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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**Comments of the Consumer Advisory Council to
the Pennsylvania Public Utility Commission**

INTRODUCTION

These comments are submitted by the Consumer Advisory Council (Council) to the Pennsylvania Public Utility Commission (Commission). The comments, which address a number of consumer protections available to low and lower income public utility customers and applicants for utility service, are in response to the Commission’s July 21, 2016 Notice of Proposed Rulemaking Order (Rulemaking Order), which was published in the Pennsylvania Bulletin on February 18, 2017.¹ The Rulemaking Order seeks comments about proposed amendments to the Commission’s regulations governing Standards and Billing Practices for Residential Utility Service found at Chapter 56 of the Pennsylvania Code, 52 Pa. Code. §§ 56.1-56.41 (“Chapter 56”). Revisions to Chapter 56 are necessary as a result of Act 155 of 2014 which Act reauthorized and amended Chapter 14 of the Public Utility Code (66 Pa. C.S. §§ 1401-1419) (“Chapter 14”).

The Council is responsible for advising the Commission upon matters relating to the protection of consumer interests affected by the Commission’s exercise of its jurisdiction as

¹ 47 Pa.B. 965.

provided by law, and is encouraged to provide advice and input that will aid the Commission in pursuit of its regulatory duties.² The protections provided by Chapter 56 have been in existence for almost 40 years, having been first enacted in 1978,³ and for decades served as model regulations protecting the interests of consumers in “ assur[ing] adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.”⁴ This rulemaking is therefore of significant importance to Pennsylvania consumers and it is properly within the purview of the Council to provide comment.

GENERAL STATEMENT

Although in a number of specific instances, Chapter 14 specifically modifies or supersedes provisions or procedures contained within Chapter 56, the two chapters share the common policy objectives of achieving equity in payment and collection processes and in maintaining residential service. Chapter 14 specifically seeks to “ensure that service remains available to all customers on reasonable terms and conditions.”⁵ The same is true of Chapter 56:

§ 56.1. Statement of purpose and policy.

- (a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures. This chapter assures adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills and protecting against rate increases for timely paying customers resulting from other

² See 52 Pa. Code § 91.2. (Purposes of the Council.)

³ See Consumer Standards and Billing Practices for Residential Service, 76 P.R.M.D. 10 (Order Entered April 21, 1978).

⁴ 52 Pa. Code § 56.1.

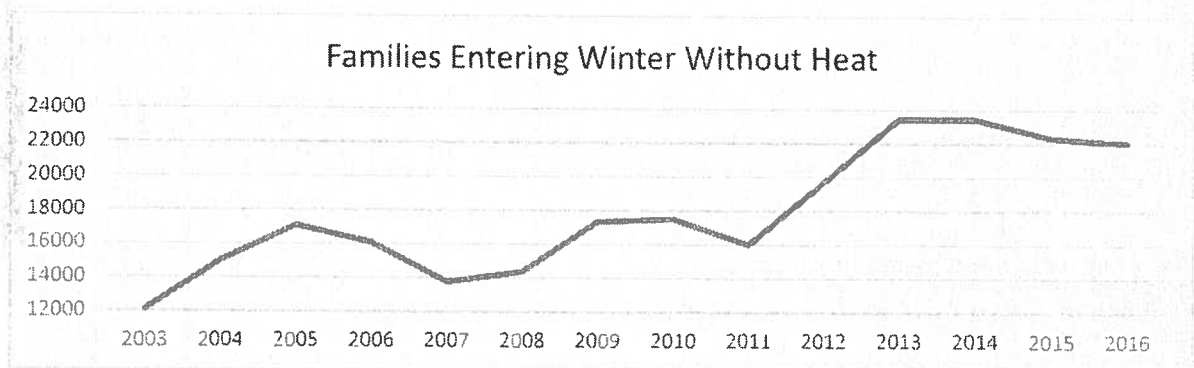
⁵ 66 Pa. C.S. § 1402(3).

customers' delinquencies. Public utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages. Every privilege conferred or duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. This chapter will be liberally construed to fulfill its purpose and policy and to insure justice for all concerned.⁶

The Council, as a result of monitoring monthly termination figures, and the Cold Weather Survey published by the Commission, is greatly concerned about the continuing upward trend in terminations and disconnections. Specifically, the Council has observed alarmingly high:

- Residential service terminations;
- Households that do not have a safe central heating source in winter; and,
- Vacant dwellings in winter subsequent to service termination.

