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COMMONWEALTH OF PENNSYLVANIA

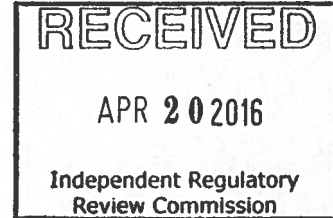


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April 19, 2017



Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 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:

Attached for electronic filing are the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

If you have any questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lauren M. Burge".

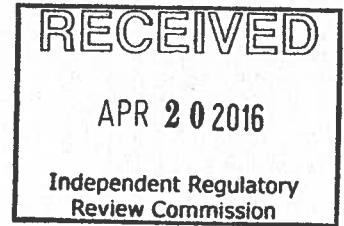
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Attachment

cc: Daniel Mumford, Office of Competitive Market Oversight
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: April 19, 2017

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I. INTRODUCTION

On February 18, 2017, the Pennsylvania Public Utility Commission's (Commission) Notice of Proposed Rulemaking Order in the above-captioned docket was published in the *Pennsylvania Bulletin*. 47 Pa.B. 965. Through this Rulemaking, the Commission is proposing amendments and modifications to its regulations regarding Standards and Billing Practices for Residential Utility Service found at 52 Pa. Code Chapter 56 (Chapter 56). The primary purpose of the Proposed Rulemaking is to promulgate regulations to implement Chapter 14 of the Public Utility Code. 66 Pa. C.S. §§ 1401-1418. Chapter 14, also known as the Responsible Utility Consumer Protection Act, was signed into law by Governor Rendell on November 30, 2004. On October 22, 2014, Governor Corbett signed Act 155 of 2014 into law, which reauthorized and amended Chapter 14. Chapter 14 applies to electric distribution companies (EDCs), natural gas distribution companies (NGDCs), water distribution utilities, wastewater utilities, and steam heat utilities.

According to the Declaration of Policy in Section 1402, the purpose of Chapter 14 is to seek to eliminate opportunities for customers who are capable of paying to avoid the timely payment of their public utility bills and to provide utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections. 66 Pa. C.S. § 1402. In its Proposed Rulemaking Order, the Commission stated the following as to the goal of the Act 155 amendments to Chapter 14:

The Act is intended to protect responsible bill paying customers from rate increases attributable to the uncollectible accounts of customers by providing public utilities with the collection mechanisms and procedures to promote timelier collections, while protecting vulnerable customers by ensuring that utility service remains available to all customers on reasonable terms and conditions.

Proposed Rulemaking Order at 1.¹

The Commission has previously addressed a number of urgent issues in Chapter 56 that resulted from the Chapter 14 amendments. See Docket No. M-2014-2558824. The remaining issues that the Proposed Rulemaking Order seek to address include: amending definitions of applicant, customer, and public utility; clarifying the 90-day deposit payment period; revising the credit methodology; and expanding protections for individuals with Protection from Abuse Orders (PFAs) to include individuals with other types of court orders related to domestic violence. As part of this rulemaking, the Commission is also seeking comment on issues such as privacy guidelines, cost of compliance, and collections reporting. Proposed Rulemaking Order at 4-5.

The OCA submits that the Commission's resolution of the issues and its proposed modification to the Chapter 56 regulations contained in the Proposed Rulemaking have, in large part, reached a reasonable balance in achieving the goals of Chapter 14 as amended. The OCA respectfully submits that the comments below will help to ensure that the updated regulations are consistent with Chapter 14 and will continue to provide essential protections to consumers throughout the Commonwealth.

The OCA submits the following general comments related to this rulemaking action:

A. Privacy Guidelines

In the Proposed Rulemaking Order, the Commission requested comment on what privacy guidelines should be put in place for electronic communications. As discussed in detail below regarding the proposed Section 56.93, the OCA submits that information provided by customers

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

for purposes of personal contact should be treated as private information and should not be shared. Currently, for example, the Commission does not allow the release of telephone numbers for any purpose.² The same treatment should be provided for e-mail addresses, numbers used for text messaging, etc. To ensure that the customer's confidential information is protected, the OCA submits that the data submitted to the public utility for purposes of personal contact should not be shared with third parties.

B. Section 56.17 – Advance Payments

The OCA submits that the Commission should update Section 56.17 of the Commission's regulations regarding advance payments. Section 56.17 provides for advance payments for certain types of utility service. Since this section was originally included in the Commission's regulations in 1978, to the best of the OCA's knowledge, no public utility in Pennsylvania has utilized this regulation to implement an advance payment program. There is a case, however, currently pending before the Commission that seeks to create an advance payment pilot program under Section 56.17, while also seeking a waiver of certain provisions of this regulation.³

Since Section 56.17 was drafted, there have been many changes in Pennsylvania statutes, regulations and policies regarding the rules for provision of electric service. For example, Section 56.17 predates the enactment of Chapter 14 and the implementation of full scale Customer Assistance Programs. These legal and policy changes have significantly affected utility consumer rights and protections, as well as collections procedures, which were not in effect when Section 56.17 was enacted. There have also been significant technological

² See Interim Guidelines for Eligible Customer Lists, Docket No. M-2010-2183412, Final Order on Reconsideration, entered November 15, 2011; see also, 52 Pa. Code § 54.8 (privacy of customer information); 52 Pa Code § 62.78 (privacy of customer information).

³ See PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17 and PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan, Docket No. P-2016-2573023.

advancements since Section 56.17 was enacted and which the regulation could not have anticipated, such as the advanced meter infrastructure that many Pennsylvania EDCs have or are in the process of deploying throughout their service territories.

The Commission has not proposed any changes to Section 56.17 in the current rulemaking, and as such the OCA is not proposing specific language at this time. However, this issue should be revisited by the Commission in the near future. The OCA recommends that this issue be taken up after the conclusion of the aforementioned PECO case.

