



Lindsay Baxter
Manager, Regulatory and Clean Energy Strategy
lbaxter@duqlight.com
412-393-6224

May 11, 2021

VIA ELECTRONIC FILING

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
Harrisburg, PA 17120

**Re: Working Group on medical certificate, other court orders and privacy guidelines relating 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
Docket No. L-2015-2508421**

Dear Secretary Chiavetta:

Enclosed for filing please find Duquesne Light Company's Comments in the above referenced proceeding.

If you have any questions regarding the information contained in this filing, please feel free to contact me or Chris Johnson at 412-393-6496 or cljohnson@duqlight.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L.A. Baxter'.

Lindsay A. Baxter
Manager, Regulatory and Clean Energy Strategy

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Working Group on medical certificate, other court
order and privacy guidelines relating 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 : L-2015-2508421

**COMMENTS OF
DUQUESNE LIGHT COMPANY**

I. INTRODUCTION

On February 25, 2021, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) issued a *Tentative Order*, regarding three outstanding issues from 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. Specifically, the *Tentative Order* addresses the following three aspects of Chapter 14: form of medical certificate, court orders relating to protection from abuse, and privacy guidelines relating to the means of communication used to provide notice of termination of service.

The *Tentative Order* provided for comments to be filed within forty-five (45) days of publication in the *Pennsylvania Bulletin*. The *Tentative Order* was published March 27, 2021, 51 *Pa.B.* 1762. Pursuant to the published schedule, Duquesne Light Company (“Duquesne Light” or “Company”) hereby submits these comments for consideration.

II. BACKGROUND

Act 155 of 2014 was signed into law on October 22, 2014. This act amended Chapter 14 of the Public Utility Code with respect to collections activities. The Commission issued a Final Order regarding Chapter 14 Implementation on July 9, 2015 (Docket No. M-2014-2448824). This Order provided guidance regarding the form and content of a medical certificate, reporting requirements for accounts exceeding \$10,000 in arrearages, and reporting requirements for medical certificates.

Subsequently, a rulemaking was initiated to revise Chapter 56 of the Pennsylvania Code (52 Pa. Code §§ 56.1-56.461) to align with the changes made to Chapter 14. The Chapter 56 Final Rulemaking Order adopted on February 29, 2019 revised the residential service standards and billing practice regulations to align with Chapter 14.¹ The final regulations were published in the *Pennsylvania Bulletin* and became effective on June 1, 2019. The Final Order deferred three outstanding issues: the form of medical certificates (66 Pa.C.S. § 1403), court orders relating to protection from domestic violence (66 Pa.C.S. § 1417), and privacy guidelines for communications used to provide notice of termination of service (66 Pa.C.S. § 1406 (b)(1)(ii)(C)). On August 29, 2019 the Commission issued a Secretarial Letter establishing a working group to focus on these three topics. Interested parties and stakeholders were permitted to file comments and a collaborative meeting of stakeholders was held on October 29, 2019.

On February 25, 2021, the Commission issued a *Tentative Order* which summarizes stakeholder input from the comments and the working group meeting. The Order also provides the Commission's proposal regarding each of the three outstanding items. Below, the Company provides its response to each of the Commission's proposals.

¹ 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.

III. COMMENTS

A. Form of medical certificate

Duquesne Light does not oppose the Commission’s proposal to develop a standardized form for Medical Certificates that includes the five elements required by Chapter 14, nor does the Company oppose making this form available via the Commission’s public website. The Company maintains that requiring a practitioner’s medical license number may reduce fraudulent certificates by ensuring only licensed medical providers sign these certificates. However, the Company has read the comments on this matter and participated in the October 2019 working group meeting, hearing that doctors prefer not to include a license number, and some medical systems have prohibited this practice. Duquesne Light is dedicated to assisting its most vulnerable customers. If the requirement to include a license number truly presents a barrier to those in need of assistance, the Company will not oppose this change. Duquesne Light requests that the Commission commit to revisiting this matter in the future if utilities see an increased incidence of potentially fraudulent use of medical certificates.

