is not relevant as we are not addressing the level of rates the utility is charging. We are merely addressing how far back a utility may charge for unbilled utility service. Quite the opposite, with respect to increasing uncollectible accounts, adopting a regulation that encourages a utility to limit the size of a make-up bill balance can only improve collections.

We will also remove the vague term "review" in paragraph (1) and replace it with the more specific "explain" since an explanation is what the customer needs when a make-up bill is received.

§ 56.15. Billing Information.

In this age of electronic billing and reduction in local business offices, Equitable suggests revising § 56.15(12) to specify that a rate schedule and an explanation of how to verify the accuracy of a bill is available on the utility's website or by calling the utility.

PULP submits for the Commission's consideration two minor clarifications to this section by replacing "or complaint" with "or dispute" in subsection (11) and adding "and online at the public utility's website in an easily accessible location" to the end of subsection (12).

Discussion:

We find merit in Equitable's and PULP's suggestion that paragraph (12) should include posting information on a website. This will improve public access to this information especially given that most utilities do not have local offices in every community. However, we do not see a need to change "complaint" with "dispute" since this is long-standing language has not caused any difficulties or confusion that we are aware of. "Dispute" is also a term that is specifically defined in these regulations and is narrower than the more generic term "complaint." For the purposes of this subsection, which is very general, the more generic reference is appropriate.

No party raised any serious concerns with proposed paragraph (14) and we propose keeping this language as proposed. The intent of paragraph (14) is to refer electric and gas utilities to the bill format regulations found in the customer information regulations that were promulgated subsequent to the most recent revision of Chapter 56. However, we will remove the proposed paragraph (15) that refers all utilities to the plain language guidelines that include some bill format guidance. We are removing this language because it may be inappropriate to reference non-binding guidelines in binding regulations.

§ 56.16. Transfer of accounts.

Allegheny Power, Duquesne, Equitable, FirstEnergy and PGW believe that § 56.16(d) should be rewritten to state that "In the event of a termination of service to a residential customer, a public utility may transfer to the account of a third-party guarantor the entire unpaid balance of the customer" to reflect the provisions of § 1404(b) and § 56.33. PPL also recommends rewording this section or just deleting § 56.16(d) altogether.

PECO believes that this provision could be used by customers facing termination who request discontinuance simply to be removed from billing. PECO believes that the Commission does not intend this result and suggests adding to the proposed section language that will enable a utility to hold the customer responsible for any charges accumulated after the discontinuance date if the customer still benefited from the service by remaining at the property past the discontinuance date.

Columbia believes that the proposed new language to § 56.16 is ill-advised because it will create additional costs to be borne by ratepayers, with no benefit to them or to the affected public utility. For example, in rental properties where rolling tenancies are common, it can be unwieldy if not impossible in some cases, to calculate an 'after-the-fact' final bill accurately. Moreover, the proposed language encourages user without contract situations because it removes the incentive of a former tenant (who, without this proposed change would continue to be billed) to arrange for meter access after the former tenant has vacated.

Equitable recommends revising the proposed section to specify that in "the absence of a notice or meter access, the customer shall be responsible for services rendered until the meter is secured or service is transferred to another party" because there are many situations when the utility is not provided access to discontinue the service. The proposed regulation also does not address who is responsible for the utility service consumed during the period between the time the customer vacates a premises and the utility is provided access.

Dominion reports that it is not uncommon to find situations where there is a significant difference between the estimated reading of the final bill and the next actual reading the utility obtains. Because the utility must then allocate the usage between customers, Dominion suggests deleting the phrase "and can determine the actual consumption used by the customer" as to eliminate any question about the utility's right to adjust the final bill even if that actual reading does not determine with certainty the customer's actual consumption.

NFG supports the proposed changes to § 56.16(a).

PGW claims that customers who request discontinuance often fail to show up for an appointment for physical discontinuance. PGW requests that this proposed language be revised to specify that a customer who fails to attend an appointment should be held responsible until meter access is provided. If the utility does not attempt to access the meter or the customer cannot provide access, then the account should be discontinued based on an estimated meter reading, subject to adjustment once access is obtained.

EAP notes that under §56.16(a), the customer is only required to notify the utility, at least seven days in advance, "specifying the date on which it is desired that service be discontinued." EAP believes that the proposed regulation is silent on who is responsible for the utility service consumed during the period between the time the customer vacated the premises and the utility is provided access. EAP recommends changing §56.16(a) to require the departing customer to provide access to the utility meter and that in the absence of a notice or meter access, the customer shall be responsible for services rendered until the meter is secured or service is transferred to another party. EAP also notes that under §56.16(d), the unpaid balance "which is equivalent to the cash deposit requirement" may be transferred to the account of a third party guarantor. EAP thinks §56.16(d) should be changed to be consistent with Section 1404(b) to

specify that in the event of a termination of service to a residential customer, a public utility may transfer all missed payments owed to the public utility to the account of a third-party guarantor.

The OCA agrees with the proposed modifications to this regulation, but proposes additional language to subsection (a) to clarify the public utility's obligation to obtain a final meter read. The OCA proposes to add a qualification to the regulation specifying that only "after reasonable attempts to obtain" meter access should the service be discontinued based on an estimated reading.

PULP recommends the Commission include an exception to the rule in this section. For example, where a victim of domestic violence is fleeing her abuser, she will clearly and understandably not be of the mindset to notify the utility of the desire to discontinue service. Making this notification might draw the abuser's attention and actually place the victim in physical danger. There are also several other reasonable situations that could justify affording an exception to this rule: in association with an unlawful self-help eviction by the landlord where an evicted tenant may not be able to provide proper notice; in a situation of fire or other emergency where a customer may inadvertently fail to provide sufficient notice; in situations of a disabling illness requiring immediate hospitalization or movement without eventual return to the premises. Given these likely possibilities, PULP recommends that the Commission carve out an exception to this rule that allows an individual to provide good cause to avoid liability for service used after that individual's departure.

IRRC notes that this section describes billing procedures for account transfers and subsection (d) addresses transfers from terminated residential customers to third-party guarantors. However, this subsection states that the transfer may be "any portion of the unpaid balance which is equivalent to the cash deposit requirements of the customer." A commentator suggested that this language is inconsistent not only with 66 Pa.C.S. §1404(b), but also with the proposed language in Section 56.33(2)(ii) of the regulation, which both require the guarantor to be responsible for *all* missed payments. For purposes of consistency not only with the statute but also within the regulation itself, IRRC states that "unpaid balances" should be replaced with "missed payments."

Discussion:

The Commission proposed the revisions to paragraph (a) to address situations where the utility does not obtain a final meter reading to close and bill an account. Many of the utility commentators framed this issue from the perspective of a customer failing to provide access, but did not address situations where a utility may miss an appointment with a departing customer. While probably not a common occurrence, emergencies and other contingencies do cause utilities to miss some pre-scheduled appointments. However, it does leave the departing customer with a problem; one that none of the utility commentators fully addressed. Hopefully, while incidences of this nature should diminish in the future as utilities move toward automated

metering, it is still a common enough occurrence that we believe it needs to be addressed in regulation.

The Commission has formally addressed this issue in the *Petition of Equitable Gas Company for Appeal From Staff Action Pursuant to 52 Pa. Code § 5.44 Regarding Discontinuance of Service and Meter Access*, Docket No. P-00011888, (March 14, 2002). The proposed revisions to this section simply codify the Commission's expectations as expressed in this final order. On page 6 of this Order, the Commission declared:

> "We are unpersuaded by Equitable's assertions that our interpretation here today will adversely affect the utilities and inure upon them additional costs which are beyond them to control. To begin with, we emphasize that we are not abdicating the responsibility of the ratepayer to provide proper notice to the utility for discontinuance, or their obligation to pay a final estimated bill where access to the meter is not provided within a reasonable time. Such a result would be inconsistent with general principles of equity.
>
> Moreover, Equitable retains the ability to render a reconciled bill when an actual final reading occurs and indicates that the estimated final bill was in error. Alternatively, the utility company is in the position to take additional measure to obtain a final meter read even if the initial attempts are unsuccessful."

No party in the instant proceeding has produced an argument that would cause us to change our previous position on this matter. It is simply not reasonable to expect an individual, who no longer owns the residence or no longer has a lease for the residence, to provide access to said residence. There may also be tenants who cannot provide access to a utility meter, even if they are still residing in the residence if the meter access is controlled by the property owner.

Many of the suggestions and arguments presented by utility commentators, such as PECO's, that would allow them to leave service on and continue to bill for the service would serve simply to facilitate the practice of "soft offs" – the questionable practice of leaving service physically active at a location without a current customer of record. While we are aware that several utilities engage in this practice and present it as a convenient and cost-saving procedure, the Commission has traditionally been skeptical of the practice. In the Commission's June 5, 2005 *Chapter 14 Implementation – Petitions of the Energy Association and the Philadelphia Gas Works for Clarification and/or Reconsideration of the Implementation Order* (Docket M-00041802 F0002), the Commission noted as follows:

> "We submit that EAP's perspective is extremely narrow on this issue. Although EAP asserts that the soft "off" practice reduces costs to a utility's customer base, the Commission is unaware, and it has not been brought to our attention, of any utility study that shows that the savings associated with soft "off" practices offset the aggregate usage and financial loss that can and does occur between the date of a soft "off" and the date on which the utility discovers usage without a contract. For example, a number of days can

pass between customers when the prior customer has discontinued service and the utility service is left on and the utility discovers that a new resident has taken occupancy. Therefore, the three days' usage may be minimal compared to the aggregate usage and financial loss that can and does occur between the date of a soft "off" and the date on which the utility discovers usage without a contact." (pages 11-12)

No party in the instant proceeding has produced anything that would cause the Commission to be any less skeptical of this practice. If we were to include provisions in this regulation holding departing parties responsible for bills after the requested discontinuance date, we would be creating an incentive for utilities to neglect to pursue meter access. The utility would in fact have no incentive to pursue a final meter reading. It must also be noted that since the definition of "customer" in Section 1403 links the status of "customer" to the "mortgage, deed or lease," it is questionable as to what legal grounds a utility could hold an individual responsible for service after they are no longer the deed or lease holder.

Instead of tailoring the regulations to facilitate the questionable practice of "soft-offs" and/or letting service on while it accumulates in a non-occupant's name, we believe the regulations should encourage the timely final billing of accounts and cessation of service.

The proposal is fair to the utility in that the estimated final bill is not the last word on the matter. Once the utility does obtain a meter reading, as it must do at some point, it is free to adjust the departing customer's final bill and allocate usage between the departing and new customer. We shall not prescribe the methodology for doing this as that would be over-reaching. We believe that the utility, using their usual business practices and estimating methodologies, is best suited to do this. We do point out that utilities should, per the definitions of "customer" and "applicant" at Section 1403, be guided by the "mortgage, deed or lease" to establish the timeframes of responsibility for the departing and new customers. We also agree with Dominion that the use of the phrase "...determine the actual consumption..." is probably not the best choice of words because it is not really possible to determine "actual" consumption in these instances. Therefore, we will delete this phrase.

We agree with OCA and will insert language that only after a reasonable attempt to obtain meter access should the service be discontinued based on an estimated bill. Hopefully this will prevent the estimating of final bills from becoming the routine, standard practice. Ending a customer's account with an actual meter reading remains the preferred practice.

We agree with IRRC, PPL, Allegheny Power, Duquesne, Equitable, FirstEnergy, PGW and EAP that paragraph (d) is not entirely consistent with Section 1404(b). We shall do as PPL suggests and delete this paragraph altogether since it is redundant; refer instead to §56.33. We will also make minor word changes to paragraph (c) to improve readability. And while we understand the concerns expressed by PULP that seven days notice is not always possible in all scenarios, the scenarios described by PULP are very fact-specific possibilities that should be handled on a case-

by-case basis using the dispute procedures. These possible scenarios do not lend themselves well to precise regulations. We do note that in cases involving Protection From Abuse orders, utilities should take care to apply Section 1417 and to treat such instances with sensitivity and confidentiality.

56.17. Advance Payments.

PPL recommends that the Commission revise §56.17(3)(i) to allow any payment-troubled customer, regardless of income, the option of using a prepayment meter. The proposed prohibition against allowing low-income customers to use a prepayment meter appears to assume that these customers are incapable of understanding the system, purchasing the prepayment cards, tracking their usage on the prepayment monitor, etc. PPL concedes that low-income customers may not be the most likely group to select a prepayment meter, but since the use of a prepayment meter is a voluntary decision, low-income customers should have access to the same payment options available to residential customers who are not low-income.

Discussion:

We note that nothing new of substance was proposed for this section. The changes proposed just rearrange the subsections to make the regulation clearer. 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. We see merit in PPL's suggestion to remove the restriction in this section that prohibits low-income customers from participating in these programs. While we believe that there may be interest among all customers for this kind of service, we acknowledge that there may be parties that have concerns with the participation of low-income customers in these programs. However, it is important to note that per paragraph (A), these programs are voluntary on the part of the customer. Additionally, per paragraph (iii), the utility, before even offering this kind of service, must first submit a plan to the Commission. In evaluating these plans, the issue of low-income customer participation can be considered and discussed.

We do not believe it is appropriate to address cost-recovery of advance payment programs in these regulations, but we do want to note that utilities should address any cost-recovery issues in the plans that they submit under paragraph (iii). Also, in keeping with our intent to modernize the regulations to accommodate new technologies, we will remove the references to "cards" since "cards" refer to a specific technology that could be supplanted by new methods. We will also remove the reference to "informal dispute settlement agreement" per our discussion relative to § 56.2.

§ 56.21. Payment.

Allegheny Power suggests the language in § 56.21(3) be changed to clarify that the payment agent needs to be one authorized by the public utility. The effective date of payment to a branch office or authorized payment agent should be the date of actual receipt of payment at that location.

Duquesne suggests that § 56.21(4) should be clarified to be clear that the effective date of payment electronically transmitted to a public utility should be the date of actual receipt of the payment, not notification of a pending payment which may later be cancelled by the customer.

PGW suggests that § 56.21 be revised to specify that the transmittal date of a bill should be the date of mailing, e-mailing or physical delivery. In addition, § 56.21(4) should specify that the effective date for payments electronically transmitted outside the payment system administered by a public utility should be the date of actual receipt of the payment monies because the utility does not control and may not have sufficient knowledge to determine when the payment was made by the customer to a third party. Moreover, PGW submits that § 56.21(5) should reflect the fact that certain third party payment processors assess and collect fees for credit card payments to PGW. According to PGW, it does not assess or collect these fees and any requirement to publish such fees in their tariff would add undue time and expense to the process.

PULP believes that the proposed § 56.21(4) inappropriately places on the customer the risks of a failure to electronic systems that are not under the customer's control. For example, a partial or full failure of the bank's systems, of the internet service provider's systems, or of the utility's systems all could lead to the delay or failure of a timely electronic payment made by the customer, often totally unbeknownst to the customer. Therefore, under the proposed regulations, the customer could be deemed liable for a late payment made under such circumstances. Furthermore, as a result of an electronic mishap a CAP customer making electronic payments or a customer making electronic payments on a payment agreement could be deemed to have defaulted on CAP or on their payment agreement. PULP recommends adding to this section language specifying that where a customer can establish that a late electronic payment is the result of a failure of the electronic systems not under the customer's control, then a customer shall not be deemed to have defaulted on payment, on a payment agreement, or on a CAP payment.

IRRC notes that this section relates to transmitting payments and that the first paragraph states that the due date of a bill may be no less than 20 days from the date of transmittal and the paragraph seems to define "date of transmittal" occurring on either the date of mailing or delivery. IRRC questions how can the transmittal date be one or the other when, in all likelihood, the payments will be received on different dates in each circumstance? IRRC also mentions that the proposed regulation removes the word "physical," whereas other sections of the regulation continue to use the phrase "physical delivery."

Discussion:

We agree with IRRC and PGW and will revise the proposed regulation to specify that the transmittal date of a bill should be the date of mailing, or electronic or physical delivery. This will provide for the flexibility needed to accommodate a variety of different methods of bill delivery. We also agree with Duquesne, Allegheny Power and PGW that the effective date of payment to a public utility should be the date of actual receipt of the payment because as Duquesne points out, a pending payment can always be cancelled by a customer.

With respect to Allegheny Power's concerns with paragraph (3), we point out that this paragraph, as currently written, specifies that the "payment agents" relevant to this section are "authorized" agents. As such, we see no need for revising this paragraph. And concerning PGW's comments on paragraph (5), we point out that this applies only to fees "assessed and collected by the public utility." Fees assessed and collected by other parties are not included. We believe this appropriately addresses PGW's concerns, and see no reason for further revising this paragraph.

While we share PULP's concerns and understand that the scenarios described by PULP are certainly possible, we believe the dispute procedures found in these regulations will be sufficient to address these possibilities. If a customer has a problem with an electronic payment, that is clearly a disputable matter under these regulations, and the utility would be expected to apply the relevant regulations, including §§ 56.140 – 152.

We will change the word "last" to "latest due" in paragraph (6) to make this section clearer. Finally, we agree with IRRC that the removal of the word "physical" was an error and we will restore this term in the regulation.

§ 56.22. Accrual of late payment charges.

FirstEnergy recommends that 56.22(d) be revised to specify that the Commission can only waive late payment charges for customers at or below 150% of the federal poverty level as the result of the filing of an informal or formal complaint; not a generic order that is not tied to a specific complaint.

PECO objects to the proposal prohibiting late payment charges on accounts no longer actively billed to a customer as not being supported by Chapter 14. PECO submits that late charges are the equivalent of interest on a loan, and a customer choosing to leave an unpaid balance is effectively the same as the customer getting a loan from PECO.

NFG submits that if the proposed regulation will cite to the statutory language from which it claims to obtain authority, the statutory section should simply be quoted in its entirety rather than paraphrased or implied. The language of Section 1409 is clear and concise enough to quote directly and would ensure that proper effect is given to the legislative intent.

PULP submits that § 56.22(c) should be altered to make it clear that only denial of access to the meter by the customer can result in the imposition of late fees. According to PULP, the proposed language is problematic because there are a variety of situations in which utility personnel might be denied access to a meter through no fault of the customer of record. In these instances, PULP believes that an innocent customer should not be penalized for actions not his or her own. For example, where a landlord forbids access to a meter on the landlord's premises, the customer of record should not be penalized with a late fee as a result.

PULP supports the proposed § 56.22(d) because many low-income customers find it exceptionally difficult simply to pay for service, much less added fees. Empowering utilities to waive late fees enables them to relieve some of the burden on these vulnerable customers and, if this discretion is exercised liberally by utilities, may help reduce the number of households without service. Where that discretion is not exercised, PULP considers that the Commission clearly has the authority to compel the waiver and should do so wherever possible.

PULP also supports the inclusion of § 56.22(e), which limits the timeframe during which late payment charges may be imposed on an account balance. PULP explains that once an account is inactive, utility late fees cease to serve a purpose and thereafter become merely punitive in nature, with no bearing on actual costs of collection or providing service. Therefore, such fees are appropriately prohibited by § 56.22(e). However, PULP submits that this section is somewhat ambiguous about when an account becomes inactive or, in the words of the regulation, "is no longer actively billed by the public utility." PULP suggests this problem can be solved with a minor change that harmonizes the language of subsection (e) with other parts of these regulations, such as the definitions of customer and applicant at § 56.2, by specifying that "additional late payment charges may not be assessed on account balances once the final bill on the account is past due."

IRRC notes that subsection (e) prevents additional late payment charges once an account is no longer actively billed. IRRC questions what is the Commission's statutory authority for this revision.

Discussion:

We disagree with FirstEnergy and decline to specify that the Commission can only waive late payment charges for customers below 150% of the federal poverty level as a result of the filing of a formal or informal complaint. Section 1409 clearly specifies that the Commission can order the waiver of "any" late payment charge for customers below 150% of the federal poverty level. This does not preclude the Commission from using a generic order if it should so choose, and we agree with PULP that the Commission clearly has the authority to compel the waiver.

We agree with NFG that the language in paragraph (d) should simply reflect the language of Section 1409 and will revise this paragraph to do so. We disagree with PULP that changes are

needed to paragraph (c). Per § 56.12, utilities are allowed to issue estimated bills in certain circumstances, and estimated bills must be paid timely the same as any other bill.

In response to the concerns expressed by IRRC and PECO, we will drop the proposed paragraph (e) from this section. This paragraph was proposed to prevent situations where a former customer continues to accrue additional charges without being aware of such because they are no longer being billed. If a customer inadvertently pays short on their final bill, this could have serious consequences that the customer will not necessarily be aware of. This was also proposed to prevent possible double recovery of carrying costs on closed, written-off accounts; a utility recovering such costs in rates as part of uncollectable revenues and also via late payment charges. We note that late payment charges are not intended to generate revenue; their purpose is to cover any carrying costs. It is not clear what carrying costs are involved on a closed account that is no longer being actively billed. Regardless, we will drop this proposed paragraph.

§ 56.25. Electronic bill payment.

Allegheny Power objects to the requirement that they provide a paper receipt for electronic payments. This requirement could cost potentially $ 1 million annually. Columbia reports that for more than twenty years, Columbia customers have had the ability voluntarily to enroll in automatic checking account withdrawal services, which are administered by third-party vendors. These vendors do not issue receipts other than the transaction record that appears on the customer's checking account statement. Columbia claims it has never had a customer who complained that they were not being furnished with a receipt and this requirement, if applied to such recurring automatic payments, will needlessly increase costs.

NFG believes that these requirements would be better served by splitting apart the concept of "electronic bill payment" from what NFG refers to as "direct pay". In "electronic bill payment" a customer must still make an affirmative action, usually through an on-line medium, to effectuate a payment. This is different from "direct pay" where a customer only signs up for the program once and the billed amount is automatically withdrawn from a financial account on a specified date. "Direct pay" can be accomplished with the customer still receiving paper bills and not receiving any type of electronic bill message. NFG believes that the "direct pay" concept should be excluded from this section. With respect to § 56.25(2), NFG suggests replacing the phrase "checking account" with "financial account;" types of accounts other than checking accounts are capable of making automatic electronic payments such as a savings account or credit union money market account. With respect to § 56.25(3), NFG suggests allowing for an option for a customer to receive relevant notices electronically. NFG notes that many customers chose the electronic billing option to avoid receiving any paper correspondence at all. Inserting "unless the customer agrees to receive notice of program changes electronically" in the second sentence of 56.25(3) after the phrase "in writing" allows this option while keeping

an in writing requirement for any customer who so chooses. Regarding § 56.25(5), NFG believes that maintaining system security is critical to an electronic billing and electronic bill payment system. NFG suggests changing this section to read "(5) the public utility shall take all reasonable steps to maintain system security in order to protect all customer information and prevent unauthorized access to customer accounts."

PGW opines that electronic bill payment requirements should be linked to utility administered systems and that disclosure of electronic bill payment terms and changes to the program should be allowed via a utility's website. Instead of a receipt, the electronic notification of payment should be a confirmation number.

Phillips suggests that written terms provided electronically should be sufficient to satisfy § 56.25(3) requirements since customers will be enrolling in these programs electronically to begin with. Phillips also reports that it is not aware of any means which it can guarantee unequivocally to protect all customer information and accounts. As such, Phillips suggests revising § 56.25(5) to state the "the public utility shall maintain sufficient system security and, in so doing, take all reasonable measures to protect customer information from unauthorized disclosure and to prevent access to customer account records by persons who are not properly authorized to have such access."

The OCA strongly supports the Commission's proposed regulations on electronic bill payment but offers a modification of § 56.25(1) for the purposes of clarity. OCA proposes that this section should be revised to say "Electronic bill payment shall be voluntary and a public utility may not require a customer to accept electronic bill payment as a condition of enrolling in electronic billing." Action Alliance supports the recommendations of the OCA with regard to electronic billing and payment options and incorporates by reference those proposed regulations that reflect the OCA's recommendations.

IRRC notes that this section describes the procedures for electronic bill payments and raises three issues. First, Paragraph (2) refers to electronic bill payments via automatic withdrawals from a customer's checking account. A commentator notes that automatic electronic payments can be made from types of accounts other than checking accounts and suggests using the term "financial account." IRRC agrees and recommends that the Commission incorporate this change in the final-form regulation. Second, Paragraph (4) requires the public utility to provide an electronic or paper receipt to the customer upon payment through the electronic method. IRRC questions the need for a receipt in these circumstances? Finally, Paragraph (5) requires the public utility to maintain a "sufficient system security." IRRC questions how the Commission will determine what is "sufficient"?

Discussion:

We agree with IRRC, Allegheny Power, Columbia and NFG that automated, pre-authorized payments should be exempt from any receipt requirement. As the parties point out, these types

of payments have been in place for many years and it is the financial institution involved that generates the receipt or notice. We agree with IRRC and NFG that this section should refer to "financial account" instead of "checking account" as to accommodate the diversity of financial accounts a customer may have. We agree further with NFG, PGW and Phillips that the terms and conditions of these programs can be made available electronically instead of on paper. This will enhance the cost-savings and environmental benefits of these programs. We agree with OCA and will revise paragraph (1) to clarify that electronic payments are voluntary and are not required to be linked to electronic billing.

NFG correctly points out that maintaining system security is critical to an electronic billing and payment system. Customers will be reluctant to participate in these programs if they believe doing so may compromise the integrity of their personal financial data. We agree with IRRC, NFG and Phillips that paragraph (5) concerning security needs to be clarified. We will change this paragraph to reflect NFG's and Phillip's suggestion that utilities shall "employ all reasonable measures to protect customer information from unauthorized disclosure and to prevent access to customer account records by persons who are not properly authorized to have such access." This will mirror the language in §56.11 concerning electronic billing. We decline to get more specific than this because constantly changing technology makes it impossible to predict or specify particular security mechanisms or procedures.

§ 56.31. Policy statement:

The CAC and PULP support the Commission determination that § 56.31 is still fully in effect and has not been superseded by any section of Chapter 14. In accord with that policy, the credit and deposit policies and practices of each utility must be equitable and nondiscriminatory and shall be based on the credit risk of the individual without regard to area in which they live and without regard to race, sex, age over 18, national origin or marital status.

PULP suggests that § 56.31 should be moved so that it appears before the heading "Procedures For New Applicants." As it is positioned currently, § 56.31 falls under the heading "Procedures For New Applicants." However, PULP explains that it appears from the content of § 56.31 that it applies to both applicants and customers. Therefore, PULP recommends the Commission move § 56.31 so that it falls after the heading "Subchapter C: Credit And Deposits Standards Policy" and before the heading "Procedures For New Applicants." Also, PULP notes that the title of the first subsection in Subchapter C is "Procedures For New Applicants." PULP submits that this title may be confusing because it appears from the content of the subchapter that one does not have to be a "new" applicant in order for the subchapter to apply. PULP states that one could also have applicant status as a result of losing service and having a final bill past due (see § 56.2's definition of "applicant"). In that instance, the individual would be an applicant but not a "new" applicant. To clarify this ambiguity, PULP recommends the Commission remove the word "New" from the title of the first section of Subchapter C so it reads "Procedures For Applicants."

Discussion:

No substantial changes were proposed to § 56.31. We do see merit in the suggestion of PULP to change the title section by removing the word "new," as this minor change will lessen possible confusion as to what is a "new" applicant as opposed to just an "applicant." We decline to move the placement of this section however since we think its current position is appropriate since this does generally involve "applicants."

§ 56.32. Security and cash deposits.

Allegheny Power, PECO and Equitable object to the proposed language that specifies that the credit score used by a utility to evaluate the credit worthiness of applicants must assess the risk of utility bill payment because it limits the discretion of the utility and circumvents § 1404(a)(2). PECO notes that they currently use Equifax's utility score which is designed to predict the likelihood of paying utility bills. However, they want to be free to use other available products and methodologies.

Duquesne reports that many utilities do not report to credit bureaus, so relying on a credit-scoring model that would assess the risk of only utility bill payment might not exist or be extremely ineffective and that § 56.32(a)(2) should be changed to make it consistent with the policy statement at § 56.31.

PPL Electric agrees with the Commission's proposed language in § 56.32(a)(2), which states that, "The credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment." PPL has been using Equifax, Inc.'s Energy Risk Assessment Model ("ERAM") for credit scoring since 2001. Equifax designed ERAM specifically to identify credit risk associated with the payment of utility bills. PPL reports that it has been pleased with the use of ERAM for credit scoring and has received few PUC complaints regarding credit scoring.

As a majority of this proposed language is taken verbatim from the statutory language, NFG suggests that § 56.32(a) track the statutory language of Section 1404(a) in order to give full effect to the legislative intent and also suggests changing the proposed language of §56.32(a)(1)(vii) by adding the phrase "but not limited to" after "including" and before "bypassing a meter" to comport with the language of Section 1404(a)(1)(vii). NFG questions why the proposed language at § 56.32(a)(2) quotes the statutory language through the first sentence, then adds a second sentence stating "The credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment." According to NFG, this sentence is inappropriate because if the legislature intended to include such a requirement it could have easily added such a sentence to the statute and in many instances, a potential applicant who poses a significant credit risk may have no history of utility payment.

PGW believes that since this section only applies to applicants, references to customers should be removed. PGW submits that the proposed regulation should be made consistent with Chapter 14 by indicating that the utility does not have to provide service if there is a failure to pay a deposit. PGW also requests that, considering PGW's limited service area and housing stock and financial restraints on its ability to modify its systems, PGW should have the ability to calculate a deposit based on the average annual bill of its customers in the same rate class. Moreover, PGW believes that out of concerns with identity theft, if one or more of the identifications provided by the customer is suspicious, PGW believes that the utility should have the authority to request additional identification.

Phillips contends that utilities should have the right to require an applicant's social security number if credit evaluation methods which do not require a social security number are not able to adequately evaluate an applicant's creditworthiness.

EAP believes that the proposed regulations again attempt to revive the name game and that the public interest is ill-served by permitting households to avoid payment for energy used by a group of people who have unjustly enriched themselves. EAP reports that utilities properly equipped may be the first to spot the red flags that signal the risk of identity theft, including suspicious activity suggesting that thieves may be using stolen information to establish service.

Aqua submits that while a detailed explanation is appropriately sent to the applicant as part of its procedure to provide service, it is not appropriate to be placed in its tariff. The utility should be permitted under its management discretion to develop appropriate credit and deposit policies that can be modified within the parameters of the Commission's rules and regulations, as business needs and information change.

Action Alliance urges the Commission not to adopt the proposed deletion of the current language at § 56.32(3)(i) ("The absence of prior credit history does not, of itself, indicate an unsatisfactory risk."). According to Action Alliance, young persons or families who have previously lived with parents or other relatives will not have developed a credit score, because they have not previously had bills in their name. Some separated spouses and victims of domestic violence, with or without a Protection from Abuse Order, are also more likely to have no credit history upon which a credit score could be based. Having already provided a security deposit to a landlord for a new home, these applicants with no negative credit histories should not then be required to pay a two month utility deposit. Action Alliance believes that Chapter 14 does not supersede the current provision at § 56.32(3)(i) nor is it inconsistent with this provision and this important provision should not be deleted.

Action Alliance supports the clarification at proposed § 56.32(a)(2) that the "credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment." According to Action Alliance, bills for life-essential utility service significantly differ in character than bills for many other consumer goods and services, and any credit scoring

methodology used by utilities should also make that distinction. Action Alliance also supports proposed § 56.32(c) relating to identity of adult applicants and the identification documents that may be required by utilities. Action Alliance agrees that applicants should not be required to disclose or produce social security numbers, unless the applicant wishes to do so for the applicant's convenience.

The OCA has previously proposed a number of critical protections that the Commission should include in its regulations. OCA submits that one of the key protections needed is for the Commission to set forth what "generally accepted" means when referring to 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 was used in several pilot programs being operated by Pennsylvania utilities. Therefore, the OCA strongly supports the proposed § 56.32(a)(2) requirement that any credit scoring methodology must specifically assess the risk of utility bill payment.

PULP also submits that Section 56.32 requires a close review by the Commission. Subsections (a) and (b) appear to be updated and are very similar to §56.51, subsections (a) and (b). Minor differences include § 56.32(a)(1)(iv) and § 56.32(a)(1)(vi) both say public utility service, whereas the corresponding sections of § 56.51(a)(1)(iv) and § 56.51(a)(1)(vi) speak only of utility service; § 56.32(a)(1)(v) refers to "material terms of an informal dispute settlement or payment agreement" whereas 56.51(a)(1)(v) has "material terms of a settlement or payment agreement."; § 56.32(a)(1)(vii) has "including bypassing a meter" whereas § 56.51(a)(1)(vii) has "including, but not limited to, bypassing a meter."; § 56.32(a)(1)(viii) has "Violating tariff provisions on file with the Commission which endanger the safety of a person..." whereas §56.51(a)(1)(viii) has "Violating tariff provisions on file with the Commission to endanger the safety of a person"; the final sentence of § 56.32(a)(2) is "The credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment." This sentence is omitted from the parallel § 56.51(a)(2); § 56.32(b)(2) requires an applicant with a household income no greater than 300% of the Federal poverty level to pay 1/12 of the applicant's estimated annual bill at the time the city natural gas distribution operation determines a deposit is required. An exception is made for applicants who enroll into the customer assistance program. In the parallel Section 56.51(b), no such exception is made.

PULP also notes that while § 56.32 falls under the heading "Procedures for New Applicants," §56.32(a)(2) reads, in part, "An applicant or customer who is unable to establish creditworthiness...." According to PULP, it is not clear why a reference to a customer is being included in this section, and the same inconsistency can be found in the parallel § 56.51(a)(2), which should not refer to applicants since the section applies only to customers. PULP recommends that the Commission, in order to consolidate regulations and avoid confusion, consider reorganizing Subchapter C. Credit and Deposits Standards Policy so that subsections,

specifically "Procedures for New Applicants" and "Deposits," do not duplicate information and so that references to applicants and customers are used consistently.

Discussion:

We agree with PPL, OCA and Action Alliance that the credit scoring methodology employed by utilities must specifically assess the risk of utility bill payment. As Action Alliance points out, bills for life-essential utility service significantly differ in character than bills for many other consumer goods and services. We also note that Section 1404(a) specifies that the credit scores used by a utility to screen applicants must be a "...generally accepted credit scoring methodology" which falls "...within the range of general industry practice." By including this language in Section 1404(a), the General Assembly made it clear that utilities could not employ just any credit score available; that the score used had to meet some standard and be of some relevance. We disagree with Allegheny Power, PECO, Equitable and NFG that it is entirely up to the discretion of the utility as to what credit scoring methodology is used. Therefore we believe it is appropriate to offer some guidance in the regulations as to what is "generally accepted." We emphasize that we are not proposing a specific score offered by a specific vendor; there are a number of vendors who offer an array of appropriate credit scoring products. PPL uses Equifax's "Energy Risk Assessment Model" (ERAM), which specifically identifies the credit risk associated with the payment of utility bills. PPL has been using ERAM since 2001 and reports that it has been pleased with the use of ERAM and has received few PUC complaints regarding its use. Based on the informal experience of the Bureau of Consumer Services, vendors such as Experian (which offers a Telecommunications, Energy and Cable Risk Model) and TransUnion offer similar products. However, a utility is always free to propose any credit scoring product to the Commission and make the case that it is a "generally accepted" practice.

We must decline PGW's suggestion that utilities should be free to calculate a deposit based on the average annual bill of its customers in the same rate class. This would be contrary to the clear requirements of Section 1404(g) which specifies that the deposit must be based on the "...annual bill to the dwelling at which service is being requested for the prior 12 months, or, if unavailable, a similar dwelling in close proximity." We also must decline Phillips request that a utility be allowed to require social security numbers from all applicants. Instead, we note that we are proposing that a utility may ask for social security numbers; and if the request is refused, the utility may require one government-issued identification, or two alternative identifications, as long as one of them includes a photo. This variety of options should also address PGW's concerns with identification and when we specify "identification" we of course mean a valid identification; a utility is never required to accept a questionable or fraudulent identification.

While we understand Action Alliance's concerns with the proposal to eliminate the provision specifying that the absence of prior credit history does not, of itself, indicate an unsatisfactory credit risk, we must decline their suggestion to retain this provision. Section 1404(a) clearly leaves a utility free to rely solely on credit scoring to screen applicants if they so wish.

We agree with NFG and PULP that the proposed paragraph (vii) should mirror Section 1404(a)(1)(vii). We also agree with PULP's suggestions to make the language in paragraphs (iv),(v), (viii) consistent with Section 1404(a) and other parts of these regulations. We also agree with PULP that this section should reference only "applicants" and not "customers" as to avoid confusion.

§ 56.33. Third-party guarantors.

Allegheny Power, Duquesne, Equitable, PGW and Phillips recommend adding language that clarifies that a third party guarantor must be a customer who has or can establish credit under §56.32.

PULP submits that the language in this section referring to third-party guarantors is potentially confusing and requires clarification and that the § 56.33 would be more appropriate in a general subsection, not in its current position within a subsection applying only to applicants. The problematic passage is "This section does not preclude an applicant from furnishing a third-party guarantor in lieu of a cash deposit. The guaranty must be in writing and state the terms of the guaranty. The guarantor shall be responsible for all missed payments owed to the public utility." The final two sentences of this segment, an almost verbatim quotation from Section 1404(b)(2), are potentially contradictory. "The guaranty must be in writing and state the terms of the guaranty" seems to suggest that the guaranty instrument can be structured so it limits the guarantor's liability to only those missed payments constituting the security deposit. However, PULP explains that the regulation goes on to state, "the guarantor shall be responsible for all missed payments owed to the public utility." This could be interpreted to mean the guarantor is responsible for both missed security deposit payments and any other outstanding balance the customer owes the utility. PULP believes that the Commission should use this opportunity to introduce clarity through the regulations. According to PULP, it is reasonable to read the language from Section 1404(b) referring to "all missed payments" to mean all missed payments only on the security deposit. It is further reasonable, PULP explains, because Section 1404(b) specifically states the purpose of the third-party guarantor is to stand in lieu of the cash deposit, not the customer or applicant's entire debt. Moreover, the rules governing guarantees for security deposits apply both to applicants and to customers. § 56.33 is currently positioned in a subsection dealing with only applicants. PULP requests that this be remedied by adding a reference to customers in § 56.33 and by relocating the section to a more general subsection of the regulations.

Discussion:

We agree with Allegheny Power, Duquesne, Equitable, PGW and Phillips and will add language to this section specifying that any third party offering to guarantee an account must themselves be able to meet the credit standard of the utility. It was probably not the intent of the General

Assembly in Section 1404(b) to allow an individual with questionable credit to guarantee the account of an applicant with questionable credit. Allowing such would be nonsensical and would defeat the purpose of Section 1404(b).

However, we disagree with PULP in that Section 1404(b) requires the third party guarantor to only cover missing payments towards the security deposit. The language of Section 1404(b) states that the guarantor "shall be responsible for all missed payments owed to the public utility" not just all missed payments owed on a deposit.

§ 56.35. Payment of outstanding balance.

Equitable believes that § 56.35(2) and § 56.35(2)(a) are slightly conflicting in that one states that the utility may not require payment for service furnished under someone else's name while the following section does permit such if the applicant resided at the property during the time the bill accrued. To clarify this, Equitable suggests adding to § 56.35(2) "unless the applicant resided at the property for which service is requested during the time the outstanding balance accrued not exceeding 4 years." However, the four-year restriction should not include fraud or theft. Allegheny Power also suggests clarifying this section by adding the phrase "except as noted in (a) and (b) below" to the end of § 56.35(2). Concerning the methods to establish applicant liability under § 56.35(2)(b), Allegheny Power suggests a combination of information provided by a landlord, historical company records and CAP applications should be accepted.

Equitable also suggests adding a paragraph that allows a utility to require the payment of an outstanding bill as a condition of furnishing an additional account to an existing customer whose current account is not being cancelled and is delinquent.

Allegheny Power and FirstEnergy object to placing liability procedures and standards in their tariff because it will deprive the utility of the ability to revise its business practices as needed and would amount to the Commission interfering with the business practices of management. Columbia objects to this requirement because tariff changes take a minimum of 60 days which would create a lag in the implementation of new methodologies.

PPL opines that it is not necessary to include in tariffs methods and standards that are already delineated in § 56.35(2)(a) and (b). However, PPL does recommend that the Commission require utilities that use "other methods" to include them in their tariff because the term "other methods" is vague.

NFG opines that Chapter 14 provides that any adult occupant is considered an applicant for purpose of applying for service. As such, if any of those individuals is "legally responsible" for a balance, the public utility may require that balance to be paid before it will furnish service to a

residence where such a person is an applicant and will be a customer. According to NFG, the proposed language of § 56.35(2) does not allow for this possibility and should be removed to maintain consistency. NFG also opposes including in tariffs the procedures and standards used to determine an applicant's liability for an outstanding balance since it is difficult to draft reasonable tariff language to address every such situation.

PGW suggests that the regulation should allow a utility to require an applicant to pay arrearages consistent with Section 1407(d) and for a time period which exceeds four years in instances of theft. In addition, the rules should specifically allow a utility to determine occupancy and residency based on a PennDOT issued license or identification card and information in the utility's own records such as previous applications for CAP, LIHEAP, medical certificates, payment agreements, customer contacts, Commission formal or informal complaints, customer correspondence, and bankruptcy petitions. PGW adds that Section 1407(e) gives the Commission the discretion to approve of these methods and requiring each utility to file tariff revisions specifically requesting approval to use these methods at some later date would be burdensome and unnecessarily delays resolution of this issue.

Phillips suggests adding the phrase "except with respect to any unpaid balance for utility service previously furnished to any other adult who will be residing with the applicant at the address where residential service is sought" to the end of § 56.35(2).

EAP believes that § 56.35(2) tries to resurrect the name game and is directly contrary to Act 201. According to EAP, if the utility can prove that an applicant received the benefit of utility service at another dwelling, Act 201 permits denial of service until full payment is made.

Action Alliance supports the Commission's clarifying language that such liability should not be assigned for service furnished more than 4 years ago since any longer period would create an unreasonable evidentiary burden and barrier to service for applicants who in fact did not reside at the property for all or part of the time period.

MidPenn is concerned with identity theft and with the current regulations under which a utility could hold an individual fully responsible for an outstanding balance of a previous account despite the individual not knowing or consenting to having the previous service in their name. MidPenn requests that the Commission specifically address this issue so that individuals whose name appears on company records as a result of identity theft not be considered liable for service.

PULP supports the requirement that all "alternate" credit procedures receive Commission approval prior to implementation. PULP also supports the Commission's modification of §56.35(b)(3), which requires public utility companies to include in their tariffs the procedures and standards they will use to determine an applicant's liability for an outstanding balance

accrued at a residence for which the applicant was not the customer of record. PULP supports the Commission's requirement that these procedures be placed into company tariffs so applicants have the tools they need to safeguard their interests and challenge utility allegations when those allegations are inaccurate.

With respect to § 56.35(b)(3), PULP requests that the Commission provide guidance in how utilities may apply the terms of § 56.191 to applicants pursuant to § 56.35. PULP explains that when an applicant is required to pay for service pursuant to § 56.35, the applicant should be judged based on the applicant's payment history with the utility, not on the customer of record's payment history. Therefore, where in the course of reconnecting service the utility attempts to make an occupant of that household responsible for a portion of the outstanding balance pursuant to § 56.35, the utility should not be allowed to apply § 56.191(c)(2)(i) and request full payment up front from the applicant (the prior occupant) based on the prior customer's poor payment history. Rather, PULP argues, it should be the applicant's (the prior occupant's) payment history that drives the application of § 56.191. Finally, PULP suggests that there may be times when it is inappropriate to assign liability to an applicant under this section and recommends that the Commission add to this section some clarification about when exceptions to the rule might apply.

IRRC also notes that subsection (b)(3) requires public utilities to include in the tariff procedures and standards for determining an applicant's liability for any outstanding balance. IRRC recognizes that several commentators have objected to this requirement, noting that including the procedures and standards in the tariff would hinder a public utility's flexibility to revise its business practices and that the standards for determining liability are already set forth in Chapter 14 and the Commission's regulations. According to IRRC, this rulemaking deletes existing language in subsection (b)(3) that prohibits a condition of restoration of service being payment of an outstanding balance of an account in the name of a person other than the applicant. Finally, IRRC submits that the final-form regulation should clarify the provision regarding restoration of service.

Discussion:

We agree with Equitable and Allegheny Power that paragraphs (2) and (2)(a) might appear to be conflicting. We will correct this by adopting Allegheny Power's and Phillip's proposal to add language to paragraph (2) that refers to the exception provided for in paragraphs (2)(a) and (2)(b). This should also address EAP's concerns with paragraph (2) facilitating the "name game."

We agree with PPL's recommendation that utilities place in their tariffs the "other methods" per Section 1407(e) that they will use to determine an applicant's liability for outstanding accounts because, as PPL points out, the phrase "other methods" is vague. Our original proposal to require

the tariffing of all methods is overly broad because it is unnecessary to itemize in the tariff the methods already provided for in this regulation and Section 1407(e), namely the use of "mortgage, deed or lease information" or "a commercially available consumer credit reporting service." However, Section 1407(e) also explicitly states that "other methods" used to determine liability must be "...approved as valid by the Commission." The tariff approval process is the most logical process to facilitate the approval of these methods. The tariff process provides the benefits of an established and standard procedure, is more efficient than requiring the filing of individual petitions with the Commission seeking permission, and provides notice to parties that facilitate the due process rights of all interested parties. No party in this proceeding has argued that the policy statement at § 56.31 has been voided by Chapter 14. § 56.31 declares that credit and deposit policies must be equitable and nondiscriminatory. Requiring the tariffing of liability standards used in the application process will bring about the transparency necessary to make sure that liability determinations are not being made in a discriminatory, inequitable manner. The purpose of a tariff is to have a utility's rules and rates in one central location, approved by the Commission, accessible to all, as to help prevent the discrimination in the application of these rules.

We disagree with PGW that the Commission should specify these "other methods" in this rulemaking because a uniform, blanket, one-size-fits-all approach would be inappropriate given that different utilities may have different capacities and abilities. Also, as PULP points out, these procedures and standards will be used to hold individuals responsible for account balances accrued by another individual and having this information in the utility's tariff will help safeguard the interests of individuals and assist challenges when the allegations are inaccurate. Everyone should have an opportunity to fully comment on these specific issues and authorizing these procedures in this rulemaking would possibly deny parties their due process rights.

We understand MidPenn's and PULP's concerns with erroneous and disputed determinations of liability. An individual should be held responsible for service only if they are truly responsible under the provisions of Chapter 14 and Chapter 56. However, we believe the dispute procedures found in Chapter 56 (§§56.140 -181) are sufficient recourse for applicants and customers who believe that they have been assigned liability inappropriately. This is one of the reasons we are proposing language at § 56.36(1) that requires utilities to provide information to applicants and customers on their right to contact the Commission if they dispute being held responsible for an account balance.