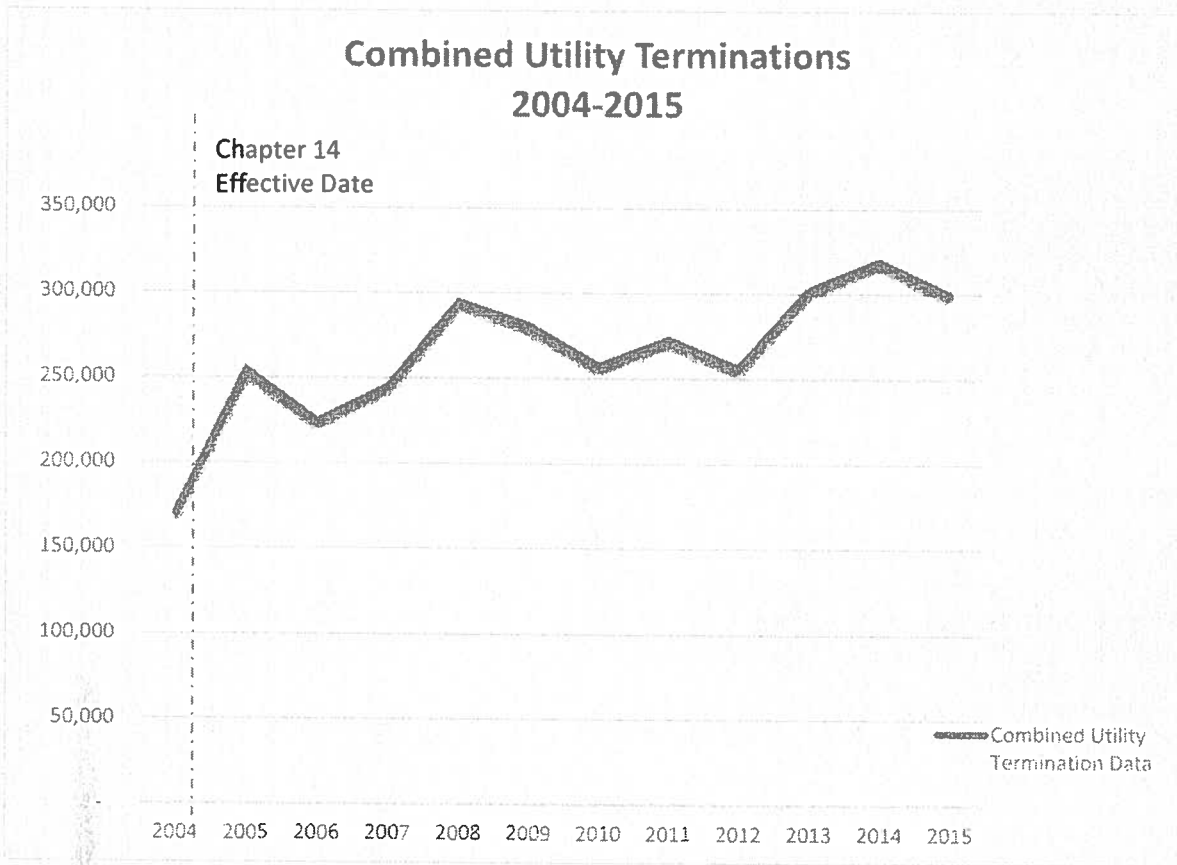
These trends can be seen visually on the following charts:



Source: Pennsylvania Cold Weather Survey Reports published by the Commission⁷

⁶ 52 Pa. Code § 56.1

⁷ Available at: http://www.puc.pa.gov/filing_resources/gas_and_electric_cold_weather_survey_results.aspx



Source: Residential Collection Data submitted pursuant to 66 Pa. C.S. § 1415⁸

Both Chapter 14 and Chapter 56 seek to ensure the availability of service while providing equity and protection to responsible ratepayers, low-income households, and other vulnerable customers, it is thus imperative that in implementing regulatory changes to Chapter 56 that the Commission be mindful of these goals in providing clarification and guidance, and use its broad regulatory authority in a manner that seeks to fulfill the overarching purposes of the statute and its own regulations.