C. Language Regarding Victims of Domestic Violence

Throughout the Proposed Rulemaking Order, the Commission proposes to include language expanding applicability and protections for individuals with protections from abuse (PFA) orders to also include those with “a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer.” This language is consistent with language included in the revised Section 1417.66 Pa. C.S. § 1417. Many terms included in this provision are unclear as to how they should be interpreted and applied. Questions raised by this language include:

- What types of orders qualify?
- How should an order from a court in another state be handled?
- What constitutes “domestic violence”?
- What qualifies as “clear evidence” of domestic violence?

This language is ambiguous in many respects, but the Commission has not proposed any language to further define or provide guidance as to how this provision should be applied.

Domestic violence is a complex issue and as such the OCA does not believe it is appropriate to propose specific language in these comments. Rather, the OCA submits that the

Commission should convene a working group consisting of a variety of stakeholders, including those with experience providing services to victims of domestic violence, utilities, consumer advocates, and low-income advocates. This group would work collaboratively to develop guidance as to how this language should be applied going forward. This guidance could then be the subject of a separate Policy Statement adopted by a final Commission Order.

II. COMMENTS ON SPECIFIC SECTIONS IN SUBCHAPTERS B-K

A. Section 56.1 – Statement of purpose and policy.

Chapter 56 currently applies only to EDCs, NGDCs, and water distribution companies. In the Proposed Rulemaking Order, the Commission proposed to revise Section 56.1 to expand the applicability of Subchapters B – K to include wastewater, steam heat, and small natural gas companies. Proposed Rulemaking Order, Att. 1 at 1. This change is consistent with the updated definition of “public utility” in 66 Pa. C.S. § 1403.

Additionally, Subchapters L – V are being revised to cover customers with protection from abuse (PFA) orders, as well as customers with a court order providing clear evidence of domestic violence against the applicant or customer and issued by a court with competent jurisdiction in the Commonwealth. Proposed Rulemaking Order, Att. 1 at 1. This revision is also consistent with the updates to Chapter 14 which broadens protections for victims of domestic violence. 66 Pa. C.S. § 1417. As discussed above, the OCA submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence. In general, however, the OCA agrees with these changes.

B. Section 56.2 – Definitions.

In its Proposed Rulemaking Order, the Commission has proposed a number of new or modified definitions for terms that are important throughout Chapter 56. The OCA submits the following comments on proposed changes to select definitions.

1. *AMR – Automatic meter reading*

The definition for automatic meter reading (AMR) was intended to apply to an older technology that predates the advanced metering infrastructure (AMI) that is currently being deployed by many utilities throughout the Commonwealth. The OCA submits that the

Commission should either update the definition of AMR to include AMI, or add a separate new definition of AMI that should be reflected throughout these regulations. AMI provides a wide variety of enhanced functionalities that should be reflected in the updated Chapter 56 regulations.

2. *Creditworthiness*

The OCA supports the proposed addition of the definition of “creditworthiness,” which reflects the definition of this term in Chapter 14, 66 Pa. C.S. § 1403. This definition describes creditworthiness as “[a]n assessment of an applicant’s or customer’s ability to meet bill payment obligations *for utility service.*” Proposed Rulemaking Order, Annex A at 3 (emphasis added). Other sections in Chapter 56 refer specifically to the ability to pay utility bills.⁴ Therefore, it is important that the definition of “creditworthiness” specifically examines the ability to pay utility bills, and not a more general ability to meet broader payment obligations. The OCA supports the addition of this definition which is identical to language included in Chapter 14, Section 1403.

3. *Physician assistant*

In the Proposed Rulemaking Order, the Commission has proposed to add a definition of “physician assistant” to Section 56.2. The proposed language comes from the State Board of Medicine’s licensing procedures at 49 Pa. Code 18.151(b), which defines a physician assistant as:

An individual licensed by the State Board of Medicine in this Commonwealth who also provides any medical service, as directed by the supervising physician licensed to practice medicine in this Commonwealth, when the service is within the physician assistant’s skills, training and experience, forms a component of the physician’s scope of practice, is included in the written agreement and is provided with the amount of supervision in keeping with the accepted standards of medical practice.

49 Pa. Code § 18.151(b); see also Proposed Regulation Section 56.2 (definitions).

⁴ See, e.g., 52 Pa. Code § 56.32(a)(2) regarding security and cash deposit procedures for applicants, which states that “The credit scoring methodology . . . must specifically assess the risk of public utility bill payment.” (Note that the word “public” is a proposed addition as part of this Proposed Rulemaking Order.)

While the OCA does not oppose the addition of a definition of physician assistant, the OCA submits that it is not appropriate for the Commission to include such a detailed definition in its regulations. Rather, Chapter 56 should simply define “physician assistant” as an individual licensed as a physician assistant in this Commonwealth pursuant to the licensing regulations at 49 Pa. Code § 18.151. This approach prevents the Commission from wading into licensing regulations and obviates the need for updates to Chapter 56 in the event of changes to the applicable licensing regulations. As such, the OCA submits that a less complex definition of “physician assistant” which refers to medical licensing regulations is appropriate in this context.

C. Section 56.12 – Meter reading; estimated billing; customer readings.

In Section 56.12, the Proposed Rulemaking Order inserts language from Chapter 14, Section 1411 providing the right to verification of automatic meter readings at the customer’s request. Sec 66 Pa. C.S. § 1411. The OCA supports the addition of this provision, with one modification. As discussed above in the OCA’s comments regarding definition in Section 56.1, the OCA suggests that the Commission either update the definition of AMR to include AMI, or add a separate new definition of AMI that should be reflected throughout these regulations. Consistent with that recommendation, the OCA submits that consumers should have the same right to verification for automatic meter readings obtained through AMI as is being included in this section for AMR.

If the definition of AMR in Section 56.2 is updated to include AMI, then automatic meter readings obtained through AMI will receive the same right of verification of automatic meter readings at the customer’s request. If a separate definition of AMI is added to Section 56.2, then language indicating that automatic meter readings obtained through AMI are also subject to verification on the customer’s request will need to be inserted into this section. This

modification will help to ensure that the regulations reflect the various metering technologies that are currently in use in the Commonwealth, and that customers have the right to verify automatic readings at their request.

