



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

October 3, 2019

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Second Floor
400 North Street
Harrisburg, PA 17120

Re: Chapter 56 Working Group, Docket No. L-2015-2508421
Joint Comments of CAUSE-PA, TURN and Action Alliance

Dear Secretary Chiavetta:

Please find the Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Tenant Union Representative Network (TURN), and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), which are respectfully submitted for filing in the above referenced docket pursuant to the Secretarial Letter issued August 28, 2019. An electronic copy will be provided to Commission Staff, as indicated below.

Please do not hesitate to contact me at 215-981-3756, or by email at jprice@clsphila.org with any questions or concerns.

Respectfully Submitted,

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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 :

JOINT 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),¹ Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance),² and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA)³ (collectively referred to herein as the Low Income Advocates) respectfully submit the following Comments in response to the August 28, 2019 Secretarial Letter issued by the Pennsylvania Public Utility Commission (Commission or PUC) announcing the creation of work groups to address complicated issues of Medical Certificates, Protections for Victims of Domestic Violence, and Customer Privacy. These comments are preliminary in nature given that the first stakeholder meeting has yet to occur and the process for additional feedback is unclear. Thus, the Low Income Advocates reserve the right to supplement and/or modify the suggestions contained herein at the stakeholder meeting and as the process at this docket progresses.

The Low Income Advocates submitted Comments in this rulemaking on April 19, 2017, and Additional Comments on September 11, 2017.⁴ The Low Income Advocates thank the Commission for considering those comments in its Final Rulemaking Order, adopted February

¹ TURN is a not-for-profit corporation with many low and lower income members whose mission is to advance and defend the rights and interests of tenants and homeless people.

² 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.

³ 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 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.

⁴ 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).

28, 2019⁵ and finalized June 1, 2019.⁶ By way of Secretarial Letter dated August 28, 2019, the Commission announced the creation of Chapter 56 work groups to address medical certificates, other court orders evidencing domestic violence, and privacy guidelines as they relate to the provision of a 72-hour electronic notice of termination. The Low Income Advocates look forward to participating in this work group process, and believe it will offer an important opportunity to discuss these critical issues in a collaborative, Commission-led forum. The Secretarial Letter invited written comments on these topics in advance of the first work group meeting. The Low Income Advocates submit the following brief comments on the language and purpose of the provisions at issue, providing an overview of what we believe to be the most critical questions that require further guidance from the Commission, and offering concrete recommendations to help move the discussion forward. The Low Income Advocates look forward to further exploring how the Commission can continue to craft appropriate consumer credit, billing, and termination standards which will serve the public interest and the residents of our Commonwealth.

⁵ 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, Final Rulemaking Order, (Feb. 28, 2019) (hereinafter “Final Chapter 56 Rulemaking”).

⁶ 49 Pa. B. 2815, <https://www.pabulletin.com/secure/data/vol49/49-22/851.html>.

II. WORK GROUP MEETING PROCESS

The Low Income Advocates recognize the need for a well-informed process to assist the Commission in addressing the form for medical certificates, necessary processes and protections for victims of domestic violence, and privacy guidelines needed for means of electronic delivery of 72-hour notice of termination prior to utility termination.

Given the sensitive nature of these topics, and the diversity of expertise needed to effectuate the purposes of these protections in Chapter 14, the work group process offers an opportunity for collaboration from a variety of stakeholders to develop recommendations for the Commission. The protections being discussed in these work groups are critical to the ability of vulnerable households to connect to and stay connected to life-essential utility service. As such, it is essential to start with some core principles to ensure that the work group structure can effectively address these significant issues. As such, the Low Income Advocates provide the following suggestions to ensure that the work groups are productive, provide valuable feedback to the Commission, and - most importantly - ensure consistent application of essential utility consumer protections. Specifically, we urge the Commission to:

- Convene targeted work groups for each distinct topic to allow for a deeper dive into the subject matter at issue.
- Encourage timely resolution of these critical issues by holding successive meetings with identified timelines and clear interim steps and deadlines for recommendations and/or other deliverables.
- Develop straw proposals based on initial work group discussions to help focus subsequent discussions, narrow the issues, and work toward consensus. In the event of entrenched disagreement among stakeholders, the work group should be charged with putting forth one or more alternate proposals for the Commission to consider in making its ultimate decision.

