

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**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**

Docket No. L-00060182

COMMENTS of the ENERGY ASSOCIATION of PENNSYLVANIA

I. OVERVIEW

The Energy Association of Pennsylvania (“EAPA” or “the Association”) files these Comments in response to the Advance Notice of Proposed Rulemaking Order (“ANOPR”) entered on December 4, 2006 in the above referenced docket, which seeks to implement Section 6 of the Responsible Utility Customer Protection Act (“Chapter 14” or “Act 201”).

Section 6 requires the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to amend Chapter 56 of the Pennsylvania Code to comply with the provisions of Act 201, and if necessary, promulgate other regulations to administer and enforce the new law while providing that promulgation of regulations shall not delay the implementation of Act 201. As stated by this Commission in the ANOPR, “Chapter 14 supersedes certain Chapter 56 regulations, all ordinances of the City of Philadelphia and any other regulations that impose inconsistent requirements on the utilities.” ANOPR at page 2. The Energy Association of Pennsylvania represents the interests of the Commonwealth’s PUC-regulated electric and natural

gas energy distribution companies. Following are general comments provided by EAPA and its members.

First, EAPA compliments the Commission for recognizing the importance of resolving issues that are likely to arise between the statute found at 66 Pa. C.S.A. §§1401-1418 and regulations presently found at Chapter 56 of the Pennsylvania Code. Initially, this should be the primary focus of this rulemaking. The Association and its members maintain that the role of this rulemaking is to fully implement the policy declarations set forth at Section 1402 of Act 201, 66 Pa. C.S.A. §1402. In this regard, at Section 4 of Act 201, the General Assembly identified a conflict between specific sections of previously promulgated regulations found in Chapter 56 at §§56.32, 56.33, 56.35, 56.41, 56.51, 56.53, 56.81, 56.82, 56.83, 56.91, 56.93, 56.94, 56.95, 56.96, 56.100, 56.101, 56.111, 56.112, 56.113, 56.114, 56.115, 56.116, 56.117, 56.181 and 56.191 which imposed requirements inconsistent with Chapter 14. It is these regulations that the Association and its members urge the Commission to examine first.

The instant ANOPR, however, proposes having to consider regulatory changes beyond those identified by the legislature and while such a review may be within the Commission's authority, EAPA suggests that it is likely to result in an unwieldy proceeding. EAPA contends that the expanded ANOPR will slow the final implementation of Chapter 14.

To avoid such a result, the Association makes two (2) critical suggestions. First, that the declaration of policy set forth by the legislature at 66 Pa. C.S.A. §1402 be used as the guide for this proceeding. The legislative policy declares that application of Chapter 56 rules has "not successfully managed the issue of bill payment. Increasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers' delinquencies." 66 Pa. C.S.A. §1402. In amending Chapter 56, the Commission has been directed to focus on: (1) timely

payment of bills; (2) eliminating opportunities for customers capable of paying their bills to avoid payment; (3) increasing timely collection by modifying the method of delinquent account collections; and (4) achieving greater equity regarding collectible accounts. Other statutory concerns involve protection against rate increases for timely paying customers resulting from other customers' delinquencies, and providing additional collection tools to Philadelphia Gas Works ("PGW") to recognize its financial circumstances and protect its ability to provide gas for the residents of Philadelphia.

Second, the Association urges the Commission to focus its efforts on the specifically identified regulations set forth in the legislation at Section 4(1) of Act 201 as well as the regulations found in Chapter 56 that are inconsistent with Chapter 14. See §4(2) of Act 201. The Association suggests that, to the extent there are areas raised in the ANOPR that address issues not affected by the enactment of Act 201, those issues can be resolved at a later date either in a continuation of this docket or in a separate proceeding.

The Association respectfully requests that the immediate efforts of stakeholders be focused on full implementation of the law first passed over two years ago. The initial phase of the rulemaking should encompass an examination of the policies and interpretations advanced in the Implementation Orders to ensure that they further the policies set forth by the General Assembly at 66 Pa. C.S.A. § 1402.