Regarding MidPenn's concerns with identity theft, the Commission, in its July 14, 2005 order *In re: Identity Theft* (M-00041811), declared that "...with regard to Chapter 56 regulations, it is anticipated that this issue will be addressed, as warranted, during the regulatory review necessitated by Chapter 14." (page 5). It is out of these concerns that we are proposing at §56.32 (relating to security and cash deposits) and § 56.36, for the first time in Chapter 56, language addressing applicant identification and third-party requests for service. These are two areas that

have never been specifically addressed in Chapter 56, but we now believe it is appropriate to do so. The new rules include what is considered acceptable applicant identification, but are flexible enough to provide options for both utilities and applicants. It is also out of concern with identity theft that language is being added to § 56.11 (relating to billing frequency); § 56.25 (relating to electronic bill payment) and § 56.32 (relating to security and cash deposits) reminding utilities of their obligation to use all reasonable methods to protect account billing and payment data and any sensitive private information provided to them by applicants and customers.

We agree with Action Alliance that a four-year limit on liability determinations is appropriate because it is consistent with other restrictions in relevant regulations and statutes. A longer period also presents unreasonable evidentiary burdens; few if any individuals maintain housing, utility, address, etc. records for a period exceeding four years. However, we agree with Equitable and will include language exempting instances of fraud and theft from the four-year limit. We will also clarify that the 4-year period should be dated "from the date of the service request" to lessen confusion about the application of this requirement.

To address the suggestions of IRRC and PULP that the application of §56.191 for the payment of outstanding balances be clarified, we will add language specifying that it is the applicant's payment history that determines the appropriate payment formula. We should also note that applying §56.191 to these instances is merely codifying Commission expectations as expressed in *Maureen Christian v. Duquesne Light Company,* F-02126762, (May 1, 2008) as follows:

> Additionally, according to Duquesne, pursuant to 52 Pa. Code § 56.35, it may require the payment of any outstanding residential account which has accrued over the preceding four years as a condition of furnishing residential service. Tr. at 54. We agree with Duquesne's classification of the Complainant as an applicant; however, the Company's reliance on 52 Pa. Code § 56.35 is misplaced, because it has been superseded by 66 Pa. C.S. § 1407(c)(2)(iii). (page 6).

We note that § 56.191 has been revised to align it with the requirements expressed in Section 1407(c)(2).

§ 56.36. Written procedures.

Allegheny Power, PECO, NFG, Equitable and PGW object to the proposed regulation at § 56.36 requiring the utility to include in its tariff the utility's credit and application procedures along with its credit scoring methodology and standards. According to these parties, Chapter 14 at 1404(a)(2) is clear that the applicant must establish creditworthiness to the satisfaction of the public utility as long as it is using a generally accepted credit scoring method that falls within the range of general industry practice. Moreover, credit scoring procedures and methodologies are proprietary information belonging to the credit scoring agency and it would be inappropriate

to place this confidential information in the tariff. Columbia also objects because this would result in delays in the use of new methodologies by vendors on behalf of their utility clients.

Duquesne reports that the details of credit standards can change frequently and that each tariff change can cost approximately $7,500 per filing. While it objects to providing this information in a tariff, it is willing to provide it to the Commission to ensure that the company is providing service under reasonable conditions to its customers.

Allegheny Power objects to requiring utilities to include in the credit denial letter to the applicant detailed information including the credit score and credit score provider, since the utility often does not have this detailed information. FirstEnergy, PECO and Columbia also object to providing the customer the credit score since a third party agency does not provide the credit score to the utility. FirstEnergy does agree that the utility should provide the contact information to register disputes and questions regarding the credit score.

Duquesne believes that a written denial statement is not always necessary and the utility should be free to provide this information verbally and not in writing. Conversely, if the application is done online via the utility's website, the utility should be able to provide a denial statement in writing, not verbally and requiring both methods in all situations should not be necessary.

Duquesne does not oppose including information on credit denial letters directed at PFA holders, but proposes removing the phrase "more lenient credit and liability standards may be available" and replacing it with "other credit and liability standards may apply."

PPL Electric agrees, in part, with the Commission's proposal that, "Public utilities must include in their tariffs filed with the Commission their credit and application procedures along with their credit scoring methodology and standards." PPL reports that they certainly could include a description of its credit and application procedures in its tariff. However, because a utility's credit and collection activities are dynamic rather than static and utilities are continuously analyzing results and implementing new initiatives to improve collections, PPL recommends a narrow definition of credit and application procedures. PPL also believes that there are two problematic areas that the Commission had not specifically addressed in § 56.36. First, PPL does not have a credit scoring methodology per se; they use Equifax's ERAM for credit scoring. ERAM assesses credit risk based on the customer's or applicant's payment of utility bills. PPL could provide an overview of ERAM's methodology, but the model itself is proprietary. PPL recommends that the Commission allow utilities to include in their tariffs a general description of credit scoring methodologies. If a utility has developed its own credit scoring model, then the utility could include that methodology in its tariff.

The second problematic area identified by PPL, under § 56.36(1), is that the Commission proposes that, "The written denial statement shall include 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 and how to contact the credit score provider." PPL agrees with the suggestion to provide information to the applicant or customer regarding the provider of the credit score and how to contact the provider. PPL has been using this process since 2001, when it started working with Equifax. The troublesome area for PPL is providing the credit score to the applicant or customer. Employees at PPL, by design, do not have access to credit scores; all they know is whether the applicant or customer failed the credit scoring risk assessment. For reasons of customer confidentiality, PPL does not believe that its employees should have access to individual credit scores. There also may be a legal concern presented by the federal Fair Credit Practices Act (15 USC § 1681g (a)(1)(B)) regarding the sharing of credit scores. For these reasons, PPL would be concerned about sending letters to applicants or customers that included their individual credit scores. PPL recommends that the Commission delete this requirement from the written denial statement because it would be more appropriate for the applicant or customer to call the credit score provider to discuss and, if necessary, correct any data used to determine an individual's credit score. PPL suggests that the credit denial letter sent by utilities would include information on how to contact the credit score provider.

PGW suggests that the regulations should allow for the use of a credit scoring methodology of one of the three major national credit reporting agencies (CRA). PGW submits that denial of credit notification has been provided for in federal law under the Fair Credit Reporting Act (FCRA) and this federal law pre-empts the notification requirements set forth in the proposed regulations. PGW claims the FCRA expressly pre-empts the Commission from imposing notice requirements or prohibitions on public utilities taking adverse action on the basis of information contained in a consumer credit report. 15 U.SC. § 1681t (b)(1)(c).

EAP also states that the Commission's proposed requirements squarely conflict with Federal Fair Credit standard and should be rejected. EAP claims that the legislature was explicit in their word choice stating that creditworthiness is to be established "to the satisfaction of the public utility" per Section 1404(a)(2).

Concerning the proposed §56.36(3), PAWC questions what is the third party's responsibility with regard to any outstanding balance. PAWC suggests the third party be held to the same standard as the third-party guarantor as provided by Section 1404.

Action Alliance supports clear notice to applicants of reasons for denial of credit and of dispute rights if the applicant disagrees with the denial of credit. Action Alliance believes that tariff filings should be served on interested agencies, including statewide and local legal services programs and agencies serving victims of domestic violence. Action Alliance believes that no more than one person can be billed at the same time for a particular outstanding balance and that the unpaid outstanding balance will revert back to the originally named customer who later applies for service at another address.

The CAC supports the Commission in its assertion that credit standard procedures be as transparent as possible and is correct in stating that these procedures need to be as transparent and fair as possible and subject to challenge whenever error or misuse occurs and that all credit related methodologies be included in the tariff. The Commission has proposed, and the CAC supports the requirement that applicants and customers be provided detailed and complete information when they are denied credit from a utility.

The OCA supports requiring utilities to establish written procedures for determining credit status and for determining responsibility for unpaid balances and to make these procedures available to the public. OCA recommends that the regulations make clear that the information must be well marked and prominently disclosed. Moreover, the OCA has identified additional pieces of information that should be required in the written denial. The acceptable credit score should be included in the denial statement because 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 required credit score would assist the applicant in deciding next steps. OCA also suggests that the applicant be provided with information on how to dispute the accuracy of their credit score. Finally, OCA asks that the written denial also include information on the applicant's rights under the Fair Credit Reporting Act.

PULP supports the requirement that applicants and customers be provided with detailed and complete information when denied credit from a utility. PULP also supports the Commission's requirement that utilities must include in their tariffs their credit and application procedures along with their credit scoring methodology and standards. PULP requests that the Commission clarify that these procedures should be made available on the company website in a standalone section in addition to being included within the company's tariff posted on the website.

PULP supports the Commission's inclusion of § 56.36(b)(1) requiring that utilities provide to applicants and customers the facts and rationale for the denial of creditworthiness or the assignment of responsibility for an outstanding balance. However, PULP submits the Commission should go further since the proposed regulations do not obligate utilities to provide applicants with specific information about their right to dispute with the utility the denial of creditworthiness or how they may appeal the utility decision before the Commission. PULP also notes that the section uses both of the terms "applicant" and "customer." The section, however, falls under the heading dealing with only "applicants." To prevent confusion, PULP recommends the Commission move § 56.36 so that it falls after the heading "Subchapter C: Credit And Deposits Standards Policy" and before the heading "Procedures For New Applicants."

IRRC first questions with respect to subsection (b)(1) what is the need for oral notification. Finally, IRRC states that the final-form regulation should explain whether the FCRA prohibits

disclosure of a consumer's credit score to the consumer, and why providing this information is necessary.

Discussion:

We agree with EAP, Allegheny Power, PECO, NFG Equitable and PGW that Section 1404(a)(2) clearly states that applicants must establish creditworthiness to the satisfaction of the public utility. While the utility is free to establish the acceptable credit score, there is nothing in Chapter 14 that states that the standard cannot be disclosed. The use of undisclosed, secret credit standards is inimical to the public interest, and contrary to the spirit of the policy statement at §56.31.

We believe that credit policies should be as transparent as possible to ensure that they are equitable and nondiscriminatory. By placing these policies in a legal document, such as a tariff, this will provide the transparency necessitated by § 56.31. It was never intended that utilities disclose confidential or proprietary information, although we agree that we must clarify our intent and carefully delineate what is to be required. We agree with PPL when they state that they could provide an overview of their vendor's methodology and a general description of their policies and procedures. This would be similar to the information provided by PPL, Columbia, Equitable and Dominion in their petitions to the Commission seeking permission to use credit scoring to screen applicants as part of a pilot program. *See Petition of Columbia Gas of Pennsylvania and PPL Electric Utilities Corp. for a Limited Waiver of 52 Pa. Code § 56.32(2) (Relating to Residential Applicant Security Deposits)* P-00001807 and P-00001808, Public Meeting of February 8, 2001; and *Joint Petition of Equitable Gas Company and the Office of Consumer Advocate for Limited Waiver of 52 Pa. Code § 56.32(2) to Permit an Experimental Program to Determine Residential Customer Security Deposits Based in Part Upon Credit Scoring,* P-00011915, Public Meeting of November 9, 2001; and *Petition of the Peoples Natural Gas Company d/b/a Dominion Peoples for Limited Waiver of Regulations at 52 Pa. Code §56.32(2),* P-00021972, Public Meeting of September 12, 2002. For example, in the above cited order approving PPL's and Columbia's petition, it was noted that "Petitioners propose the use of Equifax's Energy Risk Assessment Model (ERAM) of credit scoring. Petitioners emphasize that ERAM credit scoring was developed specifically for electric and natural gas utilities and has consistently shown to be reliable, inexpensive, and efficient" (page 3). ERAM was also described:

> ERAM begins with an analysis of historical utility bill payment data from several gas and electric utilities. Over 300 credit attributes of past delinquent utility customer were analyzed to determine those credit attributes most predictive of delinquency with utility bills. These credit attributes included payment history of credit cards, bank loans, mortgages, collection cases filed, and debt write –offs, etc. ERAM then applies these credit attributes to prospective residential customers. Each attribute is assigned a weight

> or value. A higher value is assigned to accounts that are current, while a lower value is assigned to accounts that are past due. These values are added to form a score from 1 to 999. The higher the score, the more likely the applicant will pay a utility bill on time. Conversely, the lower the score, the less likely the applicant will pay a utility bill on time. (footnote 2 on page 3)

If the above cited orders and petitions could contain general descriptions of the credit scoring model used and its methodology, we do not see why any confidentiality or proprietary concerns should prevent this same information from being disclosed as part of a tariff filing. We agree with Action Alliance, CAC, OCA and PULP that these procedures and standards need to be transparent and in writing. As we have already discussed, the tariff process provides the benefits of an established, standard procedure with which all utilities are familiar and provides notice to parties that facilitate the due process rights of all interested parties. The purpose of a tariff is to have a utility's rules and rates in one central location, lawfully approved by the Commission, accessible to all, as to help prevent the discrimination in the application of credit standards. While we appreciate Duquesne's offer to provide this information to the Commission as an alternative to tariffing, this offer misses the point that it is applicants who need this information above all others. As such, we agree with PULP that application procedures and standards should also be posted on each utility's website in a logical, easily accessible location, and not simply buried within a tariff. The procedures should also specify the procedures for applicants with a Protection From Abuse (PFA) order. At the suggestion of PULP, we will also remove references to "customers" in this section so as to avoid confusion.

Concerning the denial of credit letters required by § 56.36(1), we agree with OCA that it would be useful to provide applicants with both their own credit score and the utility's standard score so that the applicant can compare the two scores and make an informed decision as to how to proceed. However, based upon the comments of PPL, Allegheny Power, FirstEnergy, PECO and Columbia, indicating that the utility does not receive the applicant's credit score from the credit score vendor, this proposal does not appear feasible and will be dropped. It is unsettling that an applicant can be denied credit from a utility, but not be informed of their failing score. This risks leaving the applicant with the impression of a secretive, opaque process that is contrary to the principles of transparency urged by parties like Action Alliance, CAC, PULP and OCA. As OCA points out, credit scores can be controversial and fraught with problems, and are often inaccurate or incorrect and can vary by credit reporting agency. As such, we must disagree with Allegheny Power's objection to providing not only the applicant's credit score, but also providing the credit score provider. Although we are dropping the requirement to provide the applicant's credit score, we agree with OCA and PULP that the credit score vendor must be identified, along with information as to how to contact the vendor and dispute their scoring, and the applicant should also be informed of the acceptable, standard credit score. It is important to provide the acceptable score because, as OCA points out, this is information used by the applicant in deciding what their next steps should be. For example, if the customer's credit score

is close to the acceptable score, it may benefit the applicant to examine their credit report and dispute possible minor errors; whereas if the gulf between the scores is large, it may not be a useful exercise since the correcting of minor errors may not have enough of an impact to change the final determination of credit.

We agree with Duquesne that informing the applicant of the reasons for the denial does not have to be provided both verbally and in writing, and will revise this proposal to omit the verbal provisions. We note that it is common sense that if an applicant has applied for service verbally over the phone or in person, they should be informed as to the result at that time and not have to wait for a written document. However, Duquesne correctly points out that not all applications are done verbally and that this trend may increase in the future as more utilities offer online and electronic applications. By omitting the verbal notification requirement, along with allowing electronic notification, this will facilitate the movement to electronic and online transactions, and this will present cost-saving opportunities for utilities and further conveniences for their customers and applicants.

We disagree with Duquesne when they ask us to change the notification to PFA holders to state "other credit and liability standards may apply" because this phrase is dangerously vague and may actually discourage a PFA holder from exercising their important rights. An individual with a PFA may be in a desperate situation and needs to understand that assistance may be available, not just that "other standards" may apply. If Duquesne fears that this information may invite misuse, possible misuse by a small number of individuals is not sufficient justification to deny important information to everyone. We must also note that the new language uses the terms "*may* be available," not "are available" (emphasis added) because there may be situations, based on the individual's circumstances, where the utility's conditions for service do not differ significantly for an applicant regardless of a PFA; the outcome is similar regardless of whether Chapter 14 rules are applied or not. While it is important to provide PFA holders with their rights and to encourage them to exercise them, at the same time we do not want to over-promise specific results. We believe the new language is a reasonable middle-ground that provides important information, without promising a specific result.

Concerning the proposed § 56.36(3), as already discussed, the Commission previously announced its intention to address identity theft in this rulemaking. In its July 14, 2005 order *In re: Identity Theft* (M-00041811), the Commission declared that "...with regard to Chapter 56 regulations, it is anticipated that this issue will be addressed, as warranted, during the regulatory review necessitated by Chapter 14." (page 5). It is out of these concerns that we are proposing at §56.32 (relating to security and cash deposits) and § 56.36, for the first time in Chapter 56, language addressing applicant identification and third-party requests for service. Third-party requests for service have never been specifically addressed in Chapter 56, but we now believe it is appropriate to do so. This is also simply reflecting longstanding Commission expectations, as

first addressed in an August 31, 1978 Secretarial Letter from then-Commission Secretary C.J. McElwee, the text of which follows:

Transfer of residential utility accounts.

NOTICE

> The Commission has become increasingly concerned that some utilities transfer service from one account name to another after receiving a telephone request to do so; no attempt is made to verify the legitimacy of the request. It is the Commission's view that this practice is inconsistent with reasonable managerial control. It allows the ratepayer to shift his bill paying responsibility to another party who may be unaware of the transfer. Further, it places the utility in the position of not having substantiated the validity of the transfer; this frequently results in noncollectibility for service rendered.
>
> The Commission strongly urges you to verify all requests for transfer of accounts, if you are not already doing so.

We also note that third-party requests for service have been the subject of Commission informal investigations. For a recent example, see *Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service Terminations in Hastings and Erie, Pennsylvania,* M-00051906, (October 6, 2005). In this case, one of the allegations of the prosecutory staff was the establishment of the account in question by a third party; a request that was never verified with the customer of record. The new rule prohibits a utility from accepting applications for service from third parties without somehow verifying the legitimacy of the request. However, the rule does not mandate a specific procedure and is flexible enough to provide options for both utilities and applicants, based on the management discretion and experience of the utility. This flexibility is an acknowledgement that in some limited situations, a third-party request for service is appropriate, so we do not want to prohibit the practice outright. We also want to respond to PAWC's comments about the liability of a third party in these circumstances. The language at §56.36(3) addresses only the application of service; not the liability for such. For liability determinations, a utility should be guided by the regulations such as the definitions of *customer* and *applicant* at § 56.2 and the provisions of § 56.35 relating to the payment of outstanding balances.

§ 56.37. General Rule.

Allegheny Power and Columbia recommend that language be added to clarify that this provision only applies to standard reconnects and does not include new service installation/service extension type conditions. Columbia also suggests adding "or when the applicant fails to provide the necessary access to provide service" to the end of the second sentence. NFG requests specifying that the utility be required to "make a bona fide attempt" to provide service

within three "business days" because, despite the best efforts of the utility, circumstances prohibit providing service in three days and for utilities who do not perform service work on Saturdays, limiting the timeframe to three calendar days could be burdensome. PAWC asks the Commission to define and specify "all requirements."

PGW suggests that per Section 1407(b)(5), a provision should be added allowing seven days when street or sidewalk digging is required.

Phillips suggests as to encourage the prompt return of signed gas service contracts from an applicant, the phrase " and has signed and returned any gas service agreement or contract required by the public utility to commence service" to the end of § 56.37.

Action Alliance proposes that the additional language proposed in § 56.37 should be clarified. Action Alliance recommends changing the language to "once an applicant's application for service is submitted to the utility," so that the three-day clock runs at the time of submission and not at a time that the public utility decides to "accept" the application. The phrase "provided that the applicant has met all requirements" should be modified by adding "regulatory" before the word "requirements" because this will prevent utilities from adding their own additional requirements beyond those provided in regulation.

PULP requests clarification from the Commission on how the three-day time limit in this section reconciles with the reconnection timing requirements at § 56.191 and those at Section 1407. In situations where an applicant is seeking to restore service, § 56.191 and Section 1407 provide different timeframes than the three-day timeframe in § 56.37. It is unclear which timeframe will apply. PULP requests clarification on this point from the Commission.

IRRC notes that this section allows a utility to provide service to an approved applicant within three days and questions how did the Commission determine this was a reasonable timeframe. In addition, approval is contingent on the applicant meeting "all requirements," yet the regulation does not explain what these are. According to IRRC, the final-form regulation should clarify this phrase.

Discussion:

The addition to this regulation is intended to bring this section into alignment with the timeframes found in Section 1407(b). Apparently the General Assembly found a three-day time period reasonable since this is what they provided for in reconnecting service under most circumstances in Chapter 14. Historically, this section has had a three-day timeframe that applied to the utility's investigation of credit. However, it has been a source of confusion, since technically this timeframe has only applied to instances where the utility's credit investigation takes longer than three days. Not explicitly addressed are situations where the credit

investigation does not take three days. The additional language to this section should address this confusion by making it clear that the three-day limit applies in either case.

We agree with Allegheny Power and Columbia and will clarify that this provision does not apply to new service installations or service extensions. These type of services can take weeks, even months, depending on the construction work involved, and mandating a timeframe for such work is simply not feasible. We also agree with PGW and will include language specifying a seven day timeframe where street or sidewalk digging is required because, again, this will align this regulation with Section 1407(b). We agree with NFG and will revise the proposal to require only a bona fide attempt at providing service because the actual provision of service may rely on factors beyond the utilities control, such as access to the property. We will also specify that the three-day timeframe refers to "business days" to address NFG's concerns with weekends. We will also add language requiring the utility to let a customer know if service can not be provided within the timeframes specified by this regulation and to provide an estimated timeframe. This will allow customers to make informed decisions as to their plans regarding moving, etc.

Finally, we agree with IRRC and Action Alliance that the phrase "all requirements" needs to be clarified and will do so by stipulating that the requirements to be met are "regulatory" requirements.

§ 56.38. Payment period for deposits by applicants.

Allegheny Power submits that there are generally two scenarios for applicants; those seeking restoration of service and those seeking new service. Under Chapter 14, these two groups have different deposit payment requirements. Allegheny Power submits that applicants seeking to restore service should be required to pay 50 percent of the deposit as a condition of restoration, and the remaining deposit in two additional installments; 25 percent after 30 days and the final 25 percent due after another 30 days. Other applicants seeking new service should be required to pay the full amount of the security deposit before service is provided. FirstEnergy agrees with Allegheny Power on this point.

Duquesne's and NFG's position is that § 56.38 should be stricken from the regulations because, as proposed, it conflicts with Section 1404(a) of Chapter 14. Equitable believes that the phrase "prior to...providing utility service" at Section 1404 denotes that the utility has the right to collect a security deposit before providing service.

PECO believes that the Commission's proposal does offer some of the simplicity benefits noted by the Commission and is willing to work with the 50% / 25% / 25% approach. However, they suggest the language be changed to bring the due dates for the deposit installments in line with the due date of regular bills. PECO suggests revising the wording to "A customer paying a

deposit based on the grounds at § 56.41(2) may be required to pay 50% as part of the condition of restoration, with 25% to be billed on the customer's next regular bill and due on the due date for all charges on that bill, and the remaining 25% charged on the following month's bill with payment due on the due date for all charges on that bill.

PGW notes that under Section 1404(f), a deposit required by PGW must be paid in full at the time PGW determines a deposit is required; 90 days is not allowed for new PGW customers or certain applicants. PGW requests that this section be revised to make this clear that this section only applies to deposits requested under §56.32(a)(1).

EAP notes that the proposed Section 56.38 prohibits a utility from requiring full and immediate up-front payments of an entire deposit amount, except in the case of PGW. This reflects the view of the Commission that had the General Assembly intended to impose the same requirements on all utilities, they would not have made the distinction for PGW. However, EAP's position is that under 1404(a) and (e), a public utility shall not be required to provide service to an applicant without their paying the full amount of the cash deposit if the applicant fails to pass the creditworthiness test of the utility. EAP believes that the language of the statute is clear and that the utility has "the right to collect a deposit…prior to or as a condition of providing utility service" and "a public utility shall not be required to provide service if the applicant fails to pay the full amount of cash deposit" per Sections §1404(a) and (e). According to EAP's legal opinion, where there is a conflict between the statute and a regulation purporting to implement the provisions of the statute, the regulation gives way. *Department of Transportation v. Colonial Nissan, Inc.*, 691 A.2d 1005 (Pa. Commw. 1997); *Dauphin County Social Services for Children and Youth v. Department of Public Welfare*, 2631 C.D. 2003 (Pa. Commw. 2004). If the deposit is paid in installments as proposed, then service would be provided prior to receipt of the full deposit and EAP believes that this is contrary to the statutory language.

Action Alliance notes that the option to pay a deposit in installments, provided at § 56.38 and §56.42, cannot be elected unless the applicant actually knows of the option. Action Alliance supports the Commission's proposal at § 56.38 to require utilities to "advise an applicant of the option to pay the requested security deposit in installments at the time the deposit is requested."

The CAC believes that the requirement to pay security deposits to multiple utilities acts as a barrier to receipt or to reconnection of utility service for many individuals with limited economic resources. CAC notes that the Commission should use particular care to ensure that the Chapter 14 public policy purpose of "ensuring that service remains available to all customers on reasonable terms and conditions" is not thwarted by the imposition of security deposit requirements that may exceed the specific requirements of Chapter 14. Given the high number of customers entering the winter without a source of safe heating, CAC advises the Commission that security deposit requirements should be interpreted as liberally as possible. The CAC supports the determination by the Commission that §1404, except in the case of PGW, does not

require immediate, up-front payments of the deposit amount and thus allows payment over a full 90-day period. Based on its comments concerning §56.42, PULP recommends eliminating § 56.38 in its entirety.

IRRC notes that the proposed language adds a sentence permitting applicants to pay the security deposit in installments. However, IRRC notes that Chapter 14 specifically prohibits the Commission from prohibiting a utility from requiring a cash deposit "prior to or as a condition of providing utility service." IRRC maintains that the final-form regulation should explain how this provision is consistent with Section 1404(a) and (e) and Chapter 14 does not make a distinction between security deposits paid by applicants and new applicants.

Discussion:

Deposit payment timeframe requirements in Section 1404 are the subject of much confusion and debate, evidenced by the comments submitted on this section. This is an area where reasonable people can disagree because different interpretations are possible. The Commission, in its proposal, attempted to simplify security deposit timeframes by advancing an interpretation of Section 1404 that would facilitate the use of a standard time period for almost all applicants and most situations (with the notable exception of PGW, for whom there are clearly different and specific rules). This interpretation was based on the fact that while Section 1404(f), which applies to the Philadelphia Gas Works, clearly specifies that a deposit must be "...paid in full at the time the city natural gas distribution operation determines a deposit is required," this precise language is missing from Sections 1404(a) and (e), which apply to utilities other than PGW. This was seen as not only an aid to consumers who must comply with these rules but also to utilities that have the burden of administering the rules and applying the appropriate time periods.

The Commission's attempt at simplification was supported by many parties including PECO, CAC and Action Alliance. However, the Commission's proposal was opposed by Allegheny Power, FirstEnergy, Duquesne, NFG, Equitable, PGW and EAP. IRRC also questioned the basis for the Commission's proposal. While we still believe that the Commission's original proposal is reasonable and a supportable interpretation of Section 1404, given the objections to the proposal, we will revise the proposed regulation. The regulation will now require applicants who have to pay a deposit for failing to meet the utility's credit standards at § 56.32 to pay a deposit, in full, prior to the provision of service. Applicants who have to pay a deposit to restore service under § 56.41(2) will be allowed to pay by installments. The utility is free, of course, to accept a more lenient payment schedule if the utility so chooses. We admit that this proposal does mean that there are differing deposit payment periods depending on the applicant's and customer's circumstances (refer to § 56.42) which may present some confusion for consumers. We remind utilities that the responsibility is upon the utility to make sure that the appropriate time period is

applied.

§ 56.41. General rule.

PGW opines that per Section 1404(a)(2), a utility may require an existing customer to provide a deposit if the customer is unable to establish creditworthiness through the use of a commercially available consumer credit reporting service.

EAP states that § 56.41(1)(i)(a) has the utility sending notice to a perpetual non-payer that they get one more bad payment before a deposit will be required. EAP believes that this is bureaucratic, costly and does not serve the public interest.

Action Alliance is concerned with excessively broad readings of § 56.41(1) that allow deposit notifications being sent to any customer who has a delinquency no matter how small. As a result, customers with small outstanding balances, which either in practice or under regulation (less than $25) would not result in the utility's placing them on the collection path, have been served with purported § 56.41(1)(i) notices. Action Alliance notes that § 56.41(1) is prospective, and only sanctions with a deposit request the failure, *going forward*, to pay a current bill and the next bill in full and on time and/or three bills which may include the current bill in the next twelve months after notification. Action Alliance submits that two consecutive missed payments or payments which are less than the amount billed, or three such payments in a twelve month period only gives the utility the right to send a § 56.41(1)(i) notification. Action Alliance contends that the right to actually demand a payment must be based on the prospective payment pattern established by the customer's payments for the current bill and for future bills. In other words, Action Alliance submits that a customer's payment pattern in the months prior to service of the current bill and notification cannot be utilized as the basis for requiring a deposit.

In addition, Action Alliance submits § 56.41(1)(i) requires a specific written warning to the customer that their conduct will not be allowed to continue in the future without sanction and that a non-personal generalized statement of company policy regarding deposit requests to existing delinquent customers included on the "Message Center" part of a customer bill is not an appropriate notification under § 56.41(1)(i). Action Alliance opines that while the Commission may have historically encouraged utilities to utilize the authority provided by § 56.41(1) as a collection tool to control uncollectibles, the means that have been authorized are limited, and should not allow interpretations which exceed the bounds of reasonableness. For these reasons, Action Alliance requests that the Commission clarify § 56.41(1) by including a $100 threshold; requiring written notification that informs the customer that a deposit will be required if the current monthly bill and the next monthly bill, or three monthly bills in the next twelve months including the current bill are not paid on or before the due date and that the customer's prior delinquent payments identified by billing dates caused the notice to be sent and that the public

utility may require a deposit of up to two-month's average bill. Action Alliance adds that the notice must be in a document entitled "warning" which is separate from the bill and contains no other information not related to the notification. Action Alliance states that the notice should also specify that the customer may elect to pay the deposit in three installments and that the public utility may hold the deposit for a maximum period of 24 months or until the customer has paid bills in full and on time for 12 consecutive months, whichever is sooner.

Action Alliance further asks that § 56.41(1)(ii) be revised so that the term "equal monthly billing plans" be changed to "budget billing plans" to be consistent with a related proposed change at §56.12(7). Also, within §56.41(1)(ii)(A), the terms "payment agreement" in the context of §56.14 (make-up bills) should be replaced with the term "installment arrangement" because a "payment agreement" is a specialized arrangement that is very limited in availability under Chapter 14, so the terms should not be used for arrangements that do not fit strictly within its definition.

PULP recommends the elimination of the word "informal" in the two spots it appears in §56.41(3). This recommendation follows from the comments made in association with the definition of "informal dispute settlement agreement" under § 56.2.

The WPCNB opposes requiring customers who are late paying their utility bills to pay a security deposit. With the current bad economic conditions, consumers who were having trouble paying their bills in the past are experiencing even more difficulty now and many consumers who were able to pay their bills are facing layoffs that have devastated their families and threatened their very survival. According to WPCNB, having to pay the security deposit in addition to the regular monthly bill is a hardship that can lead to termination of service if the deposit is not paid.

IRRC notes that subsection (l)(ii) refers to "equal monthly billing plans" and suggests that in order to be consistent with § 56.12, the final-form regulation should replace this term with "budget billing."

Discussion:

Concerning § 56.41(1), EAP objects to providing a customer with a notice of a possible deposit, while Action Alliance thinks the notice requirements need to be augmented. We believe the current, longstanding notice requirements are a reasonable middle ground and we will retain this traditional language. And while we understand and sympathize with Action Alliance's and WPCNB's concerns with the burden that assessing a security deposit on an existing customer presents, especially regarding low-income customers, removing this option or significantly altering it as requested would be counter to the intent of Chapter 14, which is to provide more, not fewer, collection tools to utilities. We note that Chapter 14 has little if anything specifically addressing security deposits for existing customers, and urge utilities to apply the provisions of §

56.41 with care and flexibility. There may be accounts with individual circumstances in which the assessment of a security deposit on an existing customer might actually exacerbate a collection problem, not remedy it.

We agree with IRRC that the term "budget billing" should be used as to align this section with § 56.12(7) and we also agree with PULP that the term "informal dispute settlement agreement" should be aligned with the definition in § 56.2.

§ 56.42. Payment period for deposits.

PPL recommends that the Commission harmonize the two different payment periods for deposits set forth in this section. If the customer has been delinquent in the payment of any two consecutive bills or three or more bills within a 12-month period and as a condition for reconnecting service, a utility may require some customers to pay a security deposit. PPL suggests that the Commission establish the same payment period for payment of deposits under both scenarios: 50% upfront, 25% payable 30 days later and 25% payable 60 days after the initial 50% payment. PPL believes that providing customers with 60 days to pay deposits is a reasonable amount of time.

PGW suggests that only certain applicants have up to 90 days to pay a deposit, not customers, and that this proposed regulation applies to customers.

In situations when a utility may request a deposit, Action Alliance agrees with the Commissions' proposal "establishing a payment period that requires 50% payable upon the determination by the public utility that the deposit is required, 25% *billed* 30 days after the determination and 25% *billed* 60 days after the determination." Action Alliance explains that this rule would allow for compliance with Section 1404(h) providing for a 90-day time period and corrects earlier rules that only allowed up to 60 days for payment of the deposit. Action Alliance requests that the proposed § 56.42 should be modified to reflect the Commission's intentions, by correcting those terms that allow for only 60 days to pay the deposit.

Action Alliance urges the Commission to adopt the OCA's initial recommendation that customers should not be required to pay a deposit to reconnect service since Section 1404(a)(1) uses the terms applicant and "...was a customer." Action Alliance reasons that since the Commission ruled in the Implementation Order that a customer remains a customer, so "is a customer," until the final bill is due and payable, a customer should be able to reconnect service without paying a deposit, absent other grounds for a deposit request. Action Alliance also notes that customers in distress following a recent service termination should not be required to raise money for a deposit, over and above the reconnect fee and an upfront payment on the outstanding balance under Section 1407, in order to restore life-essential service. Therefore,

Action Alliance recommends that the Commission not adopt the proposed new language in §56.42 that provides for deposits for existing customers, which would include customers seeking restoration of service after a recent termination of service.

Action Alliance notes that the option to pay a deposit in installments, provided at § 56.38 and §56.42, cannot be elected unless the applicant actually knows of the option. Action Alliance supports the Commission's proposal at § 56.38 to require utilities to "advise an applicant of the option to pay the requested security deposit in installments at the time the deposit is requested." Likewise, Action Alliance submits that utilities should also be required to provide this notice of an option to pay in installments to existing customers who are charged a deposit under § 56.42. Action Alliance requests that "A public utility shall advise a customer of the option to pay the requested security deposit in installments at the time the deposit is requested" should be added to the end of § 56.42.

PULP supports the determination by the Commission that Section 1404, except in the case of the Philadelphia Gas Works, does not require immediate, up-front payments of the deposit amount and the deposit may be paid over a full 90-day period. According to PULP, this determination will create greater simplicity and understanding of the payment procedure and corresponds to the correct statutory construction and legislative intent.

PULP observes that the Commission's statement in Attachment One to its Chapter 56 Order regarding the payment of security deposits is at odds with the proposed regulations at both §§56.38 and 56.42. PULP recommends the Commission correct this problem by adopting the standard enunciated in Attachment One, a standard which PULP believes is simpler, more easily implemented by practitioners, and which provides a single standard for security deposit payment. Given the Commission's clearly stated preference in Attachment One for the simplicity and clarity of a single payment structure for all parties, PULP recommends the regulatory language should directly reflect the Commission's intent.

Discussion:

For reasons discussed previously (refer to §56.38), the Commission is revising its original proposal to apply uniform security deposit payment periods for most applicants and customers in most situations. The deposit payment time period will vary depending on the grounds on which the security deposit was assessed. If the deposit was assessed on an existing customer per § 56.41(1), then the traditional installment plan will be maintained, since Chapter 14 is silent on these deposits. However, if the deposit was assessed because a customer defaulted on a payment agreement per Section 1404(a)(3) and § 56.41(3), then the deposit must be paid in full up front per Sections 1404(a) and (e). If the deposit was assessed as a condition of reconnection per 1404(a)(1), then the deposit can be paid in installments per Section 1404(h).

We concede that this is not simple and may be a source of confusion for both consumers and utilities. As discussed previously (refer to §56.38), while the Commission's attempt at simplification in its original proposal was supported by many parties including PECO, CAC, PULP and Action Alliance, it was opposed by Allegheny Power, FirstEnergy, Duquesne, NFG, Equitable, PGW and EAP. IRRC also questioned the basis for the Commission's proposal. While we still believe that the Commission's original proposal is reasonable and a supportable interpretation of Section 1404, given the objections to the original proposal, we will revise the proposed regulation by stipulating varying deposit time periods as outlined above.

We also acknowledge PPL's point that it is counterintuitive to provide customers whose service has been terminated and have thus demonstrated the highest level of risk with an extended period of time to pay their deposits; while other customers who may not have demonstrated such risk have to pay in full immediately. However, Section 1404(h) is clear in that those who have to pay a deposit because their service had been terminated get 90 days to pay the deposit. As such, we have to conclude that this is the result intended by the General Assembly.

We must disagree with Action Alliance when they urge that customers should not be required to pay a deposit to reconnect service because Section 1404(a)(1) uses the term "applicant" and that a "customer" remains a "customer" until the final bill is due and payable. While we understand Action Alliance's concerns with the burden this imposes, especially with low-income consumers who are already struggling to pay service restoration terms, we must point out that Section 1404 opens with the phrase "In addition to the right to collect a deposit under any Commission regulation or order..." Under Commission regulations, utilities have had the right, under §56.41(2) to collect a deposit as one of the conditions of reconnection of service after termination. We do not think it would be appropriate to take away this collection tool when the intent of Chapter 14 is to provide utilities with more collection tools, rather than fewer. We again remind utilities to exercise care and flexibility in applying these provisions because there may be individual circumstances, especially involving low-income consumers, where the imposition of a security deposit will exacerbate a collection problem, not ameliorate it.

We agree with Action Alliance that a consumer who has the right to pay a deposit in installments should be informed of this right and will revise the regulation to specify this. We also agree with Action Alliance that when a consumer can pay a deposit in installments, they should be provided with the 90-day period as specified in Section 1404(h).

§ 56.43. Deposit method; cash deposit or composite group.

NFG agrees that § 56.43 should be removed from the regulations.

Discussion:

This section is being removed because composite credit groups were eliminated as an option when Chapter 56 was last revised in 1997. The retention of this section was an oversight, which we now propose to correct.

§ 56.51. Amount of cash deposit.

PGW opines that this proposed regulation should address only the amount of deposits for customers because deposit requirements for applicants have already been addressed in § 56.32 and do not have to be restated in this section.

Action Alliance likewise notes that the proposed language to § 56.51(a) is redundant with the language at § 56.32(a) also relating to deposits for applicants. If this proposed language is adopted, Action Alliance believes that § 56.51(a)(2) should also include as its last sentence the same language already proposed for the last sentence of § 56.32(a)(2): "The credit scoring methodology utilized for this purpose must specifically assess the risk of utility bill payment." The methodology used to determine creditworthiness should be uniform throughout Chapter 56 and should be narrowly tailored to assess the risk of utility bill payment and not of payment history of debts of significantly different character.

PULP submits that § 56.51(a)(1)(iii) requires some clarification. The subsection permits utilities to require a cash deposit where there was a service termination resulting from the utility being denied access to the meter or service connections. This language is problematic because there are a variety of situations in which utility personnel might be denied access to a meter through no fault of the customer of record. In these instances, a customer should not be penalized for actions not his or her own. For example, where a landlord forbids access to a meter on the landlord's premises or where the meter is in a common area over which the customer has no exclusive control, the customer of record should not be penalized with the assessment of a security deposit as a result of the utility's inability to access the meter.

Discussion:

We agree with PGW and Action Alliance that much of the language in the proposed regulation is redundant and unnecessary. The grounds for deposits are already outlined in other sections (refer to § 56.32 and § 56.41) and do not have to be repeated in this section. We will add language from Section 1404(g) addressing the calculation of security deposit amounts. We will also delete the reference to minimum deposit amounts of $5 as being outdated.

§ 56.53. Deposit hold period and refund.

PPL reports that it has discovered that some customers do not establish a timely payment history over 12 months; they pay late, they pay inconsistently but they do not have their service terminated. When this happens, PPL explains that it refunds the security deposit to the customer at the end of the 24 months, and then immediately bills the customer for another security deposit. According to PPL, this process is time-consuming, confusing to customers and presents more risk for utilities. For these types of situations, PPL recommends that the Commission permit utilities to hold security deposits until the customer establishes a timely payment history as defined under § 56.53(b), even if that period extends beyond 24 months. PPL believes that the use of the conjunction "or" in § 56.53(a) provides this flexibility to the Commission.

Action Alliance recommends insertion to the end of § 56.53(a) the words "whichever is shorter" so that the public utility will not have the option of holding the deposit for 24 months if the timely payment history is established in a shorter period of time.

PULP supports the Commission's inclusion of a section that lays out clear rules for how long a security deposit may be held. PULP recommends adding "whichever is shorter" to the end of this section as this will clarify that a customer can receive back a security deposit by achieving a sound payment history and so should encourage good bill payment.

Discussion:

PPL wants the Commission to specify that a deposit retention period can be longer than 24 months; while Action Alliance and PULP want the Commission to insert language specifying that "whichever is shorter" should apply. We disagree with PPL because the plain language of Section 1404(c)(1), including the word "maximum," appears to indicate that 24 months is indeed the longest period that a deposit can held by a utility. We also disagree with Action Alliance and PULP that the timeframe is the shortest one provided. Again, based on the plain language of Section 1404(c)(1) and the use of the word "or" appears to indicate that either option is available to the utility. We believe that an interpretation of this section between the extremes advocated by the parties is a reasonable middle ground; a deposit can be held until a good payment history is established or for a maximum period of 24 months.

§ 56.54. Application of deposit to bills.

Allegheny Power and Equitable suggest that § 56.54 be eliminated because it conflicts with §56.53(4)(c) and § 66.1404(c)(3).

Duquesne suggests that this section be clarified as to state "If a customer is eligible to have all or a portion of the security deposit returned as required in § 56.53, the customer may choose to have it refunded or credited to the account to pay future bills."

Phillips opines that the customer election as to the disposition of the security deposit, as set forth in § 56.54 appears to be in conflict with the options reserved to the public utility at § 56.53(c),(d) and (e) and, accordingly Phillips proposes that the phrase "subject to the rights or options of the public utility, as set forth herein at § 56.53(c),(d) and (e)" be added to the beginning of § 56.54.

IRRC notes that the existing language in this section allows a customer to seek a refund of a deposit; however, a commentator is concerned that this language conflicts with proposed language in § 56.53 (c),(d) and (e) which allows only partial refunds, based on various circumstances. IRRC questions how the process for refund is consistent with each of these subsections.

Discussion:

We agree with Allegheny Power and Equitable that this section should be eliminated because it conflicts with § 56.53(4)(c) and § 66.1404(c)(3). This should also address the concerns of IRRC and Phillips.

§ 56.55. Periodic review.

NFG agrees that § 56.55 should be removed from the regulations.

Discussion:

We have eliminated this regulation because it is inconsistent with Section 1404(c). Deposit retention regulations are now found at § 56.53.

§ 56.57. Interest rate.

PECO currently returns deposit interest over the course of holding the deposit. The proposal to require utilities to accrue interest until the deposit is returned or credited is less customer-friendly and would require considerable re-programming dollars to achieve this. PECO suggests allowing utilities to implement either procedure.

Discussion:

The proposed language from this section was lifted substantially verbatim from Chapter 14 and so we must decline PECO's suggestion. Section 1404(c) states that the utility shall "...return such interest with the deposit" and we do not think PECO's proposal to return the interest over the life of the deposit is in keeping with the plain language of this section.

§ 56.58. Application of interest.

We will delete the word "annually" from this section as to align it with Section 1404(c)(6).

§ 56.72. Discontinuation of service.

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

Action Alliance notes that the Commission proposes to shorten, to three days, the 10-day notice that utilities must provide to occupants when a nonoccupant customer seeks discontinuance of service to a premises. Action Alliance believes that Chapter 14 does not require shortening of the time period to three days and occupants should be provided with at least 10 days to apply for service.

The OCA notes that the first sentence of § 56.72(1) appears incomplete or seems intended as a heading and recommends that this be clarified. The OCA also questions why the notice period in § 56.72(2)(ii) has been shortened from 10 to three days because this shortened time period seems to provide insufficient time for affected occupants to make alternative arrangements or to pursue their rights under the landlord-tenant regulations. The OCA recommends that this time period be restored to 10 days.

PULP believes there is no good policy basis for reducing this notice period and ample reasons for maintaining the 10-day notice requirement. PULP reasons that Section 1406(b)(1) sets the notice period for involuntary terminations at 10 days and discontinuance of service absent affirmative consent of all occupants is comparable to involuntary termination. According to PULP, an occupant of a household where discontinuance has been requested may be totally unaware of the proposed discontinuance and may be totally unprepared to move or secure alternative service in his or her name. Domestic violence situations provide a perfect illustration of this and the need for 10-day notice.

Discussion:

We will change the term "discontinuation" to "discontinuance" in this section because "discontinuance" is the more commonly-used term; and to align it with the definition at §56.2.

Upon review of the comments and our original proposal, we agree with NFG that the proposed new language in § 56.72(1) is unwieldy and could lead to potential abuse. We will leave it to the utility's experience and discretion as to how to best handle requests for discontinuance when an account is in the name of multiple parties. We do remind everyone of the long-standing requirements at § 56.91 to provide notice before terminating service to an occupied residence.

In response to the concerns expressed by OCA, Action Alliance and PULP, we will reconsider our proposed shortening of the notice time period to three days from its traditional 10-day period. As these parties point out, discontinuance is not addressed in Chapter 14 and as such there is no need to change this timeframe. Also, as OCA points out, three days may be insufficient time for affected occupants to make alternative arrangements or pursue their rights under the landlord-tenant regulations.

§ 56.81. Authorized termination of service.

NFG submits that § 56.81(3) be amended by adding "or arrange" after "Failure to permit" because customers with meters inside or within a locked fence or the like have an affirmative obligation to assist the utility in gaining access to the equipment of the utility in order to continue to receive safe and reliable service. While customers may not affirmatively refuse access they are often times ambivalent to a utility's attempts to work with them to gain access. NFG believes that inserting a provision of this nature would give a utility an affirmative tool to assist them in gaining the necessary access to their equipment.