⁸ Available at: http://www.puc.pa.gov/filing_resources/biennial_report_pursuant_to_section_1415.aspx

COMMENTS ABOUT SPECIFIC PROVISIONS OF CHAPTER 56

1. Definitions – 52 Pa. Code § 56.2

In the Rulemaking Order, the Commission added a definition for the term *medical certificate* because it now appears in the revised 66 Pa. C.S. § 1403. Specifically, the Commission proposed simply to adopt the definition of that term contained in Section 1403 of Chapter 14, which reads:

Medical certificate—A written document, in a form approved by the Commission that:

- (i) Certifies that a customer or member of the customer's household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition.
- (ii) Is signed by a licensed physician, nurse practitioner or physician assistant.

While the Council understands the temptation to use the statutory definition, the Council believes that the regulatory definition should clarify rather than mimic the statute. Specifically, it is important that the regulations make it clear that the medical certificate “form” – whether it is an actual form or a set of requirements – “approved by the Commission” must comply with the substantive requirements contained in Section 56.113 of the Commission’s regulations. As such, the Council recommends that the regulatory definition be amended to state, in relevant part, as follows:

Medical certificate – A written document, in a form ~~approved by the Commission~~ satisfying the requirements of Section 56.113 of the regulations, that

This approach would ensure clarity about the substantive contents of the medical certificate comply with the Commission’s revised rules.

The Council also recommends that the Commission consider adopting a form that utilities could publish to comply with the requirements of Section 56.113. While the

Commission has made it clear in its *Chapter 14 Implementation Final Order*, that Chapter 14 does not require a specific form, it acknowledged the possible merit of a single, statewide form that could be adopted by the utilities and be made publically available:

As for [the] suggestion that a collaborative develop a single, statewide standard form – this idea may have merit but it is premature. Any such collaborative should await the promulgation of the Chapter 56 medical certification regulations.⁹

The Council supports the development of a model statewide form. Some members of the Council have heard from medical providers that it would facilitate their ability to issue medical certificates if there were a form that was available for download either on the utilities' website or the website of the Commission. This standard, statewide form would allow the providers to feel more comfortable about what is being asked of them, and would allow for easy access for hard-to-reach and busy medical professionals. While the Council supports the Commission's interpretation that such a form should not be the only means through which a medical certificate can be provided, its development and public access on the Commission's and utility's websites would be of significant value. Accordingly, the Council recommends that the Commission convene a work group of interested stakeholders to develop a standardized form that complies with the requirements of Section 56.113, and that the Commission place this form on its website as well as encourage the utilities to place this form on their public websites.

2. Deposit Rules for Low-Income Customers and Applicants – 53 Pa. Code §§ 56.32; 56.36; and 56.41.

Act 155 amended Chapter 14 to impose a prohibition on certain cash deposit practices. Specifically, 66 Pa. C.S. § 1404(a.1) provides that “no public utility may require a customer or

⁹ Final Order: *Chapter 14 Implementation*, Docket No. M-2014-2448824, at 10 (July 9, 2015).

applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit.” In its proposed amendments, the Commission added Section 56.32(e) which states the same language as section 1404(a.1). The Council submits that the regulations should provide additional clarity to ensure that the General Assembly’s intent in protecting low-income customers from unaffordable deposit requirements is completely effectuated.

To that end, the Council respectfully urges the Commission to adopt the following change to its proposed regulations contained at § 56.32(e) and § 56.41(4):

Security and cash deposits.

* * * * *

Cash deposit prohibition. Notwithstanding subsection (a), a public utility may not require a ~~customer that is confirmed to be eligible for a customer assistance program to provide a cash deposit~~ from a customer or an applicant having household income at or below 150% of the Federal poverty income guidelines, or such other income eligibility standard as the Commission may adopt for purposes of Customer Assistance Programs.

