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INDEPENDENT REGULATORY
REVIEW COMMISSION

May 15, 2009

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Ms. Fiona E. Wilmarth
Director of Regulatory Review
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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

Dear Ms. Emery and Ms. Wilmarth:

As requested in connection with our meeting on May 4, enclosed is a table providing a number of discrete instances where the proposed Chapter 56 regulations conflict with the existing statutory language and legislative intent of Act 201. This information supplements comments filed by the Energy Association of Pennsylvania on behalf of its utility distribution company members.

The statute has a number of specific legislative objectives found at 66 Pa.C.S.A. §1402 and directs the Pennsylvania Public Utility Commission to revise existing regulations found at Chapter 56 of the Pennsylvania Code. See Act 201 at Section 6. Specifically, the General Assembly sought to (1) eliminate the previous rules found in Chapter 56 which the legislature concluded did not successfully manage the issue of bill payment and threatened paying customers with higher rates; (2) establish equitable rules which prevent customers capable of paying from avoiding timely payment of public utility bills; and (3) provide PGW with additional collection tools in recognition of its weak financial health.

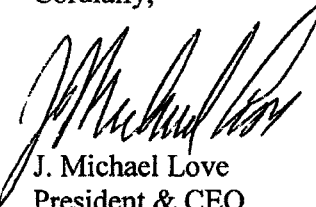
In particular, in addition to the examples on the chart and included in comments, I stress that there is not one proposed regulation that assists PGW or provides tools to address its stressed financial condition. This is in contrast to the granting of at least two emergency rate increases to PGW by the Commission since the enactment of Chapter 14. PGW currently has a Triple B-bond rating, one step above junk bond status – the legislature recognized the seriousness of the situation and instructed the Commission to revise rules to aid PGW. The proposed regulations do not meet that objective.

Heather Wimbush Emery, Esq.
Ms. Fiona E. Wilmarth
May 15, 2009
Page 2

In addition to the clear conflict between many of the proposed regulations and the statutory language, it does not appear as if any cost benefit analysis has been attempted or included in the agency evaluation. As set forth in the Association's comments at page one, the industry estimates that the cost of adhering to the proposed regulations nears \$50 million per year and includes the cost of extra winter surveys, innumerable extra visitations to residential customers at between \$50 and \$75 a visit and the carrying costs attributable to late payments.

Thank you for seeking further industry input on this massive proposed rulemaking and please do not hesitate to contact us with further questions.

Cordially,



J. Michael Love
President & CEO

JML

Enclosure

Cc: Mr. Scott R. Schalles
Michaele A. Totino, Esq.

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>DECLARATION OF POLICY</p> <p>Section 1402 (2) <i>...It is now <u>time to revisit these rules and provide protections against rate increases for timely paying customers resulting from other customers delinquencies.</u> The General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the <u>timely payment</u> of public utility bills. (Emphasis supplied.)</i></p>	<p style="text-align: center;">The legislative directives of the statute are not reflected in proposed Chapter 56 regulations.</p> <p>No protections were provided to <u>protect against rate increases</u> for timely paying customers. In fact, language that has been added to certain sections acts to increase costs for timely paying customers.</p> <p>EXAMPLE Section 56.100 (h) – proposes two additional winter surveys each which add significant Operations and Maintenance costs to public utilities, and ultimately timely paying customers</p> <p>EXAMPLE Section 56.82 – prohibits utilities from performing authorized terminations on Fridays unless the public utility has offices open on Saturday during regular business hours and personnel on duty who can negotiate conditions to restore service, accept emergency medical certificates, accept payment to restore service and can restore service. Chapter 14 specifically directs that as long as the public utility can accept payment to restore service on the following day and can restore service consistent with section 1407, utilities may perform authorized terminations on Monday through Friday. See 66 Pa. C.S.A. §1406(d). Again, additional language added by the Commission causes public utilities to incur additional costs which are ultimately borne by good-paying customers.</p>

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>DECLARATION OF POLICY</p> <p>Section 1402 (3) <i>Through this chapter, the General Assembly seeks to <u>provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections.</u></i> (Emphasis supplied.)</p>	<p style="text-align: center;">The legislative directives of the statute are not reflected in proposed Chapter 56 regulations.</p> <p>No modifications to the delinquent account procedures were provided to <u>equitably assist public utilities in reducing their uncollectible accounts.</u> In fact, modifications were made that hinder delinquent account collections.</p> <p>EXAMPLE Section 56.22 (d) provides that “A public utility at its discretion may waive a late payment charge on any customer account.” The industry agrees with this addition but would strike the remainder of the new language which states “The Commission may direct the waiver of late payment charges, <u>at its discretion,</u> for customers with a gross income less than or equal to 150% federal poverty level.” Section 1409 of the statute states that the Commission may order a waiver of any late payment charges levied by a public utility <u>as a result of a delinquent account</u> for customers with a gross monthly income not exceeding 150% of the federal poverty level. The proposed regulation allows the Commission to waive late payment charges for all customers at that income level regardless of whether there is an account delinquency.</p>

