



PHILADELPHIA GAS WORKS

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September 12, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Additional Comments of Philadelphia Gas Works, Docket No. L-2015-2508421

Dear Secretary Chiavetta:

Please find enclosed Philadelphia Gas Works' Additional Comments to the Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14 at Docket No. L-2015-2508421.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in this matter.

Respectfully,



Danielle Leva

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ADDITIONAL COMMENTS OF
PHILADELPHIA GAS WORKS**

Dated: September 12, 2017

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. BACKGROUND2

**III. COMMENTS ON PROPOSED MODIFICATIONS TO THE AUTOMATIC
STAY PROVISIONS4**

IV. CONCLUSION12

I. INTRODUCTION

Philadelphia Gas Works (“PGW”) is a municipal natural gas utility that provides natural gas service to approximately 500,000 customers within the city of Philadelphia. While a municipal utility, PGW is regulated by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) pursuant to Section 2212 of the Public Utility Code.¹ PGW has been an active participant in many proceedings regarding the Commission’s Chapter 56² regulations and appreciates the opportunity to provide these comments.

By the Order Seeking Additional Comments entered July 13, 2017 (“July Order”), the Commission invited parties to submit additional comments on the matters discussed in that order and to submit reply comments. One of the areas for which comments were sought is the current automatic stay provisions applicable to appeals of informal complaints.

As discussed in greater detail herein, PGW believes that the current automatic stay provisions, as set forth in 52 Pa. Code § 56.172(d) and the analogous, identical provision at 52 Pa. Code § 56.402(d) strike the appropriate balance to carry out the purpose of Chapter 14 of the Public Utility Code, 66 Pa. C.S. § 1401-1419 (“Chapter 14”) and should not be modified by this rulemaking, as suggested by the proposed modifications in the Commission’s July Order.

¹ 66 Pa. C.S. § 2212.

² Chapter 56 of the Commission’s regulations relate to the “Standards and Billing Practices for Residential Utility Service.” See 52 Pa. Code § 56.1, *et seq.*

II. BACKGROUND

Chapter 14 of the Public Utility Code "relates to protecting responsible customers of public utilities"³ and was enacted in 2004.⁴ It was created to address concerns about the impact that utility uncollectible accounts have on the rates of timely paying customers. Chapter 14 seeks to eliminate the opportunities for customers capable of paying to avoid paying their utility bills, and to provide utilities with the means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections. The goal of these changes is to increase timely collections while ensuring that service is available to all customers based on equitable terms and conditions.⁵

Chapter 14 was reauthorized and amended in 2014.⁶ Certain changes were made to Chapter 14 as a result of that 2014 reauthorization and amendment. But, the 2014 reauthorization and amendment did not mandate changes to the informal complaint process before the Commission.⁷ Chapter 14 and the Commission's Chapter 56 regulations define an "informal complaint" as "A complaint with the Commission submitted by a customer that **does**

³ 66 Pa. C.S. § 1401.

⁴ On November 30, 2004, the Governor signed into law SB 677 that went into effect on December 14, 2004. The Act amended the Code (Title 66) by adding Chapter 14 (66 Pa.C.S. §§ 1401-1418), which is also known as the "Responsible Utility Customer Protection Act." As originally enacted, Chapter 14 was scheduled to expire on December 31, 2014, unless re-enacted.

⁵ 66 Pa.C.S. § 1402.

⁶ On October 22, 2014, Governor Corbett signed into law HB 939, or Act 155 of 2014. This law became effective on December 22, 2014. The Act reauthorized and amended Chapter 14. As re-enacted in 2014, Chapter 14 shall expire December 31, 2024, unless re-enacted.

⁷ *See 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, Notice of Proposed Rulemaking Order entered July 21, 2016.

not involve a legal proceeding before a Commission administrative law judge or a mediation under the management of a Commission administrative law judge.”⁸

Pursuant to Chapter 14, a customer, after first contacting a public utility in an attempt to resolve a billing dispute, may file an informal or formal complaint with the Commission to resolve the dispute.⁹ Pending the outcome of a formal or informal complaint filed with the Commission, the customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.¹⁰

The subject rulemaking was commenced in July 2015.¹¹ By Notice of Proposed Rulemaking Order (“NOPR”) entered July 21, 2016, the Commission set forth its proposal to amend its existing Chapter 56 regulations to incorporate the amended statutory provisions that became effective in 2014. The proposed regulations were submitted to the Independent Regulatory Review Commission (“IRRC”) in February 2017.¹² Public comments were due in April 2017. By the July Order, the Commission invited parties to submit — by September 12, 2017 — additional comments on the matters discussed in that order and to submit reply comments to April public comments.