Additionally, the Company requests that the Final Order clarify how medical certificates are to be received. The *Tentative Order* suggests that a medical certificate can be provided to the utility directly by a customer or the medical office. However, the guidance provided in Appendix B seems to suggest that the medical provider must contact the utility directly. Specifically, the guidance for consumers states “For a medical certificate to be accepted by the public utility, your physician, physician assistant, or a nurse practitioner must write to the public utility” and the guidance for medical professionals states “For a medical certificate to be accepted by the public utility, a physician, physician assistant, or a nurse practitioner must call or write the public utility.” In the October 2019 working group meeting, customer advocates stated that a medical office can be busy and may forget to submit the letter on time, potentially putting the customer at

risk of losing service. By allowing the customer to receive the certificate and submit it directly to the utility, this risk is reduced. Duquesne Light suggests the Final Order and guidance clarify this point. Additionally, the guidance at Appendix B suggests that the medical professional can “call” the utility to submit a medical certificate. This suggestion is misleading; per 52 Pa. Code § 56.113, “Medical certifications must be in writing.” The Commission should revise Appendix B to confirm that medical certificates will be provided in writing and not accepted verbally by phone.

B. Other court orders

As a preface to any comments on this topic, Duquesne Light is supportive of efforts to assist and protect victims of domestic abuse and their families. Duquesne Light acknowledges the serious nature of domestic violence. The Company has developed and adheres to a process to ensure consistent handling of matters involving Protection From Abuse (“PFA”) orders, and is committed to working with customers with extenuating circumstances.

The *Tentative Order* declines to set definitions for what constitutes “other court orders” evidencing domestic violence and entitling an applicant/customer to PFA protections. The Company finds this lack of clarity concerning, and supports the positions of the Energy Association of Pennsylvania and Columbia Gas, as cited in the *Tentative Order*, that “utilities are not equipped and should not be required to be equipped to make judgements about what constitutes domestic violence or ‘clear evidence of domestic violence’ or the validity of ‘other court orders.’”

In declining to set definitions, the Commission instead suggests that utilities “defer to groups with expertise in this area” and “consult their in-house counsel and, if needed consult with outside experts.” This suggestion is troubling in two respects. First, utilities’ call center representatives are not qualified to read and interpret legal documents, nor should they be

expected to be. Suggesting that utilities instead utilize internal counsel to examine evidence of domestic violence in various court documents is beyond the scope of the in-house lawyers' knowledge and expertise.

Second, even where a utility has access to domestic-violence experts, the Commission's proposal fails to provide a standard by which those experts should evaluate potential evidence of domestic violence. Multiple legal documents can potentially show evidence of domestic violence. For example, an unlawful gun charge could be the result of a domestic violence incident. Similarly, a criminal complaint made by a domestic violence victim may show evidence of domestic violence, but is not a court order. The proposal in the *Tentative Order* would not provide enough direction to guide the decision of whether the legal documents that are being presented qualify. It is appropriate for the Commission to establish more clarity and definitions on this topic.

The *Tentative Order* cites PPL's comments in requesting that the Commission provide applicable definitions. Specifically, PPL requests that the Commission provide guidance on the terms "clear evidence," "domestic violence," and "court of competent jurisdiction." Duquesne Light is supportive of the definitions PPL suggests:²

- Clear evidence—a statement or finding contained in the court order that the customer or member of the household is a victim of domestic violence.
- Domestic violence— violence between family members, as defined in 23 Pa. C.S. § 6102 relating to PFAs (i.e., spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, and other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood;

² Comments of PPL, *Working Group on medical certificate, other court order and privacy guidelines relating 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*. Filed October 4, 2019, Docket No. L-2015-2508421

- Court of competent jurisdiction—a magisterial district court, court of common pleas, or an appellate court.

By declining to set clear definitions, the Commission is passing the responsibility to each utility to make its own determination of the Commission’s intent. Duquesne Light urges the Commission to reconsider its proposal to leave interpretation to the utilities and instead provide regulatory guidance by establishing clear definitions, while also allowing room for utilities to exercise flexibility based on a customer’s unique circumstances.

C. Privacy guidelines

Duquesne Light has found that a preference for electronic communication, once the exception rather than the rule, has grown significantly over the past ten years. While it is tempting to assume a preference for electronic communications is limited to younger customers, the Company is increasingly seeing customers across all demographics opting for e-billing and email communications. The potential benefits of using electronic communication for notice of termination are many. For one, a customer will receive the notice immediately, rather than waiting until they return home to receive a voicemail or a notice physically posted at the premise. This can allow a customer to more quickly act to rectify the situation. The Company believes this could provide a more convenient solution for customers who may not return home from work until after the Company’s business office is closed for the day, or who are away from their home for an extended time period. Examples include customers who are traveling abroad for work or who spend parts of the year in other locations (for example, “snowbirds” who spend the winter in Florida). These customers are not physically at their premise to receive hard copy

notice and may not have access to the phone number on the account to receive calls, but will receive an email anywhere in the world and can act swiftly to prevent termination.