D. Section 56.32 – Security and cash deposits.

Proposed Section 56.32(e) inserts language from Section 1404(a.1) of the Public Utility Code, which provides that, “[n]otwithstanding 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.” The Commission should clarify that eligibility for CAP in this context is based on *income* eligibility, not on eligibility based on some other criteria.

Many low-income individuals may be eligible for CAP based on their income, but may not actually be enrolled in CAP for a variety of reasons. For example, many people may be income-eligible but are not enrolled in CAP because their “affordable bill” under CAP is greater than their actual bill. Section 56.32(e) is intended to improve access to essential utility service for all low-income consumers, not just those who are actually enrolled in CAP. As such, the language should clarify that customers who are *income-eligible* for CAP are not required to pay a cash deposit.

E. Section 56.36 – Written procedures.

Section 56.36 requires public utilities to establish written procedures related to determining credit status of an applicant as well as responsibility for unpaid balances. Both subsection (b) and (b)(1) currently indicate that there are separate procedures and standards for victims of domestic violence with a protection from abuse (PFA) order. The Commission is proposing to expand this protection to a PFA, “or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence.”

Proposed Section 56.26(b) and (b)(1). As discussed above, the OCA generally supports the addition of this language but submits that a stakeholder group should be convened to clarify ambiguities in the language relating to victims of domestic violence.

The Proposed Section 56.26(b) and (b)(1) also include language stating that “[t]he procedures must also specify that any applicant that is confirmed to be eligible for a customer assistance program will not be required to pay a deposit.” As discussed above regarding Proposed Section 56.32(e), the OCA submits that the Commission should clarify that eligibility for CAP in this context is based on *income* eligibility, not on eligibility based on some other criteria. The final language should clarify that customers who are *income-eligible* for CAP are not required to pay a cash deposit.

F. Section 56.38 – Payment period for deposits by applicants.

The proposed revision to Section 56.38 states that an applicant that is required to pay a deposit “shall have up to 90 days to pay the deposit *in accordance with Commission regulations.*” (emphasis added). It is not clear to the OCA which specific Commission regulations are being referred to in this section. The OCA submits that, instead of a vague reference to “Commission regulations,” this language should be revised to cite specific regulations. Clarification on this issue will make this regulation easier to apply and to understand.

G. Section 56.41 – General rule.

Section 56.41 relates to procedures for deposits by existing customers. The Proposed Rulemaking Order inserts a new Section 56.41(4) which states that “a public utility may not require a customer or an applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit.” This reflects language added to Chapter 14 in Section

1404(a.1). As discussed above in relation to Section 56.32(e), the OCA submits that the Commission should clarify that eligibility for CAP in this context is based on *income* eligibility, not on eligibility based on some other criteria. This provision is intended to maintain essential utility service for all low-income consumers, not just those who are actually enrolled in CAP. As such, the language should clarify that customers who are *income-eligible* for CAP are not required to pay a cash deposit.

H. Section 56.42 – Payment period for deposits by customers.

In the Proposed Rulemaking Order, Section 56.42(d) is being updated to include a 90-day payment time period for deposits by customers that have failed to comply with a payment arrangement, as well as the ability of a customer to pay the deposit in three installments. The 90-day time period is consistent with Chapter 14, Section 1404(a). Additionally, the revised Section 56.42(d) allows customers to pay the deposit in installments, with “50% billed upon 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.” This approach is consistent with previous Commission rulemakings,⁵ and also requires utilities to notify customers of the option to pay in installments. As such, the OCA supports the revisions to this section.

I. Section 56.53 – Deposit hold period and refund.

Section 56.53(b) provides that “[a] timely payment history is established when a customer has paid in full and on time for 12 consecutive months.” The OCA submits that Section 56.53(b) should be modified to clarify that the relevant time period is *any* 12 consecutive months, and that this 12-month period is not tied to a calendar year. For example, if a customer pays in full and on time in January, but misses a payment in February, the 12-month clock

⁵ See 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, Attachment One at 18-22, Docket No. L-00060182, Order entered Sept. 26, 2008.

should start again in March. In other words, the customer should not have to wait until the following January for the 12-month period to begin again. Changing Section 56.53(b) to read: “when a customer has paid in full and on time for any 12 consecutive months” would clarify the meaning of this section.

J. Section 56.57 – Interest rate.

The language in Section 56.57 is being updated to reflect revisions to Chapter 14 at 66 Pa. C.S. § 1404(c)(6) regarding the calculation of interest on a customer’s deposit. The proposed language is consistent with that of Section 1404(c)(6). The OCA has no further comments on this section.

K. Section 56.82 – Timing of Termination.

Section 56.82 is being modified to reflect the fact that Section 1406(d) only allows a utility to terminate service Monday through Thursday for the grounds found at Section 1406(a). The OCA supports this revision as the language is consistent with Section 1406(d).

L. Section 56.91 – General notice provisions and contents of termination notice.

Section 56.91 sets forth in detail the contents of the termination notice that must be provided to customers. In the Proposed Rulemaking Order, the Commission proposes to expand Section 56.91(b)(11) to include information on special protections available to customers with a PFA, as well as those with “a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence.” As discussed above, the OCA generally supports the addition of this language but submits that a stakeholder group should be convened to clarify ambiguities in the language relating to victims of domestic violence.

M. Section 56.93 – Personal contact.

Section 56.93 is being revised to provide for the optional use of electronic messaging for providing three-day personal notice of termination. Proposed Rulemaking Order, Att. 1 at 7. The OCA submits the following comments on this proposal.