Discussion:

The language of paragraph (3) is lifted verbatim from Section 1406(a) and we decline to alter statutory language without pressing cause. While we understand NFG's concern, we believe the existing language as proposed is sufficient to address these concerns and the additional verbiage suggested by NFG would be superfluous. We do note that paragraph (5) has been revised to omit reference to "informal dispute settlement agreement" in keeping with our response to the comments submitted in reference to § 56.2 that objected to this concept.

§ 56.82. Timing of termination.

Allegheny Power, Duquesne, PPL and PGW object to including in § 56.82 any additional limitations other than those specifically mentioned in Section 1406(d). Duquesne estimates the cost of complying with these additional requirements would be $500,000 annually. PPL estimates the cost of having to staff operations on Saturday to meet this proposed requirement at $280,000 annually. PECO notes that when it engages in Friday terminations, it has personnel available on Saturdays who can negotiate conditions to restore service, accept emergency

medical certificates and offers the same services offered to customers during the week. PECO believes this practice is consistent with the requirement to have an office open during regular business hours as well as the requirements at Section 1406(d) that Friday terminations are available as long as the utility can accept payment to restore service on the following day and can restore service consistent with Section 1407. PGW notes that it has offices and call centers open on Saturday from 9 a.m. to 1 p.m. and this is adequate enough to comply with the requirements of Section 1406(d) and that this section does not require the full access to customers the proposed regulation appears to require.

The CAC supports the requirement that if the utility will terminate on a Friday, the utility must be able to accept emergency medical certificates, negotiate payment agreements, and restore service, if required, on the day after a termination of service. CAC believes that this requirement assists all parties in understanding the obligations to be assumed by utilities when they avail themselves of this additional opportunity to terminate service.

OCA supports these requirements but suggests 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. The OCA also recommends that the utility should have personnel available who can refer customers to bill payment assistance programs because a utility should have the clearly stated obligation to inform and refer customers to agencies that can provide assistance.

PULP supports the requirement that, as a condition of terminating service on a Friday, a public utility must be able to accept emergency medical certificates, negotiate payment agreements, and restore service on the day after the Friday termination of service.

Discussion:

We agree with and support the PECO practice of having personnel available on Saturdays who can negotiate conditions to restore service, accept emergency medical certificates and offer the same services offered to customers during the week. PECO believes, and we agree, that this practice is consistent with the requirement to have an office open during regular business hours as well as the requirements at Section 1406(d) that Friday terminations are available as long as the utility can accept payment to restore service on the following day and can restore service consistent with Section 1407. We believe that the General Assembly, in Section 1406(d), clearly indicated that the utility must be reachable and able to act on the day following the termination of service.

We believe that the claims of Allegheny Power, Duquesne, PPL and PGW that these are new and costly requirements are overstated and that our intent was to merely provide guidance as to what we believe the General Assembly intended. As the CAC and PULP point out, this section assists

all parties in understanding the obligations to be assumed by utilities when they avail themselves of the additional opportunities to terminate service provided by Section 1406(d). However, we are concerned that augmenting the statutory language without a more compelling reason may be inappropriate, and we will revise this section to more closely reflect the language at Section 1406(d).

Additionally, we see merit in OCA's suggestion that language be added specifying that utility's offices be open at the time of termination in that it is nonsensical that the General Assembly would intend utility offices to be available the day after a termination of service but not on the day of termination. We think it is commonsense that if the General Assembly wanted a utility to be able to restore service the day *after* termination; the same should apply to the day *of* termination. Concerning OCA's other suggestion, bill payment assistance programs; we must note that under Section 1407(c), enrollment in an assistance program is not a method a customer may use to get service restored, with the exception of PGW customers under certain circumstances.

§ 56.83. Unauthorized termination of service.

Allegheny Power submits that § 56.83(10) and (11) are inconsistent with Chapter 14 and should be eliminated.

FirstEnergy opines that Chapter 14 provides that termination may occur for nonpayment of an undisputed delinquent account without any limitations. As a result, 56.83(1) and (11) should be stricken from the proposed regulations.

Columbia believes that this section must be narrowly tailored and the proposed provisions (1), (2), (5), (7), (8), (9), (10), and (11) of § 56.83 flaunts the General Assembly and constitutes an abuse of discretion. The proposed § 56.83(4) is acceptable to Columbia.

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

PGW asserts that subsections (1), (2), (3), (5), (7), (8), (9), (10) and (11) are inconsistent with Chapter 14 and that termination is permitted for non-payment of undisputed delinquent accounts regardless of the amount, type of service or charges or age of the debt. Concerning § 56.83(8), PGW suggests that the language concerning "court, district justice or administrative agency" should be removed since Chapter 14 gives utilities the right to establish liability without the involvement of a third party like a court.

EAP contends there are many inconsistencies between Chapter 14 and § 56.83. and that maintaining § 56.83 in its current state as much as possible is inconsistent with the statute. The sections that should be eliminated are § 56.83(1) and (2) relating to concurrent service; §56.83(3) the nonpayment of merchandise and fees; § 56.83(4) relates to nonpayment of bills of other customers; § 56.83(5) and (6) are not necessary because Chapter 14 has created very specific rules about deposits, termination, and payment agreements; § 56.83(7): concerning service furnished more than 4 years ago, which is not necessary because this is to be addressed in the make-up bill regulations; § 56.83(8) conflicts with the definition of "customer" as found at Section 1403; § 56.83(9) concerning nonpayment of estimated charges unless the estimated bills were required due to denial of access to the meter; § 56.83(10) and (11) because the $25.00 threshold is not mentioned in Section 1406(a)(1) and it also defeats the purpose of a security deposit and creates an additional risk of loss to the utility.

Action Alliance agrees with the Commission that unauthorized grounds for termination, at §56.83, should be maintained in their current state as much as possible. However, Action Alliance recommends that the proposed language at §§ 56.83(4) and (8) be modified to clarify that terminations based on nonpayment of third-party liability are only permissible in strictly limited circumstances; Sections 1407(d) and 1407(e), relate only to applicants, not customers and Action Alliance believes that utilities should not be allowed subsequent to the application stage to bill customers retroactively for charges accrued under another person's name. Action Alliance therefore recommends that § 56.83(4) should be revised to read " nonpayment of bills for delinquent accounts of the prior customer at the same address unless the public utility has previously, under § 56.35 (relating to payment of outstanding balance), established that the applicant or customer was an occupant at the same address during the time period the delinquent amount accrued and had required payment on such amount, as a condition of approval of application for service or restoration of service." Action Alliance submits that § 56.83(8) should be revised to read "nonpayment for residential service already furnished in the names of persons other than the customer unless a court, district justice or administrative agency has determined that the customer is legally obligated to pay for the service previously furnished or unless the public utility has previously, under § 56.35, established that the applicant or customer was an occupant at the same address during the time period the delinquent amount accrued and had required payment on such amount, as a condition of approval of application for service or restoration of service. This paragraph does not affect the creditor rights and remedies of a public utility otherwise permitted by law."

The CAC supports the Commission proposals to maintain § 56.83 to the extent consistent with Chapter 14.

PULP submits that the Commission should clarify § 56.83(4). In its proposed form, this section might be read to mean that a child occupant, upon reaching maturity and requesting to have utility service placed in his or her name, could be held responsible for the delinquent account of a

parent. PULP submits that it is unlikely the General Assembly, the Commission, or public utilities intend for this section to apply where the occupant was a minor at the time the delinquent balance accrued. This would unjustifiably visit the sins of the parents on the children. Therefore, PULP requests that the Commission insert the word "adult" immediately prior to the word "occupant" in this section.

Discussion:

First, we disagree with PGW and EAP when they suggest that paragraph (3) is inconsistent with Chapter 14 and that they should be free to terminate utility service for the nonpayment of nonbasic charges such as, service contracts, service line insurance, etc. Leaving aside the fact that neither of these two parties pointed out the specific Chapter 14 provision that they claim supports the termination of service for such charges, the Commission has addressed this specific issue previously in the first *Chapter 14 Implementation* Order M-00041802F0002 (March 3, 2005) where the Commission noted that traditionally, a distinction has been made between basic and nonbasic utility charges (page 17). The Commission concluded that:

> "The Commission finds that utilities have adequate remedies to collect balances owed for nonbasic service. Therefore, we will retain our prohibition against terminating essential utility service for nonpayment of nonbasic charges. To allow utilities to include charges for services that may be unregulated by the Commission would result in additional terminations, and create administrative difficulties relating to determining the validity and accuracy of the nonbasic delinquent amounts that form part of the grounds for termination. We note that our resolution here is consistent with the Commission's regulations relating to billing and collection efforts of jurisdictional telephone companies found in §64.63 which prohibits suspension of basic phone service for nonpayment of nonbasic services. *See, e.g., Ruby Gandy v. MCI Worldcom Communications, Inc.*, F-01234911, entered July 11, 2004." (page 18)

We also note that the electric customer information regulations (52 Pa. Code §54.2) and the natural gas customer information regulations (52 Pa. Code §62.72) define basic and nonbasic services, and we have proposed incorporating these definitions now in Chapter 56. Neither PGW nor EAP have presented a convincing argument to overturn the Commission's previous declaration on this issue. Allowing the termination of essential utility service for nonpayment of nonbasic charges that are not set or regulated by the Commission would be a draconian measure, which might jeopardize public health and safety for the sole purpose of collecting miscellaneous charges. The remedy for non-payment of nonbasic services is for the utility to stop providing the nonbasic service; not stopping the provision of the essential, basic utility service.

Similarly extreme is the position of PGW, EAP and Columbia that utilities should be allowed to terminate residential service for non-payment of charges on a separate, commercial account, as currently prohibited by § 56.83(2). If a commercial account is in default, the collection remedy the utility should utilize is to terminate service to the commercial account; not terminating

service to a separate, residential account. Again, no party has explained sufficiently how this long-standing prohibition is in conflict with Chapter 14. We also disagree with EAP that the prohibition on terminating service before the due date of the bill which forms the basis of a payment agreement found in paragraph (6) is not necessary because of Chapter 14. We believe that allowing termination in such instances would make payment agreements meaningless.

We believe it is necessary to retain paragraph (5) because non-payment of a deposit based on the amount of a make-up bill is inappropriate and contrary to deposit amount calculation requirements in Section 1404. We believe it is necessary to retain paragraph (7) as to prevent a utility from placing on a bill charges for service furnished more than four years ago and terminating for such. Accordingly, this will avoid placing unreasonable burdens of evidence on customers who may dispute the liability for such charges because it is unlikely that more than a few customers retain account and financial information going back that far. The four-year limit also reflects the standard time period found in § 56.14 (make-up bills) and § 56.35 (liability determinations), and the utility record retention time requirement at § 56.202. It also reflects the four-year limit on rate refunds at 66 Pa. C.S.A. § 1312. However, we will revise the language in paragraph (7) to make clearer that the 4-year clock starts ticking when the utility ceases billing for the amount.

We do not understand PGW's objections to the phrase "court, district justice or administrative agency" in paragraph (8) since the intent of this was to provide utilities with more options for obtaining liability determinations rather than fewer. The proposed language of paragraph (8) allows a utility to use the independent determinations of liability provided for by Chapter 14 (as we propose incorporating at § 56.35) in *addition* to the option of obtaining a liability of determination from a court, district justice or administrative agency. There may be situations in which the utility is not able to hold a party responsible because they do not meet the criteria provided for in Chapter 14 (at Section 1407(d) and (e) for example). Retaining the option of going to a third party, such as a district justice, will make this possible. At the same time, we reject Action Alliance's request to insert language restricting liability determinations to applicants, at the time of application. If a party is responsible for a balance under the law or regulation, there is no legal basis for waiving the party's responsibility for such simply because their status has changed to that of "customer."

We are similarly perplexed by the objections of Allegheny Power, FirstEnergy, Columbia, PGW and EAP to paragraph (10) that prohibits termination for past-due amounts less than $25. Based on utility collection reporting under § 56.231 and Commission experience with both informal and formal complaints, there appears to be no shortage of accounts with arrears in the hundreds, and thousands of dollars. For a recent example, see *Benjamin A. Martins, III v. PECO Energy Company*, (F-2008-2059421) from the September 24, 2009 Public Meeting. We would hope that utilities focus their collection efforts on the accounts with large arrearages, and therefore we do not understand their concern with the prohibition on going after accounts under $25. It is even

harder to understand given the cost involved in terminating service to an account. This can include the cost of providing notices, sending personnel into the field to terminate the service, then reconnecting the service, etc. It is easy to assume that this cost must total more than $25, meaning that the utility is actually losing money as a result of the termination. This is a nonsensical result; one which the General Assembly could not have intended with the passage of Chapter 14. However, we will remove paragraph (11) based on the comments of Allegheny Power, FirstEnergy, Columbia, PGW and EAP that this provisions conflicts with Chapter 14.

We agree with PULP that liability for an account can only be assigned to an adult or someone who was an adult at the time service was provided. IRRC expressed similar concerns in their comments on the definition of "applicant." As such, we will insert the word "adult" prior to word "occupant" in paragraph (4).

§ 56.91. General notice provisions and contents of termination notice.

Allegheny Power suggests removing the requirement to publish specific Federal Poverty Level guidelines on termination notices because maintaining the income level grid is costly, requires utilities to revise their notices annually, are a training issue with customer service representatives, and can lead to customer confusion because revisions in the poverty guidelines do not coincide with the LIHEAP season. Allegheny Power also objects to termination notices containing foreign languages because the company believes that this is beyond the requirements of Chapter 14 and what is required of other industries.

Duquesne questions the language concerning the enrollment in a "universal service program" to avoid termination because LIHEAP, CRISIS, weatherization etc. are sometimes defined as universal service programs. Duquesne suggests making this more specific by instead referring to "customer assistance program" as defined in the proposed § 56.2.

PECO supports the Commission's approach in specifying notice formats and allowing utilities flexibility as it will allow PECO the opportunity to refine its notices as PECO gains experience with the information that will now be required on notices. PECO notes that some of the specific informational requirements may need minor modification to be implementable. PECO notes that providing a specific reconnection fee amount is problematic because the amount of the fee can vary depending on circumstances. And PECO notes that according to census data, as much as 26.7% of the population of Philadelphia could fall within this restriction. PECO recommends that the language proposed under subparagraph (17) be eliminated.

PPL agrees with the Commission's proposal to remove termination notice requirements from the definitions section of Chapter 56 and insert them into a revised §56.91. PPL also agrees with many of the suggested information requirements and already includes them in its existing

termination notice. However, PPL does have some concerns with several of the requirements proposed by the Commission that could expand the length of the notices from one to three pages. PPL suggests revising § 56.91 (b)(4)(iv), to "Enrollment is made in the public utility's customer assistance program or equivalent." PPL suggests this language to clarify that approval to receive assistance through a Low Income Usage Reduction Program ("LIURP") does not prohibit termination of service for non-payment of bills. This distinction is important because it may take several months to complete all of the LIURP services. PPL agrees with the Commission's proposed language included under § 56.91 (b)(10), which would enable the Company to send its normal termination notices to customers in December, January, February and March, thereby not having two separate notices, which simplifies the process and reduces costs.

PPL reports that it has a long history of including information in Spanish on the termination notice, customer letters, program brochures, etc., in recognition of the growing number of Spanish-speaking customers in its service area. Nevertheless, PPL does have concerns about the proposed § 56.91(b)(17). PPL recommends that the Commission revise the first sentence of § 56.91(b)(17) to encourage customers to call their utility. PPL recommends revising this section to "Information in Spanish, directing Spanish-speaking customers to call their public utility for information and translation assistance. Similar information may be included in other languages at the discretion of the utility when census data indicates a significant population using that language resides in the public utility's service area."

PPL has concerns with the proposed § 56.91(b)(18), because there is no one telephone number that would be sufficient; each of the 29 counties served by PPL is likely to have more than one agency serving the needs of disabled individuals. PPL recommends that the Commission allow utilities the flexibility of providing the best telephone number for this purpose. PPL Electric, for example, would provide its normal contact telephone number because its customer service representatives have access to a county-by-county electronic listing of various social service agencies.

Columbia believes that the proposed language could be interpreted as requiring 10-day notice prior to termination of a user without contract, which is contrary to the Commission's determination in its First Implementation Order entered March 4, 2005 in Docket M-00041902F002 that only three-day notice is required for a user without contract. Columbia believes that removal of the word "otherwise" from Section 56.91(a) would clear up this confusion.

Equitable suggests that the Commission provide the 10-Day termination notice as an Appendix in the regulations, and also suggests that since this notice includes the Medical Emergency Notice, the 10-Day termination notice could replace the Medical Emergency Notice currently in Appendix A. Equitable also submits that paragraph (7) should be changed to be consistent with the plain language wording in the current notices "If you have questions or need more

information, please call us today at XXX-XXX-XXXX. After you talk with us, if you are not satisfied, you may file a complaint with the Public Utility Commission (PUC). The PUC may delay the shutoff if you file the complaint before the shut-off date. To contact them call (800) 692-7380 or write to: Pennsylvania Public Utility Commission, Box 3265, Harrisburg, PA 17105-3265."

To provide clarification, NFG suggests changing the word "accounts" to "amounts" in the proposed language of § 56.91(b)(2) as well as adding the phrase "at the time of the notice" after the word "due". NFG believes that the phrase "if applicable" should be added to the end of the proposed language of § 56.91(b)(4)(iii) as, based on these proposed rules, a payment agreement or informal dispute settlement agreement will not always be available to a customer to avoid termination. Likewise, NFG believes that the phrase "if eligible" should be added to the end of the proposed language of § 56.91(b)(4)(iv) because not all customers will be eligible to enroll in a universal service program. NFG recommends removing the phrase "and that enrollment in the program is a method of avoiding termination of service" from the end of the proposed language or revising it to state "If you are eligible, enrollment in a universal services program may preclude termination of service." In addition, the word "threatening" in the proposed language of § 56.91(b)(10) is unnecessary and contrary to the notion that termination should not be used solely as a collection device. NFG also believes that the phrase "the customer" should be removed from the proposed language of § 56.91(b)(15), to prevent any potential confusion given the fact that "customer" is a defined term that may not be applicable in all situations.

PGW objects to the proposed § 56.91(b)(2) requirement that a notice include an itemized statement of the account because this could add a significant level of detail to the notice which could be confusing. PGW also objects to the proposed § 56.91(b)(17) requirement concerning foreign languages because while 2000 census data indicates that 17.7% of Philadelphia residents speak a language other than English at home, the U.S. Census Bureau reports that most people who reported speaking a language other than English at home also speak English. Also, PGW reports that they retain a foreign language service that can communicate with customers in a variety of languages as needed.

Phillips seeks clarification of § 56.91(b)(4) so that enrollment in universal service programs cannot be used to forestall termination of service multiple times. Phillips also asks that since there are very few Spanish-speaking customers in their service territory, the provision referring to census data should apply to all of paragraph (17).

EAP believes that the requirement that the notice has to reflect a language where there is a substantial "existence of a foreign language" is simply too vague. EAP also believes that there is no evidence that foreign language is a concern. The industry has positively and pro-actively addressed its customers who wish to communicate in a foreign language. There is no evidence that those current costs and procedures are not sufficient.

Aqua believes that the proposed § 56.91 (11) – (16) are significant alterations to the various current notices utilized by utilities and asks that these sections be deleted because they are not required by Chapter 14.

Action Alliance further supports the proposed definition of "user without contract," at § 56.2, and recommends its adoption, in order to bring further clarity to the regulations. Action Alliance also maintains that the proposed language at § 56.91(a) relating to termination notices, which effectively provides for a three-day notice to a user without contract, should be adopted.

Action Alliance requests that § 56.91(b)(2), be modified to include "past due of most recent payment agreement" explaining that while the Commission proposed similar language at § 56.97(2)(iii), this default cure amount is critical information that should be provided on all termination notices, as well as in contacts with the utility, if it is the lowest amount required to prevent termination of service. Action Alliance notes that throughout the Chapter 14 implementation process, the Commission has consistently upheld the customer's right to cure a default prior to termination and avoid termination and utilities must be required to identify the payment agreement catch up amount, and computer systems must display this amount to customer service representatives.

Action Alliance supports the Commission's proposal to require the provision of information on termination notices that inform victims of domestic violence with a PFA, low-income customers and tenants of the special protections from wintertime termination that are available for them and the inclusion of the federal poverty guidelines.

Action Alliance supports the Commission's proposed language at § 56.91 (b)(17) and §56.331(b)(13) requiring that termination notices include information in, not only the Spanish language, but also "in other languages when census data indicates a significant population using that language resides in the public utility's service territory." Action Alliance recommends that the Commission provide greater guidance in the regulations to clarify the meaning of "significant population using that language," by requiring written translations of vital documents for each eligible Limited English Proficient (LEP) group that constitutes 5% of persons eligible to be served or 1,000 members of the language group, whichever is less.

The CAC supports the Commission's proposal incorporating into the regulations the requirement that termination notices must include and itemize critical information and the protective information must include reference to universal service programs, emergency medical certification procedures, protections for tenants, and protections for victims of domestic violence with a PFA.

The OCA supports the proposed regulation and the contents of the termination notice specified. However, the OCA suggests that language be added to subsection (b)(4) clarifying that a

customer's application for a universal service program should be sufficient, and add language to (b)(6) and (b)(9) making it clear that the utility should provide information on the assistance program application process. 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.

PULP also requests that the protective information must include reference to universal service programs, emergency medical certification procedures, protections for tenants, and protections for victims of domestic violence with a PFA. PULP also supports the Commission's decision to require that termination notices must include information in Spanish that informs the reader of who to call for assistance.

However, PULP submits that § 56.91(b)(6) is unclear in parts and could benefit from some slight changes in its language. PULP suggests revising this subsection to state "A statement that the customer shall immediately contact the public utility to attempt to resolve the matter. The statement shall include the address and telephone number where questions may be asked, where payment agreements may be negotiated and entered into with the public utility, and where applications can be found and submitted for enrollment into the public utility's universal service programs, if these programs are offered by the public utility."

Concerning § 56.91(b)(12), PULP recommends that it would be helpful for customers if the termination notices, in addition to telling customers to contact the utility about these protections, also directed customers to the specific statutory cite. According to PULP, this would enable customers to better and more easily identify the statutory basis for their rights. PULP also requests that the Commission revise the language in subsection (14) to state that "Information indicating that if service is shut off, any adult occupant who has been living at the premises may, in order to have service restored to that premises, have to pay all or portions of the bill that accrued while they lived there." Finally, PULP requests that another subsection be added to §56.91 informing customers that they retain customer status until the final bill is past due.

IRRC notes that subsection (b) identifies the information that must be provided in termination notices. IRRC has four concerns. First, under subsection(b)(3), a commentator has noted that including a specific reconnection fee in the termination notice is not feasible, because the amount of the fee is not known at the time the termination notice is delivered. The commentator suggests removing the word "specific" and including a range of fees or maximum fee in the notice. IRRC further submits that the Commission should consider including this option in the final-form regulation. Second, under subsection (b)(7), IRRC posits the questions whether the Commission considered allowing informal complaints to be filed by electronic mail? Third, subsection (b)(17) lacks clarity because it requires a utility to include certain information in a termination notice "when census data indicates a significant population using that language resides in the public utility's service territory." IRRC recommends that the language be amended

to clarify what constitutes a "significant population." Fourth, IRRC questions whether the contact information required under subsection (b)(18) be the customer service telephone number for the utility?

Discussion:

We first want to note that this proposal for a revised § 56.91 was the result of termination notices developed in a collaborative process initiated by the Commission in the Second *Chapter 14 Implementation* Order, M-00041802F0002, (September 9, 2005), pages 11-15:

> "To ensure that utilities provide adequate notice to customers that details the customer's rights and the process a customer can use to avoid termination before utilities engage in winter terminations under Section 1406(e), we invite all parties to submit sample 10-day, 48-hour, and post-termination notices to the Commission's Bureau of Consumer Services (BCS) within 20 days from the date of this Order. Similar to the process we used to design the customer notice required at §1416, Commission staff will use the suggestions submitted by the interested parties to design three sets of notices, two sets for PGW (See PGW-Specific Issue #1), and another set for the other electric and gas utilities. When developing sample notices for Commission staff review, we request that parties incorporate the plain language guidelines at §69.251 into their design. The notices developed by Commission staff will be disseminated for additional feedback from the parties before they are finalized." (page 15)

The results of the collaborative process were disseminated to the utilities in November 2005, and those notices are the notices currently used by electric and gas utilities. The Commission's proposed notice requirements at § 56.91 substantially reflect the results of the collaborative process, and differ little from the notices currently in use.

We agree with IRRC and PECO that the notice does not have to state a specific reconnection fee amount because as the parties point out, this amount can vary depending on circumstances. We will revise subparagraph (b)(3) by removing the word "specific" and instead provide the maximum fee that could apply. We agree with Columbia that the word "otherwise" in paragraph (a) is unnecessary and possibly confusing. We agree with Duquesne and PPL that the term "universal service program" on line (b)(4)(iv) should be changed to the more specific "customer assistance program or equivalent" so as to avoid confusion with other programs such as LIHEAP and LIURP. We agree to also add the phrase "if eligible" to this same line because as NFG points out, not all consumers are eligible for CAP benefits. In the interest of plain language, we again agree with NFG that line (b)(2) should refer to "amounts" and not "accounts." This change should also address PGW's concerns with line (b)(2); but we do point out that the proposed language referencing "itemized statement of accounts" is from the current definition of notice at § 56.2, and to our knowledge has not been the source of confusion.

While we understand NFG's concerns with the use of the word "threatening" in line (b)(10), we must decline their suggestion to remove the word because it conveys an important point. The restrictions of Section 1406(e) apply to terminations that occur between December 1 and March 31. It is the date of the termination, or threatened date of termination, that triggers the winter restrictions. For example, because 10-day notices are valid for 60 days (per Section 1406(b)), a termination notice sent as early as October could be acted on in December. Therefore, because the "threatened" date of termination falls into the winter period, then the notice must include the wintertime information at (b)(10).

NFG's concern with subparagraph (b)(15) is misplaced since the utility is free to phrase this information, along with many of these notice requirements, as they see fit, as long as the language conveys the intent stated. For example, a utility may choose to convey the information in subparagraph (15) by stating on the notice that "You may be required to pay more than the amount listed on this notice to get your service turned back on." The intent of § 56.91 is to specify the information that a termination notice must provide. The exact wording and format are at the discretion of the utility, with the notable exceptions of subparagraphs (7) and (8) which do mandate specific language. We agree with PPL that the notice requirements belong at § 56.91 and we agree with PECO that while we should direct what the contents of the notice should be, we should not specify precise formats and instead leave the formatting to the discretion of the utility. As such, we disagree with Equitable's suggestion to place the notice requirements in a separate appendix. However, we do agree with Equitable that subparagraph (7) should reflect the plain language found in notices currently being used.

IRRC's and PPL's concerns with the telephone number a utility is to provide per (b)(18) is misplaced since this again is at the discretion of the utility. For many utilities, it will probably be the regular customer service number, as is the case with PPL. However, a utility is free to place whatever phone number they deem appropriate, depending on how they address consumers with disabilities.

We agree with IRRC, PECO, PPL and EAP that the proposed language in subparagraph 17 stating that "information shall be included in other languages when census data indicates a significant population using that language resides in the public utility's service territory" is vague. However, we first want to clarify what was intended by this language. It was not intended that the entire termination notice be provided in different languages. The intent was to just include a line in the foreign language directing the reader to the phone number to call for assistance. As PPL and PGW point out, utilities retain foreign language translation services. The line on the termination notice would simply direct the reader to call this service for assistance. Regardless, we admit the original proposal is too vague and difficult to implement, and we will omit this requirement. We disagree with Allegheny Power's objection to providing Federal Poverty Level information on the notices because the placing of this information on notices was one of the results of the collaborative process discussed above, and we decline to

overturn the results of that process without good cause. We also believe that the Federal Poverty Level information is crucial to protect consumers because the winter termination prohibitions are based on the poverty level. Consumers must have this information at hand if they are expected to help the utility determine their eligibility for wintertime termination (*see* §56.100).

While we see merit in Action Alliance's suggestion that (b)(2) be modified to include the amount needed to restore the customer's payment agreement and thus avoid termination (see our discussion at § 56.97), we decline to require this for practical reasons. In addition to the confusion that may be caused by placing two different dollar amounts on the notice, requiring this would cause significant and possibly costly programming changes for the utility. Instead, as a reasonable alternative, we will include a line under (b)(4) that informs the customer that payment of amounts past-due on a payment agreement will avoid the termination of service. The dollar amount past-due on a payment agreement will not be required to be printed on the notice. The costs of this change should be minimal, and it will inform the customer of this important option to avoid termination. This option allows the customer to restore a payment agreement, thus eliminating the grounds for termination at Section 1406(a)(2).

We agree with PULP and OCA that (b)(14) requires a minor revision to reflect Section 1407(d) and to specify that the individual must have been an occupant at the time a bill accrued as a condition of being held responsible for the bill. We also agree with PULP's and OCA's minor, suggested revisions to (b)(6) as to make it more plain language and more helpful. However, for reasons of practicality, we disagree with PULP about informing customers that they retain customer status until the final bill is past due. While we understand the importance of this information and its importance to the utility in its classification of consumers, it is a concept that is not easily communicated to consumers, especially via a sentence or two on a termination notice. We also decline to incorporate OCA's suggestion that an application for the customer assistance program is sufficient to avoid termination, since simply applying does not mean the customer is eligible or will be enrolled. However, we do remind utilities that, in all fairness, if the utility's review of an application is for some reason taking an extended period of time, they should consider holding the termination of service while an application is pending, assuming the customer is fully cooperating with the application process and has submitted the application in good faith. To address these concerns, we will revise paragraph (9) to indicate that application to a universal service "may" avoid the termination.

Concerning Aqua's comments on subparagraphs (11) – (16), we again note that these paragraphs were added during the above noted collaborative process, and we decline to revise the outcome of that process without good cause. While we acknowledge that the water industry was not a part of that collaborative process, Chapter 14, for the most part, does apply to water utilities, and thus most of the information on the notices is of some relevance. We also point out that paragraph (b) of this regulation starts with the phrase "A notice of termination must include, in conspicuous print, clearly and fully the following information *when applicable*" (emphasis

added). If there are requirements in this section that do not apply to the utility, then the utility is free to omit these from the notices. For example, the winter termination provisions of Chapter 14 (Section 1406(e)) do not apply to water distribution utilities. As a result, the information at (b)(10) does not have to be included. Likewise, if the utility does not have customer assistance programs, the information at (b)(9) does not have to be included.

In answer to IRRC's question about filing complaints by electronic mail, the Commission does allow the filing of informal complaints electronically via the Commission's website. However, we decline to mention this in § 56.91 because any e-mail or website address we mention in the regulations could change in the future, and thus cause problems. It is also possible, with changing technologies that new methods may one day be available (such as texting for example). As such, we do not think it is good idea to get too specific about electronic methods of contacting the Commission, and providing the toll-free phone number and mailing address is sufficient.

§ 56.92. Notice when dispute pending.

PULP submits that this section requires clarification from the Commission. § 56.92 prohibits the mailing of termination notices to households where a dispute is pending and where the termination is concerned with the subject matter under dispute. However, PULP submits it is somewhat unclear what exactly constitutes a "dispute." Given other sections of the regulations, PULP holds that there is reason to believe § 56.92 is using the term dispute in a more general fashion so that it includes the process from initial inquiry, dispute, and informal complaint through the formal complaint. PULP submits that the Commission should change the language in § 56.92 to specify that a notice should not be delivered while an "inquiry, dispute, informal complaint, or formal complaint" is pending.

Discussion:

We agree with PULP that the use of the term "dispute" in this regulation is general. We see no harm being more specific as PULP suggests and will incorporate the terms "inquiry, dispute, informal complaint, or formal complaint" as to avoid confusion on this point. We will change "inquiry" to "initial inquiry" since it is "initial inquiry" that is defined at § 56.2.

§ 56.93. Personal contact.

Duquesne does not have a problem with requiring the two phone calls to be on different day parts, but does object to the requirement that the phone calls be two hours apart as adding complexity and cost.

PECO notes that customers often give contact phone numbers other than landlines and because of this a sentence should be added to the end of § 56.93(b) stating that "Calls made to contact numbers provided by the customer shall be deemed to be calls to the residence." PECO also submits that a personal contact telephone call should not try to provide every piece of information that would be provided in a written notice. Providing the 19 items listed in § 56.91 would not be practical and would make the phone calls too long. PECO suggests limiting the phone calls to the imminence of the termination, provide a contact number at the utility, and urge the customer to contact the utility as soon as possible.

Equitable is concerned with the provision that states a phone contact may be made between the hours of 7 a.m. and 9 p.m. because the Debt Collections Practices Act prohibits calls before 8 a.m. Equitable recommends changing the hours in this section from 7 a.m. to 8 a.m.

NFG believes that the Commission has clearly gone beyond the legislative intent of Section 1406 by placing more requirements than the Legislature intended. NFG explains further that had the Legislature intended to further define the viable time periods for telephone notification it could have easily done so. Rather, the Legislature saw fit to leave that discretion to the public utility under the utility's right of self-management. See Pennsylvania Public Utility Commission v. Philadelphia Electric Co., *et al.*, 561 A.2d 1224 (Pa. 1989). Given that public utilities have already updated their electronic systems to trigger these notice calls consistent with Chapter 14, to further define the requirements at this point will result, according to NFG, in significant expenditures by the public utilities with limited beneficial potential. NFG also believes that the proposed language of § 56.93(d), stating that the content of the three-day personal contact notice must contain all of the information that was contained in the 10-day notice of § 56.91, should be removed or refined.

PGW recommends replacing the proposed § 56.93(c) and (d) with the exact language of Section 1406(b)(1)(ii),(iii) and (iv). According to PGW, Chapter 14 does not add a requirement of "conspicuousness" or of attempting to contact a "responsible adult occupant."

Action Alliance supports the proposed language which clarifies that if personal contact by one method is not possible, the public utility is obligated to attempt the other method; a home visit. Action Alliance requests that the proposed regulations at § 56.93 and § 56.333 relating to personal contact be amended to require the personal contact, whether in person or by phone, be in the primary language of the customer.

PULP supports the Commission's clarification about what constitutes appropriate telephone contact in the context of notification for termination, particularly § 56.93(b). PULP maintains that this regulation will ensure calls are placed at more varied times when a customer might actually be home to receive the call and act on the information provided.

Discussion:

We agree with NFG and PECO that our proposal in paragraph (d) is overbroad and needs to be more narrowly focused. Accordingly, it is not necessary to provide all of the § 56.91 information in the three-day call because we are convinced that this would make the phone calls too long, and would risk overwhelming the customer with too much information. Instead we will specify that the information to be conveyed is substantially found in § 56.91, paragraphs (b)(1), (2), (4), (6), (7) and (8). This basically means that the utility will be providing the date and grounds of the termination; what is needed to avoid termination; how to contact the utility and the Commission; and emergency medical information. In addition, the utility shall ask the customer if they have any questions about the written notice they received. This should accomplish the goal of the three-day notice; alerting the customer as to what is going to happen and providing them with the basic information necessary to avoid termination. Focusing the three-day notice on just these basics should limit the length of the calls, which will pose fewer cost issues for utilities, and will emphasize the most urgent information that the customer needs.

We disagree with Duquesne and NFG when they say the Commission has gone beyond the intentions of Section 1406(b)(ii). This section concludes with "...if the calls were made at various times of the day;" so it is clear that the General Assembly did not intend for the calls to be made at just any time of the utility's choosing. What the Commission is offering here is simply guidance as to how to apply this provision, and the proposal that the calls be "at least 2 hours apart" is not an unreasonable interpretation of the General Assembly's intent. In reply to NFG's concerns with the phrase in paragraph (a) that "If personal contact by one method is not possible, then the public utility is obligated to attempt the other method" are overstated. This is merely specifying that if one method cannot even be attempted, such as a customer without a telephone, then the utility is obligated to attempt the other method (in person). It is reasonable to assume that the General Assembly wants, as part of the notice process, at least an attempt at a three-day notice. Allowing a utility to forgo any attempt at a three-day notice because the customer does not have a telephone is a nonsensical result that could not have been the intent of the General Assembly. We note again that all this section requires are "attempts" (one attempt if in person; two attempts if by telephone). Moreover, only one method has to be attempted, not both because paragraph (a) specifies "person *or* by telephone."

Equitable raises a valid point when they note that the Debt Collections Practices Act prohibits calls before 8:00 a.m. . According to 15 USCA § 1692(c), "a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian..." Therefore, we will revise paragraph (b) to state 8:00 a.m. instead of 7:00 a.m.

We see no need to revise paragraph (c) as PGW suggests because we see no harm in requiring the posting of notice if the utility attempts a field visit and is unsuccessful. The utility is already at the residence for the purpose of informing the occupant of a pending termination; the posting

of a notice with this same information appears to be a common-sense procedure that will at least provide some notice in the case that no one answers the door. We do not understand how this would impose a significant or costly additional burden since the utility has already reached the residence. The General Assembly in Section 1406(b)(1)(ii) clearly wanted a three-day notice to be included in the termination process. It is nonsensical to suggest that the General Assembly included an "in person" option to satisfy the requirements of this section that would have a utility go to the trouble and expense of a field visit; but then not even leave a posted notice if there is no answer at the door. This would result in the customer receiving no three-day notice of termination even though the utility has already expended the time and expense to reach the location. The time and expense of a field visit to a residence should result in at least a posted notice to the customer; doing nothing would be a waste of utility resources. The requirement that the contact be made with a responsible adult occupant is simply common-sense guidance. Again, it would be nonsensical to suggest that the General Assembly intended the three-day contact would be with a non-occupant or a child.

We agree with PECO that phone calls to provide the three-day notice should be made to the contact telephone number provided by the customer and will add language to paragraph (b) to specify such. As increasing numbers of customers abandon residential landline telephone service in favor of wireless service, it only makes sense to modernize this regulation to accommodate this trend. It will also help fulfill the clear intent of the General Assembly that public utilities make a serious attempt at personally contacting *customers* at least three days prior to termination. This superseding purpose is clearly more important to the General Assembly than the minor and increasingly irrelevant detail that the call be directed to the "residence."

While we understand Action Alliance's suggestions about requiring the three-day notice in the language of the customer, we believe this may be impractical to implement. In place of such a requirement, we point to our proposed revisions at § 56.91(17) that direct the 10-day written notice of termination to include "Information in Spanish, directing Spanish-speaking customers to the numbers to call for information and translation assistance. Similar information shall be included in other languages when census data indicates that five percent or more of the residents of the utility's service territory is using that language." We also note the comments of PPL and PGW concerning § 56.91 that point out that utilities retain foreign language translation services. With the revised § 56.91(17) and the language services provided by the utilities, we are confident that customers who speak languages other than English have sufficient options available to them to obtain account and termination information.

§ 56.94. Procedures immediately prior to termination.

PGW suggests that the word "or" should be added under subsection (3) to make clear that either a bad check or invalid credit card will not stop termination. In addition, it should also be made

clear that customers maintain responsibility for undisputed bills and termination for undisputed bills should not be prohibited or delayed.

The CAC supports the Commission's position that §56.94 procedures prior to termination remain unchanged by Chapter 14 and the Commission's proposal regarding the interaction of the dispute procedures with the termination procedures and continuing to stay termination pending the resolution of the dispute.

The OCA suggests that "the customer has applied for and has an application pending for enrollment in a universal service program offered by the utility" be added as one of the circumstances where termination is prohibited.

PULP supports the Commission's substantially maintaining § 56.94(1) in its historical form, prohibiting the completion of a termination where, at the time of termination, utility personnel make personal contact with the customer and the customer makes payment, makes known the existence of a serious illness or a medical certificate, or disputes the termination. According to PULP, this is a critical aspect of preventing terminations and protecting the health and welfare of customers. PULP asserts that the Commission should strongly encourage utilities to fully empower their workers to take all steps necessary to accept payments and register disputes at the time of termination as a means of stopping the termination.

IRRC asks if under paragraph (1), would termination be prohibited if evidence is presented that the customer is participating in a customer assistance program? If so, IRRC recommends that this be added to paragraph (1).

Discussion:

We agree with PGW and will insert "either" at the end of paragraph (3) to make it clear that conditions in either paragraphs (i) or (ii) can apply; both do not have to apply.

We disagree with PULP when they suggest that company service personnel have to be authorized to accept disputes at the time of termination. Traditionally, § 56.142 requires that a dispute be registered "prior to the day on which the utility arrives to terminate service" and we have no intention of altering this requirement at this time. This could lead to the possible abuse of the dispute process simply to avoid an imminent termination of service. But we do agree that § 56.94 should preserve the right of the customer to stop the termination if they can present evidence that indicates a dispute or complaint previously filed is still pending. We also decline PULP's suggestion to encourage utilities to accept payments in the field as this presents serious security and employee safety issues and is a matter best left to the management discretion of the utility.

As to IRRC's question: is termination prohibited if evidence is presented that the customer is participating in a customer assistance program, the answer is no. A customer participating in a customer assistance program can have their service terminated the same as any other customer. However, we do note that generally, a customer participating in a customer assistance program is usually at or below 250% of the federal poverty level, and thus protected from wintertime terminations per Section 1406(e).

§ 56.95. Deferred termination when no prior contact.

PGW suggests that this section is unnecessary and that these requirements should fall under the winter termination regulations.

PULP supports § 56.95 as an important safeguard to customers during the winter months; however, PULP requests a slight rewording of the section so that it achieves what PULP thinks is its real purpose. This section traditionally has held that, where no personal contact with a customer or responsible adult occupant has been made regarding an impending termination, then the utility personnel must post a termination notice at the residence at least 48 hours prior to the date of the termination. The proposed wording at § 56.95, however, says a utility must post a notice, "within 48 hours of the scheduled date of termination." This wording, rather than ensuring the posting must be done at least 48 hours before the date of termination, requires the posting take place within the two days of the termination. The General Assembly could not have intended such an absurd result, and PULP believes this language is not the result of an intentional policy change. PULP suggests revising the wording to indicate that the notice must be provided "prior" to the termination. PULP also submits that the Commission can improve this section by specifying the content of this required posting as it does for other notice sections at §§56.93(d) and 56.96, which both mandate that the notices adhere to the requirements at § 56.91.

Discussion:

While we understand PGW's comments about moving this section to the winter termination section (§ 56.100), we decline to do so because we believe these requirements are appropriately placed among the regulations addressing notice of termination. We agree with PULP that in order to avoid confusion we will add the phrase "prior to and" to make it clear that the notice must be provided before the termination of service, not after. As PULP points out, the General Assembly could not have intended the notice to be provided 48 hours after the termination. This is apparent from the opening sentence of the notice requirements in Section 1406(b) which starts with the phrase "Prior to terminating service…"

§ 56.96. Post-termination notice.

NFG disagrees with the proposed language of this section that would require public utilities to amend their post termination notices to include all of the requirements of the 10-day notice of § 56.91 for the same reasons it disagrees with the proposed changes to § 56.93.

Action Alliance requests that in the title of § 56.96, the terms "Post-termination" should not be deleted before "notice," as the section clearly relates to post-termination notices.

IRRC believes that the inclusion of the word "substantially" in this section is problematic because that term is vague and does not provide a specific standard that must be met. It should be deleted or replaced with more precise language.

Discussion:

We agree with Action Alliance and will include the words "post-termination" in the title of this section. While we agreed with NFG's concerns with § 56.93, we do not see how those concerns are relevant when considering § 56.96. We agreed with NFG that all of the information provided in a written 10-day notice should not also be provided in a verbal three-day notice because this would make the phone calls used to deliver the notice unrealistically lengthy and present a possibly costly burden on utilities. However, with § 56.96 we are once again talking about a written notice and we do not understand why providing this important information in written form presents a burden. However, to address IRRC's concerns, we will delete the term "substantially."

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

Duquesne questions the language concerning the enrollment in a "universal service program" to avoid termination because LIHEAP, CRISIS, weatherization etc. are sometimes defined as universal service programs. Duquesne suggests making this more specific by instead referring to "customer assistance program" as defined in the proposed § 56.2. PPL suggests changing the language to "enrolling in the public utility's customer assistance program or equivalent."

In order to avoid any potential confusion to a ratepayer or customer, NFG suggests that the phrase "if applicable" be added to both § 56.97(a)(2)(ii) and (a)(2)(iv). NFG explains that a payment agreement or enrollment in a customer assistance program will not be available to every customer in every instance.

PGW objects to the proposed § 56.97(a)(2)(iii) because the Commission is requiring the utility to accept a payment to cure material default on a payment agreement to stop a termination. This violates Chapter 14 because a utility is allowed to terminate a customer for failure to comply with the material terms of a payment agreement, and once a utility has provided the necessary

termination notices, the Commission may not require the utility to take any additional actions prior to termination. PGW submits that forcing the utility to accept such a payment in effect creates a second or subsequent payment agreement. For this same reason § 56.97(a)(2)(iv) is also impermissible because CAP is a payment agreement.

Phillips is concerned that the proposal at § 56.97(a)(2)(iv) suggests that enrollment in universal service programs could be used to forestall termination of service multiple times and asks that this section be revised to make clear that this is not the case.

EAP believes that proposed § 56.97(b) should be rejected because it conflicts with the mandates of Chapter 14 regarding payment agreements. EAP again and again opines that the proper analysis of Section 1405(d) is that a customer gets one payment agreement, whether it be utility or Commission established, and if the customer defaults on that agreement, the Commission shall not establish a second or subsequent agreement, but the public utility may, at its discretion, do so. EAP notes that the legislature, in defining "payment agreement" at Section 1403 made no distinction between payment agreements established by the Commission and payment agreements established by the utility. The legislature, however, does make such a distinction as between utility established and Commission established payment agreements in Sections 1405(b) and 1405(c). EAP believes that had they intended to make this distinction in Section 1405(d), they would have done so.

Action Alliance fully supports maintaining the provisions in § 56.97, as they provide for critical procedures for public utilities to follow to assist a customer in preventing termination of service, including full explanations of all available methods for avoiding a termination. Also, Action Alliance contends that the Commission should adopt the two proposed subparagraphs at §§ 56.97(a)(2)(iii) & (iv), which would require public utility employees to fully explain that paying what is past-due on the most recent previous company negotiated or Commission payment agreement and enrolling in the public utility's customer assistance program or universal service program are possible methods of avoiding termination. Action Alliance reports that in their experience, these two options are two of the most common methods that low-income advocates use in assisting customers to avoid service termination. Unfortunately, some customers receive termination notices that demand payment amounts that are larger than the catch up amount or default cure amount of the last payment agreement; and these larger than necessary amounts are confirmed by utility CSRs that take the customers' calls. Action Alliance adds that low-income customers often only learn for the first time from legal services organizations that CAP programs are available to provide more affordable bills and that CAP enrollment can prevent termination of service.