Additionally, electronic communication better protects the customer's privacy, as only the customer will see the notice. There is greater chance of a paper letter being viewed by individuals other than the customer. The use of electronic communication provides greater privacy as the communication is only between the customer and the Company.

A recent example that supports the greater use of electronic communication is the Commission's move to electronic service on an opt-out basis for formal complaints, which was necessitated by the circumstances surrounding the COVID-19 pandemic. When a customer who has filed a formal complaint initially signs up for eFile, there is a checkbox to indicate that the customer wishes to be served electronically. This check box is automatically checked as the default option. The customer must un-check this box if they do not consent to electronic service. To the Company's knowledge, the customer can choose to change their preference at any time, but the Commission does not proactively reach out to remind the customer that they have elected electronic service on regular intervals. Receiving important documents regarding a formal complaint is critical, as failing to respond can result in a complaint being dismissed, potentially with prejudice. The Company finds that the successful use of electronic service for formal complaints is instructive of the potential for expansion of other forms of electronic communications.

An additional example is the Commission's recent approval of petitions from both Duquesne Light and PPL to send the triennial Eligible Customer List update communication electronically to all customers who have provided an email address, rather than limiting to only

those customers receiving an electronic bill, as allowed previously.³ In both proceedings, the Final Order permits the electric distribution company (“EDC”) to send the communication via email to all customers who have provided an email address, and requires the EDC to include in the subject line of the email the words “RESPONSE REQUESTED” in capital letters. Duquesne Light has committed to sharing results of this campaign at its completion. Initial results suggest a response rate after the first week more than three times that seen in 2018 over the same time period.

In its *Tentative Order*, the Commission suggests that there should be a separate, distinct notice for customers choosing to enroll in receiving electronic notifications at Sections 56.93 and 56.333 (relating to personal contact). This separate and distinct notice would inform the customer that enrollment is voluntary and that the purpose is to receive notification of a pending termination electronically. Further, the Commission proposes that the consent should not be a check box. Duquesne Light avers that separate consent for electronic communications related to termination notice is not necessary if a customer elects to receive all communications electronically. To the extent that the Commission moves forward with this proposal, the Company believes a clearly marked check box is sufficient, and points to the above-mentioned use of a checkbox for a formal complainant to elect to receive electronic service of important legal documents via the Commission’s website as an example.

³ See Docket No. P-2020-3022674, Order and Opinion approving the petition of Duquesne Light Company, adopted January 14, 2021; and Docket No. P-2020-3022803, Order and Opinion approving the petition of PPL Electric Utilities Corporation, adopted February 25, 2021.

The *Tentative Order* also proposes that customers be able to revoke consent at any time by any clear means. The Company is not opposed to this proposal. Customers can and do make changes to their contact information and preferences regularly.

The Order further proposes that utilities shall send a reminder notice to all customers on a yearly basis reminding them to review their account information and electronic notifications. The Company does not support this requirement. Customers who have opted into electronic billing are receiving, and paying, an electronic bill on a monthly basis. It is the Company's opinion that a further reminder is unnecessary. Should the Commission move forward with this proposal, it should allow utilities flexibility in the content and delivery of the reminder notice. For example, utilities should be allowed to deliver a reminder notice via email or bill message, which would be less expensive and burdensome than a separate mailing.

Finally, in its *Tentative Order*, the Commission acknowledges the Energy Association of Pennsylvania's ("EAP's") comments, which aver "that when customers provide their e-mail address, they are agreeing to permit the utility to contact them for all routine matters, which include billing, newsletters, service outage notices, and termination." Although the Commission went on to propose a separate, distinct notice requirement for electronic notifications related to terminations, the Commission did not address the EAP's recommendation with respect to other forms of customer communications, which are not directly at issue in this proceeding. Consistent with customer preferences and expectations, utilities (and the Commission itself) increasingly communicate with customers via electronic means. The Commission's regulations should be flexible in accommodating electronic communications for all customer notifications, including service-termination purposes.

IV. CONCLUSION

Duquesne Light appreciates the opportunity to provide further comment on the three outstanding items resulting from enactment of Act 155 of 2014. The Company urges the Commission to move swiftly to bring these final issues to conclusion, providing clear guidance and removing any regulatory uncertainty for utilities, customers, and other stakeholders. The Company looks forward to continued communication and collaboration with the Commission.

Respectfully submitted,



Lindsay A. Baxter
Manager, State Regulatory Strategy
Duquesne Light Company
411 Seventh Avenue, Mail Drop 15-7
Pittsburgh, PA 15219
lbaxter@duqlight.com
Tel. (412) 393-6224

DATE: May 11, 2021