1. *Electronic Formatting*

Currently, with the exception of some circumstances authorized under Sections 56.71, 56.72, and 56.98, a public utility must make contact with the customer or responsible adult occupant via telephone during specified times or during a home visit to satisfy the personal contact requirement. See 52 Pa. Code § 56.93. Only after attempting to contact the customer on multiple occasions by phone, or by leaving a conspicuously posted written termination notice at the residence if personal contact with a responsible adult occupant during a home visit cannot be made, does a utility satisfy the personal contact requirement. Id. Both home visits and phone contacts require a bilateral form of communication in which a public utility informs a customer of termination and the customer is presented with an opportunity to ask questions regarding termination. This provides the customer with valuable notice of an impending termination and an opportunity to respond. Moreover, as part of the 3-day personal contact notice requirement, the customer is provided with information concerning the date and grounds of termination, what is needed to avoid the termination of service, how to contact the public utility and the Commission, and the availability of the emergency medical procedures. See 52 Pa. Code § 56.93(e).

E-mail, text message, and other electronic messaging formats do not share this same immediate bilateral nature as communicating in person or by telephone. In other words, when an individual receives an email or text regarding the date and grounds for termination, what is

needed to avoid termination, contact information, and the availability of emergency medical procedures, the customer is not given an opportunity to ask questions and receive answers, immediately and directly, with the public utility.

E-mail service requires internet access, which a customer may not have if the customer faces termination of a vital public utility service. While some e-mail users are able to computer-generate reply messages in the event that they are unable to receive e-mail, a significant number of customers may have multiple e-mail accounts that are not updated if the customer is currently unavailable or unable to check a specific e-mail address. Moreover, e-mail messages that are sent to an invalid account oftentimes receive computer-generated replies that the e-mail is undeliverable. Yet, in the proposed revision to Section 56.93, there is no provision for computer-generated reply messages. In other words, even if the public utility receives a computer-generated reply informing the public utility that the customer is unable to check their e-mail at this time or that the e-mail address is invalid, the public utility could be deemed to fulfill the personal contact requirement under revised Section 56.93 by simply sending an e-mail to what could be a deactivated or inaccessible account.

Text messaging requires access to an active cell phone or an alternative device that receives text messages, which a customer may not have if the customer faces termination of a vital public utility service. Moreover, there are utility customers that have limited plans in regards to text messaging. Under both the original and revised Section 56.93, the public utility must include the date and grounds for termination, what is needed to avoid the termination of service, how to contact the public utility and the Commission, the availability of the emergency medical procedures, as well as ask the customer or occupant if they have questions about the 10-day written notice. As SMS text messages are limited to 160 characters and are broken down

into separate 153 character messages when the limit is exceeded, providing the customer with the necessary information to satisfy the personal contact requirement would likely require the customer to receive multiple text messages. On text-limited plans, these texts may only provide the customer with part or none of the necessary information if the customer exceeds their text limits. If a customer has already exceeded the number of texts they can receive in a month, there may be no computer-generated reply to inform the public utility that a customer has exceeded their text limit and thus the message was not delivered. In some cases, the sender of the SMS text message will receive a notification that the SMS text message has been sent to a landline. Under the proposed revision to Section 56.93, if a customer mistakenly puts a landline phone number as a phone number that receives texts and the public utility receives a notification that they are sending SMS text messages to a landline, the public utility could be deemed to have fulfilled the personal contact requirement under revised Section 56.93.

The OCA submits that, if electronic messaging serves as a three-day personal notice of termination, that the customer receive full disclosure as to the forms of personal contact that they will no longer be receiving. Additionally, the OCA submits that if the public utility is informed by a computer-generated reply or other means that a customer's electronic message was not received, the public utility should make personal contact with the customer by telephone or home visit in the manner currently stated in Section 56.93.

2. *Privacy*

The OCA notes that the revised language states that the electronic format must be "consistent with the Commission's privacy guidelines and approved by Commission Order." The Commission has requested comment on what privacy guidelines should be put in place.

The OCA submits that information provided by customers for purposes of personal contact should be treated as private information and should not be shared. Currently, for example, the Commission does not allow the release of telephone numbers for any purpose.⁶ The same treatment should be provided for e-mail addresses, numbers used for text messaging, etc. To ensure that the customer's confidential information is protected, the OCA submits that the data submitted to the public utility for purposes of personal contact should not be shared with third parties.

N. Section 56.94 – Procedures immediately prior to termination.

Section 56.94 is being revised to address procedures for handling dishonored payments in the context of the termination process, to align with Section 1406(h) which states that termination of service may proceed if a customer tenders payment electronically that is subsequently dishonored, revoked, canceled or is otherwise not authorized and which has not been cured or otherwise made full payment within three business days of the utility's notice to the customer. Proposed Rulemaking Order, Att. 1 at 5. The OCA supports this revision as it accurately reflects Chapter 14.

O. Section 56.97 – Procedures upon customer or occupant contact prior to termination.

Section 56.97 is being revised to require utilities to provide universal service program information to consumers upon contact with a consumer during the termination process pursuant to Section 1410.1(1) and (2). Proposed Rulemaking Order, Att. 1 at 5. The OCA supports this revision as it provides consumers with valuable information regarding universal service programs during the termination process.

⁶ See Interim Guidelines for Eligible Customer Lists, Docket No. M-2010-2183412, Final Order on Reconsideration, entered November 15, 2011; see also, 52 Pa. Code § 54.8 (privacy of customer information); 52 Pa Code § 62.78 (privacy of customer information).

P. Section 56.100 – Winter termination procedures.

Section 56.100 is being revised to clarify that the February update to the survey of households without winter heating service must be inclusive of households that were terminated in December. The OCA supports this clarification as it helps to ensure that all households without heating service during the course of the winter are appropriately accounted for in the Bureau of Consumer Services' report.

Q. Section 56.111 – General provision.

Section 56.111 is being revised to remove the previous description of “medical certificate” in that section. The proposed regulation now includes the definition of medical certificate in Section 56.2. The revisions also refer to physician assistant in addition to physician and nurse practitioner in order to reflect the new definition of “medical certificate” in Section 1403. Section 56.112 provides that prior to the termination of service, if a public utility employee is informed that an occupant is seriously ill or is affected with a medical condition which will be aggravated by a cessation of service and a medical certification will be procured, termination may not occur for at least 3 days. Under the revised regulation, this three day oral declaration only applies to avoiding the termination of service, not to the restoration of service.

