BEFORE THE PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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

JOINT ADDITIONAL COMMENTS OF

TENANT UNION REPRESENTATIVE NETWORK (TURN),

ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA (ACTION ALLIANCE),

AND COALITION FOR AFFORDABLE UTILITY SERVICE AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)

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I. INTRODUCTION AND BACKGROUND

The Tenant Union Representative Network (TURN), Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) (collectively referred to herein as the Low Income and Consumer Rights Groups) respectfully submit the following Additional Comments in response to the July 12, 2017 Order Seeking Additional Comments issued by the Pennsylvania Public Utility Commission (Commission or PUC), which "invite parties to submit additional comments on the matters discussed in this order and on any other issue raised in the comments filed at this Docket that they think warrant further attention by the Commission."[1]

TURN is a not-for-profit corporation with many low and lower income members whose mission is to advocate on behalf of low and moderate income tenants. Action Alliance of Senior Citizens of Greater Philadelphia is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. TURN and Action Alliance are Philadelphia based consumer membership and advocacy organizations who advocate on behalf of low and moderate income residential customers of PUC regulated public utilities in Philadelphia.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of

[1] Order Seeking Additional Comments at 13.

Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

The Low Income and Consumer Rights Groups submitted Comments in this proceeding on April 19, 2017, in response to the Commission's initial Notice of Proposed Rulemaking Order.[2] We will not reiterate those positions or issues here; however, we stand firmly on the positions taken therein, and cross-reference those positions where appropriate. These Additional Comments instead focus on responding to the Commission's specific request for comments on issues related to medical certificates, electronic notification of termination, and third-party notification of supplier switching. In addition, pursuant to the Commission's invitation for responsive comments, the Low Income and Consumer Rights Groups' Additional Comments respond briefly to a number of critical issues raised by other parties.

The Low Income and Consumer Rights Groups appreciate the opportunity to provide additional and responsive comments on matters which are critical to the health, safety, and welfare of Pennsylvanians, and their ability to access and maintain safe, stable, and affordable electric service on reasonable terms and conditions. We urge the Commission to incorporate the recommendations proposed throughout both our Initial and Additional Comments, and stand ready to participate further in this and other proceedings to help the Commission craft appropriate consumer credit, billing, and termination standards which will serve the public interest and the residents of our Commonwealth.

[2] Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Notice of Proposed Rulemaking Order, Docket No. L-2015-2508421 (July 21, 2016).

II. ADDITIONAL COMMENTS

A. Medical Certificates

i. There is No Evidence that Medical Certificates are Subject to Fraud/Abuse

In its July 12 Order Seeking Additional Comments, the Commission asked parties for additional information about medical certificates, noting that commenters should "comment upon their experience with the use of medical certificates to avoid termination, the fraudulent use of medical certificates, how medical certificate fraud has affected uncollectible accounts, and what portion of the utility's overall revenue is impacted by the use of fraudulent medical certificates."[3]

The Commission's request appears to have been sparked by IRRC's Comments, which questioned whether there is actual data to support the utilities' claims that additional restrictions on medical certificates were necessary to stop alleged rampant medical certificate fraud and abuse.[4] IRRC noted "the critical importance" of the medical certificate protections, explaining that "protection of those who are legitimately ill and submit a medical certificate is expressly stated in the Public Utility Code, and was reinforced by Act 155."[5] IRRC asked the Commission to "explain how the medical certificate provisions in the final regulation are reasonable and in the public interest" before imposing additional regulatory restrictions on the availability of medical certificates in its final form regulations.[6]

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[3] Order Seeking Additional Comments at 5-6.
[4] IRRC Comments at 5.
[5] Id.
[6] Id.

The Low Income and Consumer Rights Groups respectfully submit that the only relevant inquiry into assertions of medical certificate fraud is the number of petitions brought before the Commission by public utilities pursuant to section 56.118, which expressly allows public utilities to "contest the validity of the certification."[7] Other data points do not provide any reliable indication of fraud, and the Commission should carefully weed out hunches and speculation by the utilities. This is critically important because an assertion of medical certificate fraud not only implicates a utility's customer or applicant, but also the medical provider him or herself. Thus, the only reliable data on alleged medical certificate fraud would come from the Commission or utility records that resulted from an inquiry under section 56.118.

To be clear, the number and frequency of medical certificates and the amount of arrears associated with medical certificates are irrelevant to assessing whether medical certificates are appropriately submitted. Indeed, the number of medical certificates and the amount of associated arrears only underscore the importance of protecting medically vulnerable consumer who, *in the opinion of a medical professional,* are either seriously ill or require utility service to treat a medical condition.[8] Notwithstanding the utilities' claims of widespread and unchecked fraud and abuse,[9] the Low Income and Consumer Rights Groups have found no evidence in the annual

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[7] 52 Pa. Code § 56.118(a).

[8] Utilities have always been explicitly prohibited from substituting their judgement for that of the medical professional. Section 56.111 provides: "The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility." 52 Pa. Code § 56.111. Yet First Energy makes the outrageous assertion that "medical certificates are sometimes used by customers as a tool to avoid termination and further increase their arrearages ***where the customers are not truly suffering from an illness***." First Energy Comments at 23 (emphasis added). Again, the only relevant inquiry is whether the certifying professional has – in their medical opinion – determined that the loss of utility service would negatively impact the health of the household member, as defined by Chapter 14 and Chapter 56. Utilities cannot make judgment calls pertaining to whether an individual is or is not "truly suffering from an illness." Attempts to allow First Energy's inappropriate and baseless comments to shape policy moving forward should be roundly rejected.

[9] See PECO Comments at 5 (claiming that medical certificate abuse is responsible for "tens of millions of dollars of

Utility Consumer Activities Report and Evaluation – or other available reports – to indicate that the utilities have *ever* challenged the veracity of a medical certificate through the process established in section 56.118.[10] To the extent that utilities have contested the validity of medical certificates or deemed certificates invalid through practices other than the process provided by section 56.118, the Commission should clarify that such practices are prohibited.

The Commission should pay no heed to unsubstantiated assertions by utilities that cannot be reliably demonstrated. Accusations of fraud are serious, and implicate far-ranging consequences on the accused. As IRRC clearly admonished in its Comments, the Commission should be careful to not conflate actual, documented fraud with the utilities' frustration in serving vulnerable consumers with complicated lives and unique hardships. Indeed, fraud is addressed in several places throughout Chapter 56 and elsewhere in the Public Utility Code, and can have serious consequences on the ability of a household to access and maintain utility service.[11]

PPL Electric argued in comments that the Commission should adopt a specific definition of fraud,[12] and proposed sweepingly broad definitional language:

> Deceitful actions used by individuals to acquire and/or maintain utility service. This includes the use of false identities and the making of false or misleading statements for the purpose of avoidance of bill payment.[13]

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arrearages held in termination suspension via the medical certificate process"); see also First Energy Comments at 23.

[10] Pa. PUC, BCS, Utility Consumer Activities Report and Evaluation, available at http://www.puc.state.pa.us/filing_resources/consumer_activities_report_evaluation.aspx.

[11] See 52 Pa. Code §§ 56.35, .98, .100, and .191; see also 52 Pa. Code § 69.1201.

[12] Although PPL offered this specific definition in the context of its comments on the 4-year rule set forth in section 56.35(b), this definition was proposed as part of the overall rulemaking, and has implications in multiple sections, including the provisions concerning medical certificates.

[13] PPL Comments at 13.

PPL's proposed definition does not comport with Pennsylvania law, which requires proof of each of the following: (1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation, and (5) damages to the recipient as the proximate result.[14] In short, to prove fraud, there must be evidence that an individual intentionally misrepresented facts which caused the utility to act in a manner that causes damages to occur. But under PPL's suggested definition for fraud, a customer's intent – a critical element of fraud in Pennsylvania – would be wholly disregarded, as would the utility's actions in response to an intentional misrepresentation. Again, accusations of fraud can have far-ranging consequences on the accused, and can impact the household's ability to maintain utility service – as well as housing and employment over the long term. As such, the Commission should reject attempts by utilities to relax long-standing rules of law governing the elements of fraud, whether in the context of medical certificates, the 4-year rule, or otherwise.

ii. The Three-Day Stay of Termination Pending Submission of a Medical Certificate is Necessary, and Complies with Statutory Requirements

In its initial Comments, the Energy Association of Pennsylvania (EAP) argues that the Commission should eliminate the three-day notice contained in section 56.112, which requires utilities to temporarily stop termination for three days if a utility employee is notified that the household is seeking a medical certificate.[15] While the Commission previously concluded that section 56.112 was unaffected by changes to the definition of medical certificate in Chapter 14,[16]

[14] See Scaife Co. v. Rockwell-Standard Corp., 446 Pa. 280, 285 A.2d 451 (1971), cert. denied, 407 U.S. 920 (1972); Sevin v. Kelshaw, 417 Pa. Super. 1, 611.A.2d 1232 (1992); Bash v. Bell Telephone Co. of Pa., 411 Pa. Super. 347, 601 A.2d 825 (1992).
[15] EAP Comments at 15-16.
[16] Chapter 14 Implementation, Final Implementation Order, Docket No. M-2014-2448824, at 11-12 (June 11, 2015).