The Low Income Advocates assert that these overarching procedural recommendations will help ensure that the Commission is able effectively gather input from a broad group of stakeholders, while at the same ensuring that these critical issues are resolved without delay.

III. FORM OF MEDICAL CERTIFICATE

In addition to the brief comments and recommendations provided below, the Low Income Advocates provided extensive comments on the form and use of medical certificates in both initial comments and additional comments, and incorporate those comments by reference.⁷

A. The Commission's work group on medical certificates should be guided by the General Assembly's explicit intent and purpose in providing for the protection of medically vulnerable households.

Chapter 14's statement of policy recognizes a need to balance the utilities' "equitable means to reduce their uncollectible accounts" with the guarantee that "service remains available to all customers on reasonable terms and conditions." 66 Pa. C.S. § 1402 (3). The explicit purpose of the medical certificate process was to provide protection for medically vulnerable Pennsylvanians who – in the opinion of a medical professional – would be subject to an acute risk of harm if service to the home were terminated.

Chapter 14 defines medical certificate as a written document that certifies "that a customer or member of the customer's household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition; and is signed by a licensed physician, nurse practitioner or physician's assistant." 66 Pa. C.S. § 1402. This was an expansion of the prior Chapter 14 definition for medical certificates, and included additional medical professionals who could certify that a household required protection from termination. Chapter 14 further prohibits a public utility from terminating service to a premises when a customer has submitted a medical certificate, and requires the Commission to implement

⁷ 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 Comments of TURN, Action Alliance, and CAUSE-PA, at 31-41 (filed April 18, 2017); 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 TURN, Action Alliance, and CAUSE-PA, at 5-15 (filed Sept. 11, 2017).

a regulatory process and procedure for the submission of a medical certificate. 66 Pa. C.S. § 1406(f).

The undeniable purpose of medical certificates is to provide a basic level of protection to vulnerable households from adverse termination activity and ensure that households experiencing serious medical conditions or chronic illness remain connected to service. The statutory language was written in such a way to provide that qualified medical professionals – not utility employees – are in the best position to determine whether a termination of service to the household will be harmful to the health of the consumer. As such, both the form and process for submission of a medical certificate must be carefully crafted to ensure that there is no impingement on the ability of a medical provider to make that determination and halt a pending termination.

In providing further guidance to define the appropriate form of a medical certificate and the process consumers must follow to obtain and submit a medical certificate, the work group should focus on how vulnerable households are able to access the protections recognized by the General Assembly.

B. The standardized form for a medical certificate must be simple, clear and easy to access.

In the Final Rulemaking Order, the PUC suggests that the creation of a standard, statewide medical certificate form could be useful to provide greater consistency in the application of the medical certificate rules. The Low Income Advocates agree that the creation of a standard form that customers and medical providers can use and that would be accepted by all utilities would likely help streamline the medical certificate process. The Low Income Advocates suggest that the work group focus on creating a form that is simple, clear and easy to access. The form should be available online – both on the utilities’ and the Commission’s websites.

Medical providers should also be able to integrate the form with their electronic medical records system. Doing so would further the intended goal of a medical certificate – ensuring that medically vulnerable households retain access to critical utility service by making the medical certificate process easy for medical professionals and utility consumers to understand and access.

The existence of a standardized form should not be viewed as the *only* acceptable means to transmit a medical certificate by medical professionals. While all utilities must be required to accept the standardized form, medical providers should continue to be able to adopt whatever practices are most efficient for their offices, as long as the written document contains all of the required information.

i. Simple, Clear, Standardized Form

For the standardized form to be simple and clear, the form should only ask for what is required by statute and regulation as a part of a medical certificate. Accordingly, the Low Income Advocates submit that the following information is the only information that should be sought by a standardized form:

1. The name and address of the customer or applicant in whose name the account is registered.
2. The name and address of the afflicted person and relationship to the customer or applicant.
3. The anticipated length of the affliction.
4. The name, office address and telephone number of the certifying physician, nurse practitioner or physician assistant.
5. The signature of the certifying physician, nurse practitioner or physician assistant.