In the original Section 56.111, the regulation recognized this three day oral declaration prevents a termination of service and prevents a refusal to restore service. In removing language from Section 56.111 relating to the definition of medical certificate, the following language was also removed in relation to restoration of service:

a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) 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. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility.

52 Pa. Code § 56.111. This language provided for an oral certification and the prompt forwarding of medical certificate for both termination and restoration of service.

The revised Section 56.111 states as follows:

A public utility may not terminate service, or refuse to restore service, to a premises when the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) has submitted a medical certificate to the public utility.

Revised 52 Pa. Code § 56.111. The revised Section 56.111 can now be read to require the receipt of a written medical certificate to restore service, while Section 56.112 continues to allow for an oral declaration of a serious illness or medical condition in relation to termination of service, but it does not apply to restoration of service.

The OCA submits that the revision in Section 56.111 creates different treatments in very similar circumstances for a seriously ill customer. By way of example, if a utility customer is told by a doctor that a vital medical device requires the restoration of the customer's utility service, the doctor or a nurse practitioner could inform the utility that the customer requires utility service for their medical needs and that a medical certificate will be submitted within the next 3 days. In this example, the customer's utility service is off and a medical professional is informing the public utility that the utility service is needed. Under the current Section 56.111, utility service would be restored for the utility customer while the medical certificate is being sent to the public utility. Under revised Section 56.111, the utility customer's service would not be restored.

While the OCA supports the revised regulation insofar as it now includes physician assistants, the OCA submits that the Section 56.111 should clearly state that service must be restored for at least 3 days if a public utility employee is informed that an occupant is seriously

ill or is affected with a medical condition which will be aggravated by a cessation of service and that a medical certification will be provided.

R. Section 56.113 – Medical certifications.

Section 56.113 is being revised as a follow-up to the Commission's *Chapter 14 Implementation Order*, Docket No. M-2014-2448824 (Order entered July 9, 2015) (Implementation Order) and *Chapter 14 Implementation Tentative Order*, Docket No. M-2014-2448824 (Order entered January 15, 2015) (Tentative Order). Proposed Rulemaking Order, Att. 1 at 6-9. The revision updates the required content for medical certificates.

S. Section 56.173 – Review from informal complaint decisions of the Bureau of Consumer Services.

Section 56.173 is being revised to establish that the burden of proof is on the party who filed an informal complaint. Proposed Rulemaking Order, Att. 1 at 9. The revision removes "formal" and replaces this word with "informal" when referring to a complaint. Section 56.173 is contextually located in the Standard and Billing Practices portion of Chapter 56 under the heading "Formal Complaints." The OCA submits that the legal standard of burden of proof is misapplied in the context of an informal complaint. Section 56.166 addresses informal complaints and states as follows:

The Commission delegates to the Bureau of Consumer Services (BCS) the primary authority to resolve customer, applicant or occupant informal complaints arising under this chapter. The BCS, through its Director and with the concurrence of the Commission, will establish appropriate internal procedures to implement this chapter.

52 Pa. Code § 56.166.

According to the Commission's Consumer Complaint Procedures Guide:

For problems with your electric, natural gas, telephone or water/wastewater service, you can file an Informal Complaint through the PUC's Bureau of Consumer Services (BCS). After you file the Informal Complaint, a BCS

representative will work with you and the company to resolve the problem. This is easier and faster than filing a Formal Complaint.⁷

An informal complaint provides an opportunity to resolve the matter, similar to mediation, without formal legal standards. Furthermore, the only time burden of proof is mentioned in the Commission's Consumer Complaint Procedures Guide is in regards to formal complaints and hearings:

If your Formal Complaint does not settle and the hearing takes place, you will be asked to testify and give written documents or exhibits to support your case. These statements will be typed into a document called a "transcript." As the person filing a Complaint, you will go first, because you have the "burden of proof." This means you are required to prove your case.⁸

Moreover, according to PUC's brochure regarding the complaint process, informal complaints are not legal proceedings:

The PUC recommends that you use the Informal Complaint process first because many complaints are resolved sooner, are simpler, and take less time to solve compared to Formal Complaints. You also avoid the need for a legal proceeding. Informal Complaints are confidential and not available for public inspection.⁹

Additionally, the Commission's Complaint Options pamphlet notes as follows:

- Once BCS receives an informal complaint, an investigator will:
 - Investigate the complaint and work with the parties to resolve the complaint
 - Provide the outcome of the investigation, either by letter or verbally to the customer and utility or company
- The informal complaint process is simpler and less time-consuming than a formal complaint process and avoids the need for a legal proceeding¹⁰

⁷ Pennsylvania Public Utility Commission, *Consumer Complaint Procedure Guide*, available at http://www.puc.state.pa.us/General/publications_reports/pdf/Consumer_Complaints_Procedure_Booklet.pdf (accessed Mar. 29, 2017) at 2.

⁸ Pennsylvania Public Utility Commission, *Consumer Complaint Procedure Guide*, available at http://www.puc.state.pa.us/General/publications_reports/pdf/Consumer_Complaints_Procedure_Booklet.pdf (accessed Mar. 29, 2017) at 13.

⁹ Pennsylvania Public Utility Commission, *Know the PUC Complaint Process and Your Options*, available at http://www.puc.state.pa.us/General/publications_reports/pdf/consumer_complaint_trifold.pdf (accessed Mar. 29, 2017).

¹⁰ Pennsylvania Public Utility Commission, *Consumer Complaint Options at the Pennsylvania Public Utility Commission (PUC)*, available at http://www.puc.pa.gov/general/consumer_cd/pdf/Complaint_Filing_FS.pdf (accessed Mar. 29, 2017).