Pages 12 and 13 of the July Order also – for the first time – propose modifications to Section 56.172(d) and the analogous, identical provision at Section 56.402. Those Sections

⁸ 66 Pa.C.S. § 1403; 52 Pa. Code § 56.2, 56.252 (emphasis supplied). Chapter 3 of the Commission’s regulations define “informal complaint” in a similar fashion. That definition states that an informal complaint is “A document or communication to the Commission seeking action on a matter that lacks the legal or other requirements of a formal complaint under 66 Pa.C.S. § 701 and **does not involve a legal proceeding before a presiding officer or mediator.**” 52 Pa. Code § 1.8. *See also* 52 Pa. Code § 63.322 (emphasis added, referring to the definition in 52 Pa. Code § 1.8).

⁹ 66 Pa.C.S. § 1410(1).

¹⁰ 66 Pa.C.S. § 1410(2).

¹¹ *See* PUC Docket No. L-2015-2508421, which is available at: http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=L-2015-2508421.

¹² *See* IRRC Notice of Comments Issued, 47 Pa. Bull. 3157 (June 3, 2017).

currently provide that, upon the timely filing of a formal complaint (which constitutes a request for review of an informal complaint decision), the effect of the informal complaint decision of the Bureau of Consumer Services (“BCS”) will be automatically stayed.¹³ The July Order states that the automatic stay provision, as provided for in Sections 56.172(a) and 56.402(d), does not entirely reflect the Commission’s “original intention: that the stay should operate to maintain utility service while the issues remain in dispute.”¹⁴ To clarify its original intention, the Commission proposes to modify subsection (d) of said Sections as follows:¹⁵

(d) Upon the filing of a formal complaint by a customer within the 30-day period and not thereafter except for good cause shown, there will be an automatic stay of the informal complaint decision. Informal complaint decisions directing the restoration of utility service are not subject to an automatic stay, and utility service must be restored and maintained while the issues remain in dispute.

Subsection (d) of Sections 56.172 and 56.402 was first added by a rulemaking started in 2008, resulting in effective regulations in 2011.¹⁶

III. COMMENTS ON PROPOSED MODIFICATIONS TO THE AUTOMATIC STAY PROVISIONS

PGW respectfully opposes the above-described proposed modifications to subsection (d) of Sections 56.172(d) and 56.402(d) for several reasons:

First, PGW submits that the proposed modifications to subsection (d) are outside the proper scope of the subject rulemaking. Specifically, the proposed modifications are prohibited, at this time and in this rulemaking, by the Regulatory Review Act. The Regulatory Review Act provides that modifications to proposed regulations may not enlarge the scope of the proposed

¹³ See 52 Pa. Code §§ 56.172, 56.402.

¹⁴ July Order at 12.

¹⁵ July Order at 13.

¹⁶ See PUC Standards and Billing Practices for Residential Utility Services, 41 Pa. Bull. 5473 (October 8, 2011).

regulation.¹⁷ Here, the Commission’s original purpose of the rulemaking as stated in the NOPR, was to amend the existing Chapter 56 regulations to incorporate the amended statutory provisions in Chapter 14 that became effective in 2014. There does not appear to be any provision in Chapter 14, as reauthorized and amended, related to the “automatic stay” provided for in Sections 56.172(d) and 56.402. Moreover, the July Order does not identify any provision in Chapter 14, as reauthorized and amended, that justifies the proposed changes to these regulations, which have been in effect since 2011.¹⁸ Since there is no connection to the reauthorization and amendment of Chapter 14, the proposed modifications to Sections 56.172(d) and 56.402 do not appear to deal with the same subject matter as the original proposed regulation. It follows that said proposed modifications are prohibited by the Regulatory Review Act.

Second, regardless of the Commission’s original intention, PGW submits that the proposed modifications are not reasonable,¹⁹ necessary,²⁰ or in the public interest.²¹ The proposed modifications relate to the informal complaint process, which is simpler and less time-consuming than a formal complaint process²² “and avoids the need for a legal proceeding.”²³

When an informal complaint is filed through BCS, “a BCS investigator works to facilitate

¹⁷ 45 P.S. § 1202.

¹⁸ See, e.g., *Standards and Billing Practices for Residential Utility Services*, 41 Pa. Bull. 5335, 5473 (October 8, 2011); *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*, PUC Docket No. L-00060182, Revised Final Rulemaking Order entered June 13, 2011.