EAP disagrees, and claims that section 52.112 "is now a loophole around the Commission's and the statute's provision against oral medical certificates and should be eliminated."[17] EAP argues that customers will exploit the loophole to "call his or her utility and continually state that a medical certificate is being processed in order to hold termination for three days."[18]

As a preliminary matter, section 56.112 is already crafted in a manner that prohibits repeated three-day suspensions, which should alleviate any concerns by EAP that the procedure will be exploited or abused to leverage continual 3-day suspensions. Section 56.112 provides: "If a certification is not produced within that 3-day period, the public utility may resume the termination process at the point where it was suspended."[19] As such, EAP's assertion that customers will exploit the procedure outlined in section 56.112 should be disregarded.

Moreover, section 56.112 prescribes the *procedure* for obtaining a medical certificate, and does not attempt in any way to change the scope or definition of a medical certificate. Thus, the section remains wholly consistent with the language and intent of Chapter 14, which explicitly recognized the Commission's authority to establish reasonable and prudent procedures to ensure that the medical certificate protections are reasonably available to those in need. Section 1406(f) explicitly provides: "The medical certification procedure shall be implemented in accordance with commission regulations."[20]

A number of joint commenters argued that a longer procedural window to obtain the written document is prudent, in light of clear data showing that households face long wait-times

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[17] EAP Comments at 16.
[18] Id.
[19] 52 Pa. Code § 56.112.
[20] 66 Pa. C.S. § 1406(f).

and/or significant added costs when attempting to see their physician on short notice to obtain a written certificate.[21] Consistent with these commenters, the Low Income and Consumer Rights Groups assert that the procedure for obtaining medical certificates set forth in section 56.112 should not be modified as EAP suggests, but should instead be extended to account for the logistical barriers facing medically vulnerable households in Pennsylvania.

iii. The Commission Should Not Further Complicate Form Requirements

The Low Income and Consumer Rights Groups urge the Commission to reject attempts to further complicate the medical certificate form requirements. As noted above, a number of utilities raised unsupported allegations about the possibility of fraud and abuse, and suggest a number of restrictions on medical certificates to shield against the perceived threat of fraud. Specifically, several utilities argue for inclusion of licensing information on all certificates, and oppose efforts to make a medical certificate form available electronically.[22] In addition, EAP and First Energy seek to impose a requirement that a medical certificate be produced on letterhead of the certifying medical professional.[23] This unauthorized practice would impede access to medical certificates particularly from nurse practitioners and physicians assistants who may not have access to or authorization from a medical practice to utilize its letterhead for this purpose.

The Low Income and Consumer Rights Groups adamantly oppose efforts by utilities to impose added barriers to protection from termination for medically vulnerable Pennsylvanians.[24]

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[21] See Joint Comments of Community Justice Project et al. at 8-9 (arguing that section 56.112 should be expanded to allow the customer 14 days to obtain a written certificate).
[22] See EAP Comments at 14; First Energy Comments at 25; PGW Comments at 5; Duquesne Comments at 7-8.
[23] EAP Comments at 14; First Energy Comments at 23, 31.
[24] See Low Income and Consumer Rights Groups Comments at 31-42.

The utilities' positions are based entirely on unsupported claims of rampant fraud and abuse.[25] Notably, there is no consistent view on these issues by the utilities themselves. For example, while some claim that making a medical certification form available online would encourage fraud[26], others have already made the form available electronically and have not indicated any correlation with increased fraud.[27] Of course, an increase in the number of households accessing medical certificate relief is not an indication of increased fraud. More likely, such increase is an indication of the strong correlation between economic and medical hardship, affirming that access to medical certificates is absolutely essential for public health.

As explained above, without evidence of actual fraud as determined through the medical certificate complaint process in section 56.118, any increase in the number of households accessing relief through the medical certification process is most likely attributable to either increased need for and/or increased accessibility of the medical certification process for those in need. In addition, the Commission should consider the burden that imposition of additional medical certificate requirements could impose on the medical community. The utility proposals to add additional requirements to the certification process fail to appreciate the harm that could result if providers are dissuaded from completing medical certificate forms due to additional

[25] The term "abuse" as opposed to fraud is fraught with problems. What constitutes medical certification abuse? Using medical certifications when one's health requires the continuation of utility service – even if done frequently and consistently -- is not an abuse of the process. It is the process. Medically vulnerable households who, in the judgment of their medical provider, need service, should not be accused of abusing the process because they exercise their rights to a medical certification.

[26] See First Energy Comments at 23

[27] See Duquesne Comments at 7 ("Duquesne Light makes its form generally available for use by medical professionals on its website or upon request.").

form requirements. Attempts to limit the availability of medical certificates and/or to impose arbitrary requirements and restrictions on medical certificates should be rejected.

iv. The Commission Should Require Utilities to Provide Clear Information About Medical Certificate Payment Requirements

Woven into concerns about alleged fraud, a number of utilities noted that customers protected from termination by a medical certificate often do not make payments on their current bills, and argued that the right to renew certificates should, thus, be further curtailed.[28] Aqua explained, "The current regulations do state that the customer has a duty to make payments on current bills. Customers, however, do not usually abide by this duty when there is a medical certificate on an account."[29] Several utilities noted that the additional arrears accrued by households during the pendency of a medical certificate are too high.[30]

The Low Income and Consumer Rights Groups agree that households are often confused about the payment requirements for a medical certificate. This confusion is understandable, given consumers most often receive unclear, incorrect, or misleading information from their utilities about the payment obligation for medical certificate renewals.[31] Indeed, the information available on bills and termination notices is frequently inadequate, and provides insufficient detail for customers to clearly understand their payment obligations. The Low Income and Consumer Rights Groups regularly assist consumers who were told by their utility that they are limited to three medical certificates, but are never informed that they could continue to renew the

[28] See First Energy Comments at 25; Aqua Comments at 5; PECO Comments at 5; EAP Comments at 17-18.
[29] Aqua Comments at 5.
[30] First Energy Comments at 25; Aqua Comments at 5; PECO Comments at 5; EAP Comments at 17-18.
[31] See, e.g., PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Final Order at 20-21, Order on Reconsideration at 4-5, Docket No. M-2015-2507139, (Dec. 8, 2016).

medical certificate if they pay their current or budget bill each month consistent with section 56.116.

The Low Income and Consumer Rights Groups assert that, rather than curtail the ability of households to be protected from termination of medically necessary utility service, the Commission should enhance the notice requirements to include clear information about the current payment requirement when a household obtains an initial or renewal medical certificate(s). Consumers currently receive very limited information about the medical certificate payment requirements. The Medical Emergency Notice contained in Appendix A of Chapter 56 requires the following statement: "We will not shut off your service during such illness provided you: … (b) Make some equitable arrangement to pay the company your current bills for service."[32] This statement does not set forth clear and understandable payment requirements for consumers to follow, is included amongst a plethora of other notices in the 10-day written notice of termination, and fails to apprise consumers of the consequences that will result if the household were to fail to make payments on their "current undisputed bills or budget bill amount."[33] To effectively communicate the payment obligation of consumers protected from termination by a medical certificate, utilities should provide consumers with clear information about applicable payment requirements both at the time a medical certificate is presented and on subsequent billing. Doing so will assist medically vulnerable households in maintaining utility service during critical times while preventing the household from accruing additional arrears.

[32] 52 Pa. Code Chapter 56, Appendix A, Medical Emergency Notice.
[33] 52 Pa. Code § 56.116.

The Low Income and Consumer Rights Groups submitted substantial comments addressing issues associated with the current payment requirements contained in section 56.116.[34] We will not reiterate those arguments here, but rather incorporate those arguments by reference, and urge the Commission to resist attempts to further narrow or otherwise frustrate the ability of medically vulnerable households to access critical protections.[35]

v. All Household Members Must Remain Protected

EAP and PGW separately argue that the regulations lack clarity with regard to the relationship required for medical certification protections to apply. EAP argues that medical certificate protections should be limited to "permanent" household members.[36] PGW argues that relocating the definition of medical certificate to the definition section "removes some clarity from the regulation" and "arguably removes the tying of a medical condition to 'the customer's or applicant's household' at which the utility is seeking to terminate or refusing to restore service."[37]

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[34] Low Income and Consumer Rights Groups Comments at 38-42.