The Legislature clearly wants progress on Chapter 14 implementation. Both utilities and consumers need to know the rules of the road, and leaving conflicts unresolved for an extended period of time is not in the public interest. Allowing the review of other issues to dominate this proceeding could erode the gains made by Pennsylvania utilities in reducing uncollectibles since

the enactment of Chapter 14 and could work to harm the very consumers this statute was enacted to protect, i.e., those customers who pay their bills in a timely fashion.¹

Importantly, the Commission's initiatives to mitigate electric price increases, expand competition in the natural gas market and promote energy efficiency and demand-side response cannot be successful without addressing some of the issues associated with this rulemaking. For example, appropriate price signals are important both in fostering competition and in promoting conservation; prolonged payment delay, however, is contrary to these concepts. The fact that the Commission is now measuring undefined "potential infractions of Chapter 14" as set forth in the first Biennial Report, despite the absence of final rules, further underscores the need for certainty in consumer rules that adhere to legislative intent.

Section 4 of Chapter 14 states, in part, as follows:

§4. The following shall apply:

- (1) *The addition of 66 Pa. C.S. Chapter 14 supersedes any inconsistent requirements imposed by law on public utilities, including, but not limited to, requirements imposed by 52 Pa. Code §§56.32, 56.33, 56.35, 56.41, 56.51, 56.53, 56.81, 56.82, 56.83, 56.91, 56.93, 56.94, 56.95, 56.96, 56.100, 56.101, 56.111, 56.112, 56.113, 56.114, 56.115, 56.116, 56.117, 56.181 and 56.191. (Emphasis added.)*

¹ As evidenced by the Commission's own data (e.g., 2004 and 2005 *Report on Universal Service Program Collection Performance*, monthly 56.231 Report and monthly Payment Plan reports) in the year after Chapter 14 passed, significant reductions occurred in the number of customers in debt, the dollars of debt, the number of low-income customers in debt and the rate obligations arising from non-paying customers. In 2005 and 2006, the number of people paying in full to be reconnected has skyrocketed. The ratio of reconnections to terminations, which is obtained by dividing the number of reconnections by the number of terminations and used by the PA PUC as an indicator of how successful customers whose service has been terminated are of getting service reconnected, has also increased – showing that reconnection after termination was easier with stricter, more accountable rules.

(2) *All other regulations are abrogated to the extent of any inconsistency with 66 Pa. C.S. Ch. 14.*

As stated by the Pennsylvania Supreme Court in Treaster v. Union Township, 430 Pa. 223, 242 A.2d 252, (1968), “[w]ords used in a statute are not lightly to be given a meaning other than their normal one. As we said recently: ‘Both by statute and decisional law we are required to construe words and phrases according to their common and approved usage; statutes are presumed to employ words in their popular and plain everyday sense and the popular meaning of such words must prevail unless the statute defines them otherwise or unless the context of the statute required another meaning, Harris-Walsh v. Dickson City Borough, 420 Pa. 259, 271, 216 A.2d 329, 335 (1966).’” Id. at 430 Pa. 228-29, 242 A.2d 255.

Here, Section 4 of the Act not only provides that certain specific regulations must be examined in a rulemaking and modified so as to comply with Chapter 14, but emphasizes that all other regulations are abrogated to the extent of any inconsistency with the legislation. This is the task this rulemaking should initially address. A narrow focus will ensure timely adoption of regulations which is in the best interest of all timely paying customers.

II. INITIALLY, THIS DOCKET SHOULD BE LIMITED TO AMENDING CHAPTER 56 TO COMPLY WITH ACT 201

The Commission’s role in amending Chapter 56 is defined at Section 6 of Act 201 which states: “[t]he 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.” (Emphasis added.)

The word “shall” is interpreted strictly, indicates a mandatory intent, and allows no discretion regarding implementation. Association of Civilian Technicians v. Federal Labor Relations, 22 F.3d 1150, 1153 (D.C. Cir 1994). A legislative body cannot find stronger language than “shall.” United States v. Monsanto, 491 U.S. 600, 607 (1981). Furthermore, the word “shall” is mandatory, not permissive, language. Pierce v. Underwood 487 U.S. 552, 569-570 (1998).