¹⁹ The rules, regulations and standards of a regulatory agency must be reasonable, understandable, available, and must not violate the constitutional rights of any citizen. See, e.g., *Bortz Coal Co. v. Commonwealth, Air Pollution Commission*, 279 A.2d 388 (Pa. Commw. Ct. 1971).

²⁰ See, e.g., 71 P.S. § 745.5b(b)(3)(iii), which provides (in part), that the clarity, feasibility and reasonableness of the regulation to be determined by considering the need for the regulation.

²¹ 71 P. S. § 745.5b(a), (b)(3), (b)(4), (b)(7), (b)(8).

²² See http://www.puc.state.pa.us/filing_resources/filing_complaints.aspx and http://www.puc.state.pa.us/General/onlineforms/pdf/Consumer_Complaint_Options.pdf.

²³ http://www.puc.state.pa.us/General/onlineforms/pdf/Consumer_Complaint_Options.pdf.

discussions between the parties in order to resolve the complaint.”²⁴ “Informal complaints are confidential and not available for public inspection.”²⁵ The provisions in Sections 56.172 and 56.402 set forth the procedure for any party to an informal complaint to request review of BCS’ informal complaint decision.²⁶

PGW submits that the proposed modifications do not strike the appropriate balance between the rights of customers and utilities. Customers are protected by the current automatic stay whenever they file an informal complaint, including in response to a notice of termination. So long as they pay the current charges due and not in dispute,²⁷ their service will not be terminated while they pursue a formal complaint before an Administrative Law Judge (“ALJ”). The proposed modifications would make the informal complaint decision binding during the pendency of the proceeding, but only upon the utility. That different treatment is unreasonable and arbitrary.²⁸

To be clear, the automatic stay is intended to ensure that the *status quo* is preserved pending a final determination. The proposed addition of the phrase “by the customer” to the first sentence in Sections 56.172(d) and 56.402(d) eliminates the automatic stay for utilities in all

²⁴ http://www.puc.state.pa.us/filing_resources/filing_complaints.aspx.

²⁵ http://www.puc.state.pa.us/General/onlineforms/pdf/Consumer_Complaint_Options.pdf.

²⁶ See 52 Pa. Code §§ 56.172, 56.402.

²⁷ 66 Pa.C.S. § 1410(2).

²⁸ Elimination of the automatic stay would also violate the constitutional principle of equal protection. The essence of equal protection is that like persons in like circumstances will be treated similarly, unless there is a rational basis for the discrimination. Here, if the proposed modifications are adopted, the Commission’s regulations would not treat a utility requesting review of an informal complaint decision in the same manner as a customer requesting review of an informal complaint decision. The customer would always be entitled to an automatic stay, other than to service restoration and maintenance. The utility would never be entitled to a stay. Nothing in the July Order justifies such disparate treatment.

situations.²⁹ This is a change in course for the PUC, which established in 2011,³⁰ that an appeal by either a customer or a utility would have the same effect. There is no data offered which supports or explains the need for the change or that measures the projected impact of this change on utilities and/or the utilities' uncollectible accounts.

The proposed modifications also do not serve the goals of Chapter 14. This is made clear by the following example, which illustrates how the elimination of the automatic stay conflicts with the above-described purposes of Chapter 14: In this example, the customer files an informal complaint seeking the refund of money from the utility. BCS renders an informal complaint decision that orders a refund of money to the customer. The utility disagrees with that decision, and seeks review of the informal complaint decision. Without the automatic stay, the utility will be required to refund the money to the customer before a final formal determination is made. If the utility prevails, it now faces the difficult and expensive task of obtaining funds back from the customer. If funds cannot be obtained from the customer, the utility would have to file suit against the customer or experience an increased uncollectible that must be paid by the utility's remaining ratepayers. So, the elimination of the automatic stay for a utility works against reducing uncollectible accounts or delinquent account collections (or both).

On the other hand, the current rule provides adequate ways by which a customer can continue to receive service, or have service restored, pending the outcome of the formal complaint. A customer whose service has already been terminated prior to he or she filing an

²⁹ The purported justification (i.e., the Commission's original intention that a customer be provided service while a formal appeal of a BCS decision is pending, *see* July Order at 12-13)) speaks to one specific situation. It does not speak to every situation. So, the purported justification does not show that it is necessary or reasonable to eliminate the automatic stay for utilities in all situations.