52 Pa. Code § 56.113. No other information, beyond what is required by section 56.113, should be required on the standardized medical certificate form.

ii. Accessibility of Medical Certificate Form

Any form developed by a utility or the Commission should be easy to access and submit.

For this purpose, the Low Income Advocates suggest the following policies for ensuring the medical certificate form is readily available for use by customers.

- The Commission and utilities should post the standardized form(s) on their websites, along with simple directions for medical professionals and consumers on how to use the form.
- The medical certificate should be accompanied by instructions that clearly state how such a form can be submitted to a utility.
- Any form created to standardize medical certificate submission should be optional. Medical professionals should retain the ability to write medical certificates on their own forms, provided they contain the required elements.
- The form and/or accompanying materials should explicitly state, in plain language, the payment requirements for medical certificate renewal.⁸
- The form and/or accompanying materials should explicitly state the right of a customer to challenge a denial of a medical certificate through the Commission's formal and informal complaint processes.
- The form and/or accompanying materials should provide information to ensure that medically vulnerable consumers with limited English proficiency are able to equitably access medical certificate protections.

⁸ That is, the accompanying materials should explain that a customer has the right to three medical certificates (90 days of protection from termination) per balance without paying current charges, and may obtain additional medical certificates (beyond the first three months of protection) if the customer pays their current charges or budget billing amount while protected by the medical certificate. See Final Rulemaking Order, Attach. One at 98. The Low Income Advocates regularly work with consumers who do not understand the protections or payment requirements involved. Providing clear information about the renewal process and payment requirements on the form will help inform consumers and medical providers about the extent of the protections available through the medical certificate.

iii. License Numbers

The Low Income Advocates submit that the Commission should refrain from enacting any standards that would chill access to medical certificates. Requiring a license number is a needless formality that could deter medical professionals from freely exercising their professional judgment.⁹

IV. PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

In addition to the brief comments and recommendations below, the Low Income Advocates provided comments on implementation of Section 1417 in both initial and additional comments. The Low Income Advocates incorporate those comments herein by reference.¹⁰

A. The Commission work group on domestic violence protections should be guided by the General Assembly's purpose in exempting victims of domestic violence from the provisions of Chapter 14.

Chapter 14 specifically exempts victims of domestic violence from its terms. 66 Pa. C.S. § 1417. In doing so, the General Assembly recognized that victims of domestic violence are often uniquely vulnerable to physical and financial harm – especially during the period of separation from a violent intimate partner, when the risk of physical violence and financial instability is greatest.¹¹ This exemption is intended to allow greater flexibility for victims of

⁹ License numbers are not commonly requested on other forms and certifications that certifying medical professionals regularly complete. On the other hand, a utility can easily verify a certifying professional's license number through the Pennsylvania Licensing Verifications service if they question the validity of the certification. See Dep't of State, Pa. Licensing System Certification Service, <https://www.pals.pa.gov/#/page/search>.

¹⁰ 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 Comments of TURN, Action Alliance, and CAUSE-PA, at 48-51 (filed April 18, 2017); 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 TURN, Action Alliance, and CAUSE-PA, at 28-32 (filed Sept. 11, 2017).

¹¹ See Nat'l Resource Ctr. on Domestic Violence, Intimate Partner Homicide Prevention, <https://vawnet.org/sc/intimate-partner-homicide-prevention> (explaining that separation is a “predominant risk factor” for intimate partner homicide).

domestic violence in dealing with utility debt – allowing victims to start fresh, and recognizing the multi-faceted nature of domestic violence.¹²

Chapter 14’s exemption language is intentionally broad, and recognizes that not all victims of domestic violence are able to get a Protection From Abuse Order (PFA).¹³

Specifically, section 1417 states:

This chapter shall not apply to victims under a protection from abuse order as provided by 23 Pa. C.S. Ch. 61 (relating to protection from abuse) or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer.

