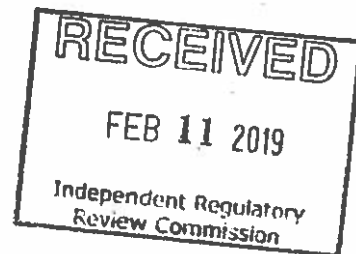




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September 12, 2017



Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania
to the Commission's Order Seeking Additional Comments at the above-referenced docket.

Sincerely,

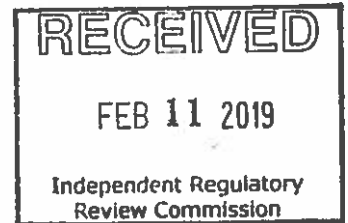
A handwritten signature in black ink, appearing to read "Nicole W. Gear".

Nicole W. Gear
Manager, Policy & Research

Enclosure

3/6/1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**



Rulemaking to Amend the Provisions of
52 Pa. Code, Chapter 56 to Comply with the
Amended Provisions of 66 Pa. C.S. Chapter 14

Docket No. L-2015-2508421

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO ORDER SEEKING ADDITIONAL COMMENTS**

I. INTRODUCTION

Amendments made to Chapter 14 of the Public Utility Code (66 Pa. C.S. §§ 1401-1419) by Act 155 (signed into law by Governor Tom Corbett in 2014) supersede a number of current regulations (52 Pa. Code, Chapter 56) and, as such, the Pennsylvania Public Utility Commission ("PUC" or "Commission") has been charged with revising current regulations to implement and enforce the amended statute.

On July 21, 2016, the PUC issued a Notice of Proposed Rulemaking Order for Act 155 ("Proposed Rulemaking Order" or "NOPR") in order to address the areas where the amended Chapter 14 supersedes the present Chapter 56 regulations. This NOPR follows the Commission-issued December 10, 2014 Secretarial Letter that addressed the more immediate, significant provisions of the statute and existing regulations that were superseded by Act 155. The NOPR also follows a January 15, 2015 Tentative Order¹ which sought input on a number of implementation

¹ Tentative Order Re: *Chapter 14 Implementation*, Docket No. M-2014-2448824.

matters: Section 1403, definition of medical certificate; and Section 1410.1(3) and (4), utility reporting requirements concerning residential accounts with arrearages in excess of \$10,000.00 and annual reporting of medical certificate usage. The Energy Association of Pennsylvania (“EAP” or “Association”) previously submitted comments to both the Tentative Order and the NOPR.

Following review of stakeholder comments to the NOPR, the Commission issued another Order on July 12, 2017 seeking additional comments on issues raised as well as introducing two new issues into the proceeding. EAP respectfully submits these comments to the Commission’s request for additional comment on the proposed regulatory changes to Chapter 56 to supplement those filed individually by its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members.²

II. COMMENTS

A. Privacy Guidelines at 66 Pa. C.S. 1406(b)(1)(ii)(D)

The amendments to Chapter 14 via Act 155 made reference to the PUC’s privacy guidelines 66 Pa. C.S. 1406(b)(1)(ii)(D) directing that these guidelines be applicable to emails, text messages, and other electronic messages sent between utilities and their customers. The Commission asked for initial input on its privacy guidelines via the NOPR. At that time, EAP recommended further stakeholder discussion on drafting Commission privacy guidelines as flexibility is necessary in an environment where technology and the related privacy issues are ever-evolving.

² Electric Utility Members: Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company. Gas Utility Members: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Equitable Division; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; and, Valley Energy Inc.

The Commission, via this most recent Order, agreed with EAP that it “not be overly prescriptive or detailed in the regulations, given ever changing technology.”³ Furthermore, the Commission recognized that the General Assembly referred to such privacy rules as “guidelines” and not regulations. Given this review, the Commission has decided to address its privacy guidelines in a separate proceeding. EAP is supportive of this proposal and looks forward to working alongside the Commission and other stakeholders in fully vetting issues and recommendations regarding customer privacy.