PULP requests the Commission delete "informal" from § 56.97(a)(2)(ii). PULP supports the Commission's inclusion of § 56.97(a)(2)(iii). PULP also supports the Commission's inclusion of § 56.97(a)(2)(iv), which requires utilities prior to termination to inform customers that they can

avoid termination by enrolling into the utility's customer assistance or universal service programs if they are eligible.

IRRC notes that subparagraph (a)(2)(iii) requires public utilities to tell customers they may avoid termination by "paying what is past-due on the most recent previous company negotiated or Commission payment agreement." According to IRRC, a commentator is concerned that this subsection exceeds the scope of Chapter 14, which specifically allows a public utility to terminate service for failure to comply with a payment agreement. *See Sections 1405(f) and 1406(a)*. IRRC agrees and asks the Commission to explain how this provision, when applied to customers with existing payment agreements, is consistent with Chapter 14. Finally, IRRC suggests that the language found in subsection (a)(2)(iv) be consistent with the language found in § 56.91(b)(4)(iv), which pertains to universal service programs.

Discussion:

We agree with IRRC, Duquesne and PPL that the reference to "universal service programs" in paragraph (a)(2)(iv) should be more specific and will revise to "customer assistance program or its equivalent" as suggested by PPL. We also agree with NFG in adding the phrase "if the customer is eligible" to the end of this sentence since not all customers qualify for a customer assistance program. We also agree with PULP to remove the reference to "informal dispute settlement agreement" from paragraph (a)(2)(ii) because we are removing this term from the definitions at § 56.2.

Consistent with our previous discussion concerning § 56.12(7), we are adding language specifying that payment agreements for heating customers entered into pursuant to paragraph (b) must be based on budget billing. This requirement dates back to the Commission's order in *Mary Frayne v. PECO Energy Company,* C-20029005 (July 17, 2003), where the Commission declared (page 7):

> "Budget billing should be the norm for all payment arrangements rather than current billing. Budget billing was designed to aid customers who are experiencing financial difficulties by ensuring a level, predictable payment amount from month to month. The level payment amount will better enable the customer to plan for his or her utility bills and budget accordingly. Therefore, customers should not be provided with the option of choosing current billing when budget billing is a more beneficial option."

This guidance was again reiterated in the following budget billing orders on June 1, 2006, *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing*. (M-00051925) and on November 9, 2006, *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing* (M-00051925) where the Commission twice declared that "Based on well-established case history, budget billing should be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility."

Therefore, including this guidance in the regulations is simply codifying a well-established Commission expectation that has been the subject of the previously mentioned Commission formal proceedings, and is not inconsistent with Chapter 14.

In the proposed subparagraph (a)(2)(iii), the Commission includes paying the past-due amount of a defaulted payment agreement as a method of avoiding the termination of service. This is based on the grounds of authorized terminations found in Section 1406(a) that includes "Failure to comply with the material terms of a payment agreement." If the default is cured prior to the termination of service, then the grounds for the termination no longer exist under Section 1406(a). We do not see this as a second or subsequent payment agreement; merely paying on the existing agreement to cure a default. No new terms on a new payment agreement are established. The Commission addressed this matter in the Second *Chapter 14 Implementation* Order, M-00041802F0002, (September 9, 2005):

> "While we agree with PGW and EAP that Section 1406(a)(2) lists "failure to comply with the material terms of a payment agreement" as authorized grounds for termination, we do not agree that the customer cannot eliminate this ground for termination by paying an amount sufficient to catch-up on the terms of a payment agreement. As stated publicly several times by EAP, as well as in its written comments, the last resort of a utility is to terminate service. EAP also notes that "utilities would prefer to work with their customers to collect payment, than to become embroiled in complaint procedures." We agree and clarify that, while a utility has every right to initiate the termination process and to terminate service if necessary for failure to comply with the material terms of a payment agreement, an available method for eliminating the grounds for termination is to pay an amount sufficient to catch-up on the terms of a payment agreement. Clearly, once the catch-up payment is made, authorized grounds for termination no longer exist."

(pages 38-39) We also disagree with PGW when they object to the enrollment in a customer assistance program as a means of avoiding termination, as provided for in the proposed subparagraph (a)(2)(iv). PGW mistakenly declares that "CAP is a payment agreement." These are two separate and distinct concepts that Chapter 14 has separate and distinct definitions for in Section 1403. For example, the definition of *payment agreement* discusses the amortization of an unpaid balance whereas the definition of *customer assistance program* does not mention amortization of balances and in fact many such programs do not include amortization. It is clear that in both the electric and gas competition acts and in Chapter 14, the General Assembly intended customer assistance programs to be made available and to be used to help make sure that "...service remains available to all customers..." per Section 1402. The appropriate place for a low-income customer is a customer assistance program. Low-income customers should not simply have their service terminated without ever having the opportunity to participate in these programs. The inclusion of subparagraph (a)(2)(iv) is intended to make sure that no low-income customer's service is terminated without first being considered for enrollment in these programs. As for Phillips concerns that this could be used by a customer to forestall termination multiple

times, we note that each utilities customer assistance program plans have provisions to address customers who default that usually prevent repeated re-enrollments within a specific timeframe.

§ 56.98. Immediate termination for unauthorized use, fraud, tampering or tariff violations.

Phillips questions the appropriateness of requiring utilities to provide post-termination notices under these circumstances because the burden of inquiry and action should be placed upon the customer who has engaged in such activity and not upon the victim of such action.

EAP believes that the proposed §56.98 does not comply with either Act 201 or the criminal code of the Commonwealth. In the *Second Implementation Order* (pages 23-24), the Commission stated that tendering a bad check or an access device which is unauthorized, revoked or cancelled is not fraud. However, while the Commission is provided deference on regulatory matters, it does not have any authority to alter criminal statutes. According to EAP, a bad check, or a bad credit card, is fraud and constitutes grounds for immediate termination.

Action Alliance believes that the proposed § 56.98 provides little guidance to utilities and consumers. Action Alliance strongly recommends that immediate terminations should be limited to those situations in which the utility can base the termination on *substantial evidence* of "unauthorized use, fraud, tampering or tariff violations." Action Alliance also recommends that the post-termination notice should include the specific grounds for immediate termination of service, with detailed information concerning the alleged material facts; the specific terms for restoration of service and the phone number of the utility department that can answer questions and immediately handle disputes concerning immediate terminations. In addition, customers subject to immediate terminations, seeking Commission review, should be provided with expedited review at the Bureau of Consumer Services and emergency review with an administrative law judge or special agent, if necessary.

PULP submits that the notice provisions associated with this section are insufficient and the Commission should expand them since the basis for an immediate termination is often an unchallenged allegation by the utility against the customer, with no chance prior to termination for the customer to defend himself or state his side of the story. At a minimum, PULP believes that the utility should be required to post a notice physically at the residence at the time of termination. This notice should instruct the customer that a termination happened, why it happened, and how to rectify it. This notice should also provide information on how to petition the Commission for expedited assistance if the customer disagrees with the utility's allegation of unauthorized use, fraud, tampering, or tariff violations.

Discussion:

We agree with Action Alliance that a utility should act with great care in applying this section. Terminating someone's essential utility service without prior warning is a serious matter that should only be resorted to when the utility is reasonably sure of circumstances. These provisions are not to be applied in a casual or careless manner, and it is expected that the utility will act only when they have reasonable evidence or indication of fraud, unauthorized use, etc. However, we decline to revise the proposed language of this section as suggested by Action Alliance. The language in this section was copied essentially verbatim from Section 1406(d) and we decline to tamper with such without a compelling reason. While we agree with the general concerns expressed by Action Alliance, their suggestion to add language requiring "substantial evidence" is problematic because the term "substantial" has been called vague by IRRC in their comments on § 56.96 because it does not provide a specific standard that must be met. We agree, and further decline to revise this section to include a "substantial evidence" burden.

Concerning post-termination notices, we disagree with Phillip's objections to providing a post-termination notice in cases of immediate termination without prior notice. Chapter 14 at Section 1406(c)(2) explicitly requires a post-termination notice. We agree with PULP that, given that utility personnel are already at the premises to conduct the termination, the posting of the premises after the termination is completed is not unduly burdensome or costly to the utility. Given the minimum effort involved, it is difficult to see why a notice could not be provided or posted in these instances. We will revise our proposed paragraph (b) to make it clear that if the utility cannot provide a post-termination notice to the customer or responsible person at the affected premises as required by Section 1406(c), they should at least post a notice at the affected premises. This requirement does not conflict with the Section 1406(b)(2) prohibition on the Commission requiring additional actions prior to termination because what we are talking about here is a post-termination action. This requirement will also help ensure that the intent of the General Assembly as expressed in Section 1406(c)(2) is fulfilled; that some kind of notice of the termination is provided. The alternative would be allowing a utility to terminate service without providing notice either prior to or after the termination of service. In addition to being contrary to the intent of the General Assembly, this would pose obvious health and safety issues. The post-termination notice will at least allow the affected occupants to know that it was indeed the utility that shut off their service and will hopefully prompt them to contact the utility to address whatever the problem is.

Finally, we must specifically respond to EAP comments on this issue. First, we have reviewed pages 23 and 24 of the *Second Implementation Order* and cannot locate the statement that tendering a bad check or access device is not fraud. The tendering of a dishonorable payment may or may not be fraud but it is not fraud for purposes warranting immediate termination of service under § 1406 (c). In discussing the immediate grounds for termination without notice under § 1406 (h) and our conclusion that the General Assembly under § 1406(c) (1) would have incorporated the subparagraph (h) list of actions, we did not address what constituted fraud under the criminal code. Moreover, it is not necessary for the Commission to engage in that analysis to

implement the intentions of the General Assembly. If dishonorable tender of payments, as is specifically listed under subparagraph (h), is not listed under subparagraph (c), then our interpretation is that the General Assembly did not intend for utilities to immediately terminate service without notice for that reason, either through a bad check or credit card.

EAP states that a "bad check or a bad credit card, is fraud and constitutes grounds for immediate termination," and cites the bad check and credit card provision of the criminal code, §§ 4105 and 4106 of Title 18, respectively. Even a cursory review of these sections would highlight the reasons why a dishonored payment under these sections should not constitute grounds for immediate termination. Under § 4105 (bad checks), it is not a fraudulent practice to issue a check that is not honored. It is only a criminal offense if you fail to make good within ten days after notice. 18 Pa.C.S. § 4105(b)(2). Similarly, under § 4106 it is a defense to the unauthorized use of a credit card if you can prove you had the intent and ability to cover the charges. Even if you ignore the basic first year law school criminal and constitutional law precedent that the accused is presumed innocent, the actual offense requires that the customer would not make good on a check or credit card charges. Therefore, this offense could not trigger immediate termination since the statute allows the customer the opportunity for redemption. Rather than "altering a criminal statute", as advocated by EAP, our position in not allowing immediate termination reflects the proper application of the law. The fact that anyone "bounces" a check, a not unusual occurrence given that banks all have standard fees for doing so, is not in and of itself a fraudulent act in violation of the criminal code. The same holds true for tendering a dishonorable payment with a credit card. The real purpose behind this provision is that a utility that has already provided the required notice can terminate service without additional notice when the process is interrupted by a dishonored payment.

§ 56.100. Winter termination procedures.

Allegheny Power suggests that the responsibility lies with the customer to respond to a utility's termination notices by contacting the utility and providing the required income and household size information. If the customer fails to respond to the notices, the utility should be permitted to follow through with the pending termination. Columbia suggests that language be added to the end of § 56.100(e) indicating that if the utility is unsuccessful in obtaining household size and income information after having made a good faith effort to do so, or if a customer refuses to provide such information, termination action may continue until such information is provided by the customer and, based upon that information, the public utility determines that termination should not proceed.

Concerning customers in which the utility lacks income information, PECO agrees with and supports the Commission's conclusion that sending termination notices to these customers is appropriate for it may induce the customer to contact the utility with this information. However,

PECO is concerned with the customers for whom the utility has unverified information that the customer's income is at or below 250% of the federal poverty level. Their concern is that customers could claim low-income solely for the purpose of avoiding winter termination. PECO suggests that the Commission allow a utility, after multiple failed attempts to obtain income verification, to pursue termination of these accounts. PECO points out that over 275,000 customers have claimed to PECO to have income at or below 150% of the FPL. However, according to 2000 census data, there are 264,000 households who live in PECO's service territory with an income at or below 150% of the FPL. PECO believes there are over 150,000 households who have claimed to have an income below 150% of the FPL who have not verified their income - even though they could presumably get rate discounts if they did so.

NFG believes that the proposed language at § 56.100(e) is beyond the scope of the legislative intent and unnecessary. NFG maintains that nowhere in Chapter 14 did the legislature include language directing public utilities on how they must determine whether an account is permitted to be terminated during the winter months.

With regard to the Cold Weather Survey provisions in § 56.100(h) and the proposal to categorize accounts by postal codes, Allegheny Power opines that this is a concept not found in Chapter 14 and would cause utilities to incur extra programming costs with no benefit to the customer. Columbia also objects to including postal codes as this would cause the utility to incur substantial report programming costs, and postal codes are already included in the monthly report of terminated accounts. Equitable also suggests deleting this proposal because it would take extensive programming to comply and the company is unaware of the purpose of this data.

Allegheny Power, Duquesne and NFG object to the proposal in § 56.100(h) to require updated survey results on January 15 and February 15 of each year. Allegheny Power states this would cost approximately $33,000 with no apparent benefit. Duquesne estimates the cost at $50,000 annually. PPL could comply with this proposal but does not see the value of providing such updates, particularly when similar data (i.e., terminations and reconnections) already appears in the monthly § 56.231 report. PPL also reports that it can fulfill the proposed requirement to categorize each account by the first three digits of the customer's postal code, but again questions the value of doing so; this request appears to fall under the "nice to know" category rather than a "need to know."

With regard to § 56.100(j), PPL Electric agrees that it is important to report deaths to the Commission in situations where a utility had previously terminated residential service for non-payment of bills. However, PPL does not believe it is necessary to incorporate these reporting requirements into code since the Commission already possesses broad investigative powers and has the authority to request this type of information. 66 Pa. C.S. § 504. PPL recommends that it would be more appropriate for the Commission to address the reporting requirements through a Secretarial Letter. On January 16, 2009, the Commission issued just such a Secretarial Letter

(Docket No. M-2009-2084013) regarding interim reporting requirements. The Commission noted that these interim reporting requirements will sunset upon promulgation of final regulations for Chapter 56. PPL suggests that the Commission simply reissue the reporting requirements in a final Secretarial Letter.

Allegheny Power also opposes the required reporting of death following a termination of utility service. According to Allegheny Power, this requirement implies a causal connection between the termination and the fatality. Columbia also opposes this requirement since the reports do not fall within the scope of "accidents" reported per 66 Pa. C.S. § 1508, the Commission may not be able to protect such reports from public disclosure or admission as evidence in a lawsuit.

NFG believes that the proposed language of § 56.100(j) is an egregious attempt to go beyond the intent of Chapter 14 and there is absolutely no legislative authority, be it in Chapter 14 or elsewhere, for the Commission to place this requirement on public utilities. NFG believes that the proposed language itself is vague, ambiguous and open to potentially broad interpretation. NFG also submits that public utilities are certainly not experts or in any way capable of making a determination as to the cause of such incidents.

Equitable suggests that a utility should be given up to five days to provide the information requested under § 56.100(j) and that the reporting should be limited to incidents that occur within 30 days of termination.

PGW wants to make the regulation clear in that a utility can terminate both heat and non-heat related service in the winter. Furthermore, the winter period is December 1 through March 31; the reference to January 1 in Section 1406(e)(2) is related to the evaluation of the charges paid by the customer and the proposed regulation should be revised to reflect this. Notification to the Commission under Section 1406(e)(3) is required only in the event of a termination notice issued for winter termination under Section 1406(e)(2) and the regulation should explicitly state so. PGW believes that the responsibility should explicitly be on the customer to provide this income information in addition to household make-up and failure to provide this information should not prevent the utility from being able to terminate the account in the winter. In addition, § 56.100(f) should be modified to include service discontinuance requests under § 56.72(2) and the "good faith attempt to reach a payment agreement" language in § 56.100(i) should be removed because a utility does not have to reach a payment agreement with all terminated consumers for restoration of service.

PGW states that the utility's knowledge is limited to the facts regarding the termination of service and as such this is the only information the utility should be required to provide the Commission. PGW also questions the confidentiality of the information submitted given the recently expanded Right to Know Law.

EAP believes that the updates to the winter survey are unnecessary because requirements for monthly reporting, including monthly termination activity, and postal code categorization are already set forth in §56.231 as currently written. EAP reports that the costs of surveys can be as high as $2.1 million, which must be reflected immediately in utility rates. Moreover, EAP states that the people who remain without a central heating source beyond December consist mainly of consumers who are unwilling to file an application for LIHEAP assistance or consumers who are unwilling to provide income information to utilities so as to permit their qualification for CAP rates and consumers who have had CAP rates, but failed to maintain their low $20-$25 a month payment.

EAP also objects to the Commission's proposal of reporting deaths possibly relating to utility termination which occur in a utility's service area because liability may be imputed to a utility where none would otherwise exist.

PAWC suggests that a provision should be added permitting a utility to petition the Commission for permission to terminate service to a premise when the account is in the name of a landlord, unless specifically prohibited by law. Concerning § 56.100(i), PAWC notes that the current regulations define "occupant" and that if the proposed regulations require utilities to attempt contact with a responsible occupant for the purpose of reaching an agreement as to the payment of arrearages and restoration, then the Commission should define the term "responsible occupant."

Action Alliance strongly disagrees with the Commission's plan to revoke its earlier proposal to eliminate the heat-related distinction in the context of winter terminations by utilities. Chapter 14 clearly provides a basis for providing protection for heating and non-heating accounts. Action Alliance notes that the term "heat-related" or the like is nowhere found in Section 1406(e). While natural gas service may not be considered strictly heat-related if not the primary source of a home's heat, Action Alliance notes that it is often the source of energy for hot water and cooking. Action Alliance believes that the Commission would be acting contrary to its much emphasized duty to protect health and safety if it adopts the current proposal to limit winter termination protections to heat-related accounts. Therefore, the language "heat-related' should be omitted from § 56.100 as such limitation is statutorily prohibited and contrary to health and safety.

Action Alliance requests that cold weather survey results be categorized by five digit postal codes and not just by first three digits, as proposed. All addresses in Philadelphia have postal codes with the same first three digits of "191" so data about the first three digits would provide little additional assistance to social service organizations in analyzing termination data of the public utilities serving Philadelphia. Action Alliance supports the Commission's proposal to require three reports, on December 15, January 15 and February 15. The surveys provide important information about how many households are without service during winter and

provide the Commission, policymakers and low-income advocates with the basis for relevant policy recommendations, if needed.

Action Alliance supports the Commission's proposal, at § 56.100(j), to require utilities to report incidents of household fire, hypothermia or carbon monoxide poisoning occurring at addresses where utility service was off at the time of the incident. However, the Commission omits any non-winter cause of fatalities such as hyperthermia. Action Alliance recommends that the term "hyperthermia" be inserted after the term "hypothermia" and that the Commission clarify that the reporting requirement applies all year. Action Alliance recommends that the reporting requirement include incidents involving injury and property damage, as well as, deaths. If the terms "injury or property damage" seem too broad, Action Alliance would here recommend that the terms "hospitalizations or property damage" be inserted after the phrase "resulted in a death" within proposed § 56.100(j).

CAC notes that the winter termination rules at §1406 (e) dramatically change prior Commission policy and practice. CAC believes that this dramatic change creates the need for the Commission to carefully review its regulations concerning winter terminations. The CAC continues to strongly support the Commission proposal to revise the winter survey provisions found at§ 56.100(4) and (5) to require updates throughout the winter. Additionally, the CAC previously supported, and continues to support the Commission's proposal that utilities be required to report to the Commission anytime they are aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service. CAC notes that although much attention is properly focused on termination-related deaths, the responsibility of the Commission to protect the health and welfare of Pennsylvania citizens is one which requires a broader data base beyond just death-related incidents. CAC therefore recommends including "serious injuries" within the report. The CAC continues to recommend that the Commission require utilities to develop a specific plan to ensure that they obtain current and comprehensive information from reliable sources within their service territory such as fire departments, health clinics, or hospitals.

The OCA notes that 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. The OCA submits that Chapter 14 does not distinguish between heat-related and non-heat related service; it protects all electric and natural gas residential service regardless of the nature of the service.

The OCA further contends that termination of 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. 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. The OCA also suggests the reporting requirement include injuries as well as deaths.

The OCA believes that the information submitted 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. If the Commission is concerned with the release of all the 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.

PULP supports the Commission's requirement that utilities must first verify that an account is eligible for wintertime termination before terminating service. The utility should use household size and income information from its own records and should solicit such information from its customers at every opportunity. PULP also supports the Commission's improvement of the cold weather survey through the introduction of survey updates by public utilities on January 15 and February 15 of each year.

PULP also has significant concerns with the Commission retaining a distinction between heat-related and non-heat-related service within the winter termination process. PULP contends that the Commission has recognized in its *Second Implementation Order* that this is a change from § 56.100 practice prior to enactment of Section 1406(e). The Commission noted that, unlike the existing Chapter 56 provisions, Chapter 14 did not make a distinction between heat-related and nonheat- related service in regard to winter termination and in its Advanced Rulemaking, the Commission proposed to eliminate this distinction. However, contrary to the clear language of the statute and contrary to recognition by the Commission in its *Second Implementation Order* of this significant change, this outdated distinction between heat- and nonheat-related service remains in the winter termination provisions. The Department of Public Welfare (DPW) has long recognized the essential nature of nonheat-related electric service in winter. For decades, DPW has provided LIHEAP Crisis grants to those income eligible applicants who have lost or are in danger of losing electric service. DPW considers electric service not primarily used for heating as a secondary heat source, as opposed to a primary heat source. Because of the critical nature of electric service in relation to enabling a furnace to function, Crisis grants are provided to non-electric heating customers.

PULP strongly endorses the Commission's decision in § 56.100(a) to prohibit water distribution companies from terminating water service during the winter months. According to PULP, it is clear from Chapter 14 that only electric distribution companies and natural gas distribution companies were intended to have different winter termination rules as a result of Chapter 14 per Section 1406(e)(1). PULP also requests that the Commission have in place and requires utilities to have in place expedited procedures for hearing customer complaints about immediate terminations pursuant to § 56.100(b).

PULP supports the inclusion of § 56.100(j) concerning the reporting by utilities of deaths at locations where public utility service was previously terminated, particularly given that the

Commonwealth has once again this year experienced fatalities in households where utility service was previously terminated. PULP also requests that the Commission require that utilities develop a specific plan, such as proposed by CAC, to ensure that they obtain current and comprehensive information from reliable sources within their service territory such as fire departments, health clinics, or hospitals. The information contained in these reports should be available to the public and to Commonwealth policymakers as well as to the Commission. PULP is equally concerned about the inclusion in the proposed rulemaking of a prohibition regarding the use of these reports by the judiciary. The Commission's proposal to bar the reports from being admitted into evidence in a court of law would appear to usurp the prerogative of the judiciary to determine the relevant contents of the factual record before it.

IRRC also questions the inclusion of the term "heat related service" and notes that Section 1406 (e) does not make any distinction between "service" and "heat related service." IRRC questions what is the procedure for verifying household income? IRRC also questions why does this subsection require the utility to gather household income and size information after the termination notice has been issued to determine eligibility for termination, rather than prior to issuance? IRRC also questions the need for the additional reporting requirement in this subsection.

Concerning Subsection (j) reporting of deaths at locations where public utility service was previously terminated, IRRC notes that this subsection has generated interest from both the utility industry and the consumer advocacy community. The utility industry questions the need for reporting deaths, and the consumer advocacy community has suggested that the provision be amended to require the reporting of deaths and injuries. Finally, IRRC submits that the Commission should explain the need for the reporting of deaths and why this provision presents an appropriate level of reporting and how the information will be used.

Discussion:

We agree with the CAC that Section 1406(e) dramatically changed the winter termination rules and that this change creates the need for the Commission to carefully review its regulations concerning winter termination. The rules governing the termination of utility service in the winter have to be carefully considered because while the lack of utility service can present dangers anytime of the year, the dangers in the wintertime can be more compelling. A family without heat in the winter may resort to desperate, dangerous acts that imperil not only themselves but their neighbors and the community. The lack of central heat can force a family to resort to the use of space-heating equipment that is not designed nor intended to heat an entire residence. "Space heaters result in far more fires and losses than central heating devices and have higher risks relative to usage" according to the National Fire Protection Association (*Home Fires Involving Heating Equipment*, John R. Hall, Jr, National Fire Protection Association, November 2007, page ii). The cold weather survey conducted annually per § 56.100 shows that

in 2008, 14,372 households entered the winter season without heat-related utility service compared to 13,762 the previous year. Given these numbers, and the dangers involved, the Commission has devoted considerable efforts in the past to address cold weather procedures, most notably in the *Second Chapter 14 Implementation Order* of September 9, 2005 (M-00041802F0002) and a follow-up December 1, 2005 *Chapter 14 Implementation Declaratory Order* (M-00041802F0002). In these orders, while the Commission addressed many different aspects to winter termination, it also made clear that "...we wish to emphasize that we are keeping our options open as to additional rules that may result from the upcoming rulemaking" (page 61 of the *Second Implementation* Order of September 9, 2005, M-00041802F0002). We thank the parties for their extensive comments on this section and believe it is now time to fully address these important winter rules.

The Commission has previously addressed the obligation of utilities to determine a customer's income and thus eligibility for wintertime termination in the above noted orders, starting with the *Second Implementation Order*, (pages 7-11):

> "We agree with EAP's comment that the primary source of income level information will be the consumers themselves. However, given the language at §1406(e), it is appropriate to infer that this provision clearly places an obligation on the electric and gas utilities to implement procedures that attempt to identify accounts that are protected from termination during the winter period, not only prior to but also subsequent to the issuance of a notice. In this regard, PGW and other parties identify an important activity that must be part of an appropriate process to ascertain income to prevent erroneous winter termination in application of §1406(e). Additionally, since water companies are not included under §1406(e), they remain obligated to apply §56.100 (winter termination procedures) when threatening termination to heat related water service between December 1 and March 31. We also clarify that §56.100 is superseded by Chapter 14 to the extent that the termination steps set forth in §56.100(1) and (2) are replaced by the termination steps at §1406(b)(1)(i) through (iii).
>
> The important activity that PGW and other parties note is that all public utilities contain pertinent income and household size information in their data bases. Moreover, this information is routinely updated whenever the utility receives a contact from a delinquent customer seeking payment terms. The OCA reinforces this point with the comment that delinquent customers should have been given every opportunity to enter into a payment agreement, and termination should not be considered until the customer has deviated from the payment agreement, and in these cases the utility already has, or should have, income information that was used to create the original payment agreement...
>
> ...With respect to the contention by the OCA and CLS that the burden is on the utility to determine household size and income **prior** to sending a winter termination notice, we do not agree that Chapter 14 requires the electric and gas utilities, except for PGW which must verify household income in light of requirements at §1406(e) pertaining exclusively to PGW, to make such determinations prior to issuing a winter termination notice. While

we intend that the policies contained in the instant Order help ensure the identification of the overwhelming majority of households that fall into the protected income categories listed at §1406(e)(1), we do not believe that Chapter 14 prohibits the issuance of a winter termination notice to a delinquent account for which the company doesn't know household size and income. However, in light of the prohibition against terminating service to households that fall into the protected income categories listed at §1406(e)(1), a utility must not complete the process and physically terminate service to a delinquent account for which the company doesn't know household size and income unless it makes a diligent, good faith attempt to verify that the household does not fall into the protected income category by following the processes required by 66 Pa. C.S. §§1401 *et seq.* and 52 Pa. Code §§56.1 *et seq.* as well as the notice provisions outlined in this Order. We also note that Chapter 14 at §1407(b)(1) requires that erroneous terminations must be restored within 24 hours. Moreover, we remind utilities the Commission may authorize termination of service pursuant to §1406(e)(1) in response to requests made pursuant to §56.100. While we do not anticipate numerous applications of §56.100 by utilities, we recognize that utilities may wish to make such requests in regard to egregious situations."

In that same order, the Commission addressed the same issue in the context of the provisions that apply specifically to the Philadelphia Gas Works (pages 60 – 61):

"As we stated in PGW-Specific issue #1, winter terminations will be permitted for customers whose income is less than 250% of the FPL. The Commission already has rules in place, in the case of PGW, in those instances where the utility is petitioning the Commission for permission to terminate a customer whose income is less than 150% of the poverty level. It is important to emphasize that from November 21 to January 31, PGW should only issue notices to this group of customers if it intends to follow through with the termination by petitioning the Commission if the customer fails to eliminate the grounds for termination.

PGW will be permitted to provide notice and terminate those customers between 150% and 250% of the poverty level during the winter. Similar to the responsibility shared by the other utilities, terminations in this customer category may not occur until PGW has confirmed that the household is not protected from termination pursuant to §1406 (e)(2)(i)-(iv). While we are permitting these terminations we wish to emphasize that we are keeping our options open as to additional rules that may result from the upcoming rulemaking."

The Commission refined its guidance in response to a petition filed by PGW seeking clarification and reconsideration of the above mentioned Implementation Order. In its December 1, 2005 *Chapter 14 Implementation Declaratory Order* (M-00041802F0002), the Commission stated the following (pages 9-11):

"Section 1405(e) provides that a city natural gas distribution operation may terminate service to a customer whose household income exceeds 150% of the FPL but does not exceed 250% of the FPL and who has not paid at least 50% of his charges for each of the

prior two months. We have reviewed PGW's Petition and the Answer filed by CLS and we are persuaded that this section does not prevent the issuance of termination notices to delinquent heating customers in the winter even if the utility does not know with certainty that the customer was not exempt from termination.

Requiring PGW to verify with certainty the income level of customers prior to issuing a winter termination notice is neither practical nor required by Chapter 14. If a customer fails or refuses to come forward with household size and income information, such failure or refusal would preclude the utility from issuing a winter termination notice that may otherwise be authorized under Chapter 14. Also, a termination notice could be an effective way to trigger a customer contact in order to determine household size and income level. This would give PGW the necessary information to then determine if a customer is, or is not, below the income level that would preclude termination under Chapter 14. Accordingly, it would frustrate legislative intent to interpret § 1406 to prohibit the issuance of a winter termination notice in all situations where the utility does not have income information for a customer."

We disagree with NFG that the proposed language in paragraph (e) is beyond the scope of the legislative intent and is unnecessary. As NFG points out, Chapter 14 does not include language directing utilities on how they must determine whether an account is eligible for winter termination. We agree, and believe this is why it is necessary to delineate procedures for this in regulation. The General Assembly clearly intended certain accounts to be exempt from termination in the winter and it is reasonable for this agency to promulgate rules that help ensure that intention is implemented. We believe the guidance provided for in the *Second Implementation Order* is basically sound, and this is reflected in our proposed paragraph (e). As we explained in the *Second Chapter 14 Implementation Order*, Chapter 14 does not prohibit the sending of termination notices to any segment of customers; it prohibits the termination of service to certain segments. In response to IRRC's questioning of the Commission permitting the sending of notices before income information is obtained, we point to our belief that the termination notice itself will prompt the customer to contact the utility to provide this information and that anything less than a termination threat may not instill the sense of urgency needed to prompt the customer to do so. While we understand IRRC's concerns, we believe prohibiting the sending of termination notices to customers whose income in unknown is overly restrictive and not required to comply with Chapter 14. We also note that we are not aware of any serious problems stemming from this procedure since it was implemented in 2005 and see no compelling reason to revise this guidance.

However, we concede that we have to address the situation raised by parties such as Allegheny Power, Columbia, PECO and PGW as to what should occur when a utility does not obtain income data from the customer either because the customer never contacts the utility or does not cooperate with the utility. In our December 1, 2005 *Declaratory Order,* the Commission, on this point, declared that it was "... not ruling on whether PGW may actually terminate service. So that it is clear, we require that PGW seek a ruling from the Commission on this issue prior to

implementing a change in this policy." We note that, to date, PGW has not sought Commission permission to change this policy. As a result, the Commission has not yet addressed this specific point but we agree that now is the appropriate time to do so. We have to disagree with the parties that suggest a utility should be free to terminate service in the winter when they do not know the customer's income. Allowing such a practice would clearly risk the termination of essential utility service to customers who the General Assembly sought to protect in Section 1406(e).

If a utility wants to terminate service to a customer who has failed to provide household income information, we point out that the petition procedure outlined in paragraph (g) is available and can be utilized in these instances. Commission staff can then review the matter and determine if termination is appropriate. To emphasize the seriousness of the situation to the consumer and in keeping with due process, we shall revise paragraph (g) to require the utility to send the customer a copy of the petition they are sending to the Commission (this is keeping with standard service procedures, but explicitly adding it to this paragraph will help make this clearer). It is hoped that being served with such a petition will alert the customer to the seriousness of the situation and that their service may be terminated as a consequence of their failure to cooperate with the utility. We believe that this is a reasonable middle ground between those who believe that these customers should not even receive termination notices (as discussed above in relation to IRRC's comments) and those that believe the customer's service should be terminated free of any review or restriction.

On the related issue raised by PECO, the verification of income information, we are not convinced that codifying this is workable. Depending upon the type of verification desired, this could present considerable administrative burdens upon utilities and also unidentified burdens on consumers attempting to comply with the verification request. Also, some utilities may want to verify income while others will not and different utilities have different capabilities (some have local offices, others do not, for example). This possible inconsistency presents equity, discrimination and fairness issues as consumers with one utility will face termination of service in the winter for failing to meet verification burdens not required by another utility. This may also be contrary to the statement of purpose and policy at § 56.1 which declares the rules to be established are to be "...uniform, fair and equitable..." If a utility wants to pursue the verification of consumer income information, we believe the fairest and most reasonable approach is to have the utility include in their tariffs a provision that would stipulate under which conditions they would require verification of income, the procedures for doing so, the proof they would expect from a consumer, and the consequences if the consumer fails to comply. This will allow each utility to prepare a voluntary verification procedure that is tailored to the unique circumstances of their operations and their customers. In addition, we again point to the petition procedures in paragraph (g) that a utility may use if they believe an individual consumer is not acting in good faith.

We acknowledge the concerns of Action Alliance, OCA and PULP with the Commission's proposal to exempt non-heat related accounts from this section. IRRC also questions the Commission's proposal. We note that the proposal was to apply the winter termination rules to heat-*related* accounts. Traditionally, this includes any service where the lack of service would cause the resident's central-heating system to cease to function. As a result, the number of protected accounts is beyond just the heating-rate or primary source of heat accounts and is in fact significantly higher than some parties suggest. Regardless, we agree that there are legitimate and reasonable arguments that can be made on either side of this issue. However, the most convincing argument is simply that if the General Assembly had intended such a broad category of accounts to be exempt from the winter termination rules they provided in Section 1406(e), they themselves would have made such a significant exception. We will revise our proposal to apply the winter rules upon all electric and gas accounts, regardless of end-use. The provisions for the water industry will remain unchanged because the winter termination rules in Chapter 14 are directed only to the electric and gas utilities. We again note the petition procedures in paragraph (g) that a utility may use if they believe an individual consumer is not acting in good faith. We also point to the petition process in response to PAWC's request to allow termination where the account is in the name of the landlord ratepayer. The petition process in paragraph (g) can be used to request permission to terminate service to any customer otherwise protected by the prohibitions in this section.

We understand PGW's objections to paragraph (c) and how we propose to implement Section 1406(e)(2), which sets forth additional authority for PGW to terminate service in the winter to those customers between 150 – 250% of the federal poverty level. However, we believe the January 1 date specified in Section 1406(e)(2) is difficult to interpret any other way other than an additional qualifier to the termination provisions of this Section. If, per Section 1406(e)(2), PGW must apply this Section only to those accounts between 150% and 250% of the federal poverty level where the customer "...starting January 1, has not paid at least 50% of his charges for each of the prior two months...", we do not see how can it be interpreted to allow for December terminations for this group of customers.

Regarding our proposed paragraphs (h) and (i) that concern the annual survey of terminated accounts (commonly referred to as the winter survey), upon our review of the comments, we believe that our original proposal needs to be modified. We agree with PPL, Allegheny Power, Equitable, EAP and Columbia that the reporting of survey results by postal code, while "nice to know" as PPL points out, does present programming and reporting costs that may not be worthwhile. We also agree that our proposal to require two rounds of updated survey results (January 15 and February 15) is not necessary and would impose unreasonable costs. Instead, we will revise this proposal to require only one update, on February 1. This would merely codify a practice that has been in place since February 2004 and would not impose any additional costs. In response to PPL and IRRC's questions that this data is already available via monthly § 56.231 reporting; we point out that § 56.231 is only a reporting requirement. While this provides the

Commission with the number of accounts terminated in any given month, it does not include a survey requirement. The survey updates in paragraph (i) go beyond just a reporting requirement; the utility is expected to make a good faith attempt to contact the customer to discuss the payment of arrearages and financial assistance to possibly get service restored. We will also remove redundant references to "December 1" in paragraph (h) to improve readability.

Given the health and safety issues involved with living without utility service in the winter which we have already discussed, we believe this second survey attempt in mid-winter is a valuable, cost-effective effort to get utility service restored. For example, in the February 2009 survey update, the electric and gas utilities reported that the total number of homes not using a central heating system was 11,347, a 36 percent reduction from 17,745, as reported in the December 15, 2008 initial survey results (http://www.puc.state.pa.us/General/press_releases/Press_Releases.aspx?ShowPR=2184). And the survey update from the previous year showed that as of February 1, 2008, the total number of homes not using a central heating system was 11,495, a 32 percent reduction from the 16,857 total reported in the initial December 15, 2007 survey results. (http://www.puc.state.pa.us/General/press_releases/Press_Releases.aspx?ShowPR=1912). We believe these numbers prove that the updated survey requirement results in more consumers having their heat reconnected in the winter and is a valuable tool in helping reduce the number of residences without heat and thus helps minimize the resulting public health and safety issues. As for EAP's point that these are customers who have had CAP rates but failed to maintain "their low $20-$25 a month payment" we point out that per the *Report on 2008 Universal Service Programs & Collections Performance* (consisting of data submitted by utilities per 52 Pa. Code §§ 54.75 and 62.50) the average CAP electric bill ranged from a low of $40 for a Penelec customer to a high of $70 for a PPL customer and the average CAP gas bill ranged from a low of $47 for a Columbia customer to a high of $112 for a UGI Penn Natural customer (page 38). There may indeed be CAP customers with a low $20 - $25 monthly bill, but based on the data they are very few in number.

We do not see a need to modify paragraph (f) as suggested by PGW to include discontinuance of service since paragraph (f) only refers to the *termination* of service, which is different from *discontinuance* of service, both of which are clearly defined in § 56.2. We also disagree with PGW's suggestion that the language in paragraph (i) referring to a "...good faith attempt to reach an agreement regarding payment of any arrearages..." conflicts with Chapter 14 and should be removed. We are not requiring a payment agreement in these instances and are not requiring service to be restored per an agreement. We are merely encouraging the utility to discuss the possibility with the customer in an effort to restore essential utility service.

Our proposal in paragraph (j) concerning the reporting of deaths at locations where public utility service was previously terminated generated numerous comments from the utility industry and consumer groups. We agree with OCA that termination of utility service can be a matter of life

and death and is central to the Commission's obligations to protect the health and safety of all citizens of the Commonwealth. As OCA points out, 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.

Following are some examples from recent years of incidents the Commission has acted on that would be reportable under the proposed paragraph (j). These incidents are also reported in the *Biennial Reports to the General Assembly and the Governor* that the Commission is required to provide every two years per Section 1415:

- An electric utility contributed $250,000 for the company's Consumer Assistance Program (CAP) and $100,000 for the Dollar Energy Fund. The informal investigations centered on improper terminations of electric service on May 11, 2005, in Hastings, Cambria County. Following the termination, four fatalities resulted from a May 14, 2005, fire, which according to media reports was caused by an unattended candle. (Public Meeting of December 15, 2005, M-00051906).

- An electric utility contributed $175,000 for the Dollar Energy Fund. According to PUC's Prosecutory Staff, the utility violated provisions of Chapter 14 of the Public Utility Code by terminating service to a customer in State College on May 17, 2005, without first providing sufficient notice of the termination to the customer. A resident of the home was subsequently found dead on July 4, 2005. According to media reports, the cause of death was carbon monoxide poisoning from a gasoline-powered generator the household was using to generate electricity. The company also agreed to implement termination notice procedures as found in Chapter 14. (Public Meeting of October 19, 2006, M-00061952)

- An electric utility agreed to contribute $300,000 to a low-income program to settle an informal investigation into an electric termination that preceded a fatal fire in Steelton, Dauphin County. The utility terminated service to the residence involved on November 2, 2007. A fire at the home the following day was allegedly started by a lit candle that touched a wall. Two children died in the fire. Commission Prosecutory Staff contended that the utility violated certain sections of Chapter 14 of the state's Public Utility Code and Chapter 56 of the Commission's regulations. In addition to the contribution, the settlement also requires the utility to revise its practices to bring them into full compliance with Chapters 14 and 56. This includes developing updated call scripts and increase training for its customer service representatives; establishing procedures to assist customers seeking payment arrangements including information about medical certificates; and enhancing procedures when they handle calls from customers whose service is terminated on Fridays. (Public Meeting held March 26, 2009, M-2008-2057562)

- On September 10, 2009, the Commission released for comment a settlement that dealt with the August 8, 2008, termination of electric service to a residence in Lancaster, Lancaster County. A fire destroyed the home on August 9, 2008, killing the resident. Although Pennsylvania State Police were unable to determine the fire's cause, the PUC's

independent Prosecutory Staff began an informal investigation into the electric utility's termination practices. If the matters had been litigated, Prosecutory Staff would have contended the company violated various portions of the state's Public Utility Code and Commission regulations including provisions on termination notices, medical certificates, payment arrangements, restoration of service and dispute rights. Under the settlement, the company agreed to not terminate service to residential customers on Fridays before January 1, 2013, without petitioning the PUC; contribute $400,000 to its Operation HELP program; pay a civil penalty of $50,000; establish additional customer service procedures; and revise additional internal procedures to deal with terminations, medical certificates and disputes. (Public Meeting of September 10, 2009, M-2009-2058182).

We do not lightly propose this requirement, but do believe that this reporting is essential in meeting our obligations as described by OCA. At the same time, we once again emphasize that this reporting is not to infer liability or causation. We want to carefully craft this requirement so that it is as clear as possible, limited in its scope, reasonable in the burdens it imposes, yet still alerts the Commission to matters that policy makers should be aware of. The parties submitted several helpful comments that will assist us in meeting these objectives while some of the comments we must take issue with. Generally, utility commentators object to the requirement or the scope of the requirement; while commentators representing consumers object that the requirement is not broad enough.

We disagree with NFG that the Commission does not have the legal authority to promulgate a reporting requirement as found in paragraph (j). Sections 504, 1501 and 1508 of the Public Utility Code provides the Commission with the authority to promulgate a reporting requirement. We also note that the Commission has previously promulgated similar requirements, including a January 16, 2009 Secretarial Letter (M-2009-2084013) and a 1995 Secretarial Letter (M-00940603).

We also disagree with PPL when they suggest that these reporting requirements are best left to a Commission Secretarial Letter instead of regulation. By placing them in regulation, they will bear the scrutiny, comments and due process requirements the rulemaking process provides. The Secretarial Letter process lacks these requirements. Placing them in regulation will also make them accessible and visible to all utilities, consumers and policy makers. Secretarial Letters simply lack this same visibility.

We do agree with PGW and NFG that the utility's reporting should focus on what the utility knows, such as circumstances of the termination and not on areas where they lack expertise, such as the cause of the incident. This is why we indicate that this information is to be provided "if applicable" or "if available." However, to clarify this further, we will revise the paragraph to make clear that the utility is responsible for providing information about the account and the circumstances surrounding the termination of service. For other information about the incident itself and its cause, they only have to forward what they have, if anything, from other sources such as the media or official government sources.

We disagree with Allegheny Power's and Equitable's objections to the one business day timeframe to submit reports. The reports consist of basic information (customer name, address, account number, date of incident, and brief description of circumstances involved) that should be readily available to the utility. Given the serious nature of these incidents, it is not unreasonable for the Commission to expect some basic information within a day. More detailed information that the Commission may request will of course take longer, and this can be worked out between Commission staff and the utility on a case-by-case basis.

We acknowledge the concerns expressed by PPL, Allegheny Power, NFG, PGW and EAP that this reporting requirement could infer an admission of liability; and that the information submitted could be subject to public exposure. However, 66 Pa. C.S. § 1508 requires that public utilities, "shall give immediate notice" of any incident where any person has been killed or injured. This statute also specifically states that the report is not open for public inspection except by an order of the Commission and that the report is not to be admitted in evidence for any purpose in any damages action.

While we understand the concerns of Action Alliance, CAC, OCA and PULP that the reporting requirement is too narrow in just focusing on deaths, we believe expanding this to include serious injuries and property damage presents too many practical difficulties to implement effectively. Almost every fire results in some property damage, so this would create an extremely broad and unnecessarily burdensome reporting requirement that would also impose burdens on the Commission in tracking so many reports. Limiting it to "serious property damage" is problematic in that "serious" is probably an impermissibly vague term. Likewise, injuries are not uncommon at a fire, if only a case of smoke inhalation or minor burns. Requiring a report on all such incidents would create too much of a burden, but limiting it to "serious" injuries again is probably impermissibly vague. Limiting it to injuries requiring "hospitalization" is problematic, in that it is the Commission's experience that media reports are rarely this detailed and specific, and hospitals generally decline to release such information, citing patient privacy concerns.

We acknowledge OCA's belief that a severe injury is not less deserving of regulatory attention simply because no fatality resulted. We emphasize that even though we omit injuries and property damage among the events triggering a report to the Commission, the Commission still has the authority to investigate such instances. Omitting these occurrences from this regulation in no way diminishes the Commission's authority, and in fact the Commission has in the past investigated incidents that involved only property damage and injuries. For recent examples, see *Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. Pennsylvania Electric Company* (Public Meeting of March 12, 2009, Docket No. M-2008-2027681) where Commission staff investigated an incident that damaged a residence and injured an occupant, but no fatalities occurred and also *Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation* (Public Meeting of September 10, 2009. Docket No. M-2009-

2059414) concerning a fire where several residential apartments were destroyed but no serious injuries or deaths resulted. We also remind everyone that omitting occurrences of injury and property damage from this regulation does not preclude any party at any time from presenting the Commission with information on such an incident and requesting an investigation.