By expanding the exemption for victims of domestic violence beyond those who are able to obtain a PFA, Chapter 14 expands the protection to all victims who have been recognized by a court to have experienced domestic violence.

Currently, if a consumer is exempt from Chapter 14 pursuant to section 1417, subchapters L through V of the Commission’s Chapter 56 regulations apply.¹⁴ These subchapters provide several critical protections for victims of domestic violence. For example, pursuant to subchapter N, section 56.285, a victim cannot be held responsible for utility debt

¹² Utility debt is a particularly unforgiving barrier for victims of domestic violence attempting to start over after separating from an abuser. Chief among the consequences of utility debt is the inability to secure safe and affordable housing, as the existence of utility debt may disqualify a victim of domestic violence from public housing, and a utility termination may trigger eviction proceedings. See 24 CFR § 960.203; see also US Dep’t of Housing & Urban Development, Public Housing Occupancy Guidebook, at Part 2, Ch. 3, pg 41.; see also HCV Guidebook: Eligibility and Denial of Assistance, at 5-38, https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11749.pdf. Indeed, it is not a coincidence that domestic violence – and the consequential inability to secure safe housing – is the “primary cause of homelessness” for women in this country. See Nat’l Law Ctr on Homelessness & Poverty, Facts on Homeless, Housing, and Violence Against Women, https://nlchp.org/wp-content/uploads/2018/10/DV_Fact_Sheet.pdf.

¹³ A victim may choose not to pursue a PFA or may be otherwise unable to obtain a PFA for a number of reasons, including for example the inability to effectuate service on a defendant, the risk of retaliatory violence, or the existence of alternative protection such as a criminal no contact order or the incarceration of the abuser.

¹⁴ 52 Pa. Code, Ch. 56, Subsections L-V.

accrued by a third party.¹⁵ And, if utility debt is accrued in the victim’s name, section 56.285 allows a victim to obtain additional and more flexible payment arrangement terms based on their unique facts and circumstances – rather than falling within the rigid standards established in sections 1405 and 1407 that limit the Commission to issuing a single time-limited arrangement on non-CAP arrears.¹⁶

The current regulatory structure offers significant protections for victims, and can effectively address many of the barriers that utility debts pose for victims of domestic violence. However, it does not address all of the barriers, and has been inconsistently implemented by utilities since the original exemption was promulgated in 2004. Substantive and procedural improvements to the Commission’s regulations should be made to effectuate the full intent of the statutory domestic violence exemption to alleviate the burden of utility debt on victims of domestic violence.

By establishing a collaborative work group process, the Commission recognizes the complexity involved in ensuring that the protections intended by the General Assembly are implemented. Final Chapter 56 Rulemaking Order, Appendix A at 138. When making recommendations to define and implement protections for this uniquely vulnerable population, the work group should keep in mind this intentionally broad language – and the underlying statutory purpose.

¹⁵ “A utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant unless a court, district justice or administrative agency has determined that the applicant is legally obligated to pay for the service previously furnished.” 52 Pa. Code § 56.285.

¹⁶ “An outstanding residential account with the utility may be amortized over a reasonable period of time. Factors to be taken into account include the size of the unpaid balance, the ability of the applicant to pay, the payment history of the applicant and the length of time over which the bill accumulated.” 52 Pa. Code § 56.285; see also 66 Pa. C.S. § 1405(b)-(d).

B. The domestic violence work group should broadly define who can qualify for the protections and how those individuals may access the applicable protections.

In its Final Rulemaking Order, the Commission calls for the creation of a work group to develop recommendations to the Commission about guidance and interpretation of section 1417 that could lead to the development of a policy statement on this topic. Final Chapter 56 Rulemaking Order, Appendix A at 138. As the Commission notes, because the statutory language is unclear, several open questions remain. The Low Income Advocates suggest that in approaching these questions, the work group be guided by basic intent of the legislature to protect any victim of domestic violence who has been recognized by a court to have experienced domestic violence. Therefore, in defining terms such as “court order” “clear evidence” and “domestic violence”, the work group should broadly construe these protections and expanded rights and endeavor to make access to these protections simple, consistent, and straight-forward.