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>DECLARATION OF POLICY</p> <p>Section 1402 (4) <i>At the same time, the General Assembly believes that it is appropriate <u>to provide additional collection tools to city natural gas distribution operations</u> to recognize the financial circumstances of the operations and protect their ability to provide natural gas for the benefit of the residents of the city.</i> (Emphasis supplied.)</p>	<p>The legislative directives of the statute are not reflected in proposed Chapter 56 regulations.</p> <p>PA's only city natural gas distribution company (Philadelphia Gas Works) was not provided with any additional collection tools within these proposed regulations.</p>
<p>DEFINITIONS</p> <p>Section 1403</p> <p><i>"Applicant." A natural person <u>not currently receiving service</u> who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential services is requested.</i></p> <p><i>"Customer." A natural person in whose name a residential service account is listed and who is <u>primarily responsible for payment of bills rendered for the service</u> or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.</i></p> <p>(Emphasis supplied.)</p>	<p>EXAMPLE</p> <p>Section 56.2 - additional language to these definitions proposes to expand the definition of customer to include someone whose service has been terminated (for whatever reason) until the final bill for the service is past due. The proposed definition added "... A natural person remains a customer after discontinuance or termination until the final bill for service is past due."</p> <p>The definition of applicant at Section 1403 clearly defines an applicant as "a person not currently receiving service". According to the definitions provided at Chapter 14, a person who is no longer receiving service cannot be a customer.</p> <p>The Commission's expansion of the term applicant beyond the statutory definition is then used to avoid the specific statutory provisions of 1407 and leads the Commission to grant payment arrangements to applicants through the misuse of Section 1405.</p>

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>CASH DEPOSITS AND HOUSEHOLD INFORMATION REQUIREMENTS.</p> <p>Section 1404(a) <i>In addition to the right to collect a deposit under any commission regulation or order, the commission shall not prohibit a public utility, <u>prior to or as a condition of providing utility service</u>, from requiring a cash deposit in an amount that is equal to one-sixth of the applicant's estimated annual bill, at the time the public utility determines a deposit is required from the following ... "</i> (Emphasis supplied.)</p> <p>Section 1404(e) <i>A public utility shall not be required to provide service if the applicant fails to pay the full amount of the cash deposit. 66 Pa.C.S.A. §1404(e).</i></p>	<p>EXAMPLE</p> <p>Section 56.38 proposes that an applicant may elect to pay any required deposits in three installments: 50% payable upon the determination by the public utility that the deposit is required, 25% payable 30 days after the determination, and 25% payable 60 days after the determination. <u>A public utility shall advise an applicant of the option to pay the requested security deposit in installments at the time the deposit is requested.</u></p> <p>However, 1404(a) clearly states that a public utility shall not be required to provide service to an applicant without that applicant paying the <u>full amount of the cash deposit</u> if failing to pass the creditworthiness test of the utility. The proposed regulation mandates the utility to allow for payment of a security deposit to be at the discretion of the applicant. The proposed regulation reverses the statutory language which places the discretion with the utility.</p>

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>CASH DEPOSITS AND HOUSEHOLD INFORMATION REQUIREMENTS</p> <p>Section 1404(a)(2) <i>Any applicant or customer who is unable to establish creditworthiness to the satisfaction of the public utility through the use of a generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice.</i></p>	<ul style="list-style-type: none"> ▪ EXAMPLE Section 56.36 – The proposed regulations added language that requires public utilities to include “in their tariffs filed with the Commission their credit and application procedures along with their credit scoring methodology and standards.” <p>The credit scoring methodology and standards are developed by third parties, such as Equifax, with whom the utility contracts. That information is not appropriate to include in a tariff.</p> <p>Further, any change made to the credit reporting agency’s policies or procedures would require the public utility to file a tariff adjustment request with the Commission, which can be a lengthy and costly procedure, again incurring costs which would be paid by its timely paying customers.</p> <ul style="list-style-type: none"> ▪ EXAMPLE Section 56.35 (1) additionally requires that if credit is denied, the public utility shall inform the customer or applicant orally and in writing of the reasons for the denial – and that 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. <p>15 USC §1681g(a)(1)(B). The Fair Credit reporting Act (FCRA) Section 1681g directs that a consumer reporting agency shall not be required to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.</p>

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>CASH DEPOSITS AND HOUSEHOLD INFORMATION REQUIREMENTS</p> <p>Section 1404(b) <i>Nothing in this section shall be construed to preclude an applicant from furnishing a third-party guarantor in lieu of a cash deposit <u>The guarantor shall be responsible for all missed payments owed to the utility.</u></i></p> <p>(Emphasis supplied.)</p>	<p>EXAMPLE Section 56.16(d) – proposed regulations 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 any portion of the unpaid balance which is equivalent to the cash deposit requirement of the customer.” This directly conflicts with the language at 1404(b) relative to the responsibilities of a third party guarantor.</p>
<p>RECONNECTION OF SERVICE</p> <p>1407(d) <i>Payment of outstanding balance at premises – A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which services is requested during the time the outstanding balance accrued and for the time the applicant resided there.</i></p>	<p>EXAMPLE Section 56.35(2)(a-b) – proposed language limits the public utility’s ability to collect payment of an outstanding balance or portion of an outstanding balance, as a condition of providing service, for service previously furnished under another account in that person’s name. This is in direct conflict to 1407(d) and, again, adds costs to the timely-paying customers who ultimately pay for those uncollectible dollars.</p>

<p style="text-align: center;">STATUTE Chapter 14</p>	<p style="text-align: center;">PUC Proposed Chapter 56 Regulations</p>
<p>TERMINATION OF UTILITY SERVICE</p> <p>Section 1406(f) Medical certification <i>A public utility shall not terminate service to a premises when a licensed physician or nurse practitioner has certified that the <u>customer</u> or a member of the customer's household is seriously ill ...</i></p> <p>(Emphasis supplied.)</p>	<p>EXAMPLE</p> <p>Section 56.111 – states that “A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under §56.191 (relating to the general rule) or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service.”</p> <p>Again, the proposed language adds to the statute's directives by including the applicant seeking restoration of service.</p>