[35] Our initial Comments correctly concluded that the obligation of a utility to provide service upon issuance of a medical certificate is separate and distinct from the limitations on the Commission's authority over payment arrangements. Low Income and Consumer Rights Groups Comments at 40. Notwithstanding this distinction, the provisions of section 56.97, requiring the utility to attempt, in good faith, to enter into a payment arrangement, continue to apply at the time of contact when termination is threatened, even if that contact is made in order to seek a medical certificate. As the Commission previously concluded:

> Regarding CLS' request that the Commission clearly distinguish that medical certificate payment arrangements are to be entered into by companies pursuant to §56.97 and may be reviewed by the Commission in the event of a dispute concerning adherence to §56.97, we agree that application of the good faith negotiation process at §56.97(b) is the appropriate method for fulfillment of the customer's duty at §56.116 to equitably arrange to make payment on all bills. Moreover, a customer may file a payment dispute about a utility's application of §56.97(b) and the Commission is authorized under §1405(a) to investigate such complaints.

Chapter 14 Implementation, Second Implementation Order, Docket No. M-00041802F0002, at 27 (Sept. 9, 2005).

[36] EAP Comments at 11-12.

[37] PGW Comments at 3-4.

Chapter 14 clearly defines a medical certificate, in relevant part, as: "A written document … certifying 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."[38] There is no requirement that the household member be a "permanent" member of the customer's household. The Low Income and Consumer Rights Groups assert that such a standard should be rejected because it is unreasonable, impossible to substantiate, and inconsistent with the explicit language in Chapter 14. To PGW's argument, it is not clear why the Commission's inclusion of the definition of medical certificate from Chapter 14 creates any ambiguity. The Low Income and Consumer Rights Groups assert that Chapter 14's definition as modified in our initial Comments should be included in the definitions of Chapter 56.[39]

B. Third Party Notification of Supplier Switching

The Low Income and Consumer Rights Groups appreciate the Commission's proposed modification of section 56.131 (and identical section 56.361) to provide an opportunity for customers to designate third parties who, in addition to receiving duplicate copies of reminder notices, past due notices or delinquent account notices, would receive notices when a customer switches energy suppliers. There are many vulnerable customers, particularly elderly and/or disabled individuals, who may have difficulty managing certain utility matters, and who should be able to designate a trusted third party to assist them. For these customers, the risks associated with unexpected and higher energy costs from a competitive supplier are heightened, as they are

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[38] 66 Pa. C.S. § 1403 (emphasis added). The Commission should recall that medical certificate protection also extends to tenants and household members who reside in a household that has utility service through a landlord account. Tenant Action Group v. Pa. Public Utility Commission, 514 A.3d 1103 (Pa. Cmwlth. 1986); 52 Pa. Code § 56.111.

[39] Low Income and Consumer Rights Groups Comments at 9.

often less able to absorb the costs and/or take steps to rectify a bad shopping contract. The Commission is no doubt aware that suppliers continue to utilize high pressure marketing practices, misleading or complicated assurances of future prices, and frequently seek to enroll customers at their doorstep, sometimes even claiming an affiliation with the customer's utility.[40] A third party notification presents an additional opportunity for a customer to obtain timely assistance in unwinding a selection of an alternative supplier that could otherwise result in unaffordable bills and a loss of service.

That said, the Low Income and Consumer Rights Groups believe that the Commission should provide clear guidance concerning who can be listed as a third party. Under no circumstances should a competitive energy supplier or other commercial, marketing, or for-profit business targeting consumers be listed as the third party to receive notification. Indeed, while the intent of expanding third party notification to shopping decisions is to protect vulnerable consumers, the notification system could also be misused or otherwise exploited in an attempt to monitor consumer shopping decisions and target marketing for energy or other services. The Commission's July 14 Order indicates that utilities are "expected to utilize" the Appendices provided by the Commission, but falls short of mandating compliance.[41] Those Appendices specify that the third party can be "a trusted relative, friend, clergy member, or social service agency."[42] Mandating the use of the Commission's Appendices to implement the third party

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[40] See, e.g., Alex Wolf, Law 360, Respond Power Pays $5.2M to Settle Pa. Price Spike Suits (Aug. 11, 2016), https://www.law360.com/articles/827574/respond-power-pays-5-2m-to-settle-pa-price-spike-suits; Emily Field, Law 360, HIKO Energy Paying $1.6M to End Pa. Price Spike Suit (May 4, 2015), https://www.law360.com/articles/651172/hiko-energy-paying-1-6m-to-end-pa-price-spike-suit; Emily Field, Law 360, Pa. Utility to Pay $2.3M to End Price Spike Suit (March 25, 2015), https://www.law360.com/articles/635486/pa-utility-to-pay-2-3m-to-end-price-spike-suit.

[41] Order Seeking Additional Comments at 9.

[42] 52 Pa. Code Chapter 56, Appendix E & F.

notification, and issuing clear guidance regarding the appropriate persons and entities that may be designated to receive third party notices, would help ensure that commercial entities are not able to take advantage of the process to monitor or otherwise attempt to influence a consumers' shopping decisions in a manner that is inconsistent with the consumers' best interests.

C. Informal Complaint Process

A number of commenters raised concerns regarding the Commission's proposal to authorize a complainant to request a copy of documentation submitted by the public utility in response to an informal complaint. The Low Income and Consumer Rights Groups urged the Commission to approve that modification, as well as address circumstances in which redaction of third party's information would impede the due process rights the Commission seeks to protect (e.g., in the event of a complaint by a Subchapter B tenant against a utility, the landlord ratepayer's information should not be redacted).[43] As explained more thoroughly below, the Low Income and Consumer Rights Groups submit that the Commission should approve the proposed modification as revised in our initial comments, and reject the concerns raised by utility companies and the EAP. Additionally, the Low Income and Consumer Rights Groups agree with the recommendations of the OCA, and submit that the Commission should not establish a burden of proof for informal complaints. Finally, we submit that the Commission should further clarify the language in its proposed regulations concerning the application of a stay pending appeal.

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[43] Low Income and Consumer Rights Groups Comments at 46-48. EAP erroneously contends that formal complaints can only be filed by customers of record or authorized persons on the account. EAP Comments at 19. The Commission's regulations are clear in authorizing a formal complaint to be filed by any "person" complaining of an act done or omitted to be done by a person subject to the jurisdiction of the PUC. 52 Pa. Code § 5.21(a). The Chapter 56 regulations do not modify this provision. 52 Pa. Code § 56.171.

i. Utility Company Documents Should be Provided to Informal Complainants

In its Notice of Proposed Rulemaking, the Commission proposed to improve due process by ensuring the provision of adequate information for a complainant to understand the basis for an informal complaint decision, and determine whether to initiate a formal complaint proceeding.[44] Providing informal complainants with documents provided by utilities to BCS will undoubtedly assist in ensuring that those who seek further review through the formal complaint process do so in an informed manner.

The Low Income and Consumer Rights Groups supported this provision in initial comments, with recommended revisions. Several utilities and EAP, however, raised a host of unfounded and largely irrelevant concerns in their respective comments regarding the effect of the proposed transparency and disclosure enhancements on future informal complaints, suggesting that requiring utilities to disclose pertinent information in an informal dispute setting will be unduly burdensome and will constrain the utilities' willingness to engage in early dispute resolution.[45] The utilities and EAP contend that more staff will be needed to redact information, but rely upon the total number of informal complaints filed, rather than the narrow subset of complaints where either the complainant or the Commission request that copies of documents be provided.[46] One utility noted that most informal complaints are resolved by BCS and do not proceed to the formal complaint process, suggesting that requests for utility company documents may be unnecessary in the majority of cases.[47] In contrast, Aqua stands out in its comments,

[44] Notice of Proposed Rulemaking Order at 9.
[45] See, e.g., PPL Comments at 11; EAP Comments at 18; Columbia Comments at § H.
[46] See PPL Comments at 11.
[47] First Energy Comments at 29.

noting that, in many cases, the information the utility provides in the informal complaint process is no different than information it provides (or would provide[48]) in a utility dispute report.[49] Accordingly, Aqua promotes a sensible, cost-effective solution that enables it to simply send the information to the customer at the same time it submits it to BCS.[50]