Beyond these definitional issues associated with interpretation of the exemption language itself, the Low Income Advocates assert that there are other operational and implementation issues that require Commission attention. In short, consumers must be better informed about these protections, and utility representatives must be better trained to recognize and apply the protections without creating additional burdens for victims seeking to be protected.

The Low Income Advocates offer the following suggestions regarding qualification for the domestic violence exemption, and steps to be taken to inform customers of the protections, train stakeholders to ensure accessibility of that exemption, and protect the confidentiality of victims of domestic violence – a vitally important component to a victim’s ongoing safety and security.

i. Defining Who Is Protected

- The protections of section 1417 should apply broadly.
- In defining what types of orders should be accepted, the language of the statute is clear that *any* order signed by the court would suffice. To the extent that the work group develops a list of possible court orders, that list must not be definitive.
- The definition of “clear evidence” should incorporate both the language of the court order itself, and documentation of the evidence or facts in the underlying case. Many courts and administrative bodies, the Commission included, keep their orders brief, relying on underlying documentation or facts as justification. While some courts will issue an accompanying opinion to further explain these underlying facts, others do not. The Commission’s guidance to utilities should instruct utilities to accept a certification from the customer or a third party¹⁷ to certify to the underlying facts of an Order if the Order itself is unclear.
- The Commission should refrain from unnecessarily limiting the definition of domestic violence, and should not tie the definition to the definition of “abuse” in the PFA Act as that would inappropriately restrict the applicability of the Chapter 14 exemption to those who are able to obtain a PFA. Domestic violence comes in many forms, including physical, emotional, sexual, mental, and economic abuse. The Commission should engage with the work group to establish a definition that is inclusive of all of the various forms of abuse that an individual may experience. One good starting point may be the definition of “domestic violence” used by the Pennsylvania Department of Human Services, codified at 55 Pa. Code § 3041.3, as it is already an accepted regulatory definition in Pennsylvania.
- The statutory language does not require that the order be issued within a certain timeframe of submission to the utility, it simply requires that the order contain clear evidence domestic violence. The Commission’s guidance should clarify that, for the purpose of applying the exemption, a court order does not necessarily need to be in effect

¹⁷ One example of a third party who could provide such a certification is a domestic violence counselor/advocate, defined in the Pennsylvania PFA Act as “an individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training.” 23 Pa. C.S. § 6102.

at the time it is submitted to the utility if the abuse the victim suffered bears some causal relation to the debt accrued or the victim's inability to establish, maintain, or afford service.

- While the language of the statute limits the definition of court orders to orders issued by “a court of competent jurisdiction in this Commonwealth”, failure to accept similar orders from out of state courts may raise issues of full faith and credit. The Low Income Advocates suggest that the Commission encourage utilities to accept any orders that are enforceable in Pennsylvania.

ii. Informing Customers and Applicants of the Domestic Violence Protections

- Utilities should affirmatively ask applicants and customers whether they are a victim of domestic violence and, if so, whether they have been involved in a court proceeding regarding such domestic violence, when those individuals are unable to connect to service, need a payment arrangement, or face termination of service.
- All customer-facing utility staff should be trained to provide information to applicants and customers about the exemption, the available protections, and the documentation the utility may need.
- Once identified by front-line customer service staff, consumers seeking to access the protections should be transferred to a smaller, dedicated team within the utility that is sensitive to the issue of domestic violence and is highly trained to review the documentation, apply the protections, and connect the victim with other appropriate resources.¹⁸ We suggest that the utilities' CARES program may be a good option for this type of sensitive case handling.
- Utilities should be encouraged to develop relationships with the local domestic violence agencies in their service territory. As an initial step, we suggest that staff from the local domestic violence agencies be invited to participate in the utility's Universal Service Advisory Committee, as this can help to build the sort of relationship necessary to identify systems or procedural issues that may arise for victims attempting to access protections.