Adopting this regulatory interpretation would ensure that for purposes of the cash deposit prohibition, the operative threshold concern regarding whether a household is or is not “confirmed to be eligible for a customer assistance plan” is the household’s income level. This clarification would create uniformity across the state and among utilities all of whom have slightly different customer assistance plan eligibility criteria, but nonetheless all abide by the 150% of federal poverty income guidelines.

In order for this provision to be effective, the Council also urges the Commission to clarify that it is the duty of the utility to inquire about a customer or applicant’s income status prior to or at the time of the cash deposit request. The Commission said as much in its

Chapter 14 Implementation Final Order:

Concerning [the]s request that the Commission provide guidance with respect to the prohibition on security deposits for CAP-eligible customers found at the revised Section 1404(a.1), we note that this new section does appear to impose an obligation upon utilities, when asking for a security deposit from a consumer, to determine whether the customer is exempt from such. It is not unreasonable to think that a utility should first refer to the income information it may have available for the customer, obtained either at the time of application, when negotiating a payment arrangement, or when having previously screened the customer for assistance. If the utility has no income data available for the customer, then it is reasonable for the utility to ask for such data either prior to or at the time it asks for a deposit. For example, the deposit warning letters per 52 Pa. Code §§ 56.41 and 56.291 and credit denial statements per 52 Pa. Code §§ 56.36 and 56.286 that utilities send to customers and applicants could include language asking the consumer to contact the utility to determine their eligibility for assistance programs and the possible waiver of a deposit. Likewise, it seems reasonable to expect that utilities mention possible waiver of security deposit requirements in their written credit procedures that are made available to applicants per 52 Pa. Code §§ 56.36 and 56.286. Guidance beyond this, however, is best reserved for the upcoming rulemaking where all parties can participate and share their suggestions.¹⁰

To that end, the Council suggests that the Commission require utilities to include the following language in the deposit warning letters per 52 Pa. Code §§ 56.41 and 56.291 and credit denial statements per 52 Pa. Code §§ 56.36 and 56.286:

“If your total household income is at or below 150% of the Federal Poverty Guidelines, you are exempt from paying any security or cash deposit. Please call [the utility] at [Customer service telephone number] to provide documentation of your income for this purpose.”

The Council also believes that the Commission should modify § 56.36 of their regulations as follows to support implementation of this cash deposit exemption:

§ 56.36. Written procedures.

* * * * *

(b) A public utility shall establish written procedures for determining the credit status of an applicant and for determining responsibility for unpaid balances in accordance with § 56.35 (relating to payment of outstanding balance). The written

¹⁰ Chapter 14 Implementation Order at 44.

procedures must specify that there are separate procedures and standards for victims with a protection from abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence. The procedures must also specify that any applicant or customer that is confirmed to be eligible for a customer assistance program will not be required to pay a deposit, and shall set forth the process in which the utility assures that no deposit will be required and the manner in which the applicant or customer is advised of this policy, and of the right to contest an incorrect deposit request. A public utility employee processing applications or determining the credit status of applicants shall be supplied with or have ready access to a copy of the written procedures of the public utility. A copy of these procedures shall be maintained on file in each of the business offices of the public utility and made available, upon request, for inspection by members of the public and the Commission and be included on the public utility's web site.

These changes are essential to ensure that a utility's written policies conform to the Commission's interpretation of the requirements imposed by § 1404(a.1).

3. Electronic Notification of Termination – 52 Pa Code §§ 56.93 and 56.97

As set forth in 66 Pa. C.S. § 1406(b)(1)(ii)(C), attempted personal contact for purposes of delivering termination notice at least three-days prior to termination may be “by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.” However, 66 Pa. C.S. § 1406(b) (1) (ii) (D) requires that the customer “affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.”

Given the extraordinary consequences associated with termination of utility service, the Council submits that the Commission's regulations should ensure, to the greatest degree possible, that applicants or customers provide knowing and informed consent as well as actually receive the electronic notice.

The Council believes that the process of providing consent to receive electronic notice of termination of service must be distinct from the consent to receive other information electronically. Specifically, a separate written consent form and educational materials explaining what a household would be “giving up” by agreeing to receive notice of termination electronically must be developed and approved by the Commission. Careful attention to this is essential for several reasons.