The OCA submits that requiring an informal complainant to satisfy a burden of proof is inconsistent with the Commission's goals. While an informal complaint may not reflect an actionable case due to the informal complainant's presentation or explanation, the BCS staff investigation may discover utility or consumer error. In an informal complaint, the complainant attempts to explain their problem and seek relief, potentially avoiding a formal complaint and hearing. This saves judicial resources and provides the customer with a less formal setting to resolve their complaint and avoid a legal proceeding. By placing the burden of proof on the informal complainant, the informal complainant may be dissuaded from seeking relief by filing an informal complaint in regards to their problem and instead file a formal complaint. Determinations regarding informal complaints should be based on a reasoned investigation by the BCS staff and not based on burden of proof standards for informal complainants. A burden of proof is a legal standard best reserved for legal proceedings. The OCA submits that replacing the word "formal" with "informal" is a departure from the previous regulation and does not accurately reflect the provisions of Chapter 14.

T. Section 56.191 – Payment and timing.

Section 56.191 is being revised to ensure that information notifying customers of the special protections that may be available for victims under a protection from abuse order may also now be available to customers with a court order issued by a court of competent jurisdiction in the Commonwealth, which provides clear evidence of domestic violence pursuant to Section 1417. Proposed Rulemaking Order, Att. 1 at 10. As discussed above, the OCA submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence.

U. Section 56.201 – Public information.

Section 56.201(b) requires that public utilities with a substantial number of Spanish-speaking customers make certain information available in both Spanish and English. In the Proposed Rulemaking Order, Section 56.201(b)(13) is being expanded to include information on protections for individuals with a court order issued by a court of competent jurisdiction in the Commonwealth, which provides clear evidence of domestic violence pursuant to Section 1417. As discussed above, the OCA submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence, but in general the OCA supports the addition of this language.

V. Section 56.231 – Reporting requirements.

Section 56.231 is being revised to add a new requirement that the utility report on its usage of electronic formats since Section 1406 now permits utilities to provide 3-day notice of termination by this method in addition to the current reporting of notices by telephone and in person. Proposed Rulemaking Order, Att. 1 at 10. The OCA submits that the implementation of the Chapter 14 reporting requirements should carefully balance the Commission's mandate to analyze utility collection practices against the significant consumer privacy concerns raised by providing specific customer account information to the Commission. The OCA submits that if customer account information is to be collected, great care must be taken to protect privacy.

1. *Reporting Requirement for Accounts Exceeding \$10,000 in Arrearages*

The proposed revision to Section 56.231 incorporates new reporting requirements involving the annual reporting of accounts exceeding \$10,000 in arrears and the number of medical certificates used by consumers. Proposed Rulemaking Order, Att. 1 at 10. The OCA

submits that if customer-specific account information is to be collected, great care must be taken to protect privacy.

a. The Snapshot Approach

The OCA submits that the data should not be a "snapshot" in time but should include all accounts that had a balance exceeding \$10,000 during the Reporting Period. A snapshot would not provide an accurate picture as it could be subject to seasonality or even an effort by the utility to clear those accounts with arrearage balances which meet the reporting threshold just before the snapshot date. Moreover, taking a "snapshot" in time does not capture data throughout the course of the year. For example, under a year-end date "snapshot" customers likely would have received a LIHEAP cash and/or crisis grant. The number of accounts over the full annual reporting period that exceed the \$10,000 level will provide better information to the Commission about the arrearages.

The OCA also submits that the Commission should require the utility to provide the Commission with information regarding the company's collections process and a clear explanation of the steps the utility takes to collect past due balances beginning with the first instance of an arrearage. The OCA submits that the utility should then be required to report to the Commission on the utility's collection steps over the life of the arrearage from its inception up to the time that the account crosses the \$10,000 arrearage threshold for the accounts over \$10,000. Again, aggregate data could be used. By way of example, if a phone call reminder is the first step, the total number of accounts that received such a reminder should be provided. Also, the total number of accounts with no collection activity should be identified.

b. Account Level Data

If account level data reporting is required for all accounts with a balance exceeding \$10,000, aggregated data should also be provided in addition to account level data. The OCA recommends the collection of additional data points for the aggregate set of consumers with arrearages in excess of \$10,000 broken out by confirmed low income and total residential as is the BCS collection reporting. This data should include:

- The number of accounts with arrears in excess of \$10,000;
- The total dollars of arrears in accounts with arrears over \$10,000 (not simply the dollars over \$10,000, but the total dollars in accounts with arrears over \$10,000);
- The number of accounts that have been treated through a company-sponsored usage reduction program;
- The length of time it took the arrearage to accumulate from the first past due balance until reaching the \$10,000 threshold (a long term equivalent of the aging of the arrears);
- The number of payment arrangements (i.e. a distribution analysis of the number of accounts receiving 1, 2, 3, etc. payment arrangements);
- The number of accounts that were subject to medical certificates; and
- The total number of accounts that were worked through each step of the utility's collections process.

The OCA submits that these data points will allow the Commission to determine whether the utility's collections processes and steps are effective and to provide the Commission with meaningful information about consumer accounts that have reached the reporting threshold.

2. *Utility Reporting Requirements for the Number Of New and Renewed Medical Certificates*

The Commission summarized three possible reporting requirement interpretations of Section 1410.1(4):

- 1) To require a single number: the number of medical certificates *and* renewals that have been submitted *and* accepted;
- 2) To require four separate numbers, as proposed in the *Tentative Order*: (1) the number of initial medical certificates submitted, (2) the number of initial medical certificates accepted, (3) the number of renewals submitted, and (4) the number of renewals accepted, or
- 3) To require (1) the number of medical certificates and renewals that have been submitted, and (2) the number of medical certificates and renewals that have been accepted.

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

In its *Tentative Order*, the Commission determined that the medical certificates be classified and reported through four separate numbers: the number of initial medical certificates submitted, the number of initial medical certificates accepted, the number of renewal medical certificates submitted, and the number of renewal medical certificates accepted. *Chapter 14 Implementation Tentative Order*, Docket No. M-2014-2448824 (Order entered January 15, 2015) (Tentative Order).