B. Data on the Usage of Medical Certificates

The Commission received comment to the NOPR from the Commonwealth’s Independent Regulatory Review Commission (“IRRC”) pursuant to the Regulatory Review Act, 71 P.S. §§745.1-745.15. The IRRC asked the Commission to “explain its historic experience with medical certificates including how many medical certificates are on file each year in relation to the overall number of customers, how medical certificate fraud has affected uncollectable accounts, and what proportion of the utility’s overall revenue the impact of fraudulent medical certificates represent.”⁴ The Commission offered the data reported for 2016 by the utility companies pursuant to Section 1410.1(4) of chapter 14 regarding medical certificate usage. However, this figure captures only the annual number of medical certificates submitted and the annual number of certificates that were accepted by the utility. No additional information is required by the report. Therefore, via the Order, the Commission asked stakeholders to comment on their experience with fraudulent use of medical certificates, particularly their use to avoid termination and their impact on uncollectable accounts and overall utility revenue. EAP defers to its member utilities on the specifics of this request.

³ Order at 5.

⁴ IRRC comments to NOPR, Docket No. L-2015-2508421, p. 6.

EAP does, however, reiterate its points from its comments to the NOPR that those customers utilizing the protection of a medical certificate should be held to the same standard as other payment-troubled customers enrolled in universal service programs. Medical certificates are intended as a protection to ensure service is maintained, not as a bill forgiveness program. As the Commission noted in its Final Order as well, “medical certificates are intended to assist vulnerable consumers with serious health conditions maintain utility service – but are not intended to allow a customer to avoid paying for utility service.”⁵ Should a customer need further financial assistance beyond what is afforded by a medical certificate and available renewals, the customer can ask for further assistance and the utility can evaluate their income eligibility for additional universal service programs.

EAP also recommended in its comments to the NOPR the inclusion of the accounts’ use of medical certificates on the annual utility report required under Section 1410.1(3) regarding residential accounts in arrears in excess of \$10,000. This additional data point identifying if the customer has had any medical certificates associated with the debt may further illuminate the medical certificate’s use as a delay tactic to avoid termination inasmuch as termination processes are deferred upon notification that a member of the household suffers from a medical condition that would be worsened by the termination of utility service and such utilization may allow for additional (uncollectable) arrearages to accumulate on the account.

C. Cost and Impact of Regulatory Changes

The IRRC also requested further information regarding the fiscal impact of the proposed changes to the regulations in its comments to the NOPR.⁶ The IRRC is tasked with ensuring that

⁵ Final Order Re: *Chapter 14 Implementation*, Docket No. M-2014-2448824, p.4.

⁶ IRRC comments to NOPR, Docket No. L-2015-2508421, p. 6.

the costs of any proposed regulation are in balance with the benefits in order to determine that such costs are justified and in the public interest. The Commission, therefore, asked stakeholders via the Order to provide cost (or savings) estimates associated with compliance with the proposed changes proffered in the NOPR and this Order. EAP defers to its member companies responses on this request.

D. Third-Party Notification of Supplier Switching

The Commission's Office of Competitive Market Oversight ("OCMO") has been advised that Sections 56.131 and 56.361 of the Public Utility Code relating to third-party notification "may be of service" in regard to energy supplier switching. Current regulations provide for third parties to receive copies of collection notices, including past due and termination notices. The purpose of such notification is to provide information to a third party that may assist the customer with a problem, such as an adult child for their elderly parent. The notices are voluntary and strictly informational, with no additional obligation or action required by the recipient.

The Commission, via this Order, is soliciting comment on a proposal to add supplier switching confirmation notices to the list of provided notices under Sections 56.131 and 56.361. A supplier switching confirmation notice is sent pursuant to 52 Pa Code §§ 57.173 and 59.93 following a customer's enrollment with a competitive supplier. The utility sends its customer this notice to alert the customer to the switch and provide the date upon which the switch will be effective. The notice also informs the customer how to contact the utility if there are any problems, such as an unauthorized switch. The argument presented by the Commission in the Order is that a third party may want to be aware of a customer's supplier selection in order to help her with the shopping process; the assumption being that some consumers may find the competitive

marketplace confusing or difficult to navigate and would prefer or require assistance of a third party and that this additional notification would be beneficial in proffering that assistance.

EAP does not disagree with the Commission's proposal in principal. Customers may in fact want or need additional assistance in navigating the energy marketplace. However, the logistics of this proposal were not thoroughly vetted in the Order. For example, utility information systems technologies typically separate the functions that handle billing and termination notices from the portion that handles notices related to suppliers and switching. Integration of these systems so that one person could be a designated recipient of both billing and supplier notices may come at a cost that is unbalanced by the benefit provided, particularly given the limited number of customers who would elect it.