First, consumers – particularly low-income consumers – often change cell phone providers or routinely run out of minutes each month thereby effectively going without mobile phone service for periods of time. Second, consumers often have email accounts that change and/or go dormant for periods of time because of job changes or other reasons. Third, electronic communication can be, and often is, ignored if it looks like spam or some other commercial solicitation rather than an essential notice.

To ensure that electronic notice is an adequate substitute, the Council believes that the following concepts must be incorporated into 52 Pa. Code § 56.93 and 56.97:

- Prior affirmative consent must be clarified to mean prior *written* affirmative consent. This will ensure that there is less ambiguity about whether consent was in fact given in the event of a dispute.
- The prior written consent should be obtained on a form that is used for that purpose only and that clearly, in plain language, sets out that the individual wants to receive contact by this means and what other means are available if the household does not want to consent to electronic disclosure.
- The prior written notice should clearly tell the households that they may revoke their consent at any time by contacting the public utility.

- The utility should have the obligation to periodically reaffirm with the household that the household wants to retain this election, and reaffirm the means of contact (i.e. updated email address, cell phone number, etc.)
- No public utility should be able to rely on an electronic notice of termination to fulfill its obligations to provide personal notice if it receives any response indicating that the message was not received electronically (i.e. undeliverable message or message that the text or email did not go through).

4. Emergency provisions – 52 Pa Code §§ 56.113-25.116

Among the more significant changes made by the reauthorization of Chapter 14 were changes to the definition and structures of medical certificate procedures. The Council commented about definitional changes, above, as well as the recommendation that while a statewide form should not be required, the suggestion that the Commission develop a form that could voluntarily be used and which was publically posted on the Commission and utilities' websites. The Council makes the following additional recommendations concerning medical certification procedures.

a. Medical Professional License Number

The Commission's Rulemaking Order invited comments concerning whether medical professionals should be required to provide their license number in connection with a medical certificate. The Council believes this may be unnecessary and may go beyond the letter or intent of the amendments to Chapter 14. To the Council's knowledge, the Commission has never requested such information in all of the decades of accepting medical certificates. Thus, it is not clear where this request if coming from or whether a problem has been identified by the

Commission. The Council is also not aware of any problems with fake or phony medical certificates, and there is no indication in the legislative history that this matter was ever raised as an issue of concern before the General Assembly.

Of more practical concern, it is not clear the intent of this requirement. Imposing needless formality to the process of submitting a medical certificate is certain to deter medical professionals from freely exercising their professional judgment and assisting customers, if appropriate, to maintain service for health and safety reasons. The Council recommends that medical certificate forms not require physicians, nurse practitioners or physician assistants to include their license numbers. The Council does not object to medical professionals being given the option to provide this information if they desire to do so.

b. Length of Affliction and Duration of Medical Certificate

In its proposed regulations, the Commission proposed to eliminate language in the Regulations concerning the “nature” of an affliction and “the specific reason for which service is required.”¹¹ The Council supports the elimination of these requirements and commends the Commission for recognizing the sensitivity of medical information, which is protected from disclosure under State and Federal law. The Commission proposes to maintain a requirement that a medical certificate state the “anticipated length of the affliction” if known based on its assertion that the utility “needs to know this information so as to determine the duration of a medical certificate.”¹² Currently, the Commission’s regulations have imposed a de facto length of at least 30 days in the event a medical provider fails to specify a duration.¹³

¹¹ Rulemaking Order at 8.

¹² Rulemaking Order at 8.

¹³ See 52 Pa. Code § 56.114(1) (establishing a minimum duration of at least 30 days).

The Council supports the requirement of the “anticipated length of the affliction” for medical certificates to the extent that the medical professional believes that the duration of the illness will be **greater than** 30 days. In other words, a medical professional should indicate the anticipated length of affliction if estimated to be longer than 30 days. This would enable the utility to accommodate a medical certificate of greater length with some certainty as to that length. However, for afflictions anticipated to last less than 30 days, no such information is readily required.