Regardless of the above, we do agree with Action Alliance, CAC, OCA and PULP that the reporting requirement as proposed may appear unintentionally limited in that it only specifies deaths from "fire, incident of hypothermia or carbon monoxide poisoning." While we find the suggestions to add hyperthermia and asphyxiation as reportable events problematic because, in the Commission's experience, media reports of these incidents are rarely this specific, we do think the language of this requirement needs broadened a bit. To do so, we will revise the proposal to bring it more into alignment with the language of the Commission's January 16, 2009 Secretarial Letter (M-2009-2084013) by adding "another event that resulted in death" to paragraph (j).

§ 56.101. Limited notice upon noncompliance with report or order.

NFG agrees that § 56.101 should be removed from the regulations.

PGW believes that the regulations should allow limited notice when a consumer has failed to appeal from an informal or formal PUC determination or utility company report. Otherwise, consumers could abuse the dispute process to delay termination.

Discussion:

We agree with NFG that this section should be removed from the regulations, and conversely we disagree with PGW that it should be retained under some circumstances. In Chapter 14, the General Assembly clearly provided new termination notice standards, and in none of those Chapter 14 provisions (Section 1406(b)) is there any mention of the traditional limited notice of termination provided for in § 56.101. As such, we can only conclude that the General Assembly did not intend to provide for a "limited notice." The use of limited termination notices has also been the subject of an investigation by Commission Prosecutory Staff in *Settlement Agreement Between Law Bureau Prosecutory Staff and West Penn Power Co., t/d/b/a Allegheny Power*, M-00061952, (October 19, 2006) where the utility, as one of the conditions of the settlement ending the investigation, agreed to stop using limited notice under § 56.101.

§ 56.111. General provision.

Allegheny Power alleges that the use of medical certificates has been abused over the past several years and that any proposed regulation should be written to prevent unscrupulous abuse.

It should be specified that the medical condition must be one for which the customer is currently under a physician's care and that the physician's license number be required. The term "applicants" should be removed from the emergency medical provisions because applicants seeking service restoration after termination would have had ample time to exercise their rights under the emergency medical provisions. PECO and Duquesne likewise believe that "applicants" should be removed from this section with Duquesne estimating the cost of complying with this provision at $860,000 annually.

PPL agrees with the proposal to include "nurse practitioner" in this section. However, PPL has concerns about an applicant who has never had service with PPL and uses the medical certification process to obtain service. From PPL's perspective, credit worthiness should be the standard of providing service for these applicants rather than a medical condition. Simply using a medical condition standard would increase PPL's financial risk. PPL suggests that for § 56.113(1)and (2), the word "applicant" means a natural person who lives at the same address and had received a final bill from the utility.

Columbia opines that to the extent that the proposed language regarding medical certifications is broader in scope than 66 Pa.C.S. § 1406(f), it should be amended. Columbia believes there is nothing in the statute that provides for the restoration of service based upon a medical certification. Consequently, the proposed language in § 56.111, "or refuse to restore," and the reference to "applicant's house" are inconsistent with the statute. While Section 1406(f) prohibits service cessation based upon a nurse practitioner's medical certification, the statute requires a follow-up letter "from a licensed physician verifying the condition" that serves as the basis for the medical certification. Thus, the proposed § 56.111 language must be amended to remove the customer's option of obtaining the verifying letter from a nurse practitioner.

PGW opposes allowing nurse practitioners to file letters of certification because this is contrary to Section 1406(f). Only physicians have the required medical training to make these determinations and the proposal would force utilities to become familiar with the nurse practitioner rules of certification and registration.

EAP's position is that the term "nurse practitioner" should be added whenever a regulation in Chapter 56 references oral medical certification, but that written medical certification is still only acceptable from a licensed physician. Based on the plain meaning of the words used in 1406(f) of Chapter 14, the written (i.e., letter) medical certification should be provided by a licensed physician only. If the legislature had intended to include licensed nurse practitioner as being authorized to issue a written medical certification, then they would have expressly stated such in §1406(f). EAP does not believe that it is appropriate for the Commission to expand the statute, via regulation, beyond the clear and unambiguous language of the statute.

PAWC also believes that the proposed regulation goes beyond Chapter 14 and that in order to be consistent with the law, the Commission should consider limiting the written certification to licensed physicians and oral certifications to both licensed physicians and nurse practitioners.

Action Alliance contends that implementation of medical certification protection varies from utility to utility, including inconsistent policies of yearly limitations or lifetime limitations on a consumer's right to assert medical protections. The Commission's proposed modifications in this area will provide much helpful clarification for customers, utilities and agencies serving vulnerable consumers. Action Alliance strongly supports the Commission's proposed language at § 56.111 which states that "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. The utility may not impose any qualification standards for medical certificates other than those specified in this section" because it is important to prevent utilities from imposing qualifications that may deter consumers from seeking medical certificates or doctors from providing medical certificates.

The CAC and PULP support maintaining in the proposed regulations the longstanding standard of "...seriously ill or affected with a medical condition which will be aggravated by a cessation of service..." and leaving the medical determinations to medical professionals. PULP explains further that emergency medical determinations are important safeguards intended to protect the health and welfare of a household's occupants. Neither the Commission nor a utility is in a position to substitute its judgment for that of a medical practitioner.

IRRC notes that Section 1406(f) only refers to customers, and not applicants and questions why have applicants been included in this section of the regulation? IRRC further notes that Section 1406(f) refers to authorized termination of service, not the refusal to restore service. Finally, while Section 1406(f) requires a letter from a licensed physician verifying the condition of the customer, why does the regulation also allow nurse practitioners to provide verification letters?

Discussion:

We find merit with the concerns expressed by IRRC, Allegheny Power, PECO, Columbia and Duquesne with the proposed language in this section referring to "applicants" and the use of medical certificates to restore terminated service. According to the existing general language provision of § 56.111:

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. (emphasis added)

The Commission has traditionally allowed the restoration of service based on the receipt of a medical certificate. However, the explicit words of Section 1406(f) cannot be disregarded. It is reasonable, and even logical to assume that the General Assembly's exclusion of the phrase "refuse to restore, service" in the drafting and enactment of Section 1406(f) was not an oversight but had a specific purpose; namely, the discontinuance of this application of the medical certification provisions. 1 Pa.C.S.A. § 1922(1). Indeed, this section only refers to customers in terms of obtaining a medical certification to prevent termination. The language of the statute is clear and unambiguous that medical certificates, by themselves, are not enough to require a utility to *restore* service. The legislative intent is expressed through the plain language of the statute. 1 Pa. C.S. A. § 1921. Moreover, this interpretation is consistent with the application of the rules for reconnection of service.

Section 1407(b) addresses the timing of Reconnection of service:

(b) 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*.
(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.
(5) Within seven days for proper terminations requiring street or sidewalk digging.
(emphasis added)

Although the opening sentence of this subsection includes the term "applicant", sub paragraph (b)(1) clearly refers to a service restoration timeframe upon receipt of a medical certificate. A plain reading of this section reveals that medical certificates are only mentioned in Section 1407(b), the subsection that specifies the rules utilities must follow regarding the timing of the physical restoration of service. Nothing in subsection (b) erodes a utility's rights under Section 1407(a), which permits utilities to charge reconnection fees, or 1407(c), which allows utilities to require payment of all or a portion of an applicant's outstanding balance before reconnection. Further, 1407(b) clearly states that utilities are only required to abide by the timing provisions "provided the applicant has met all applicable conditions." Thus, it is only after an applicant for service has complied with "all applicable conditions" that medical certificates play a role in the restoration of service, and that role is only to accelerate the timeframe the utility has to restore the applicant's service. The General Assembly's use of the word "applicant" within the reconnection of service section is clear evidence of legislative intent that medical certifications are only available for "applicants" to receive expedited reconnection of service. 1 Pa.C.S.A. § 1921(b)

We believe these changes are not only necessary to comply with Chapter 14, but are also sound public policy. Duquesne , the smallest of the large electric distribution companies, estimated that the costs of complying with the existing medical certificate procedures in Chapter 56 are $860,000 annually. These are costs that must be borne by all utility ratepayers, just as those same ratepayers will ultimately pay for the bad debt expense utilities accrue because of customers who abuse the termination and restoration process. We are mindful that this legislation seeks to eliminate opportunities for customers 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. 66 Pa. C. S. § 1402. Customers with legitimate medical conditions have ample time to provide utilities with the necessary information to ensure the continuation of service. It is only after the customer relationship is severed, following numerous notices from the utility outlining the steps to avoid termination, that the right to use a medical certificate as a tool to guarantee the continuation of service ceases.

Finally, to be clear, it is not our intent in the final regulation to require 24 hour reconnection to all applicants with a medical certification. It is our intent to make medical certificates available to those individuals who are seeking reconnection of service; meaning that their service must first have been terminated as stated in (b). This is based on the fact that Section 1407 is titled "Reconnection of service," and that to have service reconnected one's service must have been first connected and then terminated at some point. Chapter 14 clearly makes a distinction among different types of applicants and different standards are imposed on some applicants as opposed to others. For example, Section 1404(h) provides for applicants who are seeking reconnection under paragraph (a)(1) of Section 1404 up to 90 days to pay a security deposit, as opposed to other applicants, such as those that fail to establish creditworthiness under Section 1404(a)(2), who do not have 90 days to pay. It appears that the General Assembly intended applicants who are seeking reconnection of service after termination to have different standards applied to them than applicants who are seeking to establish new, initial service. This is apparent from the above cited provision at Section 1404(h) and for requiring 24 hour reconnection to applicants seeking reconnection under Section 1407(b). Therefore, the use of the word "applicant" in the reconnection of service section is explicit and should not be disregarded to ascertain intent. 1 Pa. C.S. § 1921(c). In short, an applicant seeking new, initial service cannot use a medical certificate to bypass the credit screening of the utility. We agree with PPL that credit worthiness should be the standard of providing service for new, initial applicants and believe this is also what the General Assembly intended in Section 1404. To make medical certificates available to *all* applicants would, as PPL points out, increase a utility's financial risk.

IRRC, Columbia, PGW, EAP and PAWC question the Commission's proposal to allow nurse practitioners to file medical certificates and to provide verification of medial certificates under Section 1406(f). This is an area where reasonable parties can disagree because the language at Section 1406(f) can be interpreted different ways. The first sentence of Section 1406(f), "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" (emphasis added) is fairly clear in that both physicians and nurse practitioners are qualified to provide medical certificates. However, the second sentence of Section 1406(f), "The customer shall obtain a letter from a licensed *physician* verifying the condition and shall promptly forward it to the public utility" (emphasis added) omits nurse practitioners. This appears to indicate that medical certification is a two-step process, with the second step being more restrictive than the first step. Based on the clear and unambiguous words of the statute, limiting the availability of obtaining the verification letter to a licensed physician, we conclude that if a nurse practitioner files a medical certificate, but a physician fails to provide the follow-up letter, the medical certificate filed by the nurse practitioner is invalidated and the utility may terminate service. 1 Pa. C.S.A. § 1921(b).

It is clear that the General Assembly, in Section 1406(f) intended to expand the medical professionals eligible to file a medical certificate from physicians only to now include nurse practitioners. It is equally clear that the medical certification process refers to a customer obtaining a letter of verification from only a physician.

We agree with Action Alliance, CAC and PULP that medical determinations are to be made by medical professionals and that utilities should not impose additional qualifications that are not found in regulation and statute. As such, we will retain the language we have proposed in §56.111.

§ 56.112. Postponement of termination pending receipt of certificate.

Action Alliance supports the Commission's plan to maintain the important three-day stay of termination to obtain written or oral certification at § 56.112. Illness, hospital stays and circumstances surrounding the medical emergency can prevent a household from being aware of imminent utility termination. The first time that a consumer may learn of the impending termination is when the utility worker appears at the home. Three days is the minimum period of time that should be allowed to consumers to contact a medical professional to submit a verbal or written medical certification to the utility.

Discussion:

We agree with Action Alliance and see no reason to revise the original proposal.

§ 56.113. Medical certifications.

Columbia believes that the proposed § 56.113 improperly puts the onus on the utility to "verify the certification by calling the physician or nurse practitioner or to require written verification within 7 days." Columbia thinks this is inconsistent with Section 1406(f), which provides that "The customer shall obtain a letter from a licensed physician verifying the condition." Columbia suggests that § 56.113 should be eliminated so that there is no confusion and the list of information that must be included in a medical certification should be moved to § 56.111.

Action Alliance supports the Commission's plan to maintain the seven-day window to provide written confirmation at § 56.113. If the utility requires a written certification, maintaining the seven day window, after verbal certification, for submission recognizes the demanding schedules of medical offices and provides a reasonable opportunity for consumers and their treating medical practitioners to comply.

Discussion:

Columbia is correct in that Section 1406(f) directs the customer to obtain a letter from a physician and this directive is incorporated into the proposed § 56.111. Columbia is incorrect in that the proposed § 56.113 improperly places the burden on the utility. Section § 56.113 is intended to provide the utility with the ability and means to verify a medical certificate that they may want to question. For example, if the utility receives a written letter signed by a medical professional from a customer, per § 56.111, but the utility suspects the letter to be possibly fraudulent, the proposed § 56.113 provides the *right* for the utility verify with the medical office the authenticity of the letter. It is the utility's option as to whether to exercise this right or not. We note that utilities should only use this right to verify the authenticity of the certificate and the utility should, as discussed in reference to § 56.111, refrain from questioning the medical determination of the medical professional or imposing additional standards not found in the regulations. We also believe that the retention of this provision is in keeping with the requirement of Section 1406(f) that the medical certification procedure be implemented in accordance with Commission regulations. Utilities, per this section, have traditionally had the right to verify medical certificates and we believe it was the intent of the General Assembly for utilities to retain this right. We will, in the interest of being more precise and aligning with the language of Section 1406(f), we will use the term "verification" instead of "confirmation."

§ 56.114. Length of postponement; renewals.

Allegheny Power, FirstEnergy and PGW agree that once a customer has eliminated his arrearages he is entitled to another three medical certificates. However, they disagree with the phrase "and same termination action" because every time the utility issues a new termination notice, the customer could qualify for more medical certificates. Duquesne and Equitable also ask that this phrase be removed because it is unclear.

PECO believes the proposed regulations implement a great deal of tested Commission practice and knowledge from recent years and they particularly support two elements of the new regulations; allowing the utility to enact the medical certificate restrictions without having to resort to petitioning the Commission and that the restrictions can be applied if the underlying arrearage is not resolved. However, PECO asks that the "same termination action" phrase be deleted since it may have consequences the Commission did not intend. PECO also suggests changing the reference from a "third medical certificate" to a "third renewal of a medical certificate" to avoid confusion.

PPL agrees with the Commission's proposals that limits the two 30-day renewals of medical certifications for the customer's household to the same set of arrearages and same termination action and that when the customer eliminates these arrearages, he or she is eligible to file new medical certification. PPL also supports the proposal that, in these instances, a utility does not have to petition the Commission under § 56.118(3) if the utility wishes to contest a third medical certification.

NFG recommends that the proposed language in §56.114(2) be expanded to include applicants as well as customers. In addition, the last sentence of the proposed language, regarding public utility company dispute procedures should be removed. NFG believes that there is no dispute in these cases since the proposed language of this section is clear as to whether or not a medical certificate is to be honored.

PGW disagrees that a utility's rejection of a medical certificate should be treated as a dispute because the customer's obligation to make payment under receipt of a medical certificate is unmistakable.

Action Alliance supports the Commission's proposed language at § 56.114 that brings important clarification to when the restrictions on renewals of medical certifications apply. The Commission has amended § 56.114 to clarify that the limit of two renewal certifications only applies if the customer is not making equitable efforts to pay utility bills per § 56.116, which specifies that at least current bills should be paid in order to be considered an equitable effort at payment. When payments on current bills are not being made, only then do the restrictions at §56.114 apply.

Action Alliance disagrees with the Commission's proposal to allow utilities to refuse to honor medical certifications without petitioning the Commission, when the utility determines that the renewal restrictions have been reached under § 56.114. According to Action Alliance, Section 1406(f) clearly prohibits termination of utility service "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." Action Alliance believes that the statute provides no restrictions on renewals and that any determination

that renewal limits have been met should be made by the Commission, not the utility. These most vulnerable consumers, whose medical practitioners have provided multiple certifications of a serious condition, should be afforded all the consumer protections available, including Commission review prior to service termination.

In addition, Action Alliance notes that consumers with serious and chronic conditions that are not likely to improve within 30 days should not be burdened with a requirement to renew medical certifications every 30 days. Medical certification renewals often require that the patient make and attend an appointment with the treating medical practice and pay accompanying fees for the appointment and completion of medical certification for the utility. These perfunctory efforts are financially and physically burdensome for seriously ill consumers with chronic conditions. Action Alliance urges the Commission to adopt a rule similar to that adopted in the state of Massachusetts which allows for six-month chronic illness certification and certification of infancy until the child reaches 12 months of age.

The CAC supports the clear specification that any refusal to honor a medical certificate under conditions recognized by the Commission should be treated as a dispute by the utility, requiring that the customer will be referred to the Commission.

The OCA submits, in general, that the proposed changes to the Emergency Medical Provisions have clarified and strengthened these critical provisions. However, the OCA requests that the Commission reconsider and allow certificates that exceed the 30 day timeframe so that certificates are fully available to Pennsylvania's most vulnerable citizens with serious or chronic conditions. The OCA believes that a 90-day term would reduce the burden on the seriously ill individuals as well as avoid the wasteful use of medical resources when an individual's condition is unlikely to improve. For example, the OCA notes that in Massachusetts, medical certificates for serious illness are renewed on a quarterly basis and for chronic illnesses every six months. The OCA is also concerned with the additional language letting utilities refuse a medical certificate without first petitioning the Commission if they are only enforcing the restrictions found in § 56.114. The OCA believes this is contrary to Section 1406(f) of Chapter 14 which prohibits the termination of service where a customer presents a medical certificate. The OCA believes that the petition process will better assure the Commission that all avenues for retaining service have been explored and all circumstances considered.

PULP supports the Commission's amendments to § 56.114 and the Commission's conclusion that any refusal to honor a medical certificate under conditions recognized by the Commission should be treated as a dispute by the utility, requiring that the customer will be referred to the Commission. PULP believes that the Commission has made an important clarification in Section 56.114(2) that establishes that the elimination of arrearages associated with a defaulted medical certificate enables a customer to apply for and receive another medical certificate on another set of arrearages. According to PULP, this policy also recognizes that households, particularly low-

income or elderly households, may suffer multiple debilitating illnesses over time; allowing these households to access multiple medical certificates recognizes this reality.

PULP also requests that in the case of chronic conditions, utilities should develop policies that involve less frequent than monthly recertification. PULP explains that it would be less difficult administratively for the utility and less burdensome on the sick customer and the customer's medical professional to have a quarterly or less frequent recertification process where it is likely the illness will be protracted. PULP notes that other jurisdictions have adopted this kind of practice for chronic illnesses.

IRRC also notes that medical certificates are valid for 30 days under this section and suggests that the Commission consider providing procedures that would allow customers to request longer periods of time for instances involving chronic illness or other extenuating circumstances.

Discussion:

Most of what was proposed in this section was intended to provide clarification as to the application of the limitations set on the use of medical certificates. These renewal limitations were first included in these regulations with the last revision of Chapter 56 in 1997. Since then, it has been the informal experience of the Bureau of Consumer Services that there has been confusion and inconsistency in applying these provisions and the Bureau has been presented with repeated questions from utilities, consumers and medical professionals about this section and the limitations on the usage of medical certificates. For example, there have been questions as to whether the limits on renewals apply to individuals or to the entire household. In the proposed regulation, we propose to answer this by stating that the limitations apply to the household. We believe the guidance offered in the proposed § 56.114, while not addressing every possible contingency, which is not possible, does provide some useful direction. However, upon review of the comments, we also believe some further refining of this section is necessary, including some rearranging of the sentences to improve readability.

We first remind everyone that the limitations on medical certificate usage in § 56.114 only apply if the customer is not meeting their obligation to pay on their bills per § 56.116. As long as the customer is meeting this obligation, there is no limitation on medical certificate usage under this section. This is what has been traditionally required under § 56.114 and we are not proposing to change this; the limitations will continue to apply only if the customer is not making payments.

We agree with Allegheny Power, FirstEnergy, PGW, Duquesne, PECO and Equitable that the phrase "same termination action" should be removed because it is unclear and may have the unintended result of allowing a customer to bypass the limitations simply because the utility issued a new notice. We agree with PECO that the language should refer to "third renewal of a medical certificate" instead of "third medical certificate" to avoid confusion. NFG's suggestion

to add "applicants" to this section is not necessary because this section refers to renewal of medical certificates and this does not involve applicants. We disagree with NFG and PGW's objections to providing dispute rights to those that have been denied a medical certificate. While a utility refusal to honor a medical certificate because it is applying the restrictions found in this section may be based on "unmistakable" or "clear" language, this has nothing to do with the standard for determining whether a dispute exists or not. Per the long-standing definition of *dispute* at § 56.2, it a customer's satisfaction or lack thereof with the company's position that determines whether a dispute exists or not. A customer being denied a medical certificate is unlikely to be satisfied with the company's position; meaning a dispute now exists and that the utility should provide the customer with their right to go to the Commission. Again, this is per traditional Chapter 56 rules. The proposal to note this explicitly in this section is simply serving as a reminder to the utility of this obligation; it is not a new requirement.

In an attempt to further clarify the restrictions that were incorporated into this section in 1997, we proposed making it clear that a utility has the authority to invoke these restrictions on their own, without first petitioning the Commission for permission. This has been a point of confusion since 1997, and we believe this clarification reflects the intent of the 1997 revisions. If a utility were required to petition the Commission every time they wished to apply these restrictions, it would in fact make these restrictions meaningless, since utilities have always had the option to petition the Commission to void a certificate. It would also place significant burdens on both the utilities and the Commission in processing said petitions. We understand the concerns of OCA and Action Alliance when they ask that we require the petition process to be used to apply the § 56.114 restrictions as to make sure that all the customer's circumstances have been considered. We disagree that Chapter 14 voids the restrictions in § 56.114 because Section 1406(f) states that "The medical certification procedure shall be implemented in accordance with Commission regulations." It is reasonable to assume that the General Assembly was familiar with the limitations found in § 56.114 and did not intend to void them. We also point out to these parties that, as discussed above, we will explicitly require the utility to treat these occasions as disputes. This will provide the customer the option of seeking Commission review of their circumstances and to make sure the restrictions have been appropriately applied.

IRRC, Action Alliance, OCA and PULP request that the Commission consider long-term medical certificates to address chronic or long-term illnesses. These parties raise several valid concerns about the burden the current 30-day limit imposes on patients and health-care professionals alike. However, we are reluctant to revise the regulations to this extent because the General Assembly had an opportunity to do so in Chapter 14 and declined to do so. We again note that in Section 1406(f), the General Assembly declared that the "...medical certificate procedure shall be implemented in accordance with Commission regulations." It is reasonable to assume that the General Assembly was familiar with the 30-day timeframe in the current regulations and was comfortable with it. We also remind everyone that there is no limit on medical certificates as long as the customer is paying bills per § 56.116. The limits on medical

certificate usage only apply if the customer is not meeting their obligations at § 56.116. We must also decline PULP's suggestion to add "physician assistants" along with "physicians" and "nurse practitioners" as medical professionals allowed to file medical certificates. Again, if the General Assembly had wanted this, they would have included this in Chapter 14 when they added "nurse practitioners" to the medical certificate rules. Long-term medical certificates were not provided for in the legislation and would be a very substantive addition to these regulations.

§ 56.115. Restoration of service.

PGW states that Chapter 14 does not place an obligation on the utility to "make a diligent effort" to restore on the date of receipt and therefore this requirement should be removed from the regulation. Additionally, the regulation should be revised to note that customers are required to provide access or other information as may be needed by the utility to restore service.

Discussion:

While we understand PGW's concerns, we must point out that "make a diligent effort to have service restored on the day of receipt" does not require the service to be restored. The only requirement is that service be reconnected within 24 hours. As such, this section does not conflict with Section 1407(b). Given the obvious health and safety issues involved, asking a utility to make a diligent effort is simply intended to prompt the utility to act on a medical emergency as soon as possible is a reasonable requirement since the utility has 24 hours to restore service.

In addition, given our resolution on the issue of the use of medical certificates by "applicants" to restore service, we have added a cite to § 56.191 to indicate that an "applicant" with a medical certificate must still satisfy the reconnection of service payment requirements.

§ 56.116. Duty of customer to pay bills.

FirstEnergy is concerned that the payment of outstanding account balances is not addressed in §56.116 and should be amended to require payment agreements for such balances. PPL suggests revising the language to read "Whenever service is restored or termination postponed under the medical emergency procedures, the customer shall retain a duty to make payment on all current undisputed bills, undisputed overdue balances, or equal monthly billing amount as determined by § 56.12(7) (relating to meter reading; estimated billing; ratepayer readings)."

NFG does not oppose the proposed language of this section. However, in order to simplify this section and make it more understandable NFG suggests modifying the proposed language by deleting "or equal monthly billing amount as determined by § 56.12(7) (relating to meter

reading; estimated billing; ratepayer readings)" because, generally speaking, for customers on a equal monthly billing program, the amount they see on their monthly bill is the equal monthly billing amount. NFG states that the primary purpose of this provision is to require customers to continue to pay current undisputed bills and NFG believes that removing this excess language will communicate that point more clearly.

PGW believes that the reference to budget billing should be deleted because the customer's current undisputed bill is the same as the monthly budget amount.

Action Alliance supports the Commission's proposed language at § 56.116 that brings important clarification to when the restrictions on renewals of medical certifications apply. Action Alliance agrees that the current § 56.116 language "to equitably arrange to make payment" has not given adequate guidance to utilities and consumers alike. The Commission's proposed language brings long-awaited and proper clarification. Action Alliance, therefore, agrees with the proposals at § 56.116 to replace the language "to equitably arrange" with "to make payment on all current undisputed bills ..." When payments on current bills are not being made, only then do the restrictions at § 56.114 apply.

The CAC and PULP support the attempt to clarify the requirements of § 56.116 by specifying that payment of current bills be considered an equitable effort at payment.

PULP supports the Commission's clarification that a customer or applicant with a medical certificate retains a duty to make payments on current undisputed bills. This reasonable policy recognizes that customers and applicants requiring medical certificates often have their lives disrupted by their illness, often resulting in decreased or sporadic income. By requiring payment on only the current bills, PULP believes that the Commission recognizes this disruptive nature of serious illness and allows customers to wait until after their illness or condition is corrected to resolve past due amounts, amounts associated with a payment agreement, or amounts associated with settlements.

Discussion:

While we understand NFG's and PGW's concerns that the reference to budget billing amounts may be superfluous, we believe it is important to retain this reference in this section just so it is clear that a customer should be paying current bills or the budget billing amount. However, we will revise the terminology to refer to *budget* billing as to align it with our proposed terminology at § 56.12(7). We also understand FirstEnergy's concerns with the payment of the outstanding balance. In response, we point out that if the customer is paying their current bills as required by this section, the outstanding balance will not be increasing, meaning that the customer's and the utility's problems with the account balance will not be aggravated. We expect that once the medical certificate expires, the utility would address the outstanding balance with the customer.

We also point to the petition process at § 56.118 that a utility may use to possibly void a medical certificate that a utility believes is being used to avoid the payment of the account balance. We must also reject PPL's advice because their suggestion that we require an arrangement on all current and overdue balances might be considered a payment agreement, which may conflict with Section 1405(d)'s restrictions on the Commission's authority to order payment agreements. We agree with Action Alliance, CAC and PULP that the proposed language requiring payment on all current bills or budget bills brings much needed clarity to this section, and recognizes the disruptive nature of serious illness on customers. At the same time, we believe this proposal will aid both consumers and utilities in preventing the accumulation of additional arrearages while a customer is under the protection of a medical certificate.

§ 56.117. Termination upon expiration of medical certificate.

PULP suggests that § 56.117 requires revision because when the initial and renewed medical certificates have expired, it is unreasonable to begin the termination process where it left off. Depending on the nature of the illness or medical condition, months or years can pass between the time of the initial medical certificate submission and the expiration of the original certificate or renewal certificate. PULP submits that it is unreasonable to expect customers to remember where the termination process stood at the time of their initial submission of a medical certificate. It is not particularly burdensome for the utility to begin the termination process at the written notice stage so that the customer can have a written explanation of the state of their account, with the detailed enumeration of the content of their bill. PULP encourages the Commission to consider requiring the termination process to begin over rather than picking up at § 56.93.

Discussion:

Upon review of the comments submitted by PULP we must disagree that written notice of termination is always required upon expiration of a medical certificate. Such a requirement could impose additional collection costs on utilities without sufficient benefit to justify such. However, we do agree that this section does need a small revision to ensure compliance with Section 1406(1)(i) which specifies that a 10-day written notice of termination is effective for 60 days. We will add language clarifying that additional written notice does not have to be provided upon expiration of a medical certificate if written notice has already been provided within the past 60 days.

§ 56.118. Right of public utility to petition the Commission.

NFG believes § 56.118(a)(2) should be removed because public utilities should not have to petition the Commission in these situations. As stated in §56.116, NFG explains that customers

retain an affirmative duty to pay undisputed current bills and failure to do so would subject them to the general termination procedures contained in the remainder of this chapter. According to NFG, due to the timeframes involved in any petition under this section, the process has become mostly obsolete. NFG explains that there is generally a 90-day period under which a medical certificate and its renewals can be active. As there is no language in § 56.118 requiring a medical certificate petition to be addressed within a specific timeframe, more often than not, by the time a determination is made, the issue has passed. NFG opines that if this section is to have any real world applicability, a timeframe for a final Commission adjudication of 10 days should be required.

Discussion:

Under § 56.114(2), the utility already has the right to reject a third medical certificate *without* having to petition the Commission if the customer is not paying current bills. What § 56.118(a)(2) provides is the ability of the utility to petition the Commission to vacate a medical certificate at *any time* if the customer is not paying; even before the third medical certificate is filed. We disagree with NFG when they suggest § 56.118(a)(2) be removed because we believe this provides utilities with a valuable option that they may want to exercise in some cases. A utility does not have to wait 90 days, as suggested by NFG, to file a petition; they may do so at anytime if they believe the medical certificate process is being abused by a customer. We also decline to specify a time period for Commission adjudication of these petitions, but do note that it is the practice of the Bureau of Consumer Services to handle such petitions in an expedited manner.

§ 56.131. Third-party notification.

PPL agrees with the proposal that utilities, at least annually, inform customers of the availability of third-party notification programs. PPL, via a bill insert, has been informing customers for many years of the availability of its third-party notification program. This program can be particularly useful for older customers who want an adult child or other close relative to receive copies of any collection notices. The Commission also proposes under § 56.131(4) that utilities make available a standard statewide enrollment form that would comply with the form set forth

in Appendix E. PPL recommends that the Commission allow utilities the flexibility to develop the format of their own forms, but to require all utilities to include the same standard information. This would be the same approach proposed by the Commission concerning termination notice requirements at § 56.91. PPL believes that the Commission should adopt this same reasonable and flexible approach regarding the format of the third-party notification form. Standard information would include, but is not limited to, utility name, address, customer name,

address, telephone, date, signature, and the third-party name, address, telephone, date and signature.

Discussion:

We acknowledge PPL's concerns but believe they are overstated. While we are making the third-party enrollment form available in Appendix E, the utility is only required to make their form "substantially in compliance" with this form. This means that the utility's form only has to include the substance of the appendix; it does not have to mirror the appendix. The utility is free to format their own forms and choose their own wording, as long as the utility's form contains the same information as Appendix E.

Third-party notification is an important consumer safeguard that can be used anytime by anyone, but as PPL points out, is especially helpful for customers who may, because of illness, disability or advanced age, need the occasional intervention of a third-party to manage their utility account. However, we are concerned that these programs may be under-utilized due to confusion and misperceptions on the part of consumers. For example, customers may confuse third-party notice with third-party guarantor (see § 56.33) and mistakenly think that they will be held responsible for payment of the bill simply because they have agreed to accept third-party notification. To address this misperception, the notice in Appendix E emphasizes that agreeing to accept a third-party notice does not make one responsible for paying the bill. The notice also provides important information, such as making clear that this program does not stop the shut-off of service and that the third-party is not authorized to commit to a payment agreement on the customer's behalf. We also believe that consumers who participate in these programs may enroll with numerous different utilities, such as electric, gas and water. As such, it would be helpful to have the enrollment forms communicate the same information as to lessen confusion. The requirements of § 56.131 and its accompanying Appendix E are intended to increase the comfort level of consumers using this important consumer safeguard, while providing the utility with enough flexibility to format and present the critical information as they see fit.

§ 56.140. Follow-up response to inquiry.

Minor, nonsubstantual changes were made to this section to make it consistent with the definition of "initial inquiry" at § 56.2.

§ 56.141. Dispute procedures.

Allegheny Power asks that language be added to the dispute procedures to clarify that when the Commission issues a payment agreement, it should only be rendered on the disputed amount.

The remainder of the account balance should be due immediately and not included in the payment agreement.

Discussion:

We decline to accept Allegheny Power's suggestion because we believe this level of specificity is not appropriate for codification and instead is best left to the Commission's internal procedures used to implement this Chapter under § 56.166.

§ 56.142. Time for filing informal complaints.

NFG suggests that the Commission should consider adding a requirement to this section that would spell out the timeframe that BCS has to respond to an informal complaint.

PULP recommends that this section should be modified slightly for clarity's sake by removing the repetitious phrase "and informal complaints" from the proposed regulation.

Discussion:

We agree with PULP's suggested minor revision to this section. However, we decline NFG's proposal to include a timeframe in this Section for reasons discussed relative to § 56.163.

§ 56.143. Effect of failure to timely file an informal complaint.

NFG does not agree with the proposed removal of language from this section because an essential component of any regulatory proceeding is that time is of the essence. NFG explains that there are many good reasons for this requirement; chief among them is the need to prevent the stagnation or loss of evidence. NFG submits that the language that is marked for removal makes it clear that failure to comply with necessary time requirements may lead to the inability to prosecute an informal complaint. In order to give structure to the process and promote economy in the processing of informal complaints, this language should remain.

Discussion:

While we understand NFG's concerns, we must disagree by pointing out that the Commission, in keeping with the due process rights of all parties, cannot impose such a blanket denial on the right to file an informal complaint simply based on the time of the filing. While we can specify that the right to retain service during such a proceeding can be restricted by the Commission, we cannot outright prohibit the filing of a complaint simply because a period of time has lapsed.

§ 56.151. General rule.

PPL agrees with the Commission's proposal to allow utilities, with the consent of the customer, to submit the information and documents electronically to him or her as long as the customer has the ability to accept electronic documents. This type of flexibility should help streamline utilities' internal processes and ensure timely responses to complaining parties.

PGW objects to the payment agreement language in §56.151(3) because when a customer raises a dispute, the utility is not obligated to negotiate a payment agreement if the customer is not entitled to one. EAP believes that proposed § 56.151(3) should be rejected because it conflicts with the mandates of Chapter 14 regarding payment agreements. EAP opines that the proper analysis of Section 1405(d) is that a customer gets one payment agreement, whether it be utility or Commission established, and if the customer defaults on that agreement, the Commission shall not establish a second or subsequent agreement, but the public utility may, at its discretion, do so.

Discussion:

We disagree with PGW and EAP that § 56.151(3) conflicts with Section 1405(d). This longstanding provision does not require that a payment agreement be established; merely an "attempt" is made to establish one. It is understood that the attempt may not be successful, and a possible reason for the lack of success may well be that the customer does not qualify for a payment agreement.

§ 56.152. Contents of the utility company report.

PECO objects to the proposed requirement that termination information be presented in a font size two points large than the font used in other sections of the utility report as this would require PECO to reprogram its entire utility report software. PECO suggests that the information found in this section should be "prominently displayed" in the utility report. PPL agrees with this proposed change of § 56.152(8)(ii) and can accommodate this requirement by reformatting its written utility report.

PGW suggests using the phrase "service will be terminated" because it is less confusing for the customer and the utility. PGW also objects to placing this information in a larger font because this seemingly minor change would require PGW to make an extensive, costly programming change.

Action Alliance supports the Commission's proposed language at § 56.152(8)(ii) that requires the utility to provide conspicuous notice ("in a bold font that is at least two font sizes larger than the font used in other sections of the utility report") to the customer of the deadline to file an informal complaint in order to avoid termination of service.

Discussion:

We agree with Action Alliance and believe that the termination information in § 56.152(8) is of great importance because it is informing the customer of a possible approaching termination of service. As such, this information should not be buried inconspicuously in a document to the customer that may address many other topics. However, to address the concerns expressed by PECO and PGW, we will revise § 56.152(8)(ii) to drop the specific requirement that the termination information be presented in a print size two fonts larger and instead will accept PECO's suggestion and go with a more general requirement that the information be "prominently displayed." This will allow the flexibility needed to accommodate different utility capabilities, and we agree with PPL that this should now present the need for only relatively easy modifications and reformatting. We also agree with PGW that the language should be revised to make the termination threat clearer and more direct by restoring the phrase "service will be terminated" to this section instead of the vaguer "the utility will commence termination action." We will also omit reference to "informal dispute settlement agreement" per the comments submitted concerning § 56.2 and our response to those comments.

We will also delete the language in paragraph (4) requiring the customer to file informally with the Commission within 10 days. The Bureau of Consumer Services has never enforced this provision. Practically, the Bureau is unable to enforce such a standard because at the time of filing, the Bureau has no way of knowing when the customer received their utility report from a utility.

§ 56.161. General rule; time for filing.

NFG believes that this Section should not be removed. While the proposed changes to §56.142 would establish a timeframe in which an informal complaint must be filed if it involves a potential termination of service there remains the potential for informal complaints to be filed where there is no prospect of termination of service. For the reasons discussed in NFG's comments on the proposed changes to §56.143, these instances also need the structure that is provided by clearly enumerated time deadlines. Thus, NFG believes this section should not be removed from Chapter 56. In the alternative, the 10-day filing timeframe could be added to the end of the proposed language of §56.143 for instances where an informal complaint does not involve the termination of service.

PGW also requests that this section be retained since it allows relief from the time required for filing for good cause shown.

Discussion:

While we understand NFG and PGW's concerns, we must reiterate what we said in relation to similar comments filed concerning § 56.143. The Commission, in keeping with the due process rights of all parties, cannot impose a blanket prohibition on the right to file an informal complaint simply based on the time of the filing. Moreover, to the extent that Chapter 14 addresses complaints, the General Assembly did not take the opportunity to set any filing limits. In fact, Section 1410 only requires that a customer first contact the utility prior to filing a complaint, pay undisputed bills, and verify the facts alleged in the complaint. There is no language about limiting the time period to file a complaint, formal or informal. The only time limit for filing a complaint is the statute of limitations set forth in Section 3314. *See also Duquesne Light Company v. Pennsylvania Public Utility Commission*, 611 A. 2d 370 (Pa. Cmwlth. 1992); *Suburban East Tires v. Pennsylvania Public Utility Commission*, 582 A. 2d 727 (Pa. Cmwlth. 1990).

§ 56.162. Informal complaint filing procedures.

Allegheny Power suggests that the date the complainant contacted the utility and the results of that contact be added to § 56.162 as to support similar requirements at § 56.166 and Section 1410(1).

Columbia suggests that to ensure that accurate information is being provided not only to Columbia, but to the Commission, proposed Section §56.163 should be amended to include provisions that would require complainants, upon filing an informal complaint, to provide the date the complainant contacted the utility company about the dispute, and occupant information, including the number and age of all occupants in the home, household income and the names listed on the mortgage, lease or deed of the property.

NFG suggests adding to the information that must be included in an informal complaint a statement or verification that the complainant has contacted the public utility regarding the subject matter of this complaint per Section 1410(1). NFG notes that proposed §56.166 includes this statutory requirement.

Discussion:

We agree with Allegheny Power and NFG suggestions to revise this section to reflect more explicitly the requirements of Section 1410(1). While it could be argued that the proposed

paragraph (6) is basically soliciting the same information, we agree to revise this paragraph to bring it more in line with Section 1410(1). However, we think Columbia's suggestions go too far in asking for household income and occupant names and ages, etc. This information is entirely irrelevant to many types of informal complaints, such as those involving service issues and billing problems. It is also information that many individuals consider private and requiring the disclosure of such might discourage the filing of informal complaints when the information is of no relevance.

§ 56.163. Commission informal complaint procedure.

Allegheny Power recommends that language be added to this provision requiring that informal complaints be closed by the Commission within a 3-month period as this would improve efficiency and prevent delinquency monies from accumulating. Allegheny Power generally agrees with the 30-day response time standard, but is concerned with the 5-day standard for off cases as it may be unattainable and perhaps discriminatory.

Duquesne does not object to the 5-day standard, but recommends that it be specifically applied to instances where a customer has been terminated for nonpayment. Duquesne also suggests that the 5-day period should also apply to the Commission when issuing decisions in such cases. In addition, Duquesne requests that the Commission reconsider its interpretation of § 1405(d) because they fail to see the benefit of establishing multiple payment agreements for customers who have defaulted from a previous payment agreement.

PECO is cognizant of the health and safety issues involved in cases where a customer's service is off and that the utilities, through their complaint handling and collection policies can have a significant influence on complaint volume. But PECO points out that customers also have significant influence with respect to their own complaints and some simply wait until service is actually terminated until taking action. PECO has experience trying to implement the proposed five-day response standard and has found it very difficult to do so, - especially a concern if it is five "calendar" days. PECO requests the time period be extended to 10 days. PPL and Phillips suggest clarifying that the five days be specified as "business" days.

Columbia, Equitable, NFG, PGW and PULP all request a time deadline for BCS to respond to informal complaints. Columbia supports the proposed requirement that requires the utility to provide information to the Commission within five days of the request for information where a complainant is without utility service. In return Columbia respectfully asks that the Commission expedite the closing of these cases, including complaints involving an applicant who is denied service. According to Columbia, delays in closing complaint cases negatively impact collection efforts and contribute to increased delinquencies thereby making it more difficult for the customer to pay the bill once the case is resolved. Moreover, when BCS holds individual CAP

disputes for months without resolution, the result is a *de facto* "payment arrangement" in violation of § 1405(c). Columbia believes that since the Commission cannot establish a payment agreement for a CAP account, the BCS should be prohibited from accepting inability to pay informal complaints from CAP customers.

Equitable agrees with the Commission that it is in the customer's best interest to resolve complaint issues within the shortest possible timeframe. Equitable, therefore, recommends changing the utility response requirement to 10 days when service is off and within 30 days for other complaints and requiring the BCS to issue a decision within 30 days for service off complaints and within 90 days for all other complaints.

Similarly, NFG requests that the Commission should consider adding a requirement to § 56.163(1) that would mandate a timeframe for BCS to respond to an informal complaint.

PGW also believes that Commission staff should have a 90-day response time imposed on its issuance of informal decisions; 15 days when the customer's service is off. In addition, PGW states that the failure of Commission staff to issue decisions likely violates Chapter 14 because the Commission is not authorized to establish second or subsequent payment agreements.

EAP believes that the proposed regulations contained in §56.140 through §56.181 could result in an increase in receivables and an increase in utility rates. EAP agrees that the Commission has the authority to codify or specify utility response times. However, in the spirit of promoting cooperation and improving processes and efficiency, EAP contends that it is not unreasonable for the Commission, like courts, to expeditiously process cases. EAP believes that § 56.163 should be amended to require the BCS to address a customer complaint within 30 days of receipt of the utility data.

PAWC notes that it is unclear as to when the staff will actually mark the informal complaint as closed - the time the parties sign the settlement or upon confirmation by all parties?

Action Alliance agrees with the Commission's proposal to require a response to the informal complaint from the utility within 30 days, and that the deadline should be five days when the complainant is without service. However, in emergency situations, including wintertime complaints involving loss of heat, Action Alliance urges the Commission to adopt a 24 hour standard, initially recommended by the OCA. Action Alliance also notes that the Commission has reconsidered its original proposals concerning the handling of CAP-related payment agreements and accounts where service has been terminated, and now refers those issues to be addressed in Commission internal procedures that are developed under § 56.211 (now proposed § 56.166).

PULP requests that the Commission clarify the timeframe by which an informal complaint decision must be issued by the Bureau of Consumer Services. Currently, PULP states that the only guideline in the regulations is that Commission staff will issue a decision on informal complaints in a "reasonable period of time."

IRRC notes that the formatting for § 56.163 (2), as published in the *Pennsylvania Bulletin*, is unclear because the reader cannot tell what language is being deleted and what language is being added. IRRC questions whether any parties have to sign the settlement agreement?

Discussion:

In §56.163, the Commission, for the first time in Chapter 56, is proposing timeframes for utilities to respond to informal complaints filed with the Bureau of Consumer Services. This is intended to facilitate the handling of informal complaints and to also bring the gas, electric and water industries under informal complaint procedures similar to those in the telecommunications industry. The telecommunications industry has long been under a 30-day response standard per § 64.153(1):

> (1) Review techniques. Review shall be by appropriate means, including LEC written summaries, telephone calls, conferences, written statements, research, inquiry and investigation. Procedures shall be designed to insure a fair and reasonable opportunity to present pertinent evidence and to challenge evidence submitted by the other party to the dispute. Information and documents requested by Commission staff as part of the review process shall be provided by the LEC *within 30 days* of the request. (emphasis added)

We believe the 30-day time period has worked effectively with informal complaints relating to telecommunications and is a reasonable period of time that balances the needs of the Commission, the complainant and the utility. We also note that the timeframe for a utility in addressing the consumer's complaint is actually longer than 30 days, and is in fact at least 60 days. We have to assume that the complainant first contacted the utility with their complaint because this is required by Section 1410(1) and §§ 56.162 and 56.166. Upon that contact, the utility has 30 days to address the consumer's issue per § 56.151(5). The consumer then has the option of filing an informal complaint with the Commission. The utility then has an additional 30 days to submit a report on the matter to the Commission. This totals at least 60 days since the initiation of the dispute for the utility to respond to the Commission.

We also note that no party voiced an outright rejection of the proposed 30-day response period. Admittedly, the five-day response period proposed for informal complaints where the customer is without utility service or other emergencies did raise some concerns. We still believe that given the inherent public health and safety issues involved in such complaints, a five-day response time is not unreasonable. However, we believe PECO, PPL and Phillips have a valid point and will revise the proposal to specify that the five-day time period refers to "business

days" as opposed to "calendar days." This should allow some of the flexibility asked for by utilities while still securing urgent information within a reasonable time. We also reject the arguments of Duquesne and Allegheny Power that the five-day timeframe is "discriminatory" in that it favors one group of complainants over others. Whatever discrimination this presents is of secondary concern to the public health and safety issues involved. We also reject the suggestion of Action Alliance of changing the five-day standard to 24 hours as posing too great a burden on utilities. However, we point out that the Commission reserves the right it has always had of requiring information in a shorter time period for specific cases where the circumstances warrant.