Through this ANOPR, the Commission seeks to undertake numerous tasks from implementing Act 201 to addressing technological advances to reviewing ad hoc reporting requirements. Certainly the Commission’s suggestion to consider revisions to Chapter 56 unrelated to Act 201 or to examine the impact of technological advances since Chapter 56 was adopted are all worthy of regulatory review after implementation of Chapter 14 (See ANOPR at pp. 5-6). At this time, adding issues including “any matters or issues that they (any commentator) feel we have overlooked or missed” expands the docket to a point that is contrary to the legislative intent to implement Chapter 14 in a timely manner (See ANOPR at p. 6). As previously stated by this Commission in a docket opened to identify obsolete regulations and reporting requirements, “[t]he proposed regulations cover such a wide variety of subject matter that we feel that breaking the rulemaking down into more manageable rulemakings will be in the best interests of expediency and common sense.” Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations, Docket No. L-950103, Order entered December 19, 1995. EAPA respectfully requests that the rulemaking first address

amendment of regulations to comply with Act 201 and address Chapter 56 amendments generally once that process is completed.

Finally, EAPA asks the Commission to use its discretionary powers judiciously in this proceeding to first fully implement Chapter 14 so as to avoid the possibility of inconsistent treatment of individual cases as they are handled by the Bureau of Consumer Services (“BCS”). As Professor K.C. Davis, author of the *Administrative Law Treatise*, has reasonably proposed, there should be a “requirement judicially enforced, that administration must strive to do as much as they reasonably can do to develop and make known the needed confinements of discretionary power through standards, principles and rules.” K.C. Davis, Administrative Law Treatise, Section 6.13 at page 278 (Supp 1970).

III. THE REGULATORY COMPACT SHOULD BE CONSIDERED IN THIS PROCEEDING

The Commission has repeatedly recognized that “a utility is allowed a reasonable opportunity to recover the costs incurred in providing service.” See, e.g., Cawley and Kennard, Rate Case Handbook at p. 177 (1983). This is historically referred to as the “regulatory compact”. The compact is based on two fundamental principals. “First, in return for a monopoly franchise, utilities accepted an obligation to serve all comers. Second, in return for agreeing to commit capital to the business, utilities were assured a fair opportunity to earn a reasonable return on that capital.” The Regulation of Public Utilities, Charles F. Phillips, Jr., at p.21 (1993).

Prior to the passage of Chapter 14, many in the utility industry contended that the Commission needed to revisit Chapter 56 and to revise certain provisions to better collect current

charges and overdue balances since application of Chapter 56 regulations had become “elastic” and in direct conflict with case law. See e.g., Baum v. Duquesne Light, 56 Pa. PUC 742 (1983) and Mill v. Pennsylvania Public Utility Commission, 67 Pa. Cmwlth. Ct. 597, 44 A.2d 1100 (1982).

The legislature, however, has been very specific in establishing practices in the statute (i.e., §§1405, 1406 and 1407) that are clear and place specific obligations on either the Commission or the utility. The legislation seeks to restore the balance between the need for timely payment and the recognition that utilities provide services that are essential to the health and safety of Commonwealth citizens. Regulations amended in this instant rulemaking must do likewise, providing utilities with “the 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 Commission should seek] to ensure that service remains available to all customers on reasonable terms and conditions.” 66 Pa. C.S.A. §1402 (3).

IV. APPENDIX A IMPLEMENTATION OF CHAPTER 14

A. Rules That Apply To Victims With A PFA And To Customers Of Steam Heating, Wastewater And Small Natural Gas Companies.

As the Commission recognized in Appendix A, Chapter 14 does not apply to these entities or customers. Initially, a protection from abuse order needs to be defined in the regulations. Moreover, the EAPA member companies do not support the creation of a separate chapter to address Standards and Billing Practices for these identified residential customers, rather it is suggested that exceptions are noted in the pertinent Chapter 56 regulations as part of this rulemaking.

B. Previously Unbilled Utility Service.

Initially, Act 201 does not specifically address the issue of “make-up” bills and, if the Commission is to consider imposing a four-year “statute of limitations”² on collections in this circumstance, there should be an exception for fraud and theft. Additionally, the Association contends that regulation should not limit liability for those who engage in theft, fraud and unauthorized use of service. Energy diversion is both a crime and a public safety issue that can lead to both personal and property damage. There is no public interest served by imposing requirements which limit liability for this type of activity. Thus, a four year rule in instances of theft and fraud is not in the public interest and any proposed regulation must except such action.