As an additional matter, currently, the Commission’s regulations state that the maximum length of a medical certificate is 30 days.¹⁴ There is nothing statutorily sacred about a 30 day time period and, experience shows, that there are chronic illnesses that persist for far longer periods of time. Accordingly, the Council submits that the regulations should clarify that although a medical certificate shall be effective for a minimum of thirty days, in the cases in which the medical practitioner indicates the anticipated length of the affliction to be greater than 30 days, the length of the protection provided should correspond to the length of the affliction. In the event of a chronic or terminal illness without specific ending date, medical certificates should be permitted for a period of a maximum of 6 months.

c. Payment Obligations

Finally, as the Commission notes, utilities and advocates for customers have in the past argued about the proper interpretation of the Commission’s regulations on payment obligations during the period of time when termination cannot occur due to the issuance of a medical certificate or renewal.¹⁵ The Council submits that the purpose of medical certificates and

¹⁴ 52 Pa. Code § 56.114

¹⁵ Rulemaking Order at 9.

renewals would be thwarted by requirements to pay more than current, undisputed charges. A household requiring service for health-related purposes is extraordinarily vulnerable and maintaining essential utility service during a time of medical need is of vital importance and was correctly recognized by the General Assembly in Chapter 14 as a public health and safety matter having priority over a utility's collection effort.

Requiring a customer in a time of illness and increased vulnerability to make payments in excess of current charges would fail to effectuate the fundamental purpose of a medical certificate – to interrupt the utility's termination-collection path while a medical need for service exists. The Commission previously acknowledged that households experiencing conditions warranting medical certificates should be required to pay only current charges, in recognition of the “disruptive nature of serious illness.”¹⁶ At the same time, the Commission sought to balance the needs of the utility, by ensuring that the ability of a customer to maintain service beyond a limited period (one medical certificate and two renewals), would only be available if the customer were able to compensate the utility for the cost of service rendered during that period. The Council submits that the Commission's interpretation of the availability of medical certificate renewals upon payment of undisputed amounts during the pendency of the medical certificate should be retained and clearly reflected in regulations.

5. Informal Complaint Procedures – 52 Pa Code §§ 56.163 and 56.263.

The Commission also proposed to modify the informal complaint procedure regulations to authorize a Complainant to request a copy of documentation submitted by the public utility in response to an informal complaint. As explained in the Rulemaking Order, this opportunity is

¹⁶ Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*. Docket No. L-00060182 at 149.

intended to protect the complainant's due process rights.¹⁷ The Commission further proposes that the utility redact information referring to third parties, in order to protect their privacy or personal security.

The Council commends the Commission for making this information available to complainants. It is essential that individuals who have an informal complaint with their utility be able to see the information provided by the utility to the Commission. Additionally, the Council understands and appreciates the Commission's concern for the privacy of third parties; however, it believes that the language as written may be overly restrictive. To be sure, there are circumstances in which the redaction or unavailability of information concerning third parties may impede the need for the complainant to receive information necessary to prosecute his or her claim. For instance, in the case of a tenant seeking to demonstrate that a utility has wrongfully terminated service in violation of the Discontinuance of Service to Leased Premises Act, the complainant would be specifically asserting a right as a non-customer and must divulge his/her information in order to do so. In such circumstance, the third party, the tenant's landlord or its agent, may be the utility's customer, and information about that third party is material to the complaint. Certainly, there may be other circumstances than these in which the

¹⁷ Rulemaking Order at 9

Commission's determination hinges on information concerning third parties and such information should not be categorically unavailable to an affected complainant. The Commission has previously considered the need to balance privacy rights against the disclosure necessary for due process. The Council believes that modification of the proposed regulation may be needed. While the Council does not have a specific recommendation, the regulation should make clear that information relevant to the Commission's decision should be turned over to the complainant, unless the utility demonstrates that information would jeopardize the personal security of any third party, at which point the utility should provide redacted information and an explanation for the reason for the redaction.

CONCLUSION

The Council appreciates the opportunity to provide input on the Commission's proposed regulations and invites the Commission to seek additional information from the Council and its members throughout this rulemaking process.

Respectfully submitted,

Consumer Advisory Council to the Pennsylvania Public Utility Commission


By: Ralph G. Douglass, Chairperson,
Consumer Advisory Council

Dated: April 18, 2017