As the Commission notes in its *Tentative Implementation Order*, this reporting requirement is similar to many of the traditional reporting requirements. The OCA supports the Commission's proposed guidelines for the implementation as detailed in the *Tentative Order*.

III. COMMENTS ON SPECIFIC SECTIONS IN SUBCHAPTERS L-V

A. Section 56.251 – Statement of purpose and policy.

The Proposed Rulemaking Order expands the applicability of Subchapters L-V to apply to individuals with a protection from abuse order, as well as those with a court order issued by a court of competent jurisdiction in the Commonwealth which provides clear evidence of domestic violence pursuant to Section 1417. As discussed above, the OCA supports the addition of this language but submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence.

B. Section 56.252 – Definitions.

As discussed above in relation to Section 56.2, the OCA submits that modifications to the following definitions are necessary:

1. *AMR – Automatic meter reading*

The definition for automatic meter reading (AMR) was intended to apply to an older technology that predates the advanced metering infrastructure (AMI) that is currently being deployed by many utilities throughout the Commonwealth. The OCA submits that the Commission should either update the definition of AMR to include AMI, or add a separate new definition of AMI that should be reflected throughout these regulations. AMI provides a wide variety of enhanced functionalities that should be reflected in the updated Chapter 56 regulations.

2. *Physician assistant*

In the Proposed Rulemaking Order, the Commission has proposed to add a definition of “physician assistant” to Section 56.2. The proposed language comes from the State Board of Medicine’s licensing procedures at 49 Pa. Code 18.151(b), which defines a physician assistant as:

An individual licensed by the State Board of Medicine in this Commonwealth who also provides any medical service, as directed by the supervising physician licensed to practice medicine in this Commonwealth, when the service is within the physician assistant's skills, training and experience, forms a component of the physician's scope of practice, is included in the written agreement and is provided with the amount of supervision in keeping with the accepted standards of medical practice.

49 Pa. Code § 18.151(b); see also Proposed Regulation Section 56.2 (definitions).

While the OCA does not oppose the addition of a definition of physician assistant, the OCA submits that it is not appropriate for the Commission to include such a detailed definition in its regulations. Rather, Chapter 56 should simply define "physician assistant" as an individual licensed as a physician assistant in this Commonwealth pursuant to the licensing regulations at 49 Pa. Code § 18.151. This approach prevents the Commission from wading into licensing regulations and obviates the need for updates to Chapter 56 in the event of changes to the applicable licensing regulations. As such, the OCA submits that a less complex definition of "physician assistant" which refers to medical licensing regulations is appropriate in this context.

C. Section 56.262 – Meter reading; estimated billing; customer readings.

In Section 56.262, the Proposed Rulemaking Order inserts language from Chapter 14, Section 1411 providing the right to verification of automatic meter readings at the customer's request. See 66 Pa. C.S. § 1411. Consistent with the OCA's comments regarding Section 56.12 above, the OCA supports the addition of this provision, with one modification. As previously discussed in the OCA's comments regarding Section 56.1 and Section 56.252, the OCA suggests that the Commission either update the definition of AMR to include AMI, or add a separate new definition of AMI that should be reflected throughout these regulations. Consistent with that recommendation, as well as the OCA's recommendation regarding Section 56.12, the OCA

submits that consumers should have the same right to verification for automatic meter readings obtained through AMI as is being included in this section for AMR.

If the definition of AMR in Section 56.252 is updated to include AMI, then automatic meter readings obtained through AMI will receive the same right to verification of automatic meter readings at the customer requests. If a separate definition of AMI is added to Section 56.252, however, then language indicating that automatic meter readings obtained through AMI are also subject to verification on the customer's request will need to be inserted into this section. This modification will help to ensure that the regulations reflect the various metering technologies that are currently in use in the Commonwealth, and that customers have the right to verify automatic readings at their request.

D. Section 56.282 – Credit standards.

Section 56.282(4) proposes to insert language from Section 1404(a.1) of the Public Utility Code, which provides that, “[a] public utility may not require an applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit.” As discussed above in relation to Section 56.32(e), the Commission should clarify that eligibility for CAP in this context is based on income eligibility, not on eligibility based on some other criteria.

Many low-income individuals may be eligible for CAP based on their income, but may not actually be enrolled in CAP for a variety of reasons. For example, many people may be income-eligible but are not enrolled in CAP because their “affordable bill” under CAP is greater than their actual bill. Section 56.282(4) is intended to improve access to essential utility service for all low-income consumers, not just those who are actually enrolled in CAP. As such, the OCA submits that the language should clarify that customers who are income-eligible for CAP are not required to pay a cash deposit.

E. Section 56.286 – Written procedures.

Section 56.286 requires that public utilities establish written procedures for determining an applicant's credit status. One change to this section included in the Proposed Rulemaking Order adds the following language: "The procedures must also specify that any applicant that is confirmed to be eligible for a customer assistance program is not required to pay a deposit." For the reasons discussed above in relation to Section 56.32(e) and Section 56.282(4), the Commission should clarify that eligibility for CAP in this context is based on *income* eligibility, not on eligibility based on some other criteria.

Additionally, Section 56.286 and 56.286(1) indicate that there are separate procedures and standards for victims of domestic violence with a protection from abuse (PFA) order. The Commission is proposing to expand this protection to those with a PFA, "or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence." Proposed Sections 56.286 and 56.286(1). As discussed above, the OCA generally supports the addition of this language but submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence.

F. Section 56.291 – General rule.

Section 56.291 relates to credit and deposit procedures for existing customers. The Proposed Rulemaking Order seeks to add Section 56.291(4), which states that, "[a] public utility may not require a customer or an applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit." For the reasons discussed above in relation to Section 56.32(e), Section 56.282(4), and Section 56.286, the OCA submits that the Commission should clarify that eligibility for CAP in this context is based on *income* eligibility, not on eligibility based on some other criteria.