Duquesne, Columbia, Equitable, NFG, PGW, EAP and PULP suggested that the Commission impose timeframes on the Commission for handling informal complaints. We understand the frustrations of both utilities and consumers with complaints that may be open and pending for an extended period of time. However, we also note that most complaints are not open for an excessive period of time, and that the results of customer feedback surveys indicate that 82% of customers who file informal complaints felt that the Bureau of Consumer Services handled their complaint either "very quickly" or "fairly quickly" (2007 Utility Consumer Activities Report and Evaluation, page 2). Regardless, we decline to codify an informal case-handling timeframe for several reasons.

As we have already noted, we believe that matters such as these are best left to internal Commission procedures as provided for in § 56.166. Codifying such timeframes is problematic because the Commission has no control over the volume of complaints filed with the agency. In reality, the utilities, by their actions and policies, have more control over this volume than the Commission will ever have. A utility, exercising its management discretion, can manipulate its collection efforts in ways that can both increase and decrease customer complaints. This volume can fluctuate significantly and unpredictably. For example, during the months of January through April 2009, a single electric utility increased the number of customers it terminated service to by 121% over the same period the previous year. This large increase in termination activity in turn led to an increase in informal complaints to the Commission. This is especially a concern in the future as rate caps are removed from the electric industry and the resulting rate increases generate both billing complaints and ability-to-pay complaints. It is the Commission's experience that the number of informal complaints can more than double when an electric utility's rate cap is removed.

We must also note that utilities can help minimize the number of complaints to the Commission through effective customer service practices and adherence to the regulations. The suggestion that a 30-day limit be placed on the Commission as to align it with the 30-day limit on responses we propose placing on utilities; is based on an erroneous analogy. As we discussed above, the time utilities have to respond to complaints is actually 60 days; the 30 days in response to the customer's initial complaint to the utility and the additional 30 days they have to respond to the informal Commission complaint.

On a related issue, we must respond to EAP's concerns with accounts unreceivables that supposedly accumulate while an informal complaint is pending at the Commission by pointing out that Section 1410 and §§ 56.141, 56.151(1), specify that the complainant is only excused from paying *disputed* bills while a dispute is pending. The complainant remains responsible for payment of all other charges, and the utility should be pursuing normal collection action, including termination of service if necessary, on undisputed bills. Failure to do so is not the fault of the Commission, but of the utility that lets undisputed bills accumulate.

Columbia suggests that the Commission be prohibited from accepting inability-to-pay informal complaints from CAP customers. In keeping with the Section 1405(c) prohibition on the Commission making payment agreements with CAP customers, the Commission, per its internal procedures, does turn away CAP complainants whose only issue is an ability-to-pay problem. The Commission has also previously addressed this issue on pages 34-35 of the second *Chapter 14 Implementation* Order, M-00041802F0002, (September 9, 2005):

> "All parties agree that Chapter 14 at §1405(c) prohibits the Commission from establishing payment agreements for customers participating in a company CAP. Some parties correctly note that CAP participants can seek Commission intervention for other legitimate reasons such as the following: complaints about the accuracy of meter readings; allegations that the customer's CAP budget was inappropriately increased; allegations that the customer has been charged a CAP rate which is not the appropriate one for a household with their income or type of service; allegations that the customer was improperly removed from CAP or that CAP eligibility was denied; allegations that the customer has not been credited for all payments made, and complaints about the utility's application of payments including application of energy assistance grants.
>
> These are disputes that are unrelated to the prohibition at §1405 (c) that the Commission not establish a payment agreement for CAP participants. Therefore, utilities are required to apply §56.141 in response to such disputes, i.e., utilities must place a "stay" on termination activity pending completion of the dispute pursuant to §56.141(2). Moreover, pursuant to §56.141(2), the complainant retains the obligation to pay undisputed amounts pending resolution of the dispute."

Once again we emphasize that a utility should be pursuing collection on undisputed bills while a dispute, even those involving CAP issues, is pending at the Commission. This should prevent the accumulation of additional arrearages on the account.

Concerning IRRC's questions about paragraph (2), this paragraph is intended to facilitate the settlement of informal complaints and is intended to reflect the practical realities of the informal complaint process. Since this is an informal process, it does not usually involve signed documents, sworn testimony, notarization, face-to-face meetings, etc. There are also inherent practical difficulties in obtaining signatures from complainants and utilities given that the Bureau of Consumer Services only has offices in Harrisburg and Philadelphia. It is expected that the

changes to this paragraph will facilitate settlements, resulting in cost and time savings for all parties and the Commission. As proposed, paragraph (2) will read as follows:

> (2) *Settlement.* Prior to the issuance of an informal decision, Commission staff may facilitate discussions between the parties in an effort to settle the dispute. If a settlement is reached, Commission staff shall confirm that all parties understand the terms of the settlement and document the informal complaint as closed.

We also propose to maintain the proposed paragraph (3) to make clear and explicit the validity of informal decisions issued by the Bureau of Consumer Services as authorized by Section 308(d).

§ 56.164. Termination pending resolution of the dispute.

PULP recommends that the Commission consider implementing some form of emergency expedited hearing in instances of public utility allegations of unauthorized use of utility service. PULP recognizes the Commission's concern that the unauthorized use of public utility service may place human life and personal property in harm's way. However, PULP also asks the Commission to recognize that utility companies do make mistakes, and when a utility mistakenly alleges a customer is engaging in unauthorized use and proceeds to terminate that customer's service without any substantive notice, that customer may face the same kinds of dangers to person and property that unauthorized use itself imposes. PULP believes that the Commission can rectify this problem by instituting expedited procedures that quickly allow a customer accused of unauthorized use to challenge the public utility's allegations, *e.g.*, hearing before an Administrative Law Judge within no more than 72 hours after the initiation of a complaint by the customer. Moreover, PULP submits that during the pendency of this procedure, the public utility should be required to reconnect utility service. If the Commission does not support reconnecting service during the challenge to the utility's allegations, then PULP recommends that, at a minimum, the Commission should guarantee that its own processes occur within 24 hours of the complaint being filed.

Discussion:

While we understand the concerns expressed by PULP and that utility companies make mistakes, we believe codifying special procedures for handling allegations of unauthorized use would not be appropriate and that ordering service to be restored while such complaints are pending would be contrary to Section 1406(c). We agree that complaints where the complainant is without utility service should receive expedited attention and note that in § 56.163, we are proposing a five business day response period for utilities in responding to these informal complaints. Other than that, we believe the processing of these complaints is best addressed using internal Commission procedures as provided for in § 56.166. We again remind utilities that the termination of service without notice is an extreme measure and should only be exercised when

the utility is confident enough of the facts surrounding a situation and is sure they meet the grounds for immediate termination under Section 1406(c) and § 56.98.

We will also add language to this section to remind utilities and consumers that service can be terminated if the customer does not meet their obligation to pay undisputed bills while a dispute is pending, per § 56.181 and Section 1410(2).

§ 56.166. Informal complaints.

PPL agrees with the requirement of having customers first contact their utility before BCS will accept the complaint. If customers have complaints about their service, PPL wants the opportunity to work with them to identify and resolve their concerns. This type of approach helps the utility identify and close performance gaps, better manage its costs, and improve customer satisfaction.

NFG suggests that this section should be separated into two separate new sections; the first containing only the first paragraph and the second containing the remaining two paragraphs. NFG believes that the two concepts addressed are disparate enough to warrant separate sections and this is especially true since the Legislature has specifically identified the need for a customer to first contact a public utility under Section 1410. NFG also proposes adding language that the complainant must affirm that they have first contacted the public utility and that this affirmation must be first confirmed with the utility before a complaint is filed because NFG has experienced instances where individuals were permitted to file and prosecute informal complaints without first contacting the public utility. NFG also suggests replacing "customer" with "complainant" due to the fact that other potential individuals may file informal complaints.

EAP notes that Chapter 14 clearly prohibits CAP rates from being the subject of payment agreements negotiated or approved by the Commission. According to EAP, the prohibition against payment agreements for CAP customers is an exception carved out of the statute. EAP believes that by allowing a delay or postponement of a CAP payment(s) under the pretext of pending resolution of a factual dispute is to allow an unwarranted tariff deviation. EAP contends that the Commission cannot "directly or indirectly" stray from the utilities' approved tariffs.

IRRC notes that the first sentence of this section provides BCS with primary authority over "customer, applicant and occupant complaints arising under this chapter." To improve clarity, IRRC recommends that the word "informal" be included before "complaints" in this section. This section also provides that BCS will "establish appropriate internal procedures to implement this chapter." However, IRRC further notes that 66 Pa.C.S. § 308(d)(l) requires the Commission to "adopt, publish and generally make available rules by which a consumer may make informal

complaints." IRRC recommends that the Commission should explain how this regulatory provision is consistent with the statute.

Discussion:

We first want to point out that there is little new being proposed in this section. The language here is basically taken from the current § 56.211. The language is just being relocated to this new section because it makes more sense organizationally to place it under informal compliant procedures. There is little changed of substance; except for a revised paragraph (1) that now reflects Section 1410(1). However, we agree with IRRC that the word "informal" should be inserted into the first sentence of this section for the sake of clarity. We also agree with NFG that the term "customer" in paragraphs (1) and (2) should be replaced with the more generic, inclusive term "complainant." While the language of paragraph (1) is from Section 1410(1) and we generally hesitate to revise language from the statute, we believe this revision poses no problem because the revision will not change the legislative intent of this section; namely making sure complainants have first provided the utility with an opportunity to address the disputed matter.

However, we think NFG goes too far in their suggestion that before the Commission could open a complaint, the utility would first have to confirm the affirmation of the customer that they have indeed first been in contact with the utility. This would present significant practical problems and burdens on utilities, customers and the Commission because a procedure would have to be set up where all utilities would have to have staff available to interact constantly with Commission staff who are taking and screening calls from potential complainants. It is unlikely all utilities would want to participate in such a system. This process would also result in longer call-handling and case processing times for the Commission, which would also increase costs. Moreover, the utility is always free to contact the investigator handling the case and request an immediate dismissal based on Section 1410. There is no indication that this procedure is not working efficiently enough to replace it with a new, unwieldy procedure as NFG requests.

We also disagree with NFG's suggestion that the information in this section be split into two separate sections. The issues addressed in this section are related and have traditionally been combined in § 56.211. Separating them now is not necessary and may lead to confusion. We note that we have also proposed incorporating Section 1410(1) directives in § 56.162 as suggested by NFG, so this information will be available in both § 56.162 and § 56.166. We believe noting this requirement in both sections is more than sufficient.

In response to EAP's comments about the Commission and informal complaints from CAP customers, we again point out that the Commission has previously addressed this issue on pages 34-35 of the second *Chapter 14 Implementation,* M-00041802F0002, (September 9, 2005), as previously cited.

We again reiterate that a utility should be pursuing collection on undisputed bills while a dispute, even those involving CAP issues, is pending at the Commission. This should prevent the accumulation of additional arrearages on the account.

Regarding IRRC's concerns with 66 § 308(d)(1) and § 56.166; the portion of § 56.166 relating to the establishment of internal procedures simply reflects the fact that there is a distinction between regulations and internal operating procedures. The regulations set forth the rules; the internal procedures set forth the specific steps that must be followed to properly apply the rules. For example, while Section 1410(1) sets forth a rule prohibiting the Commission from accepting complaints from someone that has not first dealt with the utility directly, the Bureau of Consumer Services must establish a set of instructions so that intake interviewers ask the appropriate questions and document the appropriate information to ensure adherence to the rule at Section 1410(1). All operations that require adherence to prescribed rules must develop procedures to ensure proper application of the rules. § 56.166 directs the Bureau of Consumer Services to establish these necessary implementation procedures, while at the same time requiring appropriate oversight by stipulating that these internal procedures receive the concurrence of the Commission.

§ 56.172. Filing.

NFG opines that the proposed timeframe created for a party to request a review of a Bureau of Consumer Services decision by § 56.172(a) – (c) is entirely too long. The way the proposed language of these sections work would, in essence create a 50-day or longer "appeal" period for these decisions. A party would have 20 days to file a request for review (subsection a) then an additional 30 days to actually file a formal complaint form (subsection c). In NFG's opinion, this time period is too long and could lead to prejudice, stagnation of evidence or issues, and potential exacerbation of the issues that lead to the informal complaint. A total of thirty days from the date the BCS decision was issued is not unreasonable. NFG also believes that the proposed language of § 56.172(2)(e) is inappropriate because if failing to request a review of a BCS decision within the timeframe established under this section does not prohibit the filing of a formal complaint regarding the same issue, the timeframes established in this section are irrelevant.

PGW believes that BCS decisions should be recognized as final and binding and except in the event of good cause shown, allowing the untimely filing of a formal complaint based upon the same complaint determined in a BCS decision undermines the finality and strength of a BCS decision.

Action Alliance does not oppose the proposed § 56.172 Formal Complaint filing deadline of 30 days following the mailing of Formal Complaint forms to the parties, so long as there is

conspicuous notice to the parties of the deadline including language that explains that any automatic stay on the informal complaint decision can be lifted or waived, if the deadline is missed, and could result in termination of service.

Discussion:

This section recognizes that there is no legal bar to the filing of a review of a BCS decision after the 30 days after receiving a formal complaint form referred to in subsection (c). A party can file a formal complaint until the statute of limitations expires. The only bar and time limit to the filing of a formal Complaint (whether subsequent to a BCS proceeding or not) is the statute of limitations set forth in 66 Pa. C.S. § 3314. This section is in compliance with § 3314 and is not inconsistent with any provision in Chapter 14.

§ 56.173. Review from informal complaint decisions of the Bureau of Consumer Services.

PGW believes that in fairness to a complainant and respondent, this regulation should continue to provide that the Commission or administrative law judge will hold a hearing within a reasonable time period after the filing of an answer.

Action Alliance notes that the proposed § 56.173 appears to eliminate *de novo* review of BCS decisions. Action Alliance does not believe it was the Commission's intent to eliminate *de novo* review of informal complaints and suspects that it was a clerical error to delete the words "*de novo*" from the proposed regulations. However, if it was indeed the Commission's intent to eliminate *de novo* review, except for ability to pay proceedings, Action Alliance takes this opportunity to register opposition to such a proposal. Given the informal nature of this process, the record developed at the informal complaint level should not be used to prejudice the consumer at the Formal Complaint level.

PULP also states that it is unclear why the Commission proposes removing a requirement that appeals from informal complaints be heard de novo by an Administrative Law Judge or special agent. According to PULP, with the removal of this explicit requirement, the Commission opens the door for the possibility that complaints filed from BCS decisions are considered appeals from that decision. It is PULP's understanding that this is precisely what the removal of the words "Appeals from" and the substitution of the words "review of" was intended to avoid. In addition, this change conflicts with exactly what is proposed in ability to pay cases by the amended § 56.174(c).

PULP submits that to allow or even contemplate allowing the factual record developed during the informal complaint to be introduced into an appeal violates basic assumptions of a fair and balanced judicial process. By eliminating the requirement that appeals from informal complaints

be heard de novo, the Commission runs the risk of undermining the credibility of the appeal process and seriously impeding the rights of customers.

Additionally, PULP opines, while many if not most residential customers approach the Commission without any legal counsel or representation, utility companies enjoy robust legal representation at every stage of the process. Moreover, PULP submits that the Commission represents on its web page that the informal complaint and the formal complaint are distinct procedures and advises customers to use the informal process because it is simpler and quicker and states that a BCS investigator will work as a mediator in the process. By having appeals heard de novo, PULP contends that the Commission guarantees that parties who approach the informal complaint in a more casual fashion are always given the opportunity in a formal complaint to more diligently and robustly develop their factual claims.

Discussion:

We agree with Action Alliance and PULP and the arguments they present that the appeals from informal complaints should be heard de novo by an Administrative Law Judge or special agent. This language also keeps this provision consistent with § 56.174(c)(ii). In addition, we agree with PGW that the phrase "hearings will be held within a reasonable time after the filing of an answer" should be retained since it is still contained in § 56.174(c). Therefore, to be consistent, this should be included. We also revised the language in this section so that it reflects current Commission practice and is consistent with Chapters 1 and 5.

§ 56.174. Ability to pay proceedings.

Allegheny Power and Columbia recommend that the time restrictions upon the Commission be reinstated as this would expedite the handling of complaints and prevent delinquent monies from accumulating. Columbia believes that the proposed regulations not only go beyond the legislative mandate of Chapter 14 but, in removing timelines that facilitate the quick resolution of these matters, also risk placing undue delays in the formal complaint process.

FirstEnergy objects to § 56.174(c)(ii) which appears to presume that Bureau of Consumer Services documents relating to an informal complaint are admissible as evidence, when in fact it should be the other way around. These records, without the preparer of the documents participating in the proceeding as a witness, are simply hearsay and should not be admissible. If a party wishes to attempt to have such evidence admitted in the record, the party must offer an appropriate witness to do so.

NFG supports the addition of the language in proposed section (a) regarding assignment of ability to pay cases to a special agent but does not feel that the addition of language in proposed section (c) regarding what documentation shall be entered into evidence at a hearing is necessary

or proper for a regulation. NFG believes that this is not the proper place for evidentiary rules and such rules are better left to the presiding officer to handle in a prehearing memorandum or otherwise.

Action Alliance notes that the Commission proposes to preserve *de novo* review in ability to pay proceedings, at § 56.174(c)(ii). Action Alliance believes that it is unclear why *de novo* review is preserved here and not in other types of cases.

PULP recommends that the Commission amend certain portions of § 56.174 which suffer from internal inconsistency and which undermine important consumer protections. Subsection (c) appears to establish the rule that BCS factual documents from an underlying informal complaint will be entered into the record of the formal complaint and only where a party makes a valid evidentiary objection will this rule be broken. On the other hand, subsection (c)(ii) seems to hold the opposite rule that cases will be heard de novo and only where parties so stipulate will facts from the underlying informal record be introduced. PULP recommends that the Commission clarify this situation by holding that all formal complaints, whether they involve ability to pay or not, shall be heard de novo. In addition, PULP strongly encourages the Commission to promulgate a rule requiring all administrative law judges, in situations where there are pro se litigants, to fully and completely describe to these litigants the ramifications of stipulating to the inclusion of the informal complaint's record in the formal complaint and to advise them of their right to object to such inclusion.

Discussion:

The language at § 56.174(7), post-hearing procedures, was eliminated since it is a repetition of what already exists in Chapters 1 and 5. These Commission deadlines are still in place and need not be repeated here. These hearings are intended to be de novo as indicated. However, stipulations as to facts are allowed as in most proceedings when the parties agree to facts.

§ 56.191. Payment and timing.

Allegheny Power notes that Section 1417 of Chapter 14 does not require that utilities solicit information from customers concerning their PFA status, and as such objects to the proposed language at § 56.191(c)(1). They note that termination notices, as proposed, will already include this information. FirstEnergy also objects to this requirement because it may significantly add to the length of telephone calls handled by the utility's call center.

Allegheny Power suggests that when it comes to determining applicant liability at a property, a combination of information provided by a landlord, historical company records and CAP applications should be accepted.

Allegheny Power objects to placing liability procedures and standards in their tariff because it will deprive the utility of the ability to revise its business practices as needed and would amount to the Commission interfering with the business practices of management. PECO objects to this proposal because it may provide "gamers" a roadmap to beat the system. If such a requirement is put in place, PECO asks that utilities be allowed to use language broad enough so that is does not provide a roadmap. PECO also objects to the four-year limit of liability assignment in the proposed regulation. The simple passage of time should not free a customer from the responsibility of paying their bills. PECO also believes such a requirement violates the filed rate doctrine. Columbia also objects to the four-year limit because if the Legislature had intended to place a four-year limitation on a public utility's ability to require this payment, it would have affirmatively stated that intention in the statute.

Duquesne disagrees that terminating the service of a customer who has paid the amount needed to avoid termination is an erroneous termination and asks that this language be stricken from §56.191(3)(b)(1).

Columbia agrees that the Commission's proposed § 56.191(b)(2) and § 56.191(c)(1) are consistent with Section 1407(b) and with the Chapter 14 objective to ensure that service remains available to all customers on reasonable terms and conditions. However, Columbia adds that unless a customer contacts the utility to provide payment receipt information, the utility will not be aware that a payment has been made. Absent such customer notification, utilities will not be made aware of when the 24-hour clock starts ticking. Columbia suggests that this issue can be addressed by amending proposed § 56.191(c)(2), so that a utility will be able to require that, upon making payment to restore service at a location designated under § 56.191(c)(1), the customer must contact the public utility and provide payment receipt information.

NFG requests that the proposed language "Erroneous terminations include instances when the grounds for termination were removed by the customer paying the amount needed to avoid termination prior to the termination of the service" should be removed because the Legislature in Section 1407(b)(1) did not feel it necessary to include the language and if the Legislature wanted to include specific instances in this language it could have easily done so. In addition, as written, NFG submits that the proposed language is ambiguous. NFG explains that it could be interpreted that the specified types of termination are the only erroneous terminations to which this language applies. NFG also objects to the proposed language of subsections (b)(3) through (b)(5) that adds the descriptor "calendar" to the three and seven-day timeframes for restoration. There is no descriptor to the word "days" in the statute and NFG submits that this period should be "business" days. Requiring restoration for instances that require street or sidewalk digging in three calendar days would be impractical, especially given the Pennsylvania One Call requirements that would need to be met.

PGW opines that § 56.191(b)(1) should specify that a termination should be considered erroneous if the payment was made prior to the day of termination because the utility may not have the ability to determine if the customer has paid if they wait until the day of termination to pay. Additionally, the regulation should establish a trigger for 24-hour restoration upon notification of the utility of a medical certificate or an erroneous termination. Concerning §56.191(c)(2)(iii) and (iv), PGW believes that a customer/applicant should have the option of paying an amount in excess of the statutory minimums towards an outstanding balance at restoration and that the word "may" should not be in place of "shall." § 56.191(d) and (e) unnecessarily addresses liability which is already addressed at §56.35, but if this is going to be included in this section, PGW has the same concerns it notes in its comments concerning §56.35.

Phillips requests that the first sentence of § 56.191(b)(1) be revised to give the public utility time to recognize that a termination action it has taken is, in fact, erroneous before the 24-hour clock begins to run. Phillips believes that it is reasonable that a utility's good faith recognition of an erroneous termination may be delayed until, for example, after its receipt of a payment dropped at an off-site payment collection center is reported to the utility or after a customer calls in to explain circumstances which, if known prior to termination, would have stopped the termination process. Concerning § 56.191(c)(1), Phillips suggests adding a specific requirement that customers provide their utility with a copy of any current Protection From Abuse order and that these regulations include either a summary of the ways in which victims with a Protection From Abuse order can expect to receive different consideration from their utility or a reference to other resources in which such information is clearly presented. Phillips also believes that the language referring to fraud and theft at the end of § 56.191(d) serves only to confuse the meaning of the entire section. This could be read to preclude a utility from seeking recovery of an outstanding balance from a person who may have had a role in obtaining service illegally.

Action Alliance had requested that the Commission include in its regulation more expansive definitions of the words "payment agreements" and "defaulted" for Section 1407(c)(2)(i) purposes. In proposed § 56.191(c)(2), the Commission has indicated that neither a payment agreement intended to amortize a make-up bill under § 56.14 or an initial bill covering more than 60 days constitutes a "payment agreement" for Section 1407(c)(2)(i) purposes. In addition, Action Alliance notes that the Commission proposes that any defaults on a "payment agreement that has been paid in full" should not be considered a defaulted agreement for the purposes of Section 1407(c)(2)(i). In its original Comments, Action Alliance submitted that a customer who had defaulted on a payment agreement, had been served a termination notice, and then cured the default prior to termination should not be considered to have "defaulted" for Section 1407(c)(2)(i) purposes. Action Alliance contends that it is not clear from the Commission's provision whether the regulatory intent was to adopt Action Alliance's position. The reference to a "payment agreement that has been paid in full" would appear to refer to a payment agreement where the customer defaulted on the agreement, cured the default, and then over time, paid off the total outstanding balance due under the payment agreement. While that clarification

does have some value, Action Alliance contends that it addresses only one simple cured default scenario and few utilities are likely to punish a customer for a default on a payment agreement that was ultimately fully paid off. Action Alliance's attention, however, was focused on the customer who might have defaulted on a payment agreement in month six, been placed on the collection path, cured the default, and now, in month thirteen of the same payment agreement, defaulted again, and was terminated. Action Alliance submits that the Commission should adopt the position that when a customer cures a default on a payment agreement, by bringing the payment agreement current prior to termination, the default that has been cured should not be counted as a "defaulted" payment agreement for Section 1407(c)(2)(i) purposes.

Action Alliance also believes that the Commission should list defaulted "invalid payment agreements," "extensions," "budget billing and budget billing true-ups," "medical certification equitable arrangements," and "customer assistance programs" as not being counted for Section 1407(c)(2)(i) purposes. Defaulted payment agreements of the prior named customer against the new customer who agrees to an assignment of liability of an outstanding balance at the service address should also not be included, because the newly named customer should be allowed a reasonable chance to fulfill his/her own payment agreement opportunities. In the event that the Commission does not choose to expand on the enumerated instances, Action Alliance requests that it should consider specifying that the enumerated instances do not represent a comprehensive list of all defaults that might be excluded.

Concerning § 56.191(d), while a two-year statute of limitations might be more appropriate in this situation, Action Alliance nevertheless appreciates the Commission's recognition of the need to apply a statute of limitations standard, in order to assure that this type of applicant has at least the same protections as other customers against stale claims. At the same time, Action Alliance submits that applicants should also be afforded the benefit of the same standard when the outstanding balance includes in whole or in part a claim for utility service obtained by fraud or theft. In considering this situation, it is important to remember that the applicant was not the customer of record at the premises, or even, in some cases, a person with a property interest in those premises via a mortgage, deed or lease. Such persons usually would not be directly responsible for the unauthorized use, did not themselves tamper, by-pass or illegally turn on service, or direct anyone else to do same. In short, Action Alliance explains that they are very similar to the persons for whom the Commission proposes to recognize a four-year statute of limitations. Action Alliance also notes that it is not reasonable to expect low-income persons who move relatively frequently, and are not likely to keep documentary evidence of their prior addresses to be able to establish where they resided more than a few years into the past. As it is, they are given the heavy burden of proving negatives – that in the past, they were not residing at the property where theft or fraud occurred and/or that they were not responsible for the fraud or theft. Action Alliance states that it is appropriate that some limit be placed by means of a statute of limitations on the scope of their potential liability for service previously provided at the address for which they are now applying for service. For these reasons, Action Alliance requests

that the Commission eliminate the exception in proposed § 56.191(d) expressed by the words "except for instances of fraud and theft."

The OCA recommends adding language indicating that utilities should restore service promptly and that the restoration timeframes provided are the longest time period allowed.

PULP supports the Commission's decision that the rule governing restoration of service at §56.191 uses calendar days, not business days, in the calculation of time for restoration. There is no justification to delay restoration of life-essential utility service. PULP respectfully suggests that the terms "customer" and "applicant" are used inconsistently throughout this section, and their usage requires clarification so as to avoid confusion. Since the Commission is proposing in these regulations that a customer whose service is terminated will retain customer status until a final bill is past due, PULP notes that there will be situations where a customer is seeking restoration of service. Therefore, whenever § 56.191 refers to applicant, it should also reference customer. Additionally, PULP respectfully requests the Commission clarify § 56.191(c)(1), which discusses payment to restore service. The proposed regulation clearly requires utilities to inform applicants and customers that conditions for restoration may differ for households containing victims of domestic violence with a PFA order. PULP submits that at the same time utilities should be required to inform customers and applicants that conditions for restoration may also differ for households containing individuals suffering from an illness or medical condition.

PULP supports the Commission's clarification in § 56.191(c)(2)(i) of what constitutes a payment agreement. This added section clarifies that there are certain types of arrangements which do not qualify as a payment agreement for purposes of calculating the requisite level of payment to effectuate restoration. PULP requests that the Commission revise § 56.191(d) by clarifying that occupants who were minors during the time the outstanding balance accrued and while they resided at the premises are not to be covered by this rule.

PULP submits that §56.191(c)(2)(i) requires clarification since the possibility exists that it may be interpreted to preclude a customer from a payment agreement who has previously defaulted on a payment agreement but cured the default prior to termination. PULP requests that the Commission clarify this subparagraph by specifically stating that when a customer cures a default on a payment agreement, by bringing the payment agreement current prior to termination, the default that has been cured should not be counted as a "defaulted" payment agreement for Section 1407(c)(2)(i) purposes.

IRRC notes that most of the language found in this section is the exact same language found in Section 1407, pertaining to reconnection of service. However, certain subsections contain different or additional language. For example, subsection (b)(2) of the statute references three days and subsection (b)(2) of the regulation references three calendar days. IRRC comments that

the Commission should explain why the different or additional language is needed and how the language is consistent with the intent of the General Assembly.

Discussion:

First, we are changing the title of this section to "Payment and timing" since "General rule" inadequately describes the important contents of this section.

Because of the obvious public health and safety issues involved, the rules governing the restoration of previously terminated service must be carefully considered. Chapter 14 dramatically changed the conditions and timeframes involved in restoring previously terminated service. Previously under Chapter 56, there were no specific payment formulas that determined the restoration of service, and restoration timeframes were a uniform "by the end of the first full working day." Under Chapter 14, restoration payment amounts are now determined by very specific formulas that are based on the customer's relationship to the federal poverty level and their number of defaulted payment agreements. And restoration timeframes can now vary from 24-hours to seven days, depending on the time of the year and the circumstances surrounding the termination.

Because of the public health and safety concerns involved, we will maintain our original proposal to apply the stricter winter timeframes to all reconnections occurring in the winter, regardless of when service was originally terminated. No serious objections were raised to this proposal, and we believe it fulfills the legislative intent. The General Assembly specifically required stricter timeframes for the winter months (November 30 – April 1) in Section 1407(b) because of the obvious public health and safety issues winter weather presents. For example, it would be nonsensical to apply the summer rules for reconnection of service in January simply because the customer's service was originally terminated in October. This nonsensical result would ignore the obvious intent of the General Assembly; to restore service quickly as to mitigate the dangers of being without utility service in the winter. Likewise, it would be nonsensical to apply the shorter, winter timeframe in June simply because the service was originally terminated in March. We believe that this rule is also simpler to administrate by utilities; they will have one set of reconnection timeframes in the winter and one set of rules for the summer. This is simpler than having rules that require the utility to first determine the date of termination for each and every reconnection before determining which timeframe to apply.

We will also maintain our proposal to include language in subparagraphs (c)(2)(iii) and (iv) that clarifies that initial payments towards the outstanding balance cannot exceed $1/12^{th}$ of the balance for customers between 150% and 300% of the federal poverty level and $1/24^{th}$ of the balance for those customers at or below 150% of the poverty level. We believe this guidance is important because misapplying this provision could result, in addition to possible noncompliance with the law on the part of the utility, in a consumer failing to get their utility service restored.

This has also been the subject of confusion and controversy in the past which the Commission has had to address in two previous Commission formal proceedings. In the second *Chapter 14 Implementation* Order, M-00041802F0002, (September 9, 2005) the Commission, on pages 31-33, discussed the initial payment a utility may demand under Section 1407(c)(2):

> "With respect to the application of Section 1407(c) in terms of requiring any up-front payments to restore service, we agree with PGW and EAP that there is nothing in Chapter 14 which precludes requiring an up-front payment, but disagree that the up-front payment may be any amount that the utility decides is appropriate. We believe the payment requirements at §1407(c) are clear, and vary depending on household size and income, and whether or not a customer has broken prior agreements....
>
> We believe the clarifications noted above reflect adherence to the language at §1407(c), as well as the apparent intent that customers with differing circumstances require different timeframes to make payments. With respect to PGW's assertion that the pre-Chapter 14 BCS reconnection guidelines, which require up-front payments, continue to be in force, we disagree. The pre-Chapter 14 BCS guidelines that PGW refers to were based on waiving security deposits in most instances for customers at or below 300% of the FPL. Regarding PECO's contention that there is value to the customer in requiring a larger initial payment because it reduces the arrears to be paid over the remainder of the payment period, we see little value in lowering subsequent monthly payments if a customer can't afford a large initial up-front payment, plus a reconnection fee, plus 50% of a deposit. Utilities should help reduce the amount of monthly payments by adhering to the policy expressed at §1402(3) and increasing timely collections. If a utility increases timely collections, the outstanding amount will be lower and this, in turn, will result in lower monthly payments when applying the formulas at §1407(c)."

The Commission revisited this issue in response to a petition for reconsideration filed by PGW concerning the above noted order. On pages 9-10 of the *Chapter 14 Implementation* Order, M-00041802F0002 (November 10, 2005) the Commission reiterated its initial guidance:

> "PGW's arguments in support of its request for relief in its Petition are decidedly similar to the arguments we addressed in the *Second Implementation Order* (pages 31-33). First, we specifically recognized that while Chapter 14 does not prohibit utilities from requiring an upfront payment, we disagreed "that the upfront payment may be any amount that the utility decides is appropriate." In fact, we found that the "payment requirements at §1407(c) are clear, and vary depending on household size and income, and whether or not a customer has broken prior agreements." This statement is not unclear nor does it leave room to allow a utility to request an amount that is larger than provided for in §1407(c)(2)(i)-(iii) – nowhere in the *Second Implementation Order* do we allow a utility to interpret §1407 as merely setting forth the minimum amount of an upfront payment to restore service.
>
> PGW's request for a declaratory order based on its position that the language in §1407(c) sets forth a minimum series of payments that a utility may unilaterally require

as a condition of restoration is far off the mark. In the *Second Implementation Order* (page 32), we specifically identified and described the repayment requirements categorized in subsection (c) (2). Furthermore, we emphasized in the *Order* "that customers with differing circumstances require different timeframes to make payments." Of course, if a utility agrees to accept an upfront payment that is less than provided for under §1407(c) (2), the use of the word "may" in the provision authorizes a utility to accept this lesser amount.

Rather than mandating such charges, the Legislature instead left to the utilities' discretion whether to require some, all, or none of the amounts delineated. Thus, the use of the word "may" was permissive, not mandatory, but the clear legislative intent was to specify the maximum amounts that can be required. In other words, the use of "may" does not limit the minimum upfront payment a utility may request. If that were the case, this provision would not make sense given the purpose of Chapter 14.

According to §1402, the General Assembly intended, *inter alia*, to provide utilities with the means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and also provide additional collection tools to PGW. The purpose of the legislation is not to protect a utility from itself and against an unwise and liberal restoration policy. Rather, the purpose of §1407(c)(2) is to set the maximum amount a utility can require from a customer as an upfront payment. Given the declared policy of Chapter 14, this is the only interpretation that is reasonable. 1 Pa.C.S. §1922. Moreover, creating an obstacle such as setting a minimum the utility can require to restore service would favor the private interest rather than the public interest, a violation of a presumption of statutory construction. *Id.*"

No party has raised a compelling reason or objection that would cause us to revise our previously stated interpretation of Section 1407(c) as explained in the above noted orders. As such, we believe it is appropriate to include this guidance in the proposed § 56.191 so that utility and consumers alike are fully aware of these expectations.

We disagree with Allegheny Power and FirstEnergy's objection to our proposed language at §56.191(c)(1) that requires a public utility to inform the applicant or customer that conditions for restoration may differ if someone in the household is a victim of domestic violence with a Protection From Abuse (PFA) order. It is clear that through Section 1417, the General Assembly intended that the reconnection rules in Section 1407(c), along with the rest of Chapter 14, do not apply to individuals covered by a PFA order. Providing this information is the only sensible way to implement the General Assembly's intent since it is unlikely that customers will be aware of Section 1417 and it is nonsensical to think that a consumer will voluntarily provide this information without any prompting. For similar reasons, we agree with PULP that in addition to PFA information, medical certificate information should also be provided. It is clear from the reconnection requirement at Section 1407(b)(1), that requires service to be restored within 24 hours in cases of medical emergencies, that the General Assembly thought this important. Again, to effectively implement this provision, consumers must be made aware of this protection

since we cannot realistically rely on consumers voluntarily providing medical information unsolicited.

We disagree with Allegheny Power and PECO's objections to the proposed language in paragraph (e) that requires utilities to tariff their liability determination procedures and standards. Section 1407(e) explicitly states that "other methods" used to determine liability must be "...approved as valid by the Commission." The tariff approval process is the most logical process to facilitate the approval of these methods. The tariff process provides the benefits of an established, standard, procedure in which all utilities are familiar with; is more efficient than requiring the filing of individual petitions with the Commission seeking permission; and provides notice to parties that facilitate the due process rights of all interested parties. Requiring the tariffing of liability standards used in the reconnection process will bring about the transparency necessary to make sure that liability determinations are not being made in a discriminatory, inequitable manner. The purpose of a tariff is to have a utility's rules and rates in one central location, approved by the Commission, accessible to all, as to help prevent the discrimination in the application of these rules. However, we will revise this paragraph somewhat to clarify that only standards and methods not already specifically authorized in Section 1407(e) need to be included in the tariff.

We disagree with PECO and Columbia's objection to a four-year limit on liability determinations. We believe this proposal is appropriate because it is consistent with other restrictions in relevant regulations and statutes. This limit of four years reflects the same restrictions found in other sections of the Public Utility Code and Chapter 56 regulations. The General Assembly under Section 1312 of the Public Utility Code determined that when a utility had to pay back or refund excess amounts, the period that this covers is also limited to the previous four years. This four-year time period is also consistent with the time limitations for civil actions, proceedings and other matters generally. 42 Pa. C.S.A. § 5525. Furthermore, the Commission's regulations have a long-standing practice of requiring payment of outstanding residential accounts with the utility that have also accrued within the past four-year period. Moreover, the Commission's record keeping regulations at § 56.202 require a utility to preserve written or recorded disputes and complaints for a minimum of four years. As Action Alliance points out, a longer period also presents unreasonable evidentiary burdens; few if any individuals maintain housing, utility, address, etc. records for a period exceeding four years. However, we decline Action Alliance's two-year limit because, as discussed above, a four-year limit is more in keeping with existing regulations and statutes. We also decline Action Alliance's request to delete the language exempting instances of fraud and theft from the four-year limit. In acknowledging the legitimate concerns of Action Alliance of the burdens of "proving a negative" can impose, especially concerning allegations from many years ago, we note that such allegations are disputable matters under Chapter 56. This means a consumer can challenge the assignment of liability by filing a complaint with the Commission and have a non-biased third party examine the circumstances and evidence involved. Additionally, we agree with Phillips

that the proposed language regarding fraud and theft at the end of paragraph (d) needs some minor revisions to make it clearer. To lessen possible confusion, we will also clarify that the four-year period dates from the date of the customer requesting that the service be restored.

In response to IRRC's and NFG's concerns with the descriptor "calendar" days in paragraphs (b)(3), (4) and (5), we believe that if the General Assembly had intended for the "days" provided for in Section 1407(b) to be "business" days they would have specifically stated so. Given that they only specified "days," we are led to believe that this was intended to be "calendar" days. "Business" days are more specific and we believe the General Assembly would have clearly specified such if they had intended such.

While we acknowledge PGW's belief that liability provisions are redundant and not needed in this section because liability is already addressed in § 56.35, we believe it is necessary to include this information in this section as well. Generally, the liability provisions at § 56.35 are in the context of applicants applying for initial service while the liability provisions at § 56.191 are generally in the context of applicants and customers seeking the reconnection of terminated service. While we acknowledge these provisions are very similar and may in some instances be duplicative, we believe it is important to include these important liability provisions in both sections. PGW also opines that the regulation should give the customer the option of paying more than the minimum specified by the regulation. In response, we believe the regulation, as proposed, does not preclude a customer from paying more than specified if they so wish. The regulation just limits what the utility may *require* from a customer, and these limits reflect the limits in Section 1407(c).

Duquesne and NFG object to the proposed language in subparagraph (3)(b)(1) that specifies that "Erroneous terminations include instances when the grounds for termination were removed by the customer paying the amount needed to avoid termination prior to the termination of service," while PGW asks that the sentence be modified to specify that the termination is erroneous only if the payment was made prior to the day of termination. In section 1407(b)(1), the General Assembly specified a 24-hour timeframe for restoring service that was terminated erroneously, without specifying what makes a termination "erroneous." As such, we believe that it is appropriate to offer some guidance in the regulation as to what constitutes an erroneous termination, thus triggering the obligations at Section 1407(b)(1). If a consumer has paid the amount of money needed to avoid the termination of service then the grounds for the termination have been removed, making a termination of service in such an instance erroneous. We are specifying this particular kind of situation since it is likely one of the more common scenarios resulting in an erroneous termination and we believe it is important that everyone be aware of our position on this issue. It is not our intent to limit situations that are considered erroneous terminations to just these kinds of circumstances and note that the sentence in question specifies that "Erroneous terminations include…" to connote that other scenarios are possible.

We have also added language to paragraphs (b)(1) and (c)(1) that correspond to the changes in §56.111. This language clarifies that while a medical certificate can be used by a customer to get their service restored within 24 hours, it must still be accompanied by the payments required by this section and Section 1407(c).

Columbia, PGW and Phillips suggest that language be added addressing what triggers the timeframes in paragraph (b), such as the customer notifying the company of an erroneous termination and/or a requirement that customers contact the utility after posting a payment. We decline to add language as suggested since the provision appears to provide sufficient guidance in that the timeframes are triggered when "all applicable conditions" have been met. While a utility can enlist a customer's assistance in helping to bring erroneous terminations to the utility's attention as quickly as possible by requesting customers notify the utility after posting a payment, we decline to make this a condition, or suggest that a utility has no obligation to correct such errors until they hear from the affected customer.

PULP suggests that this section should always refer to both "applicants" and "customers." In keeping with Section 1407(c), most of the paragraphs in this section already refer to both. However, for the sake of consistency, we will revise paragraphs (b), (d) and (e) to include references to both. However, we reject PULP's suggestion that paragraph (d) should explicitly rule out minors since it is generally understood that individuals can only be held liable for contracts and obligations accrued while they were adults.

Regarding paragraph (c)(2)(i), Action Alliance and PULP ask us to expand upon the items that a utility should not consider a defaulted payment agreement when applying these provisions. This was intended to remind everyone that *payment agreement* is defined in Chapter 14 and as such excludes some things that some parties may have traditionally viewed as payment agreements. Because the definition specifies that it applies to "...billed service..." this would exclude amortization agreements on make-up bills entered into under §56.14 and § 56.2 (definition of billing month) since these agreements involve only previously "unbilled" service. We agree with Action Alliance and PULP that the same reasoning could also be applied to budget billing agreements and amortization of budget billing reconciliation amounts, and we will add these to subparagraph (c)(2)(i). Action Alliance also requests us to include medical certificate arrangements and customer assistance programs to this paragraph. We believe it is not necessary to include medical certificate arrangements because we have proposed revising § 56.116 to eliminate medical certificate arrangements (to be replaced with an obligation to pay current bills) and that we do not have to mention customer assistance programs because it is understood that payment agreements and customer assistance programs are two different things that are defined separately and distinctly in Section 1403 and our proposed § 56.2.

Action Alliance further requests that we should specify that defaulted payment agreements established by prior customers at the same address should not count as a defaulted payment

agreement, even if the current customer is held responsible for the balance of that prior customer. We think this request may be too broad because there may be situations where the party in question should be held responsible for previous defaults if the party fell under the definition of *customer* at Section 1403 and our proposed § 56.2 at the time of the default. While we decline to get into this level of specificity in the proposed regulation, we do emphasize that a party can only be held responsible for payment agreements that defaulted during the period of time that the party could be considered a *customer* per the definition of *customer* at Section 1403 and our proposed § 56.2. We also cannot include "extensions" as something that should not be counted in paragraph (c)(2)(i) as requested by Action Alliance since the definition of *payment agreement* at Section 1403 includes amortizations that include just one payment. This appears to indicate that a payment extension is no different than a *payment agreement* under Chapter 14 as defined in Section 1403, and thus the utility can count defaulted extensions the same way they can count payment agreements.

§ 56.192. Personnel available to restore service.

PGW objects to including in § 56.192 any additional limitations other than those specifically mentioned in § 1406(d).

Discussion:

We disagree with PGW that this section conflicts with Section 1406(d). This longstanding section merely reminds the utility of their obligation to have sufficient personnel available to meet the statutory and regulatory requirements concerning the restoration of service.

§ 56.201. Public information.

PPL recommends that the Commission encourage utilities to include a link to the Commission's rights and responsibilities booklet through their websites. The Company recommends the following wording: "These summaries, as well as a summary of the rights and responsibilities of the public utility and its customers in accordance with this chapter, must be in writing, shall be reproduced by the public utility, shall be displayed prominently, shall be available on the public utility's website, and shall be available at all public utility offices open to the general public." PPL also recommends that the Commission include the rights and responsibilities booklet on its website. Regarding § 56.201(3), PPL recommends that the Commission delete the reference to the operation of fuel adjustment clauses, because they are no longer applicable under a regulatory environment in which electric generation is totally deregulated. PPL Electric also supports the inclusion of information regarding protections for victims of domestic violence (i.e., Protection From Abuse order).

NFG objects to the proposed language in sentence (13) "Information indicating that additional consumer protections are available for victims of domestic violence" because it is misleading as the non-applicability language of Section 1417 specifically refers to "victims under a Protection From Abuse order as provided by 23 Pa. C.S. Ch. 61." There is a potential legal difference between such an individual and "victims of domestic violence." This difference could lead to potentially exploitable confusion. In addition, NFG opines that Chapter 14 does not actually provide any "additional consumer protections" for victims under a Protection From Abuse order. Rather, Chapter 14 does not apply to these individuals.

Action Alliance supports the Commission's proposed language at § 56.91 (b)(17) and §56.331(b)(13) requiring that termination notices include information in, not only the Spanish language, but also "in other languages when census data indicates a significant population using that language resides in the public utility's service territory." Action Alliance requests that a similar provision for other languages also be included in § 56.201 and § 56.431.

PULP supports the Commission's requirement that utilities must publicize changes to the regulations in Chapter 56. PULP asks that the Commission expand § 56.201(13) so that it more fully covers specially identified fragile populations such as people with serious illness or chronic medical conditions, and low-income households.

Discussion:

We agree with PPL that providing and making available this important information via electronic methods has many benefits for both consumers and utilities. This information will be more accessible and always available for consumers, and utilities will save money in the dissemination of this information. We will revise this section to permit the electronic posting of this information on utility websites and dispense with the requirement that written copies be physically mailed to all new customers. Written copies will only be required to be mailed if the customer specifically requests such, as to accommodate consumers that do not have easy access to the internet. This will result in significant cost savings for utilities, while keeping this information readily available to consumers. We also agree with PPL that information on the fuel adjustment charge for electric utilities should no longer be included.