Additionally, the Commission’s ANOPR concludes that the “make-up bill” rules at §56.14 should remain an obligation of the utility and are not in conflict with 66 Pa. C.S.A. §1405(d). ANOPR Appendix at page 1. The Association must respectfully disagree with this interpretation. Section 1405(a) of Act 201 authorizes the Commission to establish payment agreements between utilities, customers and applicants within the limits established by Chapter 14. The parameters of payment agreements are set forth in 66 Pa. C.S.A. §1405 and while utilities may alter the terms, regulation cannot further mandate the period in which a make-up bill is to be repaid or recovered.

C. Credit Standards Can Easily Be Addressed.

The provisions of §56.32, §56.33 and §56.35 of the Pennsylvania Code are identified as inconsistent with provisions of Chapter 14. The Commission is correct that the §1403 definitions of applicant and customers prevail over any conflicting definitions found in Chapter 56. It is certainly agreed that the statutory provisions of §1404 (a), §1404 (d) through (f), §1407

² The Association suggests that the concept to be considered is whether a limit on liability should be inserted into regulation. “Statutes of limitations” have been enacted by the legislature and can not be added via regulation.

(d) and §1414 (c) supersede all conflicting provisions in Chapter 56. As noted by Commissioner Pizzingrilli, the question remains as to whether it is necessary to restate the statutory provisions in the amended regulatory language. EAPA contends that the statute should not be restated in the regulation.

Section 1404(a)(2) of Act 201 provides utilities with the ability to use generally accepted credit scoring methodology. These methodologies are licensed to the utility and have legal protections that may prevent their full public disclosure in tariffs. Moreover, to the extent that the licensor changes the methodology, the tariff would need to change, eliminating the flexibility utilities gain in using a utility credit scoring method developed by a national expert. Further, Section 56.36 of the Pennsylvania Code currently requires the utility to have written procedures for determining credit status available for inspection by the public and the Commission. The Association proposes that this regulation is sufficient. The Association contends that further clarification of this statutory section is not necessary and would serve only to undermine the legislative intent to rely upon “generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice.” 66 Pa. C.S.A. §1404(a)(2).

With respect to the proposals made regarding Sections 1404(d), 1407(d) & (e), the Association requests that, in promulgating regulations in this area, the Commission use its study dealing with identity theft found at Docket No. M-00041811. The legislative changes made in these sections were to provide tools to combat name-gaming. Any revised regulation that makes it difficult for a utility to collect from a competent adult residing in a house during a time period for which the utility is owed an outstanding bill would be contrary to the expressed legislative

intent. Finally, again if limitations on liability are imposed exceptions should be included for fraud and theft.

D. Payment Period For Deposits.

Initially, the Association maintains that the Implementation Order of March 3, 2005 clarified ambiguities, if any, with respect to deposit payment timeframes and urges the Commission to use its earlier Order in crafting regulations.

E. Chapter 56 Termination of Service Provisions Need To Be Eliminated.

Section 56.83 of the Pennsylvania Code was identified as a regulation in conflict with Chapter 14 in §4 of Act 201. The Commission ANOPR proposes that §56.83 remain in place to the extent that it is found to be consistent with Chapter 14. Thus, the question posed “are any of the 11 (eleven) provisions of §56.83 inconsistent with §1402 or any other provisions of Chapter 14?”

Do the provisions of §56.83 increase or decrease uncollectibles? Do the provisions of §56.83 increase or decrease timely payments? Do the provisions of §56.83 provide opportunities for customers capable of paying to avoid the timely payment of public utility bills? Finally, do specific provisions of Chapter 14 exclude some of the provisions of §56.83?

Section 56.83 (1) would permit and encourage “non-payment” simply because a customer has multiple residences. This provision needs to be eliminated, as it encourages neither timely payment nor a reduction of collectibles.

Section 56.83 (7) again discusses “non-payment” of a bill furnished more than four years prior to the date that the bill is rendered. Where there is stolen service or service diversion there should be no statute of limitations. There is no public interest in providing any protection to

those who violate the laws of the Commonwealth and place themselves and others in harm's way. Therefore, §56.83 (7) must be amended to exclude theft of service.