Opponents of the Commission's proposal for enhanced information disclosure seek to address all issues concerning access to utility documentation through the formal complaint procedure, where their lawyers can object to discovery requests by would-be informal complainants, who almost invariably will be unrepresented. PGW paradoxically submits that the complainant suffers no harm because she may initiate a formal complaint in order to conduct discovery to try to obtain the information that, in the first instance, formed the basis of an adverse BCS decision.[51] Conversely, EAP submits that if the regulations are modified, utilities may refuse to provide information in the informal complaint process (forcing the issue to be resolved in formal complaint proceedings), in order to shield their internal processes and procedures from review.[52] First Energy similarly suggests utilities will circumvent the informal complaint process to protect their legal strategy.[53] Columbia suggests such information should only be provided if agreed to, on a case-by-cases basis, by the utility, otherwise a complainant would have to seek it through a formal complaint.[54] These opponents promote goals of secrecy

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[48] Under Commission regulations (52 Pa. Code §56.151(5)), this report is only available upon request.
[49] Aqua Comments at 6.
[50] Id.
[51] PGW Comments at 7. PGW raises its status as a local agency pursuant to the Right-to-Know Law in a further attempt to shield access to information. PGW Comments at 6, n. 15. PGW identifies no theory upon which the PUC could conclude that a complainant seeking information through the PUC administrative review process is limited by the Right-to-Know Law. Information required to be provided to informal complainants is a matter governed by the principles and requirements of administrative due process.
[52] EAP Comments at 19.
[53] First Energy Comments at 29.
[54] Columbia Comments at § H.

over principles of transparency and due process, and at the same time undermine the basic concept of the informal complaint process. The informal complaint process is intended to resolve issues without an adjudication. Participants in the informal complaint process have a due process right to then seek resolution through an adjudication before the Commission by initiating a formal complaint.

As the Low Income and Consumer Rights Groups explained in our initial comments, the Commission has previously considered that privacy rights must be balanced against the Commission's obligation to provide adequate administrative due process.[55] We submit that it is fundamental to the Commission's administrative due process that, for purposes of determining whether to request review of a BCS informal complaint decision pursuant to 52 Pa. Code § 56.172, a complainant should be provided access to utility company documentation that informed BCS' decision. Although it is possible that providing this information, with appropriate redaction if ordered by the Commission, may create some administrative burden for utilities, that potential burden does not outweigh the need for a complainant to be informed of the basis for an adverse decision against them. The Low Income and Consumer Rights Groups submit that informal complainants have an exceedingly high interest in receiving documents provided by utility companies that were relied upon by BCS in rendering its decisions. This information is critical for the consumer to make an informed decision about whether to appeal the decision. Indeed, without this information, a consumer cannot determine whether to invest time, resources, and energy to bring a formal complaint, and may be discouraged from seeking assistance from counsel. On the other end of the spectrum, a consumer might needlessly file a

[55] Low Income and Consumer Rights Groups Comments at 47.

formal complaint simply because the consumer was unable to access documentation supporting the utility's position.

The Low Income and Consumer Rights Groups recognize and appreciate the need to shield or redact third party information in appropriate circumstances where the privacy interests may outweigh the complainants' due process interests. PGW refers to such an instance, suggesting that cases which involve issues related to the domestic violence exemption warrant additional caution in the disclosure of dispute information.[56] Indeed, we agree that utilities must be diligent to shield confidential and sensitive personal data from disclosure to inappropriate individuals, especially in cases involving application of the domestic violence exemption. However, these unique cases should not be used as justification to prevent all complainants from receiving information and data that is pertinent to their dispute with the utility and, in fact, was used to form the basis of the Commission's informal complaint decision. To strike an appropriate balance between the provision of due process and the need to protect confidential information, The Low Income and Consumer Rights Groups submit that the Commission should approve the proposed modifications to 52 Pa. Code § 56.163 as set forth in our initial Comments.[57]

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[56] PGW Comments at 6.

[57] Low Income and Consumer Rights Groups Comments at 48. In relevant part, we recommended the following:

> If so ordered by the Commission, the public utility shall redact any documents to omit information concerning an individual other than the complainant which is not relevant to the Commission's decision or the disclosure of which would compromise the personal security of such individual. ~~The public utility shall redact any documents to omit information that would possibly compromise the privacy or personal security of any individual other than the complainant.~~

ii. There Is No Burden of Proof for Informal Complaints

The Commission proposed a modification to 52 Pa. Code § 56.173 to establish that the party filing an informal complaint bears the burden of proof.[58] Although the Commission submitted that this change was a clarification, the Low Income and Consumer Rights Groups believe it to be a substantive change. We agree with the OCA that there is no burden of proof in informal complaint proceedings at BCS.[59]

The lack of a burden of proof in informal complaints is demonstrated by the absence of any deference to BCS in a formal complaint seeking review of an informal complaint decision. Formal complaints seeking review of BCS decisions are reviewed de novo, and to initiate such a review, a complaint must be filed that satisfies the Commission's pleading standards. The party filing a complaint seeks an order from the Commission that includes findings of fact and conclusions of law, and must establish a *prima facie* basis for a decision in its favor. Through the formal hearing process, the party filing the complaint must submit sufficient evidence on the record to prove they are entitled to relief. The **formal** complainant is the appropriate party to bear the burden of proving its entitlement to relief, regardless of whether it is the same party that filed the original informal complaint. Accordingly, the Low Income and Consumer Rights Groups urge the Commission not to implement its proposed modification to 52 Pa. Code § 56.173, and to continue to impose no burden of proof in informal complaints.

[58] Notice of Proposed Rulemaking Order at 5.
[59] OCA Comments at 21.

iii. Clarification is Necessary Regarding Stay Pending Appeal

In the Commission's July 12 Order, it proposed a further modification to the informal complaint regulations at sections 56.172 and 56.402.[60] The Commission proposed to clarify that a customer must be provided utility service while a formal complaint in review of a BCS decision is pending. The Low Income and Consumer Rights Groups appreciate the Commission's attention to the needs of customers to continue to receive service while engaging in the Commission's complaint process. We suggest, however, that the regulations be modified to be consistent with the provisions of section 56.166, which delegates authority to BCS to resolve "customer, applicant or occupant" informal complaints.[61] We believe that this language importantly recognizes the rights of individuals who may not be customers, whether they are tenants pursuant to Subchapter B, occupants who have been denied customer status, applicants who have been denied service, or other individuals, such as spouses or partners of customers, who may not satisfy Chapter 14's definition of "customer." All such persons may have standing to pursue a formal complaint pursuant to 52 Pa. Code § 5.21 and should be protected by the Commission's stay provisions. Accordingly, the first sentence of section 56.172(d) should read as follows:

> Upon the filing of a formal complaint <u>by a customer, applicant or occupant</u> within the 30-day period and not thereafter except for good cause shown, there will be an automatic stay of the informal complaint decision.

Moreover, the Low Income and Consumer Rights Groups supports the Commission's proposed second sentence of section 56.172(d) as continuing to ensure that customers, applicants or

[60] Order Seeking Additional Comments at 12-13.
[61] 52 Pa. Code § 56.166.

occupants for whom BCS has ordered restoration of service will not be deprived of service based on a utility-initiated formal complaint.

D. Electronic Notice of Termination

In the Commission's July 12 Order, the Commission appears poised to address issues concerning consent to electronic notice of termination in a separate, but related, proceeding regarding the Commission's privacy guidelines.[62] The Low Income and Consumer Rights Groups respectfully submit that, although there are issues relating to electronic notice of termination that may be resolved by appropriate Commission guidelines, customer consent to such notification is not one of them. Indeed, the provisions of section 1406 do not support the proposal to address customer consent to electronic notice in Commission guidelines. Therefore, provisions ensuring informed, affirmative customer consent must be included in the Commission's regulations.

As the Commission recognizes, it is under a continuing mandate to ensure that its regulations effectuate the provisions of Chapter 14, as modified.[63] This obligation continues to apply to changes to Chapter 14 pursuant to Act 155 of 2014. Accordingly, unless the General

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[62] Order Seeking Additional Comments at 5 ("It is also apparent from the comments that there are number of concerns related to this topic, including what type and form of consent is needed; the duration, expiration and revocation of consent; and the use and sharing of the contact information provided. However, we agree with EAP's suggestion that we not be overly prescriptive or detailed in the regulations, given ever changing technology….It is reasonable to assume that the General Assembly envisioned the development of guidelines that would be ratified by a Commission Order.").