¹⁸ To the extent that applicants and customers are physically present in a utility office, all customer service staff should be empowered to accept any documentation presented by the applicant or customer and send the documentation to the dedicated staff at the utility for review.

iii. Training and Educational Materials

- Training and Educational Materials should be developed through a collaborative process that includes advocates, utilities, Commission staff, and experts in domestic violence.
- Utility staff (including all customer-facing staff and regulatory staff) and Commission staff should receive regular training on working with victims of domestic violence. A single training is insufficient, as the turn-over of front-line utility consumer services staff is often very high.
- Utilities should be encouraged to work with local domestic violence agencies in their service territory to conduct reciprocal training, wherein the utility provides information about its assistance programming and the agency provides training and information about domestic violence, and best practices for working with customers who have experienced domestic violence.
- Standardized, customer-facing educational materials should clearly define the domestic violence exemption, provide examples of documentation accepted, and provide examples of the applicable protections – though these lists should not be considered exhaustive.
- Customer-facing educational materials should be posted on utility websites and available at utility offices, and should include information that is accessible to limited English proficient applicants and customers.

iv. Confidentiality expectations

- Once a utility has noted that a customer is exempt from Chapter 14, there is no reason for the utility to retain the documentation provided. The utility should simply make a note in the customer's file and apply the appropriate protections. After doing so, the utility should treat the documents as confidential and dispose of them appropriately.
- Utilities and the Commission should identify dedicated staff to direct the work with customers and applicants claiming the domestic violence exemption.
- Utilities should establish or identify a secure and dedicated fax line and email address for customers who submit a court order or other documentation. These lines of communication should only be accessible to the small team within the utility that is designated to handle domestic violence cases.

V. PRIVACY GUIDELINES

In addition to the brief comments and recommendations below, the Low Income Advocates provided comments on the electronic provision of 72-hour notice of termination and associated privacy concerns in both initial and additional comments. The Low Income Advocates incorporate those comments herein by reference.¹⁹

A. Clear guidelines should be developed to ensure customer confidentiality and privacy.

The Commission, in its Chapter 56 Secretarial Letter, notes that Chapter 14, as amended, references the Commission’s privacy guidelines in the context of providing a 72-hour electronic notice of termination by email, text, or other electronic messaging service.²⁰ However, the Chapter 56 Secretarial Letter states that the Commission does not currently have specific privacy guidelines. Accordingly, the Commission is establishing a work group to provide feedback on how those guidelines should be developed and what they should include. The focus of work group discussions should be on how the personal information of customers and applicants should be protected by the utility – through confidential record keeping, limiting the release of such information to third parties, and ensuring that electronic notice does not compromise or reveal sensitive, personal information. In addition, the guidelines should also establish standards for utilities in the appropriate delivery of an electronic 72-hour notice of termination to ensure that

¹⁹ 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 Comments of TURN, Action Alliance, and CAUSE-PA, at 27-31 (filed April 18, 2017); 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 TURN, Action Alliance, and CAUSE-PA, at 24-28 (filed Sept. 11, 2017).

²⁰ It is important to be clear that Chapter 14 only authorized the use of electronic messaging for delivery of the 72-hour notice of termination. 66 Pa. C.S. § 1406(b)(1)(ii); see also 52 Pa. Code § 56.93. This authorization does not extend to the required 10-day notice of termination – or the requirement that utilities attempt to make personal contact at the residence immediately prior to termination (often referred to as the “last knock” rule). 66 Pa. C.S. §§ 1406(b)(1)(i), (iv); 52 Pa. Code §§ 56.91, .94

adequate and appropriate information is conveyed, and to verify whether that information was delivered without technical errors.