Chapter 14 has properly included all people with legal responsibility under the term customer. The definition of "customer" found in 66 Pa.C.S.A. §1403 is clear and therefore §56.83 (8) is no longer necessary and can be safely eliminated.

Section 56.83 (9) again has as its basis "non-payment" due to estimated billings. Again, Chapter 14 provides for the acceptability of estimated bills, see 66 Pa. C.S.A. §1404, and this aspect of the regulation is eliminated.

Section 56.83 (10) and (11) suggest that non-payment is permitted if the amount owed is below a level of \$25.00. Again, the policy of Section 14 is to encourage full and timely payment of utility bills. There is no reason to provide such undue preferences to some customers.

Section 56.83 was singled out by the Legislature to be superseded. Subsections (1), (7), (8) (10) and (11) are eliminated not only by Section 4, but also due to the conflict with 66 Pa. C.S.A. §1402.

F. Sections 1405, 1406 (h), 1409 and 1410 (2) of the statute have rewritten §56.181 of the Pennsylvania Code.

Section 56.181 has been affected by the statutory language contained in §1405, §1406 (h), §1409 and §1410 (2). Reference should be made to these statutes and §56.181 should be eliminated as it has been superseded by statutory language.

G. Section 1407 has replaced §56.191.

Section 1407 addresses the situation when a customer has been terminated and seeks reconnection. Previously, §56.191 set forth the general rule pertaining to reconnections. It clearly has been replaced with statutory language. The Commission should either eliminate the

regulation in its entirety or replace with language directing the reader to see 66 Pa. C.S. A. §1407.

The Commission continues to maintain the distinction between “user without contract” and “unauthorized use” as set forth in its Implementation Order dated March 3, 2005 at pp. 7-10. The Commission’s distinction does not minimize uncollectibles or encourage timely payment. The Commission’s Implementation Order adds to the rate burden resulting from uncollectibles. As such, the decision on this issue is directly contrary to the guidance provided by 66 Pa.C.S.A. §1402 and should be altered.

The Association believes that the dispute procedures in the Pennsylvania Code at §56.92, §56.97 §56.141 through §56.181 are inconsistent, in part, with Chapter 14. Since the statutory enactment, changes have been instituted outside the regulatory framework in the area of dispute procedures and EAPA seeks a review of those rules to ensure that dispute procedures are clear and uniformly applied.

For example, if a consumer files a dispute regarding a portion of a utility bill, the consumer must timely pay all undisputed portions of the bill plus all subsequent bills in a timely fashion. The Commission and its staff, in most instances, cannot waive approved utility tariffs imposing late payment charges. Indeed the Commission’s notice requirements must inform the customers that any non-payment of either undisputed or disputed amounts will lead to a late payment charge if the utility prevails unless the customer is a Level 1. Pursuant to §1409, the Commission can no longer waive late payment charges and customers disputing their bill run the risk of a late payment charge should their claims be incorrectly asserted. 66 Pa. C.S.A. §1409.

H. Distinctions between Heat Related and Non-heat Related Accounts should not be Eliminated

The Association disagrees with the proposal made by the Commission to eliminate the distinction between heat and non-heat related accounts in the context of §56.100. The lack of reference in the statute does not necessitate the elimination of this important collection tool for natural gas utilities. Moreover, restrictions on winter terminations are in place to assure citizens who heat via utility service that they will be warm. Service provided that does not power a heating supply should be exempt from winter termination restrictions.

I. Emergency Medical Procedures.

The Association agrees that 66 Pa. C.S.A. §1406(f) requires an update of the emergency medical provisions found at sections 56.111 through 56.118.

Chapter 14 supersedes conflicting provisions of Chapters 56.111 through 56.117. As the Commission correctly notes the term “licensed nurse practitioner”³ needs to be added whenever a regulation in Chapter 56 references an oral notice by a licensed physician. Written notices continue to be acceptable in writing only from a licensed physician.

Because the reference to licensed physicians and licensed nurse practitioners are embodied in Pennsylvania statutes instead of regulations, the physicians and nurse practitioners must be licensed by the Commonwealth of Pennsylvania.