[63] Notice of Proposed Rulemaking Order at 2 ("The Commission is directed to revise Chapter 56 and promulgate regulations to administer and enforce Chapter 14"); see also Section 6 of Act 201 of 2004, first establishing Chapter 14, ("The Pennsylvania Public Utility Commission shall amend the provisions of 52 Pa. Code Ch. 56 to comply with the provisions of 66 Pa. C.S. Ch. 14 and may promulgate other regulations to administer and enforce 66 Pa. C.S. Ch. 14, but promulgation of any such regulation shall not act to delay the implementation or effectiveness of this chapter.")

Assembly has expressly authorized the effectuation of provisions of Chapter 14 through some other means, the Commission has a standing obligation to modify its regulations.

Act 155 authorized electronic notice of termination notices under limited circumstances. It did so by making the following specific changes to section 1406(b)(1) of the Public Utility Code:

> (b) Notice of termination of service.--
> (1) Prior to terminating service under subsection (a), a public utility:
> * * *
> (ii) Shall attempt to contact the customer or occupant[, either in person or by telephone, to provide notice of the proposed termination at least three days prior to the scheduled termination.] **to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:**
> **(A) in person;**
> **(B) by telephone.** Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of [7] **8** a.m. and 9 p.m. if the calls were made at various times each day[.]**; or**
> **(C) by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.**
> **(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.**

As is demonstrated by the express language of the statute, a public utility is permitted to provide electronic notice via approved electronic messaging format "consistent with the Commission's privacy guidelines and approved by commission order."[64] Accordingly, the manner of providing notice, the format of such notice, and the platform (e.g., e-mail, text messaging or other format) used to provide such notice, may properly be addressed through approved Commission privacy guidelines, to be developed through a separate proceeding.

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[64] 66 Pa. C.S. § 1406(b)(1)(ii)(C).

Indeed, the Low Income and Consumer Rights Groups look forward to the opportunity to participate in such separate, forthcoming proceeding.

However, the language of Act 155 does not authorize the Commission to effectuate the requirement of customer affirmative consent through privacy guidelines. Section 1406(b)(1)(ii)(D) imposes an absolute obligation of affirmative consent to the specific electronic messaging format to be used for purpose of termination notice. Importantly, and unlike section 1406(b)(1)(ii)(C), the General Assembly did not provide the Commission any authorization to effectuate the mandate of affirmative consent through "policy guidelines." The Commission must address the manner of obtaining consent through its regulations.

The Low Income and Consumer Rights Groups submitted specific proposed provisions for the Commission's regulations, clarifying that consent must be written, provided in a form dedicated to notice of termination (ensuring that such consent is knowing), and imposing obligations on utilities to periodically confirm such consent and deliver notice through other lawful means if the utility has reason to believe such notice was not received.[65] We continue to submit that these provisions are necessary and reasonable to effectuate the purposes of Act 155's electronic notification provisions.

In general, commenters requested additional guidance regarding electronic notification.[66] Some commenters also submitted that "bounceback" mechanisms, which inform the utility that certain electronic notices are not received, are already in place.[67] Indeed, one utility

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[65] Low Income and Consumer Rights Groups Comments at 27-31.
[66] See, e.g., PAWC Comments at 3; EAP Comments at 8-9.
[67] Duquesne Comments at 15; EAP Comments at 7. It should be noted that the Low Income and Consumer Rights Groups strongly disagree with EAP's mischaracterization of electronic notice of termination as akin to "other

acknowledged the need for periodically updating consent to electronic notification, agreeing that other forms of notice would be required if electronic notice is not received.[68] The Low Income and Consumer Rights Groups submit that their proposed modifications to sections 56.93 and 56.97 are consistent with the views of these commenters. Specifically, we proposed modifications to provide clear guidance, reasonably designed to ensure that actual notice is received. Our proposal will permit utilities to obtain adequate affirmative consent to implement electronic termination notice practices, subject to such additional guidelines as may appropriately govern the manner, format, and platform of delivering electronic notice.

i. PGW's Proposal to Use Electronic Notification for 10-Day Notices is Contrary to Law

PGW proposes that the PUC permit it to provide 10-day advance termination notices electronically, contrary to the express provisions of Chapter 14. The Commission should flatly reject PGW's poorly conceived proposal, as it would violate the Public Utility Code.

PGW observes that the Commission proposed to address electronic termination notices in section 56.93 (relating to three-day notices), but not section 56.91 (relating to ten-day notices).[69] PGW proposes either that section 56.91(a) reference the availability of electronic notice (as the Commission has proposed in section 56.93(a)) or contain identical language as that proposed for

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routine services" individuals may receive such as banking or shopping. EAP at 7. Electronic notice of termination is far from routine (it required a recent statutory amendment, after all), and is intended to trigger an immediate response by the recipient to prevent far-reaching consequences which are likely to result from the loss of critical, life-sustaining energy and water services. It is a far cry from a notification that a package is scheduled for delivery or that favorable home equity loan terms may be available. Indeed, notice of a pending utility termination is more akin to notice of an eviction or foreclosure, which are subject to similar statutory and regulatory guidelines to ensure the household actually receives notice of the pending detrimental action.

[68] Duquesne Comments at 14-15.

[69] PGW Comments at 2.

section 56.93(a).[70] PGW's proposal disregards the statutory framework for the Commission's proposal, i.e., the provisions of Chapter 14 as modified by Act 155.

Section 1406(b) of the Public Utility Code addresses, and requires rejection of, PGW's proposal. Specifically, section 1406(b)(1)(i) requires written notice of termination at least ten days prior to the proposed termination. This provision, which has been effective since 2004, was not modified by Act 155, and does not authorize electronic notification.[71]

In contrast, section 1406(b)(1)(ii) establishes a second and separate notice obligation. This provision, which was modified by Act 155 (as shown above), authorizes electronic notice of termination at least three days prior to the proposed termination, provided the customer has affirmatively consented to the receipt of such electronic notice. For that reason, the Commission's proposed regulations address electronic notice for three-day notices, because a change is required by section 1406(b)(1)(ii) as modified by Act 155.

The Public Utility Code provides no legal basis or justification for PGW's proposal. The Commission cannot permit a utility to provide ten-day notices of proposed termination electronically because the Public Utility Code does not authorize such notices to be provided electronically.

E. Domestic Violence Standards

The majority of agencies and organizations that commented on domestic violence standards in response to the Commission's Notice of Proposed Rulemaking noted that additional

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[70] Id.

[71] See Aqua Comments at 4 ("Aqua realizes that the proposed rulemaking and current Chapter 56 regulations require the initial termination notice to be written (56.91) and that this requirement will remain intact.")

regulatory guidance and clarity is critical to ensure proper implementation of the domestic violence exemption found in section 1417.[72] Nearly all of these commenting parties, including subject matter experts at the Pennsylvania Coalition Against Domestic Violence, agreed that the complexity of the issue – coupled with a lack of internal expertise on the intricacies of domestic violence laws and policies – necessitates further input before adopting additional regulatory guidance.[73] Several commenters suggested that the Commission should convene a work group to more carefully examine the topic and develop recommended language for the Commission to set forth for broader public comment.[74]

Just one commenter, PPL Electric, recommended specific language for the Commission to adopt. However, PPL's recommendations are inappropriately restrictive, inconsistent with the language contained in section 1417, and should be rejected. PPL first suggests that, to qualify for the domestic violence exemption, a court order should be required to contain a specific statement or finding of domestic violence.[75] But court orders rarely – if ever – contain findings of domestic violence because domestic violence is not the element of a crime, nor is it an element required to obtain a Protection From Abuse (PFA) Order, a divorce decree, a child custody order, or other civil court order. However, these orders might otherwise contain clear *evidence* of domestic violence. For example, a court order which finds a defendant guilty of

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[72] See Low Income and Consumer Rights Groups at 51-52; OCA Comments at 4-5; PECO Comments at 2; Duquesne Comments at 8-9; PPL Comments at 12-13; Joint Comments of Community Justice Project et al. at 24-27.
[73] See id. Note that the Joint Comments of Community Justice Project et al. included the Pennsylvania Coalition Against Domestic Violence – the statewide coalition of domestic violence service providers across Pennsylvania – as well as two local domestic violence programs, The Women's Center, Inc. (Columbia and Montour Counties) and The Women's Resource Center (Lackawanna and Susquehanna Counties).
[74] See Low Income and Consumer Rights Groups at 51-52; OCA Comments at 4-5; Joint Comments of Community Justice Project et al. at 24-27.
[75] PPL Comments at 12-13.

simple assault may contain findings that he or she "attempt[ed] to cause or intentionally, knowingly, or recklessly cause[d] bodily injury to another"[76] – but it is unlikely to contain an explicit finding that the victim was in a relationship with the defendant. However, that same order may contain the victim's name, which should constitute clear evidence of domestic violence if the victim and defendant have or previously had shared utility service.