B. The Commission must develop privacy guidelines that adequately protect the consumer.

As noted by the Low Income Advocates in their initial comments to the Commission regarding this rulemaking, implementation of a 72-hour electronic notice of termination, as authorized in Chapter 14, is a complicated and fraught topic. Economically vulnerable households often have unreliable access to advanced communication tools, and may change their phone numbers or email addresses several times over the course of a year.²¹ In addition, technology is ever-changing, and the methods and modes of contact between companies and individuals continues to evolve. The Low Income Advocates again commend the Commission for taking a collaborative approach to developing standards for how electronic modes of communication are treated from a privacy standpoint. The Low Income Advocates welcome the opportunity to explore this topic with utilities, the Commission, and other stakeholders –with an eye to protecting the privacy of consumers.

The Low Income Advocates offer the following recommendations to the work group for establishing appropriate guidelines for protecting customer information in the context of the electronic provision of a 72-hour notice of termination.

i. Information to be Protected

- Similar to current regulations that prevent the release of telephone numbers, the privacy guidelines should prevent utilities from sharing any form of personal identification and contact information. See 52 Pa. Code § 54.8. The privacy guidelines should be developed in a way that contemplates both current modes of communication and potential future

²¹ See Pa. Dep't of Housing & Urban Development, Office of Policy Development & Research, Digital Inequality and Low-Income Households (Fall 2016), <https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html>.

technology as well. This includes numbers for text messages, email addresses and any other forms of electronic communication or data submitted to a utility for the purposes of providing a 72-hour notice of termination.

- The privacy guidelines should also protect the information that is being shared with the consumer. The Low Income Advocates submit that utility termination information is inherently personal and sensitive. The privacy guidelines should address how the utility can adequately inform the recipient without risking inadvertent disclosure to third parties.

ii. Form of Consent by the Consumer

- Because of the inherent risks of electronically delivering a 72 hour notice of termination, including both the sensitivity of the information and the likelihood that electronic notice could fail to reach the consumer in a timely or effective manner (particularly if the consumer's contact information has changed), the Commission's privacy guidelines should set forth in detail how utilities must obtain affirmative consent from consumers.
- Utilities should be required to obtain knowing, informed, and affirmative consent from the consumer in a form that ensures the consumer understands the risks inherent in using these methods of communication. The consent should not be generic, or broadly applicable to any communications from a utility. Rather, it should be narrowly tailored to obtain explicit consent to receive 72-hour notice of termination electronically.
- Utilities should be required to periodically update this consent, and absent continuing affirmative consent from the consumer, utilities should cease to use electronic modes to contact the consumer about adverse actions like termination. This is critical to ensure that the consumer's electronic contact information has not changed, and to verify that the consumer continues to consent to electronic communications in an ever changing technological landscape.

iii. Sharing of Contact Information

- Any data submitted to utilities for the purposes of providing a 72-hour electronic notice of termination should not be shared with third parties, including energy marketers or suppliers. The Commission's privacy guidelines should expand on the current regulations

that prevent disclosure of telephone numbers and billing data to include all personal identifying information and data – including electronic means of communication.

iv. Protecting Information Shared Over Electronic Channels

- The Commission’s privacy guidelines should also protect and limit the personal information shared by electronic communication. When a utility is providing 72-hour notice of termination by telephone call or by in person contact, the utility can confirm they are speaking with the account holder or an authorized user. By contrast, the frequency of hacking, surveillance, and unauthorized disclosure of personal email data among the free email services utilized most commonly by low income customers²² is grounds for strictly limiting the personal information included in these transmissions.
- In developing privacy guidelines, and taking into account the various methods and modes of communication, the work group and Commission should clarify what information utilities should be required to include in an electronic 72-hour notice of termination, and whether (and how) the notice should direct the consumer to another location to obtain additional information.

²² See Douglas MacMillan, Tech’s ‘Dirty Secret’: The App Developers Sifting Through Your Gmail, The Wall Street Journal (July 2, 2018), <https://www.wsj.com/articles/techs-dirty-secret-the-app-developers-sifting-through-your-gmail-1530544442>.

VI. CONCLUSION

The Low Income Advocates thank the Commission for the opportunity to submit written comments in advance of the work group meeting on October 29, 2019, and urge the Commission to structure the work group conversations with an aim towards ensuring consumers have unencumbered access the utility protections set forth in Chapter 14.

Respectfully Submitted,



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