The Association disagrees that the application of the medical certification rule applies to the entire household **only** “as long as the account remains in the same name(s).” Section 1407(d) permits transfer of arrearage responsibility to another adult occupant and the prior medical

³ **Nurse Practitioner** - A certified registered nurse practitioner (CRNP) licensed under the laws of the Commonwealth to engage in the practice in medicine as defined in Pa.C.S. Title 49, Chapter 21, §21.25.

certifications connected to that arrearage should also be transferred for same household occupants.

Another change to these Chapter 56 provisions is to replace the word “ratepayer” with “customer.” Chapter 14 has a new definition of customer that needs to be honored and the regulations modified accordingly.

Section 56.116 of the Pennsylvania Code discusses the duty of a customer to continue paying their utility bills where there is a medical emergency in place. Besides the modification of ratepayers to customers, the obligation to arrange equitably for payments must be modified to include a requirement that there is a dual requirement of both timeliness and equity. When the medical emergency is over, timely full payment must be tendered.

J. Reporting Requirements

The Commission proposes revisions to the winter survey requirements. First, the Commission proposes requiring updates to the winter survey throughout the winter period. The monthly report required by §56.231 includes information on termination notices sent, terminations completed, and reconnections completed. The Association submits that this report, provided throughout the winter period, will provide ample information to the Commission on winter terminations. The primary purpose of the winter survey is to provide customers with financial assistance information so as to restore service. If the Commission determines that it is necessary for utilities to provide assistance information to customers terminated during the winter, the Association proposes that providing this information to the customers with the post-termination notices, instead of conducting a winter survey on a customer who was terminated (and would have received all the required notices) only two weeks prior.

The Association also suggests limiting the initial winter survey to involuntary terminations occurring only in the current year of the survey. If a customer requested a discontinuance of service at a property, and no new request for service was received, that property should not be included in the winter survey. Likewise, if a property was terminated for nonpayment 18 months prior and no restoration of service at the property has occurred, that property would have been included in the prior year winter survey and repeated surveys should not be required. These limitations will assist the utilities in focusing their efforts on the properties and customers intended to be targeted by the survey - customers who were terminated for nonpayment and who may be eligible for financial assistance or payment terms to restore heat-related service through the winter period.

V. APPENDIX A PROVISIONS ALREADY RESOLVED OR BEYOND THE AUTHORITY OF THE COMMISSION

A. The Commission Cannot Address CAP Related Disputes in a Manner That Violates Section 1405(c).

The current Commission staff treatment of CAP-related disputes is a concern for some of EAPA's members. The Commission staff has been delaying some CAP cases due to issues involving, inter alia, billing and/or eligibility requirements. EAPA believes that extending the time for payment has the same effect as establishing CAP payment arrangements, which is contrary to Section 1405(c).

The Commission is a creature of statute and has only those powers that are granted by the legislature expressly or by strong implication. Delaware River Port Authority v. Pennsylvania

Public Utility Commission 393 Pa. 639, 643, 145 A.2d, 172, 174 (1958). In determining whether the Commission has any given power, the Courts have stated that the grant of power by the legislature to an administrative Commission must be precise, and further that “a doubtful power does not exist.” Process Gas Consumers v. Pennsylvania Public Utility Commission, 511 Pa 88, 92, 511 A.2d 1315, 1319 (1986).

The Commission has no statutory authority to hold consumer complaints in abeyance for CAP customers. The ANOPR cites 66 Pa. C.S.A. §2203(8) and §2804(9) as the statutory authority for looking at CAP related disputes.

First, statutes should, whenever possible, be read in concert with one another. When two statutes are capable of co-existence, it is the duty of the Commission to regard each as effective Andrus v. Glover Construction Co., 445 U.S. 608 (1980). However, if the Commission deems there to be conflict between §1405(c) and §2203(8) and §2804(9), the Commission must provide deference to Chapter 14. When an amendment to a statutory code addresses a specific issue, (payment arrangements) and, if it appears to conflict with an earlier general enactment, the specific must take precedent over the general. Common statutory construction dictates that the specific governs the general. Morales v. Trans World Airlines, Inc., 804 U. S. 374 (1992).