PPL next argues that "domestic violence" should be "defined as violence between family members, as defined in section 23 Pa.C.S.A. § 6102."[77] But the term "domestic violence" is not defined in the PFA Act.[78] Rather, the PFA Act defines "abuse" and "family or household members," both of which are intricately nuanced, contain multiple subparts, and are tied to a plethora of accompanying case law which must be closely parsed to know whether or not an individual meets the threshold under the Act.[79] A utility should not be placed in the position of examining the underlying facts of an order and determining whether the definitions in the PFA Act are met. There are also inherent inconsistencies in defining the expanded protection in section 1417 in a manner which limits its application to the original exemption. In other words, section 1417 was expanded to exempt individuals with other court orders containing clear evidence of domestic violence, so limiting application of the expanded exemption to the definitions contained in the PFA Act would, in essence, eclipse the expansion.

Finally, PPL suggests that the term "court of competent jurisdiction" be defined as "a magisterial district court, court of common pleas, or appellate court."[80] But this definition does

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[76] See 18 Pa. C.S. § 2701.
[77] PPL Comments at 12-13.
[78] 23 Pa. C.S. § 6102.
[79] See id.; see also PCADV, The Pennsylvania Protection From Abuse Act Annotated (updated Sept. 2015), http://pubs.pcadv.net/palegal/PFAActAnnot_LATEST.pdf.
[80] PPL Comments at 12-13.

not include administrative courts – such as federal Immigration Courts and the Bureau of Hearings and Appeals within the Department of Human Services (DHS) – which often issue orders which contain evidence of domestic violence.

In its review of the comments, IRRC noted:

> Several commenters asked for clarification of portions of the [domestic violence exemption], including "a court of competent jurisdiction," "clear evidence" and "domestic violence." Many commentators volunteered to participate in a work group to clarify the phrase. While these phrases may not be easy to define, we are concerned that the public safety may not be adequately protected if they are not made clear to a regulated community and public affected by them. Therefore, we recommend that the PUC clarify the meaning of these phrases in the final regulation.[81]

The Low Income and Consumer Rights Groups agree with IRRC that the public safety is not adequately protected without clear guidance to ensure that the protections for victims of domestic violence are implemented appropriately to fulfill the intent of the General Assembly in exempting this vulnerable population from harsh credit, billing, collection, and termination standards. However, to date, the public has not been afforded an opportunity to provide meaningful feedback on specific proposed language. Indeed, PPL was the only commenter to suggest specific recommendations, and those recommendations – as explained above – are fatally flawed and must be dismissed. The Low Income and Consumer Rights Groups urge the Commission to proceed with care by employing an equally deliberative process which considers *responsive* input and recommendations from a variety of stakeholders. Indeed, we strongly assert that – prior to adoption of any final form regulations further implementing the domestic violence exemption – the Commission should release draft regulatory language, and should

[81] IRRC Comments at 1-2.

allow responsive comments from interested stakeholders. The Commission should strongly encourage the participation of subject matter experts and organizations that provide assistance to domestic violence survivors.

The Low Income and Consumer Rights Groups' recommendation that the Commission set forth explicit language, and allow for additional, responsive feedback thereto, is consistent with the approach the Commission employed in its July 12, 2017 Order Seeking Additional Comments, which sought to gather input on further proposed language with regard to electronic notice of termination, medical certificates, third party notification of supplier switching, and the informal complaint process. Indeed, the same level of careful scrutiny is necessary to ensure that critical protections for vulnerable Pennsylvanians are appropriately upheld.

F. Security Deposit Standards

Several of the utilities, along with EAP, asked the Commission to clarify the security deposit requirements.[82] The Low Income and Consumer Rights Groups assert that the utilities' arguments with respect to the low income security deposit prohibition and the 90-day security deposit payment window should be rejected.

First, the utilities and EAP argue that the Commission should impose a number of restrictions and limitations on the security deposit prohibition for low income customers contained in section 1404(a.1).[83] Some utilities ask that low income consumers be required to provide income information to the utility before applying the prohibition, while others –

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[82] See EAP Comments at 4, 6; PPL Comments at 2-6; PECO Comments at 7; Duquesne Comments at 13; Columbia Comments at 6-7.
[83] See id.

including EAP and Columbia Gas – go so far as to suggest that customers be required to actually enroll in CAP before being exempt from deposit requirements.[84]

The Low Income and Consumer Rights Groups submitted lengthy comments with regard to the low income security deposit prohibition.[85] While we will not repeat those arguments here, we do wish to explicitly refer to those comments herein to ensure that the scope of the security deposit prohibition in section 1404(a.1) is not undermined. While there are many benefits to CAP enrollment, there are also many responsibilities and potential financial consequences to the household. For example, CAP customers are excluded from accessing a Chapter 14 payment arrangement for arrears incurred while in the program.[86] Households should not be forced to actually enroll in or to complete the enrollment process simply to avail themselves of the security deposit prohibition contained in section 1404(a.1). Indeed, section1404(a.1) applies to any household which is eligible for a customer assistance program, and is not limited to those who actually enroll in the program. Furthermore, the CAP enrollment process may be both time consuming and costly for the applicant and company alike. Individuals who do not wish to enroll in CAP should not be subjected to these burdens, and other ratepayers should not be required to pay the costs of the CAP enrollment process for those individuals who do not intend to enroll. As such, as explained more thoroughly in our initial comments, a simple income verification showing the household is at or below 150% of the Federal Poverty Level should be sufficient for the prohibition to attach.[87]

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[84] See EAP Comments at 5; Columbia Comments at 6-7.
[85] Low Income and Consumer Rights Groups Comments at 18-26.
[86] See 66 Pa. C.S. § 1405(c).
[87] Low Income and Consumer Rights Groups Comments at 18-26.

Next, the utilities and EAP argue that utilities should be able to terminate based on a single missed security deposit installment – rather than having to wait until the end of the 90 days to proceed with termination.[88] But allowing households a full 90 days to pay a utility security deposit without risk of immediate termination is often critical to the household's financial stability. Indeed, the costs of relocating can be astronomical, and households often lack the upfront capital to pay an immediate cash deposit. Allowing termination after missing the first or second of three installment payments will only exacerbate the household's financial instability by causing immediate disconnection and reconnection fees on top of the security deposit requirements. Allowing the full 90 days for a household to pay the deposit ensures that the household has sufficient time to establish themselves at their new residence.

The Low Income and Consumer Rights Groups urge the Commission to reject each of the utilities' attempts to undermine the protections afforded to consumers through Chapter 14 to help ensure that security deposits do not work to prevent households from accessing critical and essential utility services.

G. Payment of Outstanding Balance of Prior Resident

EAP suggests further modifications to the Commission's regulations to require certain applicants to assume responsibility for service rendered to third parties.[89] This proposal is contrary to the Public Utility Code and the Commission should reject it.

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[88] See EAP Comments at 4, 6; PPL Comments at 2-6; PECO Comments at 7; Duquesne Comments at 13; Columbia Comments at 6-7.
[89] EAP Comments at 5-6.

As the Commission is aware, prior to the implementation of Chapter 14, the "general rule [was] that a public utility may not request payment of a residential service bill from a customer unless the residential service was provided in that customer's name."[90] With Chapter 14, the General Assembly modified the general rule in very specific and limited circumstances. Specifically, section 1403 redefined customer to include "any adult occupant whose name appears on the mortgage, deed or lease of the property for which residential service is requested."[91] Furthermore, following termination of service, section 1407(d) authorized a utility to require payment of "any outstanding balance of portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there."[92] Except as modified by these two provisions, which have been adequately incorporated into the Commission's existing regulations,[93] the Commission's regulations are clear in preserving the status quo prior to Chapter 14. Naturally, the ability to demand payment under Commission regulations "does not affect the creditor rights and remedies of a public utility otherwise permitted by law."[94]

Notwithstanding the narrow exceptions to the longstanding prohibitions on third-party liability, EAP proposes a significant alteration that would expose an indeterminate number of applicants to unexpected and unwarranted third-party liability. Specifically, EAP proposes that the Commission add the following language to section 56.35(b)(3):

> A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant is applying for service at a property still occupied by a prior customer who accrued an outstanding balance at the property

[90] Di Corpo v. National Fuel Gas, Pa. PUC No. F-00240132 (March 23, 1995).
[91] 66 Pa. C.S. § 1403.
[92] 66 Pa. C.S. § 1407(d).
[93] See 52 Pa. Code §§ 56.35(b)(1); 56.191(d).
[94] 52 Pa. Code § 56.35(c).