We disagree with NFG's objection to providing Protection From Abuse (PFA) information (line 13) and agree with PPL that this information should be provided. The General Assembly, in Section 1417, clearly intended customers with PFA's to have a different level of protection from other consumers. It is very unlikely that consumers will know of this provision unless they are informed of it. However, we agree that it would not be appropriate to itemize or promise specific protections in the "Rights and Responsibilities" booklet. We will tweak the language of the phrase to replace "*are* available" to "*may be* available" as to avoid over-stating the protections available because depending on the situation, a PFA may not always be relevant. We

also agree with PULP that line (13) should mention that additional protections may be available for those with serious medical conditions and low-income consumers.

We agree with Action Alliance that this information should be made available in Spanish, but decline to place this obligation on utilities. It will simpler and much more cost effective to have the Commission develop a Spanish version and make it available on the Commission's website. Utilities could link to this Commission document and thus make it readily available to consumers. This will be far more cost effective than requiring each utility to develop their own Spanish language version. If other languages are desired, the Commission can always be asked to make other versions available as well.

§ 56.202. Record maintenance.

Discussion:

In response to the comments submitted relative to § 56.2, definition of informal dispute settlement agreements, we will delete reference to these in this section. We will also insert the word "accessible" in this section since the important thing is that the records need to be accessible somewhere within this Commonwealth; not necessarily that the records are physically located here. This is keeping with our intent to modernize these regulations as to accommodate technological advances, including advances in record retention and access.

§56.222. Applications for modification or exception.

Again, to keep these regulations adaptable to technological advances, we are inserting language in this section as to accommodate the possibility of waivers of these regulations if a technological advance allows a augmented level of customer service. We note that the utility would be compelled to demonstrate in their waiver request how the technological advance would provide a greater level of customer service.

§ 56.223. Inconsistent tariff provisions.

IRRC notes that this section states that: "[a] tariff provision inconsistent with this chapter is deemed nonoperative and superseded by this chapter." IRRC raises an issue as to the Commission's statutory authority for this section and questions what is the need for this section, and how will the Commission implement it since the section says the inconsistent tariff provisions are simply "deemed" nonoperative.

Discussion:

Although there is precedent for this authority, the provision is a reflection of current case law that may change, and may, therefore, not be necessary to codify. As a general proposition, a tariff that is inconsistent with the requirements of Commission regulations will not withstand judicial scrutiny. *See e.g. Pennsylvania Public Utility Commission v. Terry*, 368A.2d 1362 (Pa. Cmwlth Ct, 1977).

§ 56.231. Reporting requirements.

Allegheny Power recognizes that the Commission has attempted to consolidate the Chapter 14 Biennial Reporting Requirements with the § 56.231 reporting requirements. Allegheny Power proposes to consolidate other duplicative reporting requirements, such as the § 55.5 non-residential reporting; the annual quality of service benchmarking; annual residential usage and billing statistics report; and the annual universal service reporting.

PPL agrees with most of the Commission's proposed changes regarding this section. However, PPL recommends that the Commission delete the requirement under § 56.231(7) and (8) for utilities to report on the total number of inactive residential accounts in arrears and the total dollars associated with these accounts. Given the additional reporting requirements proposed at §56.231, PPL sees limited value in providing data about inactive accounts. According to PPL, the Commission already receives timely and periodic reports from utilities regarding write-offs, which would ultimately include write-offs associated with inactive residential accounts in arrears.

Columbia states that Section 1415 requires biennial reporting to the General Assembly and that the information contained in these reports was provided by the utilities through existing reports. Therefore, Columbia opines, the proposed amendments to § 56.231 are unnecessary, and should be removed.

Equitable contends that there is a substantial increase in the amount of data required monthly by this section and while Equitable has always made every effort to provide the Commission with all the data sought, they question the usefulness of additional data, particularly Nos. 17, 18, 19, and 20 concerning reconnection. While the current regulations request the number of reconnections in each of the categories identified in these numbers, Equitable argues that the proposed regulation request substantially more data which will require extensive programming.

NFG comments regarding this section are with respect to § 56.231(a)(17) – (20). NFG explains that in late 2007, various public utilities worked in collaboration with the Commission to develop

a "Data Dictionary" similar to Appendix C of the proposed rulemaking. The breakdowns of sections (a)(17) through (20) are different from those established though the collaborative process and in the current Data Dictionary. Public utilities spent a good deal of time and money to update their systems to be compliant with the collaborative terms. NFG states that the proposed language would again change the breakdowns and result in another expenditure of time and money for compliance.

Concerning the proposed §56.231(7) and (8), PGW opines that the monthly report on inactive accounts should provide only accounts which became inactive in that month, otherwise, the utility might provide stale information on accounts which became inactive a substantial time ago. Also, PGW does not maintain records of the number of consumers from whom a security deposit has been requested, and thus recommends that § 56.231(21) and (22) should be revised to remove "requested."

Phillips reports that it will have trouble complying with some of the new reporting requirements because its existing information system will not permit the generation of a monthly report which incorporates this level of detail; specifically requirements that would provide the information in four distinct income categories set forth in subparagraphs (i) to (iv). Similar difficulties are associated with an annual report which would require the total dollar amount of annual collection operating expenses pursuant to § 56.231(b)(3). Phillips notes that it expects to have a new customer information system by the end of 2010 and will incorporate into the new system the capacity to generate the reports needed to comply with the proposed § 56.231. Accordingly, Phillips requests that utilities be permitted a reasonable period of time, at least to December 31, 2010, to make such adjustments.

Aqua requests that the proposed modifications of this section be deleted and that the monthly reporting for Class A water distribution utilities be eliminated because a yearly report is filed under the requirements at Docket M-00041802F003.

The CAC supports extending the monthly collections data reporting requirements specified at §56.231 to also include Class A water utilities. CAC agrees that water utility rates have increased significantly since this section was first promulgated and concerns with collection issues in the water industry are now sufficient to amend this section to include major water utilities.

PULP supports the recognition by the Commission that comprehensive and current data collection is essential in allowing the Commission to fulfill its obligations under Section 1415. PULP states that both the costs and termination activities of water companies have increased dramatically and the Commission should be kept abreast of the activities of these companies. Action Alliance supports the PULP Comments with regard to the reporting requirements and incorporates them herein by reference.

Discussion:

This reporting requirement is intended to allow the Commission to fulfill the requirements of Section 1415 to report to the Governor and General Assembly regarding the implementation of Chapter 14. The report is required to include, but is not limited to, the degree upon which the Chapter has been implemented; the effect upon cash flow and uncollectable accounts; the level of access to utility service by residential customers including low-income customers; and the level of consumer complaints filed with the Commission.

Section 1415 specifically requires the public utilities affected by Chapter 14 to provide the data needed for this reporting to the Commission. To facilitate this reporting while Chapter 56 revisions were pending, the Commission issued interim guidelines. *See Interim Guidelines for Residential Collections Data Reporting Requirements of the Electric, Natural Gas and Water Distribution Companies in Accordance with the Provisions of Chapter 14 at §1415* as contained in the Final Order of July 24, 2006 re: *Biennial Report to the General Assembly and Governor Pursuant to Section 1415,* M-00041802F0003. These guidelines were developed during a collaborative process in which utilities and consumer representatives participated. The proposed revisions to §56.231 were intended to substantially reflect the outcome of this process.

Upon careful consideration of the comments, we agree with Equitable and NFG that the proposed breakdown of reporting by income category in paragraphs 17, 18, 19, and 20 go beyond what was agreed to in the above discussed collaborative process and are not essential for the Commission in meeting its obligations per Section 1415. Since termination data (paragraphs 14-16) are not broken down by income category, there is no need to report reconnections by income category since no comparison to terminations to reconnections based on income is possible anyway. We will also revise the accompanying Appendix C to reflect these changes.

We acknowledge Allegheny Power's and Columbia's concerns about duplicative reporting requirements by noting that the proposed § 56.231 is intended to consolidate the current § 56.231 reporting requirement with the current Section 1415 reporting requirement. Once effective, the revised § 56.231 is intended to replace both of these current requirements. However, we must disagree with Allegheny Power when they suggest also consolidating requirements concerning quality of service reporting and commercial reporting requirements. Quality of service requirements (see 52 Pa. Code §§ 54.151 – 156) are altogether different from Chapter 56 matters and are required to fulfill the Commission's obligation to monitor service quality per 66 Pa.C.S. § 2807(a) and (d). Commercial collection data would not be appropriately incorporated into §56.231 which is intended to include residential data exclusively.

We disagree with PPL and PGW's objections to reporting inactive account data. This was part of the data agreed to in the collaborative process, and is essential in determining how much money is sitting inactive at the utility before being written off. We must question PGW's

concerns with reporting stale information because we do want the total current amount of inactive account monies. We fully understand that this amount is an accumulation of inactive amounts, minus amounts that have been moved to write-off status.

We must also reject PGW's request to remove the word "requested" from paragraphs 21 and 22 because this language was agreed to in the collaborative process. It is also intended to reflect the fact that security deposits requested from applicants are not "billed" because an applicant is not yet a customer and thus not being "billed" for anything. Limiting these paragraphs to just "billed" deposits would omit the large number of deposits that applicants are required to pay. We must also reject Phillips concerns with meeting these requirements since they themselves acknowledge that their new information system in 2010 will allow this reporting. And we note that any utility, per § 56.222, can request a temporary waiver of this requirement if they need additional time to program their systems to meet the reporting requirements.

We also must reject Aqua's request to omit Class A water utilities from this reporting requirement. Chapter 14 applies to water utilities and thus falls under the Section 1415 reporting requirement. Termination activity has increased significantly since the enactment of Chapter 14 and water costs have also increased substantially. However, we recognize that this reporting requirement may be too burdensome for smaller water companies; therefore we will limit it to just Class A utilities (utilities with annual revenues exceeding $1 million).

§ 56.251. Statement of purpose and policy.

FirstEnergy agrees that utility applicants and customers are treated differently from other utility customers under Chapter 14. FirstEnergy suggests that a general provision be added that makes it clear that it is the responsibility of the individual purporting to possess a PFA order to inform the utility of and prove the existence of the appropriate documentation supporting such a claim.

PECO believes that the protections for PFA customers are clearly limited in the manner proposed in the Commission's new regulations. However, PECO also believes that customers with a PFA order are differently situated than customers of steam heating, wastewater, and small natural gas companies and questions the Commission's approach to addressing PFA customers in this proceeding. PECO suggests that this should be addressed in a separate proceeding.

PAWC had hoped that the Commission would incorporate the Chapter 14 standards and make them applicable to wastewater customers and applicants. PAWC provides wastewater services to 17,343 residential customers and most of these also receive water service from the company as well. PAWC believes the ability to apply one standard makes good business and regulatory sense and requests again that the Commission exercise its discretion and apply selected provisions of Chapter 14 to wastewater customers.

Action Alliance supports the Commission's proposal to create separate chapters to address the utilities and consumers that are specifically excluded from Chapter 14 under Section 1417. Action Alliance further supports the Commission's plan to incorporate into the separate chapters those sections of Chapter 14 that provide a higher level of consumer protection than in the current version of Chapter 56 because the General Assembly certainly did not intend to provide victims with a PFA order with a lesser level of consumer protections than other customers. Action Alliance also supports the Commission's proposal to establish, in an upcoming separate proceeding, a Policy Statement relating to the many significant issues of victims of abuse, which may not be appropriately placed in these regulations. According to Action Alliance, a separate proceeding will allow for participation of the various organizations who provide supportive services to victims of abuse and whose staff will provide practical recommendations regarding training, consumer education, record keeping, confidentiality and other related matters. In the meantime, Action Alliance requests that the Commission provide express interim guidance to the utilities to correct blatantly incorrect interpretations of Section 1417, such as refusing to honor a PFA issued by an out-of-state court. Action Alliance also supports the Commission's proposed requirements that public utilities provide information about the PFA exemption in all contacts with consumers, including but not limited to, written utility application procedures, credit denial letters, rights and responsibilities summaries, 10-day written termination notices, three-day personal contact notices, and post-termination notices.

The CAC continues to support the proposal of the Commission to create a separate chapter to address residential customers of steam heating utilities, wastewater utilities, small natural gas distribution utilities, water utilities' winter termination activity, and victims with a PFA order who are specifically excluded from Chapter 14 provisions.

The OCA strongly supports the Commission's determination to establish a separate chapter for customers and utilities that are specifically excluded from Chapter 14. OCA notes that 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.

PULP supports the Commission's decision to include a new subchapter with regulations for victims of domestic violence with a Protection From Abuse order (PFA). PULP also supports the Commission's decision to include within this new subchapter regulations reflecting levels of consumer protection that are higher than Chapter 56 where Chapter 14 provides for higher protections. In addition, PULP supports the Commission's decision to require utilities to publicize on important utility documents the exceptions from Chapter 14 to which victims of domestic violence with a PFA are entitled. Finally, PULP supports the Commission's choice to address in a separate proceeding the special ancillary issues concerning victims of domestic violence with a PFA. These ancillary issues are complex, and the expertise of advocates and specialists will provide immeasurable assistance to the Commission in crafting sensible, fair, and

effective protections for a vulnerable population. PULP recommends that the Commission should not put off this separate proceeding for more than 6 months after the submission of these comments.

IRRC notes that pursuant to Section § 1401, "[t]his Chapter relates to protecting responsible customers of public utilities." A public utility is defined as: "[a]ny electric distribution utility, natural gas distribution utility or water distribution utility in this Commonwealth that is within the jurisdiction of the Pennsylvania Public Utility Commission." 66 Pa.C.S. §1403. It is clear that the General Assembly intended Chapter 14 to apply to specific types of public utility. This rulemaking adds 11 new subchapters to Chapter 56. While IRRC does not question the policy behind adding these new subchapters, IRRC requests that the Commission further explain its statutory authority for promulgating the new subchapters. IRRC also notes that the language in these subchapters is similar, and at times verbatim, to the corresponding sections of Subchapters A through K. To the extent this occurs, IRRC incorporates comments from Subchapters A through K.

Discussion:

We disagree with PECO that the regulations that apply to customers with a PFA should be addressed in a separate proceeding. This would needlessly delay the enactment of these important provisions. In fact, customers with a PFA, and customers of wastewater, steam heating and small natural gas companies are similarly situated; Chapter 14 applies to none of them. We must not delay needlessly the promulgation of rules for these customers. We also disagree with PAWC that Chapter 14 should be applied to wastewater utilities for the reasons outlined by OCA; that to the extent that the General Assembly chose to modify the existing Chapter 56 protections for some types of utilities and customer groups, it is equally clear that the General Assembly did not intend to mandate the expansion of those changes to other utilities.

We agree with Action Alliance and PULP that many of the ancillary issues concerning victims of domestic violence with a PFA should be addressed in a separate policy statement, rather than a regulation. This includes issues like confidentiality, consumer education, record keeping, training, etc. As PULP points out, this will allow the expertise of advocates and specialists to assist the Commission in addressing these sensitive issues.

IRRC points out that the language in these subchapters is similar, and at times verbatim, to the corresponding sections of Subchapters A through K. IRRC notes that to the extent that this occurs, they incorporate their comments from Subchapters A through K and ask the Commission to respond to the comments on both sets of subchapters and amend the final-form rulemaking in a consistent manner. We agree, and will treat the comments submitted by all parties in the same fashion. Comments filed on Subchapters A through K shall also be considered for the

corresponding sections of Subchapters L through V, unless it is apparent that the comments do not apply to the corresponding section.

The General Assembly set the stage for this rulemaking which was mandated by section 6 of the Act. Since the General Assembly determined that Chapter 14 would not cover steam heating, small gas utilities, wastewater utilities and customers protected by a PFA order, Chapter 56 provisions, as modified herein, would still apply to these utilities and this customer group. Therefore, at the same time the Commission is complying with section 6 of the Act by amending the provisions of Chapter 56 regulations to comply with this new legislation and declared policy, we still need to account for the General Assembly's decision to exclude certain utilities and PFA holders. Rather than discuss this exclusion and distinction in every provision of Chapter 56 (subchapters A-K), address whether Chapter 14 applies or doesn't apply to these utilities and customer group, and draft regulatory language consistent with our determination, we decided to establish a separate subchapter (L-V) within Chapter 56 for utilities and customers not covered by Chapter 14. We believe that the statutory authority for these new subchapters is the General Assembly's mandate that the Commission amend Chapter 56 to comply with Chapter 14 but not for a select group of utilities and a customer group.

§ 56.252. Definitions.

Allegheny Power suggests adding definitions for *Change in Income, Complainant, Federal Poverty Level,* and *Significant Change in Circumstance*. Allegheny Power suggests using the Chapter 14 definition for *Change in Income* and *Significant Change in Circumstance* and *complainant* should include the *customer, occupant, third-party designate, applicant*, or someone with *Power of Attorney*. Allegheny Power would also limit the ability to file complaints to only those having a true interest in the matter.

PGW asks that the term "Protection from Abuse Orders (PFA)" be defined so it is clear that this refers only to PFA orders issued in Pennsylvania. 23 Pa. C.S. § 6104(a) provides a legitimate process to certify a foreign PFA and requiring utility employees to verify foreign PFA's would require utility employees to become familiar with the PFA laws of different states.

IRRC notes that there are several terms that are used in the proposed regulation but are not defined. The final-form regulation should include definitions for the following terms: "change in income;" "complainant;" "Federal poverty level;" "significant change in circumstance" and "third-party guarantor." Both "change in income" and "significant change in circumstance" are defined in Section 1403 and a cross-reference is appropriate for definitions of these terms.

Discussion:

We propose to make the list of definitions at § 56.252 comprehensive by including all the definitions that apply, instead of splitting the list between §56.2 and § 56.252. This means that the utilities and customers subject to subchapters L – V will only have to look in one place for definitions, instead of two places and then determining which definition applies. This should be less confusing and simpler and means we are adding to § 56.252 definitions for *AMR, Billing month, Billing period, Dwelling, Emergency, Formal complaint, Informal complaint, Nurse practitioner, Person, Premises, Termination of service* and *Unauthorized use of utility service*. These definitions were excluded from § 56.252 in the version published in the Pennsylvania Bulletin because they duplicate definitions already found in § 56.2. However, as we note above, upon review, we now believe that the list of definitions at § 56.252 should be as complete as possible by including them.

We decline to include definitions of "change in income" and "significant change in circumstance" as suggested by Allegheny Power and IRRC because neither of these terms is used in these regulations. In addition, these terms are relevant to Chapter 14, which does not apply to utilities and customers covered by the definitions at § 56.252. We also decline to include a definition of "complainant" since if we specify who is eligible to file a complaint, this could inadvertently bar some individuals from being able to file a legitimate complaint. Traditionally, the Commission has not restricted who a complainant may be, beyond the usual standard that the complainant must have some standing in the matter. A complainant does not even have to be a customer. For example, a non-gas customer may file a complaint alleging that a gas utility damaged the street they live on while repairing a gas line; or a tenant in a multi-unit building may complain about frequent electric outages despite not being a direct customer of the electric utility. We also decline to include a definition of "third-party guarantor" because we believe it would be more appropriate to address this in § 56.361 which specifically addresses third-party guarantors. Concerning PGW's and PPL's request to define Protection from Abuse Orders (PFA), we decline to do so in this proceeding and will instead defer this matter to a separate proceeding that was discussed in the NOPR that will address PFA matters in a more comprehensive manner.

We do find merit in IRRC's suggestion of defining "Federal Poverty Level" and will propose using the definition provided by the federal Department of Health and Human Services. We will also change the definition of "Discontinuation" to "Discontinuance" since "discontinuance" is the more commonly-used term.

Definition of *AMR (Automatic Meter Reading)*:

PPL and Columbia suggest adding language to this definition indicating that a reading obtained from an AMR is an actual reading.

Discussion:

We find merit in the comments of PPL and Columbia and will add language to this definition indicating that a reading obtained from an AMR is considered an actual meter reading for the purposes of this chapter. This will reflect the acceptance and increasing use of this technology, which provides cost saving benefits for utilities and billing accuracy benefits for consumers.

Definition of *Applicant*:

PAWC suggests using the Chapter 14 definition of applicant because to do so, according to PAWC, would not cause any harm to any potential applicant or infringe upon consumer protection. However, this would eliminate PAWC from applying two separate definitions to a person seeking water and wastewater service.

IRRC questions if someone under 18 can be considered an applicant. IRRC submits that the definitions for "customer" and "occupant" should also include the same clarification.

Discussion:

We disagree with PAWC's suggestion because this would basically be applying Chapter 14 provisions to wastewater utilities. We decline to do this for the reasons outlined by OCA; that to the extent that the General Assembly chose to modify the existing Chapter 56 protections for some types of utilities and customer groups, it is equally clear that the General Assembly did not intend to mandate the expansion of those changes to other utilities. We do agree with IRRC and will specify that an applicant must be at least 18 years of age.

Definition of *Basic services*:

The OCA believes that 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 and that the term "basic service" should include the provision of default supply service.

IRRC notes the definition refers to the delivery of residential service, however it does not mention default supply. IRRC questions whether the Commission has considered the inclusion of default supply in the definition of basic service? If the Commission includes default supply in the definition of basic service, it should also separately define "default supply" in the final-form regulation. Finally, the definition for "nonbasic service" should also be consistent with the language in the definition for "basic service."

Discussion:

We concur with IRRC and OCA and will incorporate a reference to default service in the proposed definition of *basic service.* We will also include a new definition of *default service* in this subsection, as defined at § 54.182.

Definition of *Billing month*:

FirstEnergy recommends that an additional exception be added to the definition of "billing month" to allow for instances that may follow a company's rerouting of meter reading processes. This would eliminate the need to file petitions for waiver of this section every time a utility changes metering routes, which would represent savings in time and resources for both the utility and the Commission.

NFG submits that the Commission may want to take this opportunity to streamline the process a utility needs to undertake to modify its meter-reading routes. In the past, due primarily to demographic changes in service territories, public utilities needed to alter their meter reading routes for purposes of efficiency. In those instances, it is often necessary that the billing month for certain customers may fall outside the guidelines presented. In these cases, the utility must initiate a proceeding with the Commission for a temporary waiver of this provision and § 56.11 regarding billing frequency. It has been NFG's experience that the Commission has handled these requests timely in the past and the outcome is always favorable. The utility would notify the customers in advance and subsequently allow any impacted customer to make a payment agreement on a bill resulting from a meter rerouting. NFG suggests that the Commission could enjoy some economic efficiencies by allowing for them in the regulation by adding an exception to the billing month definition addressing rerouting.

Discussion:

We find merit in the suggestions of FirstEnergy and NFG that we take this opportunity to incorporate another exception to this definition that would facilitate the routine change of meter reading routes. These parties are correct in that under the current rules, utilities must file waivers every time a routine meter route change causes a billing month to fall outside of the parameters of the definition. The processing of these routine waiver requests is costly in both time and money for both the utilities and the Commission. For a recent example, see *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Continuation of Temporary Waiver of Certain Standards and Billing Practices of 52 Pa. Code Section 56.1, et seq.*, P-00062243, (January 26, 2007). We believe it is possible to carve out an exception to facilitate these routine meter changes while at the same time protecting affected customers. We shall put into place the same protections that are usually adopted by the petition process by requiring amortization of any bills exceeding a 60-day period, which should be exceedingly rare. We note that this amortization is not a payment agreement under Chapter

14 because it does not involve unpaid balances. We will also require an informal notification to the Bureau of Consumer Services of these occurrences so that the Bureau is prepared to answer customer inquiries on the matter.

Definition of *Customer*:

PAWC suggests using the Chapter 14 definition of customer because to do so would not cause any harm to any potential applicant or infringe upon consumer protection. It would, however, eliminate PAWC from applying two separate definitions to a water and wastewater customer.

FirstEnergy suggests the definition of "customer" specify that the individuals must be eighteen years of age or older. Action Alliance proposes that to clarify that only adults or emancipated minors can be customers, the phrase "only a natural person 18 years or older, or an emancipated minor, may become a customer" should be part of this definition. IRRC asks if someone under 18 can be considered a customer.

Discussion:

We disagree with PAWC's suggestion because this would basically be applying Chapter 14 provisions to wastewater utilities. We decline to do this for the reasons outlined by OCA; that to the extent that the General Assembly chose to modify the existing Chapter 56 protections for some types of utilities and customer groups, it is equally clear that the General Assembly did not intend to mandate the expansion of those changes to other utilities.

We agree with IRRC, Action Alliance and FirstEnergy and will specify that a *customer* has to be at least 18 years of age.

Definition of *Customer assistance program*:

Discussion:

Because customer assistance programs are referenced in some of the subsections L-V, § 56.337, for example, we shall include the definition of such. This is the definition found at Section 1403. This will have no negative impact on customers with PFA orders under Section 1417.

Definition of *Default service*:

Discussion:

This definition of *default service,* reflecting the definition in the default service regulations at § 54.182 was not included in the NOPR, but is now included based on comments received from IRRC on the proposed definition of *basic service*:

> IRRC notes the definition refers to the delivery of residential service, however it does not mention default supply. IRRC questions whether the Commission has considered the inclusion of default supply in the definition of basic service? If the Commission includes default supply in the definition of basic service, it should also separately define "default supply" in the final-form regulation. Finally, the definition for "nonbasic service" should also be consistent with the language in the definition for "basic service."

Definition of *Dispute*:

Action Alliance recommends modifications to the definition of the term "dispute" to clarify aspects of its meaning and its use within the Commission's administrative processes, particularly in light of Chapter 14 changes. Action Alliance requests that the Commission amend the definition of "dispute" so it more clearly reflects that the administration of universal service and energy efficiency programs may be subject to a dispute by an applicant, customer, or occupant. And to clarify the definition of dispute, Action Alliance recommends that within the definition the Commission replace the terms "initial contact" and "contact" with the terms "initial inquiry" and "inquiry," respectively. This change will harmonize the definitions of dispute and initial inquiry and will clarify that a dispute may begin as an initial inquiry.

Action Alliance notes that according to the definition of dispute, the trigger that converts an initial inquiry into a dispute is the level of satisfaction felt by the complainant regarding the resolution of the issue forming the basis of their initial inquiry. Therefore, it is important that public utilities carefully discern that satisfaction level. However, at the end of a contact with an applicant, customer, or occupant, a general question by a utility representative, such as "Are you satisfied with this call?" may be misleading. Action Alliance recommends that public utilities must ensure applicants, customers, and occupants understand that their satisfaction is to be based upon the resolution of their grievance, not with the personal qualities or conduct of the customer service representative.

PULP requests that the Commission amend the definition of dispute so it more clearly reflects that the administration of universal service and energy efficiency programs may be subject to a dispute by an applicant, customer, or occupant. PULP also recommends the Commission make changes to the wording of the definition to clarify a dispute's place within the chain of administrative process. As PULP reads Chapter 56, there may be a four step progression in the "complaint" process before the Commission: a customer makes an initial inquiry with the public utility; where that initial inquiry is not resolved to the satisfaction of the customer, the initial inquiry converts into a dispute; where a dispute is not resolved to the satisfaction of the

customer, then the customer may register an informal complaint with the Commission; where the informal complaint is not resolved to the satisfaction of either party, then the dissatisfied party may file a formal complaint with the Commission. To clarify the definition of dispute, PULP recommends that in two spots within the definition the Commission replace the term "initial contact" with the term "initial inquiry." PULP also suggests adding "Public utilities must ensure applicants, customers, and occupants understand that their satisfaction is to be based upon the resolution of their complaint, not with the quality of customer service provided by the public utility" so that it is clear that the level of satisfaction regards the resolution of the underlying issue.

Discussion:

We agree with Action Alliance and PULP that the list of subjects that a customer may dispute with a utility and/or the Commission has changed over time as new topics, like energy conservation programs and CAP programs have come along. However, we are reluctant to list or itemize such subjects in the regulation because this could be inadvertently interpreted to exclude subjects not specifically listed. Another reason we are reluctant to itemize disputable issues as it is likely that other new things will come along in the future such as hourly metering, remote appliance control and other load management initiatives that may also be the subject of disputes. We must also note that Chapter 56 dispute procedures have also been incorporated into other regulations, such as the electric "slamming" regulations at § 57.177 for example. It is possible that future regulations on other topics may include similar language. As an alternative to itemizing disputable issues, we prefer to insert the phrase "but not limited to" after "including" in the first sentence of this definition. This will convey that a disputable issue is not restricted to the few items listed in the regulation.

We also agree with Action Alliance and PULP that the customer's satisfaction should be based on the resolution of the underlying complaint, not solely with the utility's handling of the complaint or proposed course of action. We propose addressing this by inserting the phrase "of the subject of the grievance" after the word "explanation" in the final sentence of the definition.

Definition of *Electronic billing*:

NFG and PGW believe that the second sentence of this proposed definition should not be included in the definition because the act of paying a bill electronically can take many forms. A better definition for the act of paying a bill electronically would be "electronic remittance." Also, the act of electronic billing can be completely separate from the act of electronic payment. In some cases, a customer may elect to receive an electronic bill and not a paper bill and yet still pay their bill with a check or by other non-electronic means. In order to clarify the differences, NFG believes that these concepts should be divided into two separate definitions. PGW believes

that the proposed definition is too broad and could include electronic transactions over which the utility has no control. PGW suggests modifying the definitions by specifying that it applies only to electronic systems "administered by a public utility for its customers."

IRRC notes that is their understanding that electronic billing and electronic payment are separate and distinct from each other. However, this definition includes both billing and payment. To improve clarity, IRRC advocates that the final-form regulation should include separate definitions for the terms "electronic billing" and "electronic payment."

Discussion:

We agree with NFG, PGW and IRRC that electronic billing and payment are two different and distinct concepts that are not necessarily in tandem. Therefore, we will add a separate definition of electronic remittance. We also agree with PGW that the proposed definition is possibly overbroad and should specify only those systems administered by a utility and/or that the utility is responsible for.

Definition of *Electronic notification of payment*:

Allegheny Power states that the receipt requirement will be very costly, potentially $ 1 million annually with little or no benefit to the customer. PPL believes it is necessary to distinguish between one-time payments made by customers through a utility's interactive voice response system and reoccurring monthly payments from customers who participate in on-line billing. PPL suggests revising this proposed definition to "A notification generated by the electronic payment system upon receipt of a payment from on-line billing and payment customers. The notification will inform the customer of successful receipt and amount of payment and the date and time the payment was received." PGW notes that it is not possible to always confirm electronic payments because PGW receives electronic payments from many sources including third party payors.

NFG suggests that the word "the" in the first sentence of this proposed definition should be changed to "an".

Aqua requests that that this definition be clarified so that a paper receipt is not mandated but otherwise maintain the requirement for a tracking system so that the customer has a confirmation and record of the payment. Electronic payments can be of very different forms and an automatic bill payment from a banking institution does not generate a paper receipt. A confirmation number that permits the tracking of the payment is the most appropriate and efficient manner to advise the customer that the electronic payment has been made.

Discussion:

We agree with Allegheny, PPL and PGW that a receipt for all electronic payments is not necessary because as the parties point out, not all payments are received through utility-operated systems. In addition, utilities have operated direct, pre-authorized debiting systems for years without receipts being provided. We find PPL's proposed definition helpful, along with NFG's suggestion to change "the" to "an."

Definition of *Electronic notification of payment:*

Discussion:

This definition was not in the NOPR, but is now being included based on the suggestions of NFG, PGW and IRRC in response to the proposed definition of *electronic billing*.

Definition of *Federal poverty level*:

Discussion:

A definition of "Federal Poverty Level" is being added at the suggestion of IRRC. The definition is the one provided for by the federal Department of Health and Human Services on its website.

Definition of *Formal complaint*:

Discussion:

We shall include the definition of *formal complaint* since this term is used in §§ 56.401- 404 and has no negative impact on customers with a PFA that would be contrary to Section 1417. This definition is from Section 1403.

Definition of *Informal complaint*:

We shall include the definition of *informal complaint* since this term is used in §§ 56.391- 394 and has no negative impact on customers with a PFA that would be contrary to Section 1417. This definition is copied verbatim from Section 1403 and it has not been the cause of any confusion or controversy. That being said, we will address the concerns Action Alliance, PULP and IRRC raised in relation to §56.2 by removing the word "filed" from the definition.

Definition of *Informal dispute settlement agreements*:

PAWC asks if the parties fail to reach an agreement on the statement of the claim or dispute, will it prevent the parties from reaching an informal dispute settlement agreement? Perhaps the first sentence can be reworded or deleted? PAWC also suggests that the regulation set a time period in which the customer or applicant must make known to the public utility that they reject the settlement offer as to eliminate ambiguity and minimize potential confusion.

Discussion:

For reasons based on comments received and discussed in relation to this same definition at §56.2, we will withdraw this proposed definition and remove all references to it in the regulations.

Definition of *Initial inquiry*:

Action Alliance and PULP recommend that the Commission amend the definition of "initial inquiry" so it more clearly reflects that the administration of universal service and energy efficiency programs may be subject to an inquiry by an applicant, customer, or occupant.

Discussion:

The concerns expressed by Action Alliance and PULP parallel the concerns they expressed about the definition of *dispute*. Again, we are reluctant to list or itemize such topics in the regulation because this could be inadvertently interpreted to exclude topics not specifically listed. Another reason we are reluctant to itemize disputable issues is that it is likely that other new subjects will come along in the future such as hourly metering, remote appliance control and other load management initiatives that may also be the subject of disputes. We also note that Chapter 56 dispute procedures have been incorporated in other regulations, such as the electric "slamming" regulations at § 57.177 for example. Moreover, it is possible that future regulations on other topics may include similar language.

We shall resolve this issue in the same manner as with definition of *dispute*. We will insert the phrase "but not limited to" after "including" in the first sentence of this definition. This will convey that a disputable issue is not restricted to the few items listed in the regulation.

Definition of *Nonbasic services*:

The OCA believes that 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 and that the provision of default supply service should also be included.

Discussion:

OCA's comments are analogous to the comments they and IRRC submitted in response to the definition of basic service. We shall address these concerns in a similar manner, by inserting a reference to default supply service in the proposed regulation.

Definition of *Occupant*:

Action Alliance proposes that to recognize that an occupant can reside at a property where service is not currently being provided, and to clarify that a dependent child occupant should not be made responsible for the bills of a parent, under Section 1407(d), the definition should specify "adult" persons and that the phrase "or requested" be added to the end of the definition. OCA also agrees that the word "adult" should precede the word "person" because 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 and the current definition of "occupant" could produce such a result.

PULP requests that the Commission make a minor modification to the definition of occupant by adding the phrase "or requested" to the final sentence. This addition will capture the idea that the public utility's relationship with the household can often extend beyond the time when public utility service is currently provided. For example, in situations where a customer loses service and the final bill is past due, the public utility may still have interactions with occupants of the household. Because of this fact, the definition of occupant should be more expansive.

IRRC believes that the proposed definition is vague for two reasons. First, while other related terms like "customer" or "applicant" use the descriptor "natural person," this definition uses "person." To improve consistency, "person" should be replaced with "natural person." Second, IRRC raises the question; when does a natural person officially become an occupant and when does the natural person cease being one. IRRC also notes that this definition should clarify if someone under 18 can be considered an occupant.

Discussion:

The word "occupant" appears in the following sections of the current Chapter 56: §§ 56.2, 56.12, 56.17, 56.71, 56.72, 56.83, 56.93, 56.96, 56.97, 56.99, 56.100, 56.111, 56.112, 56.151, 56.201, 56.211 and 56.231. We proposed no substantial changes to this definition in the NOPR and Chapter 14 does not include a revised definition of occupant. There has been little if any confusion or difficulties with this definition that we are aware of. As such, we are reluctant to tinker with this definition out of concern for inadvertent, and possibly serious, consequences that could result, especially given the large number of sections where this term appears, as noted above. For example, under the medical emergency regulations at §§56.111-112, an "occupant" is eligible to file an emergency medical certificate. If we revise the definition of "occupant" to

specify an occupant must be an adult, this would serve to strip children of medical emergency protections; clearly an unacceptable outcome.

We prefer to keep with the traditional approach as found in §56.93 for example. When it is important that the occupant be an "adult" the regulation specifies that the occupant concerned must be an "adult." As another example, we believe that our proposed revisions to the definitions of *customer* and *applicant*, which specify that both must be "adults" will address to a large extent the concerns expressed by some of the parties. We also see no problem with IRRC's suggestion that we insert the word "natural" before "person" as to align this definition with the definitions of *customer* and *applicant*.

Definition of *Physician*:

The CAC and PULP support the elimination from the definition of physician at § 56.2 the requirement that a physician must be licensed by the Commonwealth of Pennsylvania. Many individuals are treated by out-of-state physicians. Those individuals who live in communities bordering other states or require specialists or treatments located in other states should not be precluded from the intended protection of the statute.

Discussion:

We agree with the CAC and PULP and will revise this regulation to stipulate that the medical professional has to be licensed in the United States.

Definition of *Remote reading device*:

Allegheny Power thinks this definition should specify that automated meter reading (AMR) technology is excluded, since the AMR definition likewise excludes remote reading devices. We will also rearrange the sentence structure of this definition to improve readability.

Discussion:

We do find merit in Allegheny Power's suggestion as to improve clarity and avoid confusion. This will be in keeping with the intent of Section 1411 that deems automatic meter readings as actual readings.

Definition of *User without contract*:

PGW believes that Chapter 14 does not allow a distinction between the terms "user without a contract" and "unauthorized use" because Section 1406 permits immediate termination of service for all unauthorized use of service and fraud. PGW explains that since unauthorized use is without official authorization, using gas service without a contract is unauthorized use. However, if the Commission maintains this distinction in the regulations, PGW requests that user without contract must be specifically limited to a "reasonable" use of utility service, such as where a customer dies and the spouse continues to use the service for a period of time. PGW suggests that a reasonable period of time be specified as two months or when the utility threatens termination; whichever is earliest.

Phillips asks that this definition be revised to include applicants and customers who have failed or refuse to sign service contracts.

EAP takes the position that the "users without contract" are unauthorized users where service is maintained without customer application and is subject to immediate termination without notice. EAP argues that maintaining a distinction between "user without contract" and "unauthorized user" as the Commission proposes will not minimize uncollectible expenses or encourage timely payments. According to EAP, under the Statutory Construction Act (1 Pa.C.S.A. §1921), the object of all interpretation of statutes is to ascertain and effectuate legislative intent; had the legislature intended to make the distinction between "user without contract" and "unauthorized user" in Chapter 14, it would have done so.

EAP believes that Chapter 14 is very clear in its language mandating when the utility may terminate service and what it shall do prior to termination of service under Section 1406. EAP submits that the Commission's authority to inject itself into the internal management of a public utility is limited and the Commission has no authority to supplant the decision making responsibility of management on matters committed to their discretion. EAP concludes that the Commission, by attempting to inject itself into managerial decisions of the utilities, by proposing regulations inconsistent with Chapter 14, would be acting outside its legislative authority as interpreted by Pennsylvania courts.

Action Alliance notes that the Commission has long recognized that users without a contract, like persons such as widows taking service under their deceased spouse's name, should be protected from immediate service terminations without prior notice, and that overly broad interpretations of unauthorized use as grounds for immediate terminations should be avoided. Action Alliance strongly supports the Commission's original proposal to maintain the long-standing distinction between "user without contract" and "unauthorized users." Action Alliance further supports the proposed definition of "user without contract," at § 56.2, and recommends its adoption, in order to bring further clarity to the regulations. Action Alliance also agrees that the proposed language at § 56.91(a) relating to termination notices, which effectively provides for a three-day notice to a user without contract, should be adopted.

CAC and PULP support the Commission's decision to maintain the distinction between "user without contract" and "unauthorized use." These commentators agree that the inclusion of a new definition of "user without contract" in the new regulations provides needed clarity and assistance to consumers and utilities in recognizing the distinction between a "user without contract" and "unauthorized use."According to CAC and PULP, common sense and equity require that these two situations should be treated differently. CAC explains that a widow continuing to use the service provided to her in her deceased husband's name is markedly different from someone who has illegally tampered with a meter to avoid paying for service. PULP also supports the Commission's decision to craft the regulations in a manner that recognizes this difference.

IRRC notes that this definition includes "unauthorized use" as an exception to what would be considered a "user without contract." Given that the existing regulation already includes a definition for "unauthorized use" IRRC suggests that the Commission consider simply amending this definition to include the substance of this proposed definition for "user without contract"?

Discussion:

The Commission has formally addressed "user without contract" in recent years, and the arguments against the Commission's long-standing position on this matter are basically the same that have been presented in these previous proceedings. *See* first Chapter 14 *Implementation Order,* M-00041802F0002, (March 3, 2005) and the follow-up *Chapter 14 Implementation – Petitions of the Energy Association and the Philadelphia Gas Works for Clarification and/or Reconsideration of the Implementation Order,* M-00041802 F0002, (June 2, 2005).

For the same reasons previously provided in relation to §56.2, definition of *user without contract*, we see nothing that persuades us to change the long-standing distinction between *user without contract* and *unauthorized use.* The arguments presented relative to this same definition under § 56.252 are even less persuasive since many of the arguments of EAP and PGW are based on Chapter 14. Chapter 14 has no relevance to § 56.252 because these definitions apply to utilities and consumers specifically exempt from Chapter 14 per Section 1417.

To repeat what the Commission declared in the above noted March 3, 2005 Order (page 10), "If utilities are allowed to treat users without contract the same as unauthorized use, an unnecessary tragedy may occur." Also, given the importance of this distinction and its prominence, we believe it is important to define *user without contract* with a separate, distinct definition in this subsection. Therefore, after careful consideration, we decline IRRC's suggestion that this definition be incorporated into the definition of *unauthorized use of utility service*. We feel this is also unnecessary given that the definition of *user without contract* immediately follows the definition of *unauthorized use of utility service* in the regulations. We will make a minor revision by inserting the word "utility" in the definition to make clear the reference to the

definition of *unauthorized use of utility service*. We will also clarify that a user without contract is a "person" as defined at 66 Pa.C.S.§102.

§ 56.261. Billing frequency.

Allegheny Power claims that it would cost $228,000 annually to provide duplicate paper and electronic bills. Columbia reports that it would cost them $6,000 monthly. FirstEnergy, PPL and PGW also oppose a requirement to provide both paper and electronic bills to the same customer as being unnecessary and negating the benefits of electronic billing.

FirstEnergy supports the inclusion of regulations regarding electronic billing and agree that this option should be voluntary and at the customer's option. FirstEnergy also believes § 56.11(b)(7) should be deleted because maintaining a system to ensure delivery of electronic bills would be difficult and that it should be the customer's obligation to notify the company of a change in e-mail address.

PPL opines that since hardship funds are voluntary and the Commission has no regulatory authority over them, that the proposed language at § 56.11(b)(5) should omit "must" and replace it with "should." PPL also suggests revising §56.11(7) by adding language specifying that the customer shall be responsible for informing the utility of changes to email addresses within 30 days.

PECO recommends that the Commission not attempt to regulate the format of electronic bills. PECO believes that an electronic bill can include the same information as a paper bill but that utilities should be allowed flexibility to utilize evolving web technologies to present information in ways that fully utilize those technologies.

Columbia suggests revising 56.11(b)(1) to clarify that a public utility will be required to process a request to revert to paper billing "one billing cycle after the request is made" because depending upon when such a request would be made within a particular customer's billing cycle, it could take longer than one month's notice to process such a request.

Citizen's notes that it has received very positive feedback from consumers regarding their electronic billing program. It is very convenient and allows customers to receive early notification of their electric bills. Citizen's uses a password protected website with firewalls and secured servers to ensure that information over the internet is encrypted and cannot be intercepted and customer data is protected from unauthorized access.

NFG believes that the language in Chapter 56, as originally written, is broad enough to include the electronic transmission of bills. However, if the Commission decides otherwise, NFG suggests that a blanket waiver permitting electronic billing would be appropriate.

UGI fully supports appropriate revisions to the Chapter 56 regulations to permit electronic billing without the necessity of seeking a waiver from the Commission. UGI notes that in case of a failed e-mail delivery, a paper bill is automatically generated and sent to the customer along with a note that they will be removed from e-billing unless correct e-mail information is provided and five days is added to the payment deadline.

Columbia reports a similar procedure. However, FirstEnergy and PGW differs by declaring that it cannot realistically assure customer privacy or ensure the delivery of e-bills and that the burden of ensuring that e-mail addresses are valid should be placed entirely on the customer, and that the utility should not have to contact the customer to try to find out the correct e-mail address.

PGW suggests that electronic billing provisions must acknowledge the realities of processes for electronic methods of communication. PGW reports that it cannot realistically assure customer privacy or ensure the delivery of e-bills and that the utility should not have to contact the customer to try to find out the correct e-mail address. PGW claims that it is customers who control and can change e-mail addresses without the knowledge of the utility and that the burden should be placed on the customer to inform the utility of any changes. PGW asks that if the Commission is going to specify cancellation timeframes, it should specify at least one billing cycle instead of specifying "months" since calendar months and billing cycles do not necessarily coincide. PGW also asks the Commission to consider expanding electronic notification options to include all notices, such as termination notices, by e-mail through the e-billing process.

EAP agrees that the Chapter 56 rulemaking process provided a satisfactory vehicle for addressing electronic billing and further agrees that certain protections should be in place, such as voluntary participation, a visual format that mirrors the paper bill including messages, bill inserts, assurance of customer privacy, etc. EAP disagrees, however, with § 56.11(b)(1) because this proposed provision goes against the rationale of providing electronic billing services. A provision that was put into place to streamline the billing process for both the customer and the utility has now essentially doubled the processes and costs. EAP members estimate that at current electronic billing enrollment levels, requiring utilities to provide the additional paper bill to its electronic billing customers will range anywhere from thousands to hundreds of thousands of dollars per utility each year.

United notes that there are many positives to electronic billing from a customer service, environmental and cost perspective. United encourages companies to choose electronic billing

partners carefully and ensure that they have integrated solid security measures and also visible and real-time tracking mechanisms.

York agrees with the Commission's comments that electronic billing and payment will save customers and utilities time and expense and create significant environmental benefits. If a customer elects electronic billing, York will provide all of the text that is currently printed on a water bill plus a link to view any bill stuffers. York believes that the shift towards electronic billing will continue until it is the norm and paper bills are the exception.

Action Alliance supports the recommendations of the OCA with regard to electronic billing and payment options and incorporates by reference those proposed regulations that reflect the OCA's recommendations. Action Alliance supports the proposed language, at § 56.11(b)(5), which requires that electronic bills include the option for the customer to contribute to the utility's hardship fund, so that such important contributions to assist low-income customers can be maximized.