EAP defers to its member companies regarding the extent of the cost and the number of customers currently utilizing third-party notification and/or estimates of the number of customers that may be interested in third-party notification of supplier switching confirmations. EAP recommends the Commission review and evaluate the information provided before continuing with this proposal. EAP would also recommend the Commission evaluate whether the option to provide supplier switching notices to third parties could be made without mandating their inclusion in regulation.

E. Customer Retaining Utility Service Pending Formal Appeal

The Commission's Bureau of Consumer Services ("BCS") seeks to clarify the effect of its informal decisions in situations where a customer has appealed that informal decision, thus sending the dispute to a proceeding before an administrative law judge. Current Commission regulations at Section 56.172 and Section 56.402 provide for an automatic stay of the informal complaint decision following a formal complaint filing. Maintaining the status quo while the informal

decision is on appeal mirrors the process followed in formal administrative and judicial proceedings, protects the due process rights of the parties, and minimizes administrative/judicial intervention in the day-to-day operations of regulated entities and businesses. The Commission, however, proposes to revise these regulations applicable to informal proceedings and mandate that utilities restore service, i.e. that the stay does not apply, while a formal appeal of a BCS decision is pending.⁷ The revised language mandates reconnection at an informal stage of the proceeding at the discretion of BCS without any further process and despite the filing of an appeal by the utility.

EAP believes that the Commission has not thoroughly vetted the implications of this proposed amendment. The additional language would alter the established informal complaint process and change the role of BCS from arbiter to decision maker. The clear intent of Chapter 14 is that the informal complaint process is not a “legal proceeding” but rather a means by which to resolve disputes short of a formal complaint that the parties then agree to follow. The informal decision does not have the same binding effect as the decision made in a formal complaint process before an administrative law judge. The PUC’s proposed addition of language “by a customer” permits a stay of an informal complaint decision if an appeal (formal complaint) is filed *only* by the customer; therefore, by exclusion, this language prohibits the application of the stay for appeals (formal complaints) filed by the utility. EAP does not believe it is the Commission’s true intent, or particularly lawful, to create an imbalance regarding the applicability of an automatic stay as between the customer and the utility during the informal complaint process.

By analogy, customers are presently protected by the automatic stay in place at Section 56.172 whenever they file an informal complaint in response to a notice of termination.

⁷ In cases where the informal decision rendered by BCS was for the utility to restore service.

Termination processes are put on hold during the pendency of the informal complaint so long as the customer continues to pay current charges due and those charges in dispute, i.e., the status quo is maintained. In comparison, the proposed revision automatically alters the status quo without any further process. EAP recommends the Commission withdraw these proposed changes until such time as these ideas and issues can be fully vetted as regards the impact on the informal complaint process itself.

Should the Commission wish to explore this issue further outside the context of this rulemaking, EAP believes that the explanatory language that follows the proposed regulatory change is informative.⁸ Namely, in certain situations, utilities may choose to restore service during the pendency of an appeal of an informal decision even where it would alter the status quo; however, the quid pro quo would, at a minimum, require the customer to pay current bills along with any undisputed portions of money due to the utility. Utilities should not be required to restore service if a customer is not abiding by the terms of the informal complaint decision while an appeal is pending.

EAP further recommends consideration of the utility employee safety in situations where an informal decision seeks restoration of service for the customer. Some disputes regarding service termination involve situations that are unsafe (tampering, theft of service, unsanitary or unsafe condition of the home) for utility employees to enter into in order to restore service. Utilities maintain an obligation to protect their employees from harmful situations and should not be mandated to restore service, particularly at the informal complaint stage of the dispute and in contravention of the automatic stay provisions, when it is unsafe to do so.

⁸ The language in the Order states that “[i]f a customer receives a BCS informal decision with restoration terms and the customer pays according to the BCS informal decision, the utility must restore service.”

F. Other Issues

EAP offers the following input given the Commission's invitation to submit additional comments on "any other issue" raised by the comments filed under the docket for this proceeding.⁹ EAP appreciates this opportunity to provide further comment.