> for which service is requested, not exceeding 4 years from the date of service request. A public utility may establish that a customer still resides at the property for which residential service is requested through the use of a mortgage, deed or lease information, field visits, landlord confirmation, or other methods as approved by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this section, used to determine the applicant's liability for an outstanding balance.[95]

Under EAP's proposal, an individual who did not previously occupy a property, nor benefit from service provided to that property, would nonetheless be personally responsible for service provided to a third-party solely because that third-party still resides at the premise. Effectively, EAP proposes to subject an exceedingly broad category of new applicants to third-party liability, irrespective of the fact that such applicants may have: (1) never previously received service from the utility; (2) never previously resided at the service address; (3) recently reached the age of majority; (4) relocated to the premise pursuant to a bona fide lease or sublease; (5) no agency relationship or affiliation with the prior customer(s)/recipient(s) of service; (6) never previously had any ownership or leasehold interest in the property; and (7) no intent to assist a former customer to avoid responsibility for unpaid utility charges.

Effectively, EAP proposes to significantly and impermissibly broaden the narrow statutory language of "customer" set forth in section 1403.[96] Under EAP's proposal, a third party would effectively become a customer for purposes of a back balance without having been an adult occupant during the period service was provided, and without having had any formal relationship with the property, documented through a mortgage, deed or lease. The General Assembly did not intend for, nor authorize, such a broad scope of potential third-party liability in

[95] EAP Comments at 6.
[96] 66 Pa. C.S. § 1403.

enacting and amending Chapter 14. Accordingly, EAP's proposed modification should be rejected as contrary to the Public Utility Code and adverse to the public interest. As the Commission's regulations recognize, public utilities maintain creditor rights and remedies against nonpaying customers. Utilities should exercise those rights against the former customers who are responsible for the debt, not seek regulatory authority to recover from third-parties who have no relationship to that debt.

H. Universal Service Referral Mandate

Section 1410.1 requires utilities to perform several specific and mandatory duties:

> When a customer or applicant contacts a public utility to make a payment agreement as required by section 1410 (relating to complaints filed with the commission), the public utility **shall**:
>
> (1) Provide information about the public utility's universal service programs, including a customer assistance program.
> (2) Refer the customer or applicant to the universal service program administrator of the public utility to determine eligibility for a program and to apply for enrollment in a program. …[97]

In other words, when a customer contacts a utility to avoid a pending termination of service for insufficient payment, utilities must provide the customer with information about universal service programs and must facilitate that customer's enrollment in an appropriate program by referring the customer to the universal service program administrator.

In response to the Commission's Notice of Proposed Rulemaking, several utilities, along with EAP, sought to severely curtail utilities' responsibilities to inform and refer customers to universal service programs, suggesting that the Commission narrow the mandate to apply only

[97] 66 Pa. C.S. § 1410.1.

when the utility *knows* the household is low income and/or to allow utilities to fulfill the duty through automated messaging.[98]

These recommendations are hopelessly circular, and would limit the duty to such an extent that it would only require automated universal service referrals when the utility has information which could only be known by speaking with the customer directly. Consumers facing termination are in crisis, and often have unique circumstances which cannot be adequately identified and questions which cannot be adequately addressed through an automated system. Without a direct dialogue with the customer, the utility cannot ensure that all available relief is applied to prevent the harsh and often avoidable consequences of service termination. The Low Income and Consumer Rights Groups regularly assist consumers who face termination or were already terminated, but were never properly advised of the availability of universal service programs. Often these consumers could have avoided termination of service by simply enrolling in one of the available universal service programs.

The duty for utilities to provide information and facilitate enrollment in appropriate universal service programs is a statutory mandate, which cannot be narrowed or avoided through regulation. Indeed, the legislature used the term "shall" in bestowing this critical duty on utilities, and utilities should not be able to shirk the responsibility by pushing for inappropriately narrowed regulatory guidance. As such, the Low Income and Consumer Rights

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[98] EAP Comments at 10 ("EAP recommends revising section 56.97(a) and (b) to remove reference to authorized employees throughout, arguing that "[h]aving to talk to a live utility employee may feel intimidating to those customers who are under threat of termination."); First Energy Comments at 18 ("[I]nstead of providing customer assistance information to all customers, utilities should only be required to provide this information to customers potentially eligible for customer assistance programs. … Where the Companies have information that a customer is potentially eligible for customer assistance programs, the Companies would provide this information to the customer."); PPL Comments at 6-7.

Groups urge the Commission to reject the utilities' attempts to narrow the duties prescribed in section 1410.1, and provide explicit guidance requiring utilities to provide information and referral services to all consumers at risk of termination for nonpayment, regardless of whether the consumer has previously disclosed their income or life circumstances to the utility.

I. Timing of Reconnection

First Energy proposes a new delay in reconnection of service, to be added to 52 Pa. Code §56.191. As explained by First Energy:

> The Companies recommend an increase to the reconnection timeframe where a utility employee was previously threatened by the applicant or customer. If a verbal or physical threat previously occurred, utilities will bring additional security or engage a police escort during the reconnection process. A five-day reconnection timeframe would provide sufficient time for utilities to obtain additional security forces.[99]

In addition, First Energy proposes that utility companies be permitted to increase reconnection fees, if approved in their tariffs, in circumstances where the utility determines that additional security is needed.[100]

The Low Income and Consumer Rights Groups oppose First Energy's suggested revisions. Chapter 14 of the Public Utility Code sets forth specific requirements for the timing of restoration of service. Specifically, as set forth in section 1407(b), upon meeting the applicable conditions for restoration, a customer's service must be restored: (1) within 24 hours for erroneous termination or upon receipt of a medical certificate; (2) within 24 hours for winter terminations; (3) within three days for erroneous terminations or where sidewalk digging is

[99] First Energy Comments at 29.
[100] Id.

required; (4) within three days for non-winter terminations; and (5) within seven days for proper terminations requiring street or sidewalk digging.[101] These requirements are reflected in existing Commission regulations, at section 56.191(b)(1)-(2). First Energy's proposal for additional delay in service restoration is not authorized by and, thus, is contrary to the Public Utility Code.

In addition to being impermissible under Chapter 14, we are concerned about the administration and oversight of First Energy's proposal. It is not clear what First Energy, or any utility company, perceives as a threat to utility personnel for this purpose. This purely subjective determination is ripe for misuse. Similarly, it is not clear that the perception of such a threat justifies the delay in restoring utility service. Indeed, as suggested by First Energy, a five-day delay in restoration of service would apply to winter terminations, erroneous terminations, and even medical certificate restorations. In these circumstances, where the health and safety of utility customers is actually or potentially at stake, any delay in restoration could have dire consequences.

Moreover, First Energy's proposal appears to be indefinite, meaning that if the utility asserts that its personnel have been threatened, the five-day reconnection period would be effective in perpetuity. Accordingly, the perception of a threat from a customer complaining about a down power line could be used to delay service restoration for that customer who, months or years later, requires restoration via a medical certificate.

We are not unsympathetic to the difficult and sometimes heated exchanges between utility customer service personnel and customers regarding termination and restoration of

[101] 66 Pa. C.S §§ 1407(b)(1)-(5).

service. However, the Low Income and Consumer Rights Groups are unaware of the existence of significant actual and actionable threats posed by customers to utility personnel, and, in particular, we are not convinced that perceived threats should be deemed continuing among customers who have satisfied the applicable conditions to having service restored. We submit that the proper course of action for utility personnel to take, when fearing for personal safety due to threats of violence, is to contact local law enforcement personnel.

J. Winter Terminations

First Energy and PPL propose modifications to the Commission's regulations regarding winter termination and winter survey provisions. 52 Pa. Code §§ 56.100(f); 56.100(h). The Low Income and Consumer Rights Groups oppose both proposed modifications.

i. Winter Termination of Landlord Ratepayers

First Energy and PPL assert that the Commission's prohibition on winter termination of landlord ratepayers, whose tenants are protected by Subchapter B of the Public Utility Code,[102] should be "revisited,"[103] or "aligned" [104] with the 250% FPL household income for residential customers who are not landlord ratepayers. We strongly disagree.