³⁰ Standards and Billing Practices for Residential Utility Services, 41 Pa. Bull. 5335, 5473 (October 8, 2011); *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*, PUC Docket No. L-00060182, Revised Final Rulemaking Order entered June 13, 2011.

informal complaint and who receives a favorable ruling from BCS on their informal complaint, may, nonetheless, have service restored during the pendency of the utility's appeal depending on the circumstances presented. This can happen by payment of required outstanding amounts and/or remedying unsafe situations.³¹ Moreover, the utility is still at risk for an enforcement action as a result of the underlying conduct as well as a potential civil penalty.³²

PGW is concerned that if the PUC modifies the automatic stay provisions as suggested, the proposed modifications will quickly become a way for customers terminated for non-payment to get their gas restored and further extend the period of non-payment. Accordingly, PGW respectfully urges the Commission to reconsider its original professed intention to "guarantee" service during the pendency of an appeal and consider both (a) the utility's need to be paid for service provided (and therefore not impose additional uncollectible expense on remaining customers); and (b) Chapter 14's goal of reducing the utility's uncollectible expense.³³

Moreover, on that point, the body of the Commission's July Order states that "If a customer receives a BCS informal decision with restoration terms and the customer pays according to the BCS informal decision, the utility must restore service."³⁴ That being said, the proposed language provides, in part, that "utility service must be restored and maintained while

³¹ Restoration could also happen if the ALJ modified the stay upon good cause shown. *See* 52 Pa. Code § 56.174(b), which provides that, in an ability to pay proceeding, the presiding officer may remove the stay and order payment of amounts in the informal complaint decision. It follows that, in a restoration proceeding, the presiding officer should be able to remove the stay and direct compliance with the restoration conditions in the informal complaint decision. If that is not the case, Section 56.174 could be amended to provide that: "Upon good cause shown, the presiding officer may remove the stay and order compliance with the restoration conditions in the informal complaint decision."

³² Separate actions (such as informal investigations and formal complaints) may be commenced by Commission staff with respect to the subject matter of an informal complaint. *See* 66 Pa.C.S. § 308(d)(1); 52 Pa. Code § 3.112(b)(2), (3).

³³ In addition, the proceeding does not explain how the costs of funding the restoration, and ongoing utility service that is not paid, and a subsequent termination will be repaid to the utility if the utility ultimately prevails in the proceeding and the informal complaint "decision" is not upheld.

³⁴ July Order at 13 (emphasis added).

the issues remain in dispute.”³⁵ It should be clear that a utility should not be required to provide service when the customer is not making payments,³⁶ and that the intent behind Chapter 14 is to address the Legislature’s concerns about the impact that utility uncollectible accounts have on the rates of timely paying customers.³⁷ However, the proposed language does not provide that such service is contingent upon compliance with the payment terms in the BCS decision or the payment of current, undisputed bills (or both). The silence in the proposed language on payment could be interpreted as requiring a utility to continue to provide service – even if the customer is not complying with the payment terms in the BCS decision. Such a result is not acceptable because it does nothing to protect timely paying customers from the impacts of uncollectible accounts.

Third, and most importantly, PGW submits that informal complaint decisions should not legally be given any effect before a final formal determination is made – regardless of whether service is off or on. As noted, the automatic stay is intended to preserve the *status quo* pending a final determination of a formal complaint (i.e., appeal is filed from that informal complaint decision). The proposed modifications, as written, would give effect to an initial complaint decision during the pendency of the proceeding. This means that a matter is being adjudicated

³⁵ July Order at 13.

³⁶ All customers, regardless of financial means, have an obligation to pay for utility service. *See, e.g., Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (Order entered February 12, 1982); *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (Order entered October 8, 1985); *Mill v. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982). Otherwise, customers’ unpaid bills are included in the utility’s uncollectible expense and ultimately paid by the remaining ratepayers. *See, e.g., Bolt v. Duquesne Light Co.*, 66 Pa. PUC 463 (Order entered April 8, 1988).

³⁷ *See, e.g.*, 66 Pa. C.S. § 1402(1) (“Increasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers’ delinquencies.”), 1402(3) (“Through this chapter, the General Assembly seeks to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions.”) and 1403(4) (“The General Assembly believes that it is appropriate to provide additional collection tools to city natural gas distribution operations to recognize the financial circumstances of the operations and protect their ability to provide natural gas for the benefit of the residents of the city.”).

and relief is being granted before the utility has an opportunity to put on evidence, cross examine witnesses under oath or do a detailed investigation through discovery. The utility’s rights do not evaporate when an informal complaint is decided by a BCS investigator; if anything, decisions affecting “personal or property rights, privileges, immunities, duties, liabilities or obligations” trigger more rights,³⁸ not less. Giving binding effect to initial decisions before a final determination is made would violate the utility’s due process rights³⁹ as well as the rights protected by the Administrative Agency Law⁴⁰ and the Public Utility Code.⁴¹

Chapter 14 makes clear that an informal complaint is not a “legal proceeding”⁴² and, therefore, the informal complaint decision of a BCS investigator cannot legally be given binding effect during the pendency of the proceeding. The award of relief during the pendency of a Commission proceeding is typically only done by an emergency order of an ALJ (i.e., presiding officer) or of a Commissioner, and only when claims are made that justify such emergency relief.⁴³ The BCS investigator does not serve in either of those roles,⁴⁴ and the Commission may

³⁸ “Adjudications” are defined as orders, decisions, or determinations by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding. *See* 2 Pa.C.S. § 101; 45 P.S. § 1102.