The Commission does not have the authority to delay payment of bills by a CAP customer due to a desire to review specifics of CAP programs, billing, eligibility and default. The Commission can honor these concerns through its process of individualized utility CAP reviews. Changes to the program requirements are to be matched with full cost recovery, as referenced in the statutory consideration of §2200 et seq. and §2800 et seq.

Finally, the Association understands that CAP programs must be cost-effective. As the Commission recognized in its most recent CAP order, cost effectiveness includes the interests of

other ratepayers who pay for CAP related shortfalls. Delaying CAP customer payments does not carry out the legislative intent set forth at 66 Pa. C.S.A. §1402 nor does it qualify as cost effective under the law.

B. The Commission Does Not Need To Clarify Restoration Terms For Terminated Customers.

The language in the ANOPR crystallizes an issue of debate regarding the Commission's authority over payment agreement restoration terms for customers whose service has been terminated. The BCS, in various decisions, has set restoration terms for customers whose service has been terminated pursuant to standards set forth at 66 Pa. C.S.A. §1405 (Payment Agreement) rather than 66 Pa. C.S.A. §1407 (Reconnection of Service).

Two Administrative Law Judges have recently found that, in these situations, it is Section 1407 and not Section 1405 which governs restoration terms for customers. John Lavrusky v. Columbia Gas of Pennsylvania, Inc., Pa. PUC, Docket No. C-20066425 (October 26, 2006) and George Crawford v. National Fuel Gas Distribution Corporation, Pa. PUC, Docket No. C-20066348 (December 1, 2006). The language of the statute is clear on its face. The legislature set forth at 66 Pa. C.S.A. §1407 the terms that must be met for purposes of reconnection after termination. These statutory provisions are clear and need not be restated in regulation.

C. Reporting Requirements Cannot Be Vague or Legally Impermissible.

The Commission seeks comment on a proposed requirement related to the reporting of deaths “linked” to lack of utility service. The Commission asks whether utilities should report to the Commission “anytime” they became aware of a death following termination of utility service where it appears that the death “may be linked” to the lack of utility service. The Association maintains that to mandate such reporting requirements violates basic principals of due process,

which are protected under both state and federal constitutions. Asking a utility to admit liability outside a civil judicial proceeding does not address the health and safety concerns with which the Commission is charged. Even without this reporting mandate, the Commission can investigate such a situation as it relates to adherence to regulations and policy and in this way will not violate due process rights of the utility.

The suggested reporting mandate is further of concern in that it assumes a causal link even where buildings have been vacant for long periods of time, service has been connected illegally, and customers have chosen to use generators or other appliances without adhering to manufacturer instructions or municipal ordinances. The Association respectfully suggests that the issue of reporting requirement generally be addressed after full implementation of Chapter 14 and that this particular request to report deaths “linked” to lack of utility service be denied.

VI. Conclusion

The Commission has a statutory obligation to amend the processes of Chapter 56 to comply with Act 201. The Commission must follow the declarations of policy set forth at 66 Pa. C.S.A. § 1402 so as to reduce the level of uncollectibles and improve timely payment. The specific regulations referenced in §4 of Act 201 should be the primary focus of this rulemaking along with other inconsistent regulations currently found in Chapter 56.

Further, Commissioner Pizzinigrilli’s inquiry as to whether it is appropriate or necessary to incorporate portions of the statute directly into the regulations should be answered in the negative. Regulations need not state verbatim statutory language but should, where necessary, clarify specific requirements with respect to issues such as termination, reconnection and deposits. Statutory language need not be restated in regulatory form.

Commissioner Pizzinigrilli also asked to have commentators offer input on the request of the Consumer Advisory Council. Absent a direct causal link between the death and the lack of utility service as finally determined by a court of law, the request to report violates traditional notions of due process. The proposed report is impermissibly vague and does not follow the legislative intent of Act 201.

The Association urges the Commission to deal initially in this rulemaking with full implementation of Chapter 14. To that end, any NOPR should first propose amending the specific sections of Chapter 56 detailed by the legislation and any others inconsistent with Chapter 14 based on the declaration of policy clearly set forth at 66 Pa. C.S.A. §1402.

RESPECTIVELY SUBMITTED:

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