As a threshold matter, it should be understood that First Energy and PPL are seeking the authority to terminate utility service to innocent tenants who had no contractual connection to the utility, but whose service is dependent upon accounts that are listed in the name of a landlord ratepayer. Revising the prohibition on winter termination as First Energy and PPL desire would

[102] 66 Pa. C.S §§ 1521-1533.
[103] First Energy Comments at 22.
[104] PPL Comments at 16-17.

jeopardize the very individuals intended to be protected by the statute; namely, innocent non-utility customer tenants. At the same time, that proposal will virtually never achieve the goals First Energy and PPL desire; that is, to effectuate termination of service to the person responsible for payment, the landlord ratepayer.[105] As First Energy explains:

> The Companies have previously encountered challenges collecting payment from landlord ratepayers and this prohibition against winter termination for nonpayment permits landlords to further postpone payment and increase their arrearages.[106]

This proposal is a clear effort to force landlords, who do not rely upon the service at issue, to pay for delinquent bills that the Public Utility Code recognizes as placing affected tenants at risk. Subchapter B exists to provide a layer of protection to tenants whose landlords seek to utilize the voluntary discontinuance or termination of utility service to get the tenants to leave their homes. Subchapter B seeks to permit these tenants to maintain service, without becoming customers, and creates specific presumptions in favor of tenants concerning landlord retaliatory behavior.[107]

Because tenants protected by Subchapter B are expressly permitted to maintain service without becoming customers, those tenants have no obligation to provide utility companies with information regarding household income level. Indeed, such tenants are provided a statutory disincentive to become customers, in the form of an entitlement to deduct the amount they pay for continued utility service from rent. Given the legal framework of Subchapter B, and the fact that tenants protected by Subchapter B will, in the majority of cases, not provide income information to the utility, applying the 250% FPL income threshold for application of winter moratorium protections is completely unworkable.

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[105] Hypothetically, a landlord ratepayer may also reside at a premise occupied by tenants protected by Subchapter B.
[106] First Energy Comments at 22.
[107] 66 Pa. C.S. § 1531.

It should also be recognized that because a tenant of a landlord ratepayer has no obligation to become a customer, she also has no obligation to notify the utility if she relocates and does not intend to continue to pay for service. Accordingly, even if a tenant protected by Subchapter B ceases making payments to continue service, this fact does not justify a winter termination. Indeed, because the landlord ratepayer remains the utility's customer, any subsequent termination notices, due to nonpayment by affected tenants, are required to be delivered to each affected tenant, including any tenants who may not have been previously identified, and posted in common areas.[108] The prohibition on winter terminations for properties where the landlord ratepayer is the customer provides an additional layer of protection to tenants, both known and unknown, that should not be disturbed, particularly given the periodic and frequent changes in occupancy that can occur at such properties.

Ultimately, Subchapter B already provides the utilities a non-termination pathway to collecting unpaid bills due from landlord ratepayers – receivership.[109] Under no circumstances should the Commission condone or permit utilities to place tenants at further risk of loss of service, and disastrous health, safety, and family unity consequences that may flow from such loss, as a means of trying to collect against a landlord whose actions have already threatened to displace tenants through loss of utility service.

ii. Winter Survey Modifications

First Energy proposes modifications to the winter survey provisions of 52 Pa. Code §56.100(h) and (i). Currently, these provisions require utilities to conduct in person surveys of

[108] 66 Pa. C.S. § 1528.
[109] See 66 Pa. C.S. § 1533.

premises where service has been terminated during the past year, and attempt to reach an agreement to restore service. Utilities have to report their survey results by December 15. Thereafter, the utilities have to resurvey the premises, and report by February 1 any changes from the prior report. The purpose of these provisions is to encourage utilities and occupants to access necessary resources, and establish flexible payment terms, that can help vulnerable families regain access to essential utilities during the cold winter months.

First Energy proposes to permit the utilities to reach customers by phone or electronically, in addition to "in person" contact currently mandated. Additionally, First Energy proposes to eliminate the "re-survey" provision of 52 Pa. Code §56.100(i), requiring a further contact and report whether service remains off at a premise by February 1.

Both proposals should be rejected. In person contact is essential to accurate survey results (which currently report whether service is off, a property is vacant, or whether unsafe heating sources are being used). Contact electronically or by telephone will reduce the likelihood that the winter survey can capture the actual conditions at the premises where service was terminated. Furthermore, in person contact presents the strongest likelihood that a utility and a customer can successfully make arrangements to restore service. Customers who have lost utility service, and remain off during the period leading up to the winter heating season, are more likely to have also lost access to telephone service or be unable to maintain and operate means of electronic communication. Additionally, it seems far more likely that occupants without service will be more readily able to resolve a barrier to service dealing in person with utility personnel rather than over the telephone.

Eliminating the resurvey provision, as First Energy proposes, would also eliminate the ability of the Commission and other stakeholders to gauge the level of success utilities may be

experiencing in restoring service to vulnerable households. The Commission's regulations expressly require a "good faith attempt" to reach an agreement to pay arrearages and restore service. 52 Pa. Code §56.100(h). Elimination of the resurvey provision would fundamentally undermine the Commission's goals in promoting access to essential utility service.

K. Anti-Discrimination

The Low Income and Consumer Rights Groups appreciate and agree with Duquesne's suggested expansion of the Commission's policy statements regarding nondiscrimination in credit and deposit policies.[110] The Commission should approve revisions to 52 Pa. Code §§ 56.31; 56.281 to ensure that utilities do not discriminate on the basis of gender, sexual orientation, gender expression or identity, AIDS or HIV status or disability.

L. Supplier Consolidated Billing

NRG Energy, Inc., a competitive electric supplier, submitted lengthy comments in response to the Commission's Notice of Proposed Rulemaking which argue for substantial changes to the existing provisions within Chapter 56 and the adoption of an entirely new subchapter to govern Supplier Consolidated Billing (SCB). NRG's proposal must be rejected.

The Low Income and Consumer Rights Groups oppose NRG's attempts to insert the issue of Supplier Consolidated Billing into the Chapter 56 rulemaking. There is already an open proceeding pending before the Commission to address the fraught and complex legal and policy issues related to the adoption and implementation of SCB in Pennsylvania, and the negative consequences to consumers (particularly vulnerable, low income consumers) that are likely to

[110] Duquesne Comments at 11-12.

result if SCB were approved.[111] The Electric and Natural Gas Choice Acts each clearly provide that, throughout the competitive market transformation, "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to access and maintain electric service."[112] But as explained at length in the pending proceeding, the implementation of SCB would undermine current statutory, regulatory, and programmatic protections for vulnerable consumers, in direct contradiction with the Competition Acts.[113] Rather than detail the many legal and public policy issues here, the Low Income and Consumer Rights Groups refer the Commission to the open docket, where a substantial number of parties – including the Low Income and Consumer Rights Groups – separately filed lengthy Comments and other pleadings in opposition to NRG's proposed billing mechanism.[114]

Notwithstanding our unequivocal opposition to SCB, if the Commission were to consider regulations which impact SCB, we urge the Commission to do so in a separate proceeding to allow proper input from the public on the critical impact that such a shift would have on Pennsylvania's consumers. Indeed, the public has not had a true opportunity to review and comment on NRG's proposed regulations because the Commission has not requested specific comments on the broad and far-reaching topic of SCB – or the specific language proposed by NRG in its Initial Comments. It would be inappropriate to adopt NRG's proposed language in a

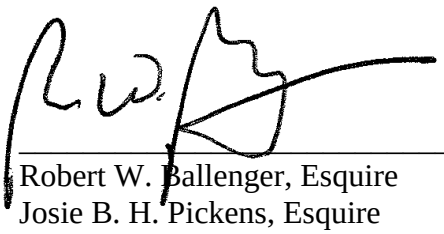
[111] Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249.
[112] See 66 Pa. C.S. §§ 2202(7), 2802(10).
[113] See id; Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Comments of CAUSE-PA; Comments of TURN et al.; Answer of CAUSE-PA (Jan. 23, 2017); Reply Comments of CAUSE-PA; Reply Comments of TURN et al. (Feb. 22, 2017).
[114] See id.

final rulemaking without first vetting the topic with the public, especially given the SCB proceeding currently pending before the Commission.

III. CONCLUSION

In consideration of their comments above, Low Income and Consumer Rights Groups urge the Commission to approve changes to its regulations as set forth herein – as well as in our Initial Comments filed at this docket on April 19, 2017.

Respectfully Submitted,



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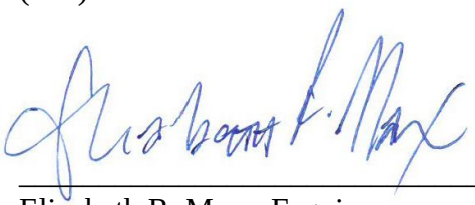

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