³⁹ The July Order implies that the BCS investigator is rendering decisions that affect “personal or property rights, privileges, immunities, duties, liabilities or obligations” of the parties. If that is the case, the due process rights of the parties are being violated because none of the requirements for adjudications are satisfied by the informal complaint process before the BCS investigator. Examples of statutory violations are set forth in the next two footnotes.

⁴⁰ Reasonable examination and cross-examination shall be permitted in Commonwealth agency hearings under the Administrative Agency Law. *See* 2 Pa.C.S. §§ 101, 504, 505. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings. 2 Pa.C.S. § 504. All adjudications of a Commonwealth agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail. 2 Pa.C.S. § 507.

⁴¹ For adjudications, the Public Utility Code requires the opportunity for discovery, cross-examination, a stenographic record, and an actual written decision by the Commission. *See, e.g.,* 66 Pa.C.S. §§ 332, 333, 334, 335, 703(c), 703(e).

⁴² *See* footnotes 8 (and the accompanying text to that footnote) and 23.

⁴³ *See* 52 Pa. Code §§ 3.1 to 3.12.

grant interim relief only when all of the elements exist for the issuance of an emergency order.⁴⁵ By way of further comparison, even the decisions of ALJs are not given binding effect during the pendency of the proceeding. Under the Public Utility Code, the issuance of recommended and initial decisions of ALJs (which follow an on-the-record evidentiary hearing) do not have binding effect until they become a final determination. The Public Utility Code provides that some types of decisions of ALJs may become final decisions of the Commission by operation of law.⁴⁶ But, nothing suggests that informal complaint decisions become final by operation of law or otherwise.⁴⁷

Hence, the PUC's suggestion that the results of a non-legal proceeding should be give legal effect for customers – but not for utilities – is not consistent with the legal or constitutional protections afforded utilities, and is unfair and unnecessary. In most cases a customer may avoid termination prior to PUC review by simply filing an informal complaint prior to termination and then filing an appeal of that informal complaint in a timely manner. Requiring utilities – but not customers – to follow an informal decision of BCS before having the matter reviewed by an ALJ and the Commission would not be reasonable, necessary or in the public interest.

⁴⁴ There are statutory requirements on the qualifications of Commissioners and on the appointment of ALJs. *See* 66 Pa.C.S. §§ 301, 302, 304.

⁴⁵ *See, e.g., Glade Park East Home Owners Association v. PUC*, 628 A.2d 468, 473 (Pa. Commw. Ct. 1993).

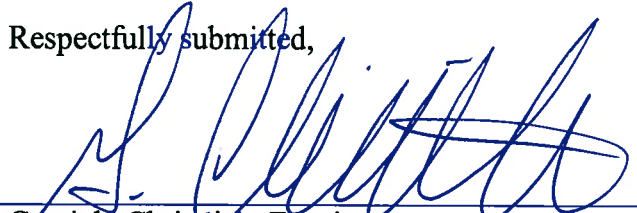
⁴⁶ 66 Pa.C.S. § 332(h).

⁴⁷ 66 Pa.C.S. § 703(e) provides the decisions of the Commission have the force and effect of law. The same is not true of informal complaint decisions by BCS. In fact, the Commission has noted that an informal complaint does not preclude the filing of a formal complaint on the same issues. *See* 52 Pa. Code §§ 56.172(e), 56.404(e). *See also* 52 Pa. Code § 3.112(c) (“The submission or withdrawal of an informal complaint is without prejudice to the right of the complainant to file and prosecute a formal complaint.”).

IV. CONCLUSION

PGW respectfully submits that the current automatic stay provisions, as set forth in 52 Pa. Code and 56.402(d) carry out the purpose of Chapter 14 and should not be modified as suggested by the proposed modifications in the Commission's July Order. PGW appreciates the opportunity to provide these comments and looks forward to continuing to work with the Commission and its staff on these important issues.

Respectfully submitted,



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Date: September 12, 2017

Attorney for Philadelphia Gas Works