i. Petition for Supplier-Consolidated Billing

On December 8, 2016, NRG Energy, Inc. ("NRG") filed a petition ("NRG Petition") requesting the PUC to initiate a proceeding that would result in a mandate for EDCs to enable the implementation of supplier consolidated billing ("SCB") by the second quarter of 2018 for a "qualified" electric generation supplier that chose to provide SCB services. See, NRG Petition at paragraphs 15, 27, 70 – 75. The NRG Petition details a prescribed set of actions for the PUC to follow to reach the sought after remedy of SCB ostensibly on behalf of electric generation suppliers operating in Pennsylvania. However, the Electricity Generation Customer Choice and Competition ("Competition Act"), *as amended*, 66 Pa. C. S. §§ 2801 – 2815 does not provide for SCB as a customer billing option nor does it grant statutory authority to mandate the implementation of SCB. Sections 2807 (c) and (d) of the Competition Act clearly provide that EDCs are to remain responsible for customer service functions, including billing for distribution service, meter reading, collections and complaint resolution. 66 Pa. C. S. §§ 2807 (c) and (d). NRG in its comments to the NOPR on amendments to Chapter 56 made another attempt at requesting the PUC to implement SCB via its recommended language changes to the regulations. EAP outlined its objections and the illegality of such a proposal in its comments to the NRG Petition as provided for following its publication in the PA Bulletin on December 24, 2016. EAP asked the Commission to dismiss the NRG Petition as a matter of law and decline to follow the

⁹ Order Seeking Additional Comment, Docket No. L-2015-2508421, p. 13.

path proposed by NRG to establish a new regulatory program that would require EDCs to facilitate SCB.¹⁰ EAP incorporates by reference its comments to the NRG Petition and asks the Commission to dismiss this attempt to circumvent the legally-established system of utility billing and to derail constructive improvements and required updates to Chapter 56 under this docket.

ii. 52 Pa. Code § 56.100(j) Reporting of deaths at locations where public utility service was previously terminated

EAP does not agree with comments offered to the NOPR¹¹ that suggest removal of language that protects the information submitted by the utility to the Commission following the discovery and reporting of a death at a location where public utility service was previously terminated. The commenters argue that there is a fundamental difference – one that is in the public interest – between those accident reports similarly shielded from public access under 66 Pa. C.S. §1508 and those reports under 52 Pa. Code § 56.100(j). EAP disagrees with this assessment.

iii. Information Provided by Utilities on Accounts in Arrears in Excess of \$10,000

EAP appreciates the Commission's acceptance of its prior comments under this section relative to the reporting requirements of utilities regarding accounts with arrears in excess of \$10,000.00. EAP supports the idea of an annual "snapshot" date for this report, as first recommended and adopted by the Commission¹² and as already filed for 2015 and 2016 by the utilities.

EAP does not agree with stakeholder comments¹³ to the NOPR that recommend changing the nature and format of this report to include all accounts in arrears over the calendar year

¹⁰ EAP comments to Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-25792493, p. 3.

¹¹ Comments of the "Low Income and Consumer Rights Groups" to NOPR, Docket No. L-2015-2508421, p. 43.

¹² Final Order, Chapter 14 Implementation, Docket No. M-2014-2448824 (Order entered July 9, 2015) (Implementation Order).

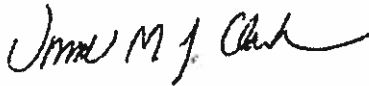
¹³ OCA Comments to Tentative Order, Docket No. M-2014-2448824, p. 5; OCA comments to NOPR, Docket No. L-2015-2508421, p. 23.

(cumulative approach) for several reasons. First, the utilities still must compile this report manually. There is no automation in most utility customer information systems to obtain the data required by the report; utilities have to run individual computer queries. Running individual queries for every account every month or by some other increased frequency would necessitate more expense and work for the companies than the information would ultimately provide to the Commission and other stakeholders regarding these accounts. Secondly, the "snapshot" approach incentivizes utilities to concentrate on those accounts that have continuing outstanding high arrearage issues. If a customer is over \$10,000 in arrearages earlier in the reporting year, but through her efforts and the work of the utility has reduced the arrearage to under \$10,000 by the annual "snapshot" date, that is a benefit not only to the utility in having one fewer account on the report but also a benefit to both the particular ratepayer with the arrears in having less owed and the residential rate base by ultimately having less uncollectable expense. EAP recommends the Commission maintain the format of the annual arrearage report as agreed to in its Final Order.

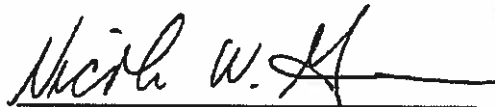
III. CONCLUSION

The goal of the comments contained herein is to encourage the Commission to continue to strive toward an optimum balance between the two main goals of Chapter 56: protecting vulnerable customers and helping them to maintain essential utility service while minimizing costs for the remainder of the residential rate base. EAP respectfully requests that the Commission consider these comments as it develops a Final Order on Chapter 56 regulations.

Respectfully submitted,



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Date: September 12, 2017