PULP recommends modifying § 56.11(b)(1) which states that a customer must provide the utility with one month's notice if the customer wants to revert from electronic billing back to paper billing because there may be circumstances that prevent a customer from giving one month's notice. For example, if the internet service provider or the provider of e-mail services goes bankrupt, out of business, or experiences unforeseen technical difficulties, the customer will not have the time to provide one month's notice to the utility.

IRRC raises three issues concerning electronic billing. First, subsection (b)(l) states that a customer must provide the public utility with one month notice to revert to paper billing. Commentators for both public utilities and consumer groups question whether a one month notice is an appropriate amount of time. The Commission should consider adding language suggested by a commentator that the request for paper billing be processed "one billing cycle after the request is made." Second, subsection (b)(5) requires an electronic bill to: "include the option for the customer to contribute to the utility's hardship fund." IRRC questions whether this requirement also applies to paper billing; if not, why is it being added to electronic billing requirements. ? Finally, subsection (b)(8) requires the public utility to maintain a "sufficient system security" and IRRC submits that the Commission should further explain this requirement.

Discussion:

Electronic billing and payment hold great promise in increasing customer convenience while lowering costs, in addition to the obvious environmental benefits. It must be implemented in a way that does not impose costly restrictions on the utilities while at the same time protect and assure consumers that these methods are safe and helpful. It is not our intention to specify and regulate every feature in detail of these programs. We recognize that such a level of detail is

over-reaching and that such micromanagement can lead to inflexibility and unintended results. This is especially true with evolving technologies, where such over-specificity may discourage innovation.

We believe that it is important that electronic bills contain the same information as paper bills and this includes any bill inserts and newsletters. Again, the point is to encourage the use of these programs by assuring customers that they will be receiving the same information electronically that they have always received on paper. However, we agree with PECO that while we should require the same information on electronic bills, we should not specify a format. As PECO points out, one of the advantages of electronic communication is the technological possibilities of presenting information in new, more interactive and innovative ways. Mandating a set format may well stifle these creative possibilities. We will make a minor revision to paragraph (3) to remove a redundant word; "required."

We agree with Action Alliance that it is critical that, whatever the format, the electronic bill must include an option that the customer can easily utilize to contribute to the utility's hardship fund. These funds rely on customer contributions and are of urgent importance to the customers that need them. Going back to the 1992 PUC report on *Investigation of Uncollectable Balances*, where recommendation 27 (page 31) urged "…all major gas and electric companies' should adopt the 'dollar check-off' provision or a similar provision on utility bills to enable customer to make contributions with minimal effort." In addition, this is a component of some of the major utility's universal service plans that are filed with and approved by the Commission. For example, PPL's *Universal Service and Energy Conservation Plan For the Period (2008 – 2010)* includes this provision:

> Begun in March 1983, Operation HELP was one of the first utility-sponsored hardship funds in the nation. Through its annual promotional campaign, PPL Electric encourages customers to contribute by adding an extra $1, $2, or $5 to their monthly electric bill or by sending in onetime, lump-sum checks. Over 20,000 customers give to Operation HELP via their electric bill payments. PPL Electric's customer service system has the flexibility to allow customers to give any amount to the program and to choose a specific period of time (over the winter months).

Another example is *PECO Energy Company Universal Services Three-Year Plan, 2007 to 2009, February 2009 Revision, Revised to Reflect the Settlements Approved by the Commission on October 29, 2008 in Docket No. R-2008-2028394 and on December 23, 2008 in Docket No. M-00061945* which includes this provision:

> The Matching Energy Assistance Fund (MEAF) is PECO's hardship fund program. There are two components, MEAF contributors and MEAF grants. Contributors – Ratepayers can pledge donations through monthly bill payment, or a one time donation.
> Monthly Bill Check-Off and bill inserts options - Beginning in the 4th quarter of 2006,

customers will have the ability to contribute to MEAF through a check-off box on their monthly bill stub.

We also note that this matter has been addressed by the General Assembly in the Natural Gas Choice and Competition Act at Section 2205(c)(6) that requires gas utilities to take reasonable steps to allow customers to contribute via their bill to hardship energy funds. However, to address the concerns expressed by PPL and IRRC, we will revise the proposed regulation to specify that a hardship fund contribution feature only needs to be provided if the utility has a hardship fund and collects contributions through regular customer billings.

We agree with EAP, NFG, Columbia, FirstEnergy and PGW in that we should not require a utility to provide redundant paper and electronic bills to the customer at the same time. We are not convinced that requiring duplicate bills is of any substantial benefit especially since we propose requiring both electronic and paper bills to provide the same information. Requiring such redundancy may defeat some of the purposes of electronic bills, such as the environmental benefits and cost savings.

We commend utilities such as UGI and Columbia that have put in place procedures to address instances where an e-mail delivery fails. We believe that if a utility is going to rely on billing a customer electronically, failed e-mails should not be ignored, especially since, as noted by PULP, not all failures are necessarily the fault of a customer. While we agree that failed delivery of an e-mail cannot be ignored and should be addressed by the utility, we will not require a specific method or procedure for handling such. The evolving technologies and differences in each utilities program make the mandating of a specific procedure problematic. However, utilities should be directed to have some procedure in place and for guidance may want to look at the procedures utilized by UGI and Columbia that are discussed in their comments.

PPL, PGW and UGI reported that customers are free to cancel electronic billing at anytime. We believe that this is an important feature that will encourage participation in these programs. However, we agree that a cancellation should require advance notice of at least one billing cycle as opposed to one calendar month because as parties like Columbia and PGW point out, billing cycles do not necessarily coincide with calendar months. As for the amount of notice that must be provided prior to cancellation, parties such as PULP suggest the proposed period is too much; while some parties suggest it may be too little notice. We believe that a "one billing cycle" period is a reasonable middle ground.

To further reinforce the message that security is important, especially in the context of heightened concerns with identity theft and data theft, we believe we should remind utilities of their obligations to secure their systems. However, we should avoid specifying the precise methods that a utility should employ in protecting customer information from unauthorized access. Ever-changing technology would make this impossible and might inhibit new and

innovative security arrangements. We agree with Phillips in their comments responding to the proposed § 56.25 that we should simply indicate that utilities should employ "all reasonable measures to protect customer information from unauthorized disclosure and to prevent access to customer account records by persons who are not properly authorized to have such access."

PGW suggests that the Commission permit the electronic transmission of other notices, such as termination notices. We see merit in allowing this as to accomadate customer's who may be more comfortable with electronic means of communication, and in keeping with our intent to update these regulations as to accomadate technological advances. However, we believe this should only be allowed with the prior consent of the customer, and that the electronic notices will complement the normal notice process - not replace it. As anyone with experience with e-mail knows, an e-mail inbox can easily be filled with a variety of spam and other unsolicited e-mail. An important notice from a utility can be easily overlooked. As such, we believe providing termination notices through the traditional methods should continue, with the electronic termination notice augmenting the procedure, not replacing it.

§ 56.262. Meter reading; estimated billing; customer readings.

Allegheny Power states that § 56.12(2)(i) be amended to accommodate electronic and telephonic methods for submitting meter readings in lieu of paper postcards.

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

PULP recommends the Commission amend the final sentence of Section 56.12(5)(i), by replacing the word "occupant" with "applicant or customer." PULP explains that given that the word "occupant" has taken on a specific meaning under these regulations, this word choice may now be inapt and confusing.

Columbia notes that the proposed definition of "AMR (Automatic meter reading)" in § 56.2 correctly excludes remote reading devices. However, Columbia thinks that the proposed additional language that would refer to AMRs in 56.12(5) confuses that distinction. While the proposed language appears to be designed to reinforce that AMR reading are actual readings, Columbia thinks the way the language is inserted may be misconstrued as an indication that 56.12(5) applies to AMR readings. If the definition of AMR in 56.2 were to be amended as suggested above in these comments, no reference to AMRs would be necessary in 56.12(5).

Allegheny Power suggests language requiring mandatory 12-month stay in and stay out provisions to prevent customers from participating in budget billing only when their budget bill amounts are less than their actual monthly usage amounts.

FirstEnergy does not support the provision requiring amortization of any anniversary bill amounts exceeding $25. According to FirstEnergy, if the customer is already on a payment agreement, this provision would require adding a second payment agreement onto the account, presenting problematic and expensive programming and bill presentment changes. Moreover, this could also be inconsistent with Section 1405(d) of Chapter 14 which prohibits the Commission from ordering the establishment of a second payment agreement.

PPL generally agrees with the Commission's suggested revision, but suggests adding language indicating that a reconciliation amount exceeding $25 shall, depending upon the amount and the customer's ability to pay, be amortized over a 3-12 month period at the discretion of the utility.

Columbia opposes the proposed changes to 56.12(7) that would require any reconciliation amount under budget billing that exceeds $25 to be amortized over a three to twelve month period. Columbia contends that the proposed changes conflict with the policies of Chapter 14 explaining that the 3-12 month amortization requirement will result in public utilities incurring additional expenses in the form of carrying costs which must be financed through borrowed money, and which will ultimately be passed onto other customers who should not be required to subsidize unnecessary payment plans. Columbia also finds no support anywhere in Chapter 14 for the proposed additional language in 56.12(7) that would require payment agreements for heating customers to be based upon equal monthly billing. Finally, Columbia submits that the reference to "payment agreements" has no place in a subsection that addresses budgets.

NFG suggests changing "and" to "or" in the first sentence of §56.12(7). NFG also requests that the amortization period be changed to no longer than 9 months and that amortization be made only necessary at the request of a customer.

PGW believes that the proposed requirement to amortize budget reconciliation amounts in §56.12(7) is contrary to Chapter 14's prohibition on the Commission from ordering second payment agreements because many of PGW's customers on budget billing have already received and broken payment agreements. Without waiving this position, PGW is amenable to setting a reasonable dollar amount over which a reconciliation amount could be amortized if the customer requests such. PGW suggests that amounts between $100 and $300 could be amortized over 6 months with amounts in excess of $300 amortized over 12 months. However, PGW asserts that the customer should have the option to pay the bill in full.

Phillips recommends that the minimum budget billing reconciliation amount requiring amortization be increased from $25 to $100 so as to avoid logistic and administrative burdens of having to monitor transactions involving small amounts.

Concerning § 56.12(7), EAP believes that the Commission, despite statutory language, has extended repayment periods or granted second or subsequent payment agreements to many customers who defaulted on previous payments. EAP explains that by ordering a utility to defer payment, for example, for 12 months for a customer with a gross monthly household income of 300% of the federal poverty level, the Commission overlooks Section 1405(b)(4) which provides that the maximum period of time is only 6 months. EAP submits that allowing a customer to make payment of $26 over a 12-month period simply delays full payment unnecessarily, thereby compounding a utility's cash flow difficulties. Moreover, to comply with this regulation, EAP believes that the utilities would need to increase programming and other collection tracking, which comes at a cost, all contrary to the spirit of Chapter 14.

Action Alliance supports the proposed requirement, at § 56.12(7), that reconciliation of budget bills not cause sudden jumps in payment requirements, which would defeat the purpose of budget billing to provide equal monthly bills. Action Alliance requests that the term "payment agreements" in the new language should be changed to a different term such as "amortization" to avoid confusion with the Chapter 14 defined term "payment agreement" that can count toward the maximum number of payment agreements that a customer may receive for a particular balance.

PULP supports the Commission's choice in Section 56.12(7) to require year-round, open rolling enrollment into the budget billing program, where this means that at no time in the year would a customer be denied enrollment into the program. PULP explains that budget billing enables a customer to have fairly consistent bills each month of the year, reducing the billing volatility caused by seasonal changes in energy use. This facilitates a household's ability to maintain a fairly regular bill amount, appropriately budget, and build a consistent payment history.

IRRC has three concerns with paragraph (7) which specifically addresses the budget billing process. First, the proposed paragraph changes the billing mechanism from "equal monthly" to "budget billing," yet the Commission does not explain the reason for the change. As a result, many commentators expressed concerns that changing the method was inappropriate. Second, IRRC explains that paragraph (7) allows a public utility, as part of budget billing, to amortize over a three to 12-month period any amount exceeding $25 resulting from reconciliation. IRRC asks how the Commission determined that both the amount triggering amortization and the time periods is reasonable. Finally, IRRC questions the need for the last sentence of paragraph (7) that states: "payment agreements for heating customers shall be based upon equal monthly billing."

Discussion:

We agree with Allegheny Power and have proposed allowing electronic and telephonic methods to comply with § 56.12(2). We disagree with NFG however and do not believe it is appropriate to expand the number of consecutive months that estimated bills would be permitted. We note that the current regulations require only one utility-obtained meter reading annually in cases where meter access is an issue. Given the advances in AMR and remote metering, we would expect the instances of meter access problems and estimated bills to diminish over time; not increase. Therefore, loosening these already lenient requirements is not needed at this time. We also disagree with PULP that the word "occupant" in the final sentence of § 56.12(5)(i) is a possible problem. The new "occupant" may not necessarily be a "customer" or an "applicant" and that person's status as such is not of any relevance in providing access to the utility for the purposes of obtaining a meter reading. We agree with Columbia in that with the new definition of "AMR – Automatic Meter Reading" at § 56.2, the inclusion of AMR language in § 56.12(5) is redundant and no longer needed. And in keeping with our intent to modernize the regulations, we will remove the references to "postcards" from paragraph (ii) as to accommodate other, technology-driven methods of submitting customer meter-readings.

Most of the comments about this section were specifically related to § 56.12(7), commonly referred to as the budget billing rules. Budget billing has been the subject of previous Commission proceedings with many stemming from a Motion of then Vice Chairman Cawley in *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing,* M-00051925 (November 10, 2005). The Motion described the importance of these programs to both consumers and utilities:

> "…and budget billing has become a key tool for customers to mitigate spikes in utility bills and for utilities to manage account receivables. Now is the time to ensure that utility budget billing programs optimize both the customers' and companies' ability to manage higher prices this winter…"

The Motion also asked interested parties to comment as to what should be the elements of an acceptable budget billing program. Based on the comments received, the Commission issued two subsequent orders; *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing,* M-00051925 (June 1, 2006) and, *Re: Insuring Consistent Application of 52 Pa. Code § 56.12(7) Equal Monthly Billing,* M-00051925 (November 9, 2006). In the June 1, 2006 Order, the Commission declared that an acceptable budget billing program should include the following elements:

- Budget billing must be available, on a rolling enrollment basis, to all utility customers with residential end use irrespective of the rate the account is billed.

- Based on well-established case history, budget billing must be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility.
- Budget accounts are to be routinely monitored and adjusted at least three times per year, consistent with the Commission's regulations to prevent over or under collections to the extent possible.
- Natural gas utilities should adjust budget bills at least four times per year, in conjunction with their Purchased Gas Cost (PGC) rate adjustments.
- The budget billing payment period must be a minimum of 12 months, with no annual true-ups occurring during the winter heating season.
- If the true-up amount is less than 100% of the budget amount, customers should be given 3-6 months to pay off that amount.
- If the true-up amount is 100% or more of the budget amount, customers should be given 12 months to pay off that amount.
- Any tariff provision that is inconsistent with the Commission's interpretation of its regulation is deemed null and void.

The Commission concluded the Order by stating that:

> "By allowing rolling enrollment in budget billing programs and mandating adjustments to the budget billing amount at least three times per year, we reduce the likelihood of having large true-ups at the end of the budget year. Given the utilities' obligation to review budget billing amounts 3-4 times per year, large true-ups should be the exception. By doing this we are providing a way for companies to smooth customer bills and decrease their exposure to uncollectible expenses. We strongly encourage utilities that do not presently have these elements in place to work with BCS to ensure that their new system contains the elements that comply with the letter and intent of this Final Interpretive Order. The Commission will incorporate this Final Interpretive Order in the next Chapter 56 rulemaking."

However, this was not the Commission's final declaration on this subject. In response to petitions for reconsideration filed by various parties, the Commission followed up with additional guidance and clarification in a November 9, 2006 Order. Among other things, the Commission deferred to the rulemaking process some of the interpretational issues raised by some parties:

> "PPL argues that the prohibition against winter true-ups is overly broad since it includes all customers, not just heating customers. We agree. In the discussion section of the Final Interpretive Order, we stated that two commentators found winter true-ups for heating customers undesirable during the winter. However, when we enumerated the list of essential elements for an acceptable budget billing program, we did not limit that element to heating customers. Moreover, as explained by PPL, if the budget billing amount is reviewed and adjusted periodically, the true-up amount should not be substantial. Under these circumstances, we shall delete the prohibition on winter true-ups from the interpretive rule. Nevertheless, we reiterate what was stated in our Final

Interpretive Order. We expect utilities to exercise good judgment in dealing with these situations, and to manage their budget billing programs in a manner designed to avoid large winter true-ups for heating customers.

We also agree with the commentators that there appears to be a conflict between Section 56.12(7) and the enumerated element that the budget billing period "must be a minimum period of 12 months… ." In addition, NFG stated that some of its customers are satisfied with a 10 month budget billing program that allows customers to experience two months of lower current bills during the summer months. As stated in our Final Interpretive Order, the purpose of that order was to provide guidance. Since our intent was not to change or modify the current regulation, we will modify the fifth bullet on page 19 of our Final Interpretive Order to more closely track the existing regulation. Accordingly, we do not intend to prohibit 10 or 11 month budget billing programs that suit the needs of some customers and utilities.

Finally, we agree with NFG and Columbia that bullet numbers 6 and 7, pertaining to how long customers should be given to pay off true-up amounts, raise interpretational issues with Chapter 14 payment arrangement limitations. The purpose of our Final Interpretive Order was to provide guidance as to how budget billing programs are managed, not to resolve interpretational issues that will be the subject of the rulemaking required at Section 6 of Act 201 to amend Chapter 56. Accordingly, we will delete bullet numbers 6 and 7 from these guidelines. However, we emphasize that we expect utilities to exercise good judgment in dealing with true-up amounts in their budget billing programs. The remaining elements enumerated are guidelines on how to set up budget billing programs and what common elements we expect to see in budget billing programs. These guidelines should have no effect on customer assistance programs and existing payment agreements. Moreover, the use of "should" for bullet numbers 4-7 is intended to communicate what the Commission would like to see practiced by utilities. Nevertheless, the elements listed as acceptable budget billing components are guidelines, not a mandate. As stated in our Final Interpretive Order the goal of budget billing is to allow new customers, and existing customers not previously enrolled in a budget billing program, to obtain the maximum benefits from the program, while benefiting utilities by reducing their exposure to uncollectible expenses. A properly designed and managed budget billing program will achieve these goals and benefit both the customer and the utility."

The Commission then modified the list of elements that an acceptable budget billing program should include:

- Budget billing must be available, on a rolling enrollment basis, to all utility customers with residential end use irrespective of the rate the account is billed.
- Based on well-established case history, budget billing should be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility.

- Budget accounts are to be routinely monitored and adjusted at least three times per year, consistent with the Commission's regulations to prevent over or under collections to the extent possible.
- Natural gas utilities should adjust budget bills as often as necessary, but not less than three times per year. Rate changes such as increases in the Purchased Gas Cost (PGC) are examples of indicators that budgets may need adjustment.
- The budget billing payment period should average service costs over a 10, 11 or 12 month period.
- Any tariff provision that is inconsistent with the Commission's interpretation of its regulation is deemed null and void.

As noted above, the Commission in 2006 declared that budget billing would be addressed in this rulemaking; and that the interpretational issues concerning Chapter 14, specifically Section 1405(d) would also be addressed.

We disagree with EAP, FirstEnergy and Columbia that the Commission's proposal to require the amortization of reconciliation amounts conflicts with Chapter 14's limits on Commission – mandated payment agreements found in Section 1405(d). A "true-up" or "reconciliation" amount results when a utility, at the end of the budget billing "year" reconciles the customer's billed amount with the amount of service the customer actually used. This could be a positive amount (meaning the customer has a credit) or a negative amount (meaning that the customer will be billed to recover the difference). If the utility has been properly reviewing the account throughout the budget year, large reconciliation amounts should be rare. However, it can occur, especially with new customers, customers who are recent budget enrollees, or customers with highly erratic usage patterns. Such large reconciliation amounts defeat the purpose of budget billing, which is to provide the customer with a somewhat consistent, predictable bill amount that will facilitate regular payment; thus reducing a utility's uncollectible debt problems. When we discuss amortization of such bills, we are instructing the utility to adjust the future budget billing amounts to cover not only current average usage, but also to include a portion of the reconciliation amount from the previous budget year.

Frankly, Chapter 14 limits also do not apply because we are not talking about past-due charges. The definition of *payment agreement* in Chapter 14 at Section 1403 specifically refers to the amortization of an "unpaid balance of the account." In the Commission's proposal, we are not discussing "unpaid" amounts; in fact we are discussing amounts that the customer has not even been billed for. Thus we cannot accuse a customer of having an "unpaid balance" when in reality the customer has never been billed for the balance in question. Additionally, Chapter 14 is irrelevant when considering this requirement at § 56.262 because this section only applies to utilities and consumers that are specifically excluded from Chapter 14 provisions, as we explain in reference to § 56.251.

In any event, we do find merit in the comments of PPL, NFG, PGW and Phillips in that the Commission's amortization proposal should be modified to reflect a more reasonable dollar trigger amount. We find a $100 trigger amount more reasonable than the proposed $25 amount, and also that this should not be an absolute requirement; customers should have the option of paying in full if so desired. Amounts between $100 and $300 can be amortized over 6 months; with amounts exceeding $300 amortized over at least a year. We will also include language permitting shorter amortization periods if the customer requests such. This amortization schedule should not result in payments that are overly burdensome for the customer; while providing a reasonable timeframe for the utility to collect on the unbilled charges.

This amortization requirement is intended to encourage customer participation in budget billing programs. For this same reason, we must reject Allegheny Power's suggestions about mandatory stay-in/stay-out provisions. We believe that such provisions would discourage customers from participating in budget billing programs. Regarding Allegheny Power's concerns with customers leaving budget billing when their actual usage is less than their monthly budget amount, we note that there is nothing to prevent a utility in this situation from removing the customer from budget billing and then billing the customer for unpaid actual usage. The above discussed amortization requirement only applies to customer's at the end of their budget year. To further make these programs more consumer-friendly, we are proposing changing the name of this subsection from *Equal Monthly Billing* to *Budget Billing*. Budget billing is the term that utilities and consumers commonly use to discuss these programs and the regulatory language should reflect this. This is merely a change in the terminology; it is not a change in the methodology used to calculate budget billing amounts.

Finally, we agree with Columbia and IRRC that the directive that "payment agreements for heating shall be based upon equal monthly billing" would be better placed elsewhere in the regulations. We propose placing it in § 56.337, which addresses the negotiation of payment agreements with customers facing the termination of service. This requirement dates back to the Commission's order in *Mary Frayne v. PECO Energy Company,* C-20029005 (July 17, 2003) where the Commission declared (page 7):

> "Budget billing should be the norm for all payment arrangements rather than current billing. Budget billing was designed to aid customers who are experiencing financial difficulties by ensuring a level, predictable payment amount from month to month. The level payment amount will better enable the customer to plan for his or her utility bills and budget accordingly. Therefore, customers should not be provided with the option of choosing current billing when budget billing is a more beneficial option."

This guidance was again reiterated in the June 1, 2006 and November 6, 2006 budget billing orders discussed previously where the Commission twice declared that "[b]ased on well-established case history, budget billing should be the method by which customers in arrears pay current bills while liquidating the past due amounts owed the utility." In conclusion, including

this guidance in the regulations is simply codifying a well-established Commission expectation that has been the subject of the previously mentioned Commission formal proceedings.

§ 56.263. Billings for merchandise, appliances and nonrecurring and recurring services.

Phillips asks that this requirement be made clearer by adding the phrase "which requirement shall be satisfied where the charges for nonbasic services appear on lines of the customer bill which are different or separate from those which address basic services" to the end of this proposed section.

The OCA is concerned that while the proposed change in this regulation will allow charges for merchandise, appliances, etc. to appear on the utility bill, 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 based on such charges. The OCA does not support the proposed change because there is nothing in Chapter 14 and no technological advance that would justify the change to the long-standing requirement that these services be billed separately.

IRRC notes that rather than have a separate billing, the proposed regulation would now include miscellaneous merchandise as part of the bill for basic service. According to IRRC, a commentator suggests there is no justification for this change, and that it could unfairly result in termination of service if termination is based on overdue miscellaneous merchandise charges. If a utility is able to terminate a customer's basic service as a result of unpaid miscellaneous merchandise charges, then the Commission should clarify in the final-form regulation that basic service cannot be terminated as a result of unpaid miscellaneous merchandise charges.

Discussion:

The changes proposed by the Commission to this section were intended to reflect the electric and gas bill formal regulations found in the customer information regulations for electric and gas; the relevant portions as follows:

> **§ 54.4. Bill format for residential and small business customers.**
> (a) EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement.
> (b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The default service provider will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.
> (1) EDC charges must appear separately from EGS charges.
> (2) Charges for basic services must appear before charges for nonbasic services, and appear distinctly separate.

(3) Customer bills must contain the following charges, if these charges are applicable, and these charges must appear in a distinct section of the bill. The designation or label of each charge as either a basic charge or nonbasic charge appears in parenthesis following the name of the charge. This label of either basic or nonbasic is not required to accompany the name of the charge on the bill.

(i) Generation charges (basic).

(A) Generation charges shall be presented in a standard pricing unit for electricity in actual dollars or cents per kWh, actual average dollars or cents per kWh, kW or other Commission-approved standard pricing unit.

(B) Generation charges shall appear first among the basic charges with one exception. EDCs may place the customer charge first among the basic charges.

(ii) Transmission charges (basic).

(iii) Distribution charges (basic).

(iv) Customer charge or basic charge (charge for basic service in § 56.15 (relating to billing information)) (basic).

(v) Advanced metering charges (basic).

(vi) Transition charges (basic).

(vii) Taxes (comply with § 56.15) (basic).

(viii) Late payment charges (basic).

(ix) Security deposit (basic).

(x) Reconnection fee (basic).

(xi) Itemization of nonbasic charges (nonbasic).

(xii) Overall billing total.

§ 62.74. Bill format for residential and small business customers.

(a) NGS billed prices shall reflect the marketed prices and the disclosure statement prices.

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, and to the extent that the charges are applicable. Duplication of billing for the same or identical charges by both the NGDC and NGS is not permitted.

(1) NGDC charges shall appear separately from NGS charges.

(2) Charges for basic services shall appear before charges for nonbasic services, and appear distinctly separate.

(3) Customer bills shall contain the following charges, if these charges are applicable, and these charges shall appear in a distinct section of the bill. The designation or label of each charge as either a basic charge or nonbasic charge appears in parentheses following the name of the charge. This label of either basic or nonbasic is not required to accompany the name of the charge on the bill.

(i) Commodity charges (basic).

(A) Commodity charges shall be presented in the standard pricing unit for natural gas of the NGDC in actual dollars or cents per standard pricing unit or actual average dollars or cents per standard pricing unit.

(B) Commodity charges shall appear first among the basic charges with one exception. NGDCs may place the customer charge first among the basic charges.

(ii) Distribution charges (basic).
(iii) Customer charge or basic charge (charge for basic service in § 56.15 (relating to billing information)) (basic).
(iv) Gas cost adjustment charges (basic).
(v) Interstate transition cost surcharges (basic).
(vi) Taxes (Comply with § 56.15) (basic).
(vii) Late payment charges (basic).
(viii) Security deposit (basic).
(ix) Reconnection fee (basic).
(x) Itemization of nonbasic charges (nonbasic).
(xi) Overall billing total.

The above cited regulations were promulgated subsequent to the most recent revision of Chapter 56, and these regulations clearly permit the billing of nonbasic and basic charges on the same utility bill, as long as the charges are labeled and properly separated. The main reason for the Commission's proposed changes to § 56.13 is to simply update this section and make it consistent with the customer information regulations. We must disagree with the OCA that the requirement that nonbasic charges be billed separately is "long-standing." In fact, this requirement was dispensed with upon the adoption of the above-noted customer information regulations.

We share OCA and IRRC's concerns that termination for nonbasic charges should never be permitted, and have elected to address this in the proposed § 56.83(3) which prohibits termination of service for unpaid "in whole or in part: of nonbasic charges for leased or purchased merchandise, appliances or special services including but not limited to merchandise and appliance installation fees, rental and repair costs; of meter testing fees; of special construction charges; and of other nonrecurring or recurring charges that are not essential to delivery or metering of service, except as provided in this chapter." We believe this provision provides sufficient protection against the termination of essential utility service for nonpayment of nonbasic charges. In addition, we have proposed definitions of both *basic* and *nonbasic* services in the definitions at § 56.2 to help make clear how charges should be classified and to avoid confusion on this point. The definitions reflect the definitions found in the above mentioned customer information regulations with additional language added, per the suggestion of OCA and IRRC, that addresses default service.

§ 56.264. Previously unbilled utility service.

Duquesne suggests adding language to § 56.14 that would exclude situations involving fraud or theft. Equitable also suggests that theft and fraud be expressly excluded from the proposed four-year rule and that a utility should be permitted to recover the amount previously unbilled without regard to the timeframe. However, PECO understands that as the regulation is currently written and also proposed, neither fraud nor theft are triggering events, and thus not considered make-up

bills under § 56.14. PECO supports the Commission proposal to limit make-up bills to four years and the Commission's decision not to mandate a 20 percent discount on such billings.

Columbia opposes the establishment of a four-year limit on make-up bills. Columbia believes that the proposed four-year limit would serve to increase uncollectible accounts and, as such, would conflict with the General Assembly's stated policies in Chapter 14. Furthermore, Pennsylvania statutory law requires utilities to charge the approved rate for services provided, and makes no exception for any vintage of previously unbilled service (66 Pa.C.S. § 1303). Furthermore, Columbia submits that the $50.00 threshold for providing a customer with the option of entering into a payment agreement should be removed. Over a period of four or more prior billing periods, the $50.00 limit will almost always be exceeded. Columbia submits that, absent information that a $50.00 make-up bill would cause undue hardship to a particular customer, a payment agreement for such a low make-up payment is not necessary. Columbia states that the proposed regulation should be amended so that the 50% threshold for excess of the otherwise normal estimated bill should be the only threshold for whether a payment agreement will be made available. NFG also recommends increasing the threshold amount.

Action Alliance supports the Commission's recommendation to retain the obligation to offer an installment arrangement on make-up bills since such an arrangement concerns "unbilled" amounts, not "billed" amounts, and as such, are not considered a payment agreement in the context of Chapter 14. To avoid confusion, Action Alliance recommends the use of the term "payment agreement" should be avoided in the context of arrangements to pay a make-up bill. Action Alliance proposes use of the term "installment arrangement" for these make-up bill arrangements. Action Alliance also supports retaining the current threshold amounts of 50% of current bills or $50 required for the issuance of make-up bills because the current levels are appropriate and working in an adequate fashion. Any increase in the threshold, and resulting immediate demands for full payment, would impose significant burdens on utility customers, especially on low-income customers. Action Alliance also supports the proposed four-year limitation on make-up bills as it reflects the same restrictions found in other sections of Chapter 56 or Title 66, *i.e.,* § 56.35 (relating to payment of outstanding balance), § 56.202 (record maintenance requirements), and 66 Pa.C.S.A. § 1312 (relating to refunds).

The CAC continues to support the proposal to establish a four-year limit on billings for previously unbilled service. CAC also recommends, consistent with its position in the NOPR, that arrangements to pay previously unbilled utility service not be subject to the constraints and limitations which apply under Chapter 14 "payment agreements". The CAC continues to support this approach and further supports the Commission determination to retain the current threshold amounts of 50% of the current bills or $50 required for the issuance of make-up bills. According to CAC, an increase above current levels would pose significant burdens on many utility customers, most particularly on low-income consumers.

The OCA supports the Commission's determination to impose the four-year limit on make-up bills under § 56.14 and to clearly state that arrangements to pay make-up bills are not considered "payment agreements" under Chapter 14. OCA argues that the four-year limit is a long-standing practice and is consistent with the four-year limit in Section 1312 and there is no reason under Chapter 14 to modify this practice. However, to avoid any confusion when considering whether the customer has received a payment agreement from the Commission under Chapter 14, the OCA recommends that a different term, like "payment plan" be used in discussing payment arrangements on make-up bills.

PULP supports proposed § 56.14's retention of the current threshold amounts required to trigger the issuance of make-up bills. The current levels are appropriate and presently working in an adequate fashion; any increase would pose significant burdens on many utility customers, most particularly on low-income consumers. PULP also supports the Commission's recognition that Chapter 14 does not apply to § 56.14 make-up bills. PULP submits that the definition of payment agreements contained in §1403 relates specifically to amounts previously billed to the consumer which have gone unpaid; make-up bills, not having been billed to the consumer, fall outside the parameters of Chapter 14.

PULP also requests that the Commission eliminate references to the term "payment agreement" in § 56.14. The proposed definition of payment agreement contained in § 56.2 states that a payment agreement refers to a "liability for billed service"; however, § 56.14 deals with previously unbilled service. Therefore, it seems inappropriate and potentially confusing to use the term "payment agreement" to refer to the repayment methodology of § 56.14.

IRRC recognizes that this section allows for a utility to render a make-up bill for previously unbilled public utility service which accrued within the last four years. However, IRRC notes that Section 1303 appears to require utilities to charge the approved (tariff) rates for services provided.

Discussion:

First we must address the comments of Duquesne and Equitable that request an exception be inserted into this provision exempting instances of fraud and theft. This is not needed because as PECO correctly points out, the regulation as it is currently written and also proposed does not include fraud and theft as triggering events. This means a bill seeking to recover amounts that were previously unbilled because of theft or fraud have never been considered make-up bills under § 56.14 and this will continue to be the case under the proposed revisions to this section.

We must also reject Columbia and NFG's suggestion to raise the triggering dollar amounts found in this section. As Action Alliance and PULP point out, the current triggering amounts are

appropriate and currently working adequately and any increase may pose burdens on many utility consumers, especially low-income consumers.

We agree with CAC, OCA, Action Alliance and PULP that the payment agreements mentioned in this section are not payment agreements as defined by Section 1403. The definition of *payment agreement* at Section 1403 clearly refers to an "unpaid balance," and § 56.14 concerns charges that have not even been billed as yet, let alone unpaid. As a result, these arrangements entered into under § 56.14 should not be counted toward the payment agreement restrictions and standards found in Sections 1405(d) and 1407(c). To avoid confusion on this point, we agree with CAC, OCA, Action Alliance and PULP that we should refrain from using the term *payment agreement* in this section and instead simply refer to amortization.

Concerning the proposed four-year limit on make-up bills issued under this section, except for Columbia, the four-year limit on make-up bills is not opposed. As emphasized by the Action Alliance, this limit of four years reflects the same restrictions found in other sections of the Public Utility Code and Chapter 56 regulations. The General Assembly under Section 1312 of the Public Utility Code determined that when a utility had to pay back or refund excess amounts, the period that this covers is also limited to the previous four years. This four-year time period is also consistent with the time limitations for civil actions, proceedings and other matters generally. 42 Pa. C.S.A. § 5525. Furthermore, the Commission's regulations have a long-standing practice of requiring payment of outstanding residential accounts with the utility that have also accrued within the past four-year period. Moreover, the Commission's record keeping regulations at § 56.202 require a utility to preserve written or recorded disputes and complaints for a minimum of four years.

Finally, in 2004 the Commission addressed the issue of whether there should be a time limit on make-up bills and what is the appropriate period. In *Roderick Berry v. Philadelphia Gas Works*, F-01184412 (April 15, 2004), Pages 8-9, the Commission made the following disposition on the issue:

> "We also must address the appropriate period for the make-up bill, if any is found to be warranted. The ALJ found that pursuant to Section 3314(a) of the Code, 66 Pa.C.S. § 3314(a), the Commission's statute of limitations is three (3) years from the date at which liability arose. (I.D. at 5). However, that is not the proper timeframe for make-up billing. In *Angie's Bar v. Duquesne Light Company*, 72 Pa. PUC 213, 1990 Pa. LEXUS 4 (1990), (*Angie's Bar*) we stated the following on the issue of make-up billing generally:
>
> > Section 1312 of the Public Utility Code permits ratepayers to seek rate refunds when certain findings are made, up to a four-year past period measured from the date that the improper billing was discovered. Parity and equity warrant that a utility should likewise be limited to a four-year past period for recoupment of under billings. ...*Accordingly, we shall limit backbillings to a four-year period in*

> *cases where the customer has no culpability*, and as such, Duquesne, in this proceeding, is permitted to backbill the Complainant for estimated unmetered usage for a period of April 10, 1982 to May 28, 1986."

72 Pa. PUC 217; 1990 Pa. PUC LEXIS 12-13. (Emphasis added). (Footnote omitted)

The Commission continued its analysis noting that prior decisions provide for a four-year period where "theft of service or other culpable acts" did not lead to the under billing. *Roderick Berry* at page 9.

As indicated in our discussion, the issue does not involve a determination of the appropriate tariff rate. The issue involves a resolution of the appropriate period for the make-up bill or the length of time a utility can go for recoupment of under billings. Therefore, the adherence to tariff requirement under Section 1303 is not relevant as we are not addressing the level of rates the utility is charging. We are merely addressing how far back a utility may charge for unbilled utility service. Quite the opposite, with respect to increasing uncollectible accounts, adopting a regulation that encourages a utility to limit the size of a make-up bill balance can only improve collections.

We will also remove the vague term "review" in paragraph (1) and replace it with the more specific "explain" since an explanation is what the customer needs when a make-up bill is received.

§ 56.265. Billing information.

In this age of electronic billing and reduction in local business offices, Equitable suggests revising § 56.15(12) to specify that a rate schedule and an explanation of how to verify the accuracy of a bill is available on the utility's website or by calling the utility.

PULP submits for the Commission's consideration two minor clarifications to this section by replacing "or complaint" with "or dispute" in subsection (11) and adding "and online at the public utility's website in an easily accessible location" to the end of subsection (12).

Discussion:

We find merit in Equitable's and PULP's suggestion that paragraph (12) should include posting information on a website. This will improve public access to this information especially given that most utilities do not have local offices in every community. However, we do not see a need to change "complaint" with "dispute" since this is long-standing language has not caused any difficulties or confusion that we are aware of. "Dispute" is also a term that is specifically

defined in these regulations and is narrower than the more generic term "complaint." For the purposes of this subsection, which is very general, the more generic reference is appropriate.

No party raised any serious concerns with proposed paragraph (14) and we propose keeping this language as proposed. The intent of paragraph (14) is to refer electric and gas utilities to the bill format regulations found in the customer information regulations that were promulgated subsequent to the most recent revision of Chapter 56. However, we will remove the proposed paragraph (15) that refers all utilities to the plain language guidelines that include some bill format guidance. We are removing this language because it may be inappropriate to reference non-binding guidelines in binding regulations.

§ 56.266. Transfer of accounts.

Allegheny Power, Duquesne, Equitable, FirstEnergy and PGW believe that § 56.16(d) should be rewritten to state that "In the event of a termination of service to a residential customer, a public utility may transfer to the account of a third-party guarantor the entire unpaid balance of the customer" to reflect the provisions of § 1404(b) and § 56.33. PPL also recommends rewording this section or just deleting § 56.16(d) altogether.

PECO believes that this provision could also be used by customers facing termination who request discontinuance simply to be removed from billing. PECO believes that the Commission does not intend this result and suggests adding to the proposed section language that will enable a utility to hold the customer responsible for any charges accumulated after the discontinuance date if the customer still benefited from the service by remaining at the property past the discontinuance date.

Columbia believes that the proposed new language to § 56.16 is ill-advised because it will create additional costs to be borne by ratepayers, with no benefit to them or to the affected public utility. For example, in rental properties where rolling tenancies are common, it can be unwieldy if not impossible in some cases, to calculate an 'after-the-fact' final bill accurately. Moreover, the proposed language encourages user without contract situations because it removes the incentive of a former tenant (who, without this proposed change would continue to be billed) to arrange for meter access after the former tenant has vacated.

Equitable recommends revising the proposed section to specify that in "the absence of a notice or meter access, the customer shall be responsible for services rendered until the meter is secured or service is transferred to another party" because there are many situations when the utility is not provided access to discontinue the service. The proposed regulation also does not address who is responsible for the utility service consumed during the period between the time the customer vacates a premises and the utility is provided access.

Dominion reports that it is not uncommon to find situations where there is a significant difference between the estimated reading of the final bill and the next actual reading the utility obtains. Because the utility must then allocate the usage between customers, Dominion suggests deleting the phrase "and can determine the actual consumption used by the customer" as to eliminate any question about the utility's right to adjust the final bill even if that actual reading does not determine with certainty the customer's actual consumption.

NFG supports the proposed changes to § 56.16(a).

PGW claims that customers who request discontinuance often fail to show up for an appointment for physical discontinuance. PGW requests that this proposed language be revised to specify that a customer who fails to attend an appointment should be held responsible until meter access is provided. If the utility does not attempt to access the meter or the customer cannot provide access, then the account should be discontinued based on an estimated meter reading, subject to adjustment once access is obtained.

EAP notes that under §56.16(a), the customer is only required to notify the utility, at least seven days in advance, "specifying the date on which it is desired that service be discontinued." EAP believes that the proposed regulation is silent on who is responsible for the utility service consumed during the period between the time the customer vacated the premises and the utility is provided access. EAP recommends changing §56.16(a) to require the departing customer to provide access to the utility meter and that in the absence of a notice or meter access, the customer shall be responsible for services rendered until the meter is secured or service is transferred to another party. EAP also notes that under §56.16(d), the unpaid balance "which is equivalent to the cash deposit requirement" may be transferred to the account of a third party guarantor. EAP thinks §56.16(d) should be changed to be consistent with Section 1404(b) and specify that in the event of a termination of service to a residential customer, a public utility may transfer all missed payments owed to the public utility to the account of a third-party guarantor.

The OCA agrees with the proposed modifications to this regulation, but proposes additional language to subsection (a) to clarify the public utility's obligation to obtain a final meter read. The OCA proposes to add a qualification to the regulation specifying that only "after reasonable attempts to obtain" meter access should the service be discontinued based on an estimated reading.

PULP recommends the Commission include an exception to the rule in this section. For example, where a victim of domestic violence is fleeing her abuser, she will clearly and understandably not be of the mindset to notify the utility of the desire to discontinue service. Making this notification might draw the abuser's attention and actually place the victim in physical danger. There are also several other reasonable situations that could justify affording an exception to this

rule: in association with an unlawful self-help eviction by the landlord where an evicted tenant may not be able to provide proper notice; in a situation of fire or other emergency where a customer may inadvertently fail to provide sufficient notice; in situations of a disabling illness requiring immediate hospitalization or movement without eventual return to the premises. Given these likely possibilities, PULP recommends that the Commission carve out an exception to this rule that allows an individual to provide good cause to avoid liability for service used after that individual's departure.

IRRC notes that this section describes billing procedures for account transfers and subsection (d) addresses transfers from terminated residential customers to third-party guarantors. However, this subsection states that the transfer may be "any portion of the unpaid balance which is equivalent to the cash deposit requirements of the customer." IRRC raises a commentator's concern that this language is inconsistent not only with 66 Pa.C.S. §1404(b), but also with the proposed language in Section 56.33(2)(ii) of the regulation, which both require the guarantor to be responsible for *all* missed payments. IRRC states that for purposes of consistency not only with the statute but also within the regulation itself, "unpaid balances" should be replaced with "missed payments."

Discussion:

The Commission proposed the revisions to paragraph (a) to address situations where the utility does not obtain a final meter reading to close and bill an account. Many of the utility commentators framed this issue from the perspective of a customer failing to provide access, but did not address situations where a utility may miss an appointment with a departing customer. While probably not a common occurrence, emergencies and other contingencies do cause utilities to miss some pre-scheduled appointments. However, it does leave the departing customer with a problem; one that none of the utility commentators fully addressed. While incidences of this nature should diminish in the future as utilities move toward automated metering, it is still a common enough occurrence that we believe it needs to be addressed in regulation.

The Commission has formally addressed this issue in the *Petition of Equitable Gas Company for Appeal From Staff Action Pursuant to 52 Pa. Code § 5.44 Regarding Discontinuance of Service and Meter Access*, Docket No. P-00011888 (March 14, 2002). The proposed revisions to this section simply codify the Commission's expectations as expressed in this final order. On page 6 of this Order, the Commission declared:

> "We are unpersuaded by Equitable's assertions that our interpretation here today will adversely affect the utilities and inure upon them additional costs which are beyond them to control. To begin with, we emphasize that we are not abdicating the responsibility of the ratepayer to provide proper notice to the utility for discontinuance, or their obligation

> to pay a final estimated bill where access to the meter is not provided within a reasonable time. Such a result would be inconsistent with general principles of equity.
>
> Moreover, Equitable retains the ability to render a reconciled bill when an actual final reading occurs and indicates that the estimated final bill was in error. Alternatively, the utility company is in the position to take additional measure to obtain a final meter read even if the initial attempts are unsuccessful."

No party in the instant proceeding has produced an argument that would cause us to change our previous position on this matter. It is simply not reasonable to expect an individual, who no longer owns the residence or no longer has a lease for the residence, to provide access to said residence. There may also be tenants who cannot provide access to a utility meter, even if they are still residing in the residence if the meter access is controlled by the property owner.

Many of the suggestions and arguments presented by utility commentators, such as PECO's, that would allow them to leave service on and continue to bill for the service would serve simply to facilitate the practice of "soft offs" – the questionable practice of leaving service physically active at a location without a current customer of record. While we are aware that several utilities engage in this practice and present it as a convenient and cost-saving procedure, the Commission has traditionally been skeptical of the practice. In the Commission's June 5, 2005 *Chapter 14 Implementation – Petitions of the Energy Association and the Philadelphia Gas Works for Clarification and/or Reconsideration of the Implementation Order* (Docket M-00041802 F0002), the Commission noted as follows:

> "We submit that EAP's perspective is extremely narrow on this issue. Although EAP asserts that the soft "off" practice reduces costs to a utility's customer base, the Commission is unaware, and it has not been brought to our attention, of any utility study that shows that the savings associated with soft "off" practices offset the aggregate usage and financial loss that can and does occur between the date of a soft "off" and the date on which the utility discovers usage without a contract. For example, a number of days can pass between customers when the prior customer has discontinued service and the utility service is left on and the utility discovers that a new resident has taken occupancy. Therefore, the three days' usage may be minimal compared to the aggregate usage and financial loss that can and does occur between the date of a soft "off" and the date on which the utility discovers usage without a contact." (pages 11-12)

No party in the instant proceeding has produced anything that would cause the Commission to be any less skeptical of this practice. If we were to include provisions in this regulation holding departing parties responsible for bills after the requested discontinuance date, we would be creating an incentive for utilities to neglect to pursue meter access. The utility would in fact have no incentive to pursue a final meter reading. It must also be noted that since the definition of "customer" in Section 1403 links the status of "customer" to the "mortgage, deed or lease," it