G. Section 56.306 – Interest rate.

The language in Section 56.306 is being updated to reflect revisions to Chapter 14 at 66 Pa. C.S. § 1404(c)(6) regarding the calculation of interest on a customer's deposit. The proposed language is consistent with that of Section 1404(c)(6). The OCA has no further comment on this section.

H. Section 56.331 – General notice provisions and contents of termination notice.

Section 56.331 is being revised to reflect Chapter 14 and provides victims of domestic violence who have a court order issued by a court of competent jurisdiction in the Commonwealth, which provides clear evidence of domestic violence, with special protections. As discussed above, the OCA generally supports the addition of this language but submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence.

I. Section 56.333 – Personal contact.

Section 56.333 seeks to add language regarding electronic communications prior to termination. See Proposed Section 56.333(b)(3). As discussed above regarding the proposed Section 56.93, the OCA submits that channels for electronic communications, such as email or text messaging, should be treated in the same manner as telephone numbers and as such should not be disclosed to third parties.

J. Section 56.337 – Procedures upon customer or occupant contact prior to termination.

Section 56.337 is being updated to reflect Sections 1410.1(1) and (2). The revised Section 56.337 now requires utilities to provide customers with universal service program information upon contact with a consumer during the termination process. The proposed language is consistent with Section 14101(1) and (2). As discussed above regarding Section

56.97, the OCA supports this revision as it provides consumers with valuable information regarding universal service programs during the termination process.

K. Section 56.340 – Winter termination procedures.

Section 56.340 is being revised to clarify that the February update to the survey of households without winter heating must be inclusive of households that were terminated in December. The proposed language is consistent with Chapter 14. As discussed above regarding Section 56.100, the OCA supports this clarification as it helps to ensure that all households without heating service during the course of the winter are appropriately accounted for in the Bureau of Consumer Services' report.

L. Section 56.351 – General provision.

Section 56.351 is being revised to include physician assistants among the individuals able to certify and verify the condition of a customer for purposes of obtaining a medical certificate. The OCA supports this modification as it makes it possible for a variety of qualified medical professionals to submit documents necessary to obtain a medical certificate.

M. Section 56.353 – Medical certifications.

Section 56.353 is being revised as a follow-up to the Commission's *Chapter 14 Implementation Order*, Docket No. M-2014-2448824 (Order entered July 9, 2015) (Implementation Order) and *Chapter 14 Implementation Tentative Order*, Docket No. M-2014-2448824 (Order entered January 15, 2015) (Tentative Order). Proposed Rulemaking Order, Att. 1 at 6-9. The revision updates the required content for medical certificates. Similar to section 56.113, the OCA supports this revision because it reflects the Commission's Implementation Order and provides clarity.

N. Section 56.403 – Review from informal complaint decisions of the Bureau of Consumer Services.

Section 56.403 is being revised to establish that burden of proof is on the party who filed an informal complaint. As discussed above regarding Section 56.173, the OCA submits that the legal standard of burden of proof is misapplied in the context of an informal complaint, and as such the proposed change is not appropriate in this context.

O. Section 56.421 – Payment and timing.

The Proposed Rulemaking Order seeks to expand the language at 56.421(7) to notify both applicants or customers with PFAs, as well as those with “a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence,” of their options for making a payment to restore service. As discussed above, the OCA generally supports the addition of this language but submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence.

P. Section 56.431 – Public information.

Section 56.431(b) requires that public utilities with a substantial number of Spanish-speaking customers make certain information available in both Spanish and English. In the Proposed Rulemaking Order, Section 56.431(b)(13) is being expanded to include information on protections for individuals with a court order issued by a court of competent jurisdiction in the Commonwealth, which provides clear evidence of domestic violence pursuant to Section 1417. As discussed above, the OCA submits that a stakeholder group should be convened to clarify the language relating to victims of domestic violence, but in general the OCA supports the addition of this language.

Q. Section 56.461 – Reporting requirements.

Section 56.461 is being revised to incorporate new reporting requirements involving the annual reporting of accounts exceeding \$10,000 in arrears and the number of medical certificates used by consumers. For the reasons discussed above in relation to Section 56.231, the Commission should utilize the reporting requirements adopted in its Tentative Order in regards to medical certifications and renewals.

R. Chapter 56, Appendix A – Medical Emergency Notice

The proposed modifications to Appendix A will add newly defined terms or terms whose definitions are being modified, such as “physician assistant” and “public utility.” The proposed language is consistent with other proposed modifications to Chapter 56.

S. Chapter 56, Appendix B – Medical Emergency Notice

As with Appendix A discussed above, the proposed modifications to Appendix B will add newly defined terms or terms whose definitions are being modified, such as “physician assistant” and “public utility.” The proposed language is consistent with other proposed modifications to Chapter 56.

T. Chapter 56, Appendix C

Appendix C includes definitions related to reporting requirements in Section 56.231. The proposed updates to these definitions are consistent with Chapter 14 and other modifications to Chapter 56 that are proposed herein. The OCA does not have further comment on this Appendix.

U. Chapter 56, Appendix D

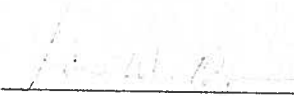
Appendix D includes definitions related to reporting requirements in Section 56.231(d). The proposed updates to these definitions are consistent with Chapter 14 and other modifications

to Chapter 56 that are proposed herein. The OCA does not have further comment on this Appendix.

IV. CONCLUSION

The Office of Consumer Advocate applauds the Commission's efforts to update its regulations to comply with Chapter 15, and appreciates the opportunity to provide comments on the proposed revisions to Chapter 56 of the Commission's regulations. The OCA respectfully submits that the above comments will ensure that the updated regulations will be consistent with Chapter 14 and will continue to provide essential protections to consumers throughout the Commonwealth.

Respectfully Submitted,



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