

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 CONSUMER ADVISORY COUNCIL TO THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

INTRODUCTION

These comments are submitted by the Consumer Advisory Council (Council) to the Pennsylvania Public Utility Commission in response to the Proposed Rulemaking published on February 14, 2009 in The Pennsylvania Bulletin a 39 Pa. B. 925 regarding the Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 PA.C.S., Chapter 14.

This Proposed Rulemaking, which primarily entails amendments to the provisions of 52 Pa. Code, Chapter 56, (Standards and Billing Practices For Residential Utility Service) to comply with the Provisions of 66 PA.C.S., Chapter 14 (Responsible Consumer Protection Act) is of the utmost importance to the interests of Commonwealth consumers. The Council previously submitted Comments to the Notice Of Proposed Rulemaking (NOPR) in this proceeding on February 12, 2007 and respectfully submits these Comments in furtherance of its responsibility to advise the Commission upon matters relating to the

protection of consumer interests as those interests are affected by the Commission's exercise of its jurisdiction as provided by law (52 Pa. Code § 91.2. Purposes of the Council.)

GENERAL STATEMENT

The Council notes that, in a number of specific instances, the Commission has substantially adopted the recommendations made by the Council in its prior comments to the NOPR. In these Comments, the Council will highlight those matters and express continued support for the Commission's inclusion of those items in the Chapter 56 modifications which will be made to conform to the newly enacted Chapter 14. The Council's full Comments to the NOPR are therefore incorporated herein. As the Council has previously noted the two chapters share common policy objectives of achieving equity in payment and collection and of maintaining residential service. Chapter 14 specifically seeks to "ensure that service remains available to all customers on reasonable terms and conditions." 66 Pa. C. S. § 1402(3), while providing a mechanism that will provide protections against rate increases for timely paying customers resulting from other customers' delinquencies by eliminating opportunities for customers capable of paying to avoid the timely payment of utility bills." The statement of purpose and policy of Chapter 56 states:

This chapter establishes and enforces uniform, fair and equitable residential utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures. This chapter assures adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service. Every privilege conferred or duty required by this chapter imposes an obligation of good faith, honesty and fair dealing in its

performance and enforcement. This chapter will be liberally construed to fulfill its purpose and policy and to insure justice for all concerned. (§ 56.1.)

We therefore continue to recommend that in enacting regulations, the common purposes of the two Chapters – ensuring the availability of service while providing equity and protection to responsible ratepayers and to low-income consumers - must be considered as the guiding goals of the regulation.

1. Rules That Apply To Victims With A Protection From Abuse (PFA) Order And To Customers Of Steam Heating, Wastewater And Small Natural Gas Companies.

The Council continues to support the proposal of the Commission to create a separate chapter to address residential customers of steam heating utilities, wastewater utilities, small natural gas distribution utilities, water utilities' winter termination activity, and victims with a PFA order who are specifically excluded from Chapter 14 provisions. It is appropriate and sound public policy to specifically and clearly designate the regulations which apply to this group of utilities and their customers as well as to victims of violence who possess a Protection from Abuse (PFA) Order.

The Council previously recommended that the Commission ensure that PFA Order holders, whom the Chapter 14 legislation sought to protect, should receive the standard of greatest protection provided by either Chapter 14 of 56. We are pleased that the Commission has adopted such a policy in the proposed regulation and we support that action. As a result, low-income PFA holders will have automatic winter termination

protection, the ability to have a nurse practitioner notify a utility of a medical emergency, and other safeguards.

2. Previously Unbilled Utility Service.

The Council continues to support, as it did in its comments to the NOPR, the Commission proposal to establish a four-year limit on billings for previously unbilled service.

In accord with the Councils' recommendation in the NOPR, the Commission has adopted the principle in the proposed regulations that arrangements to pay previously unbilled utility service not be subject to the constraints and limitations which apply under Chapter 14 "payment agreements". The Council continues to support this approach. As the Commission has correctly pointed out.....

The Council further supports the Commission determination to retain the current threshold amounts of 50% of the current bills or \$50 required for the issuance of make-up bills. The current levels, require no modification, are appropriate and are presently working adequately. An increase above current levels would pose significant burdens on many utility customers, most particularly on low income consumers.

3. Credit Standards

The Council supports the Commission in its assertion that credit standard procedures be as transparent as possible. The Commission is correct in stating that these procedures need to be as transparent and fair as possible and subject to challenge whenever error or misuse occurs and that all credit related methodologies be included in the tariff.

The Council further supports the Commission determination that § 56.31 is still fully in effect and has not been superseded by any section of Chapter 14. In accord with that policy, the credit and deposit policies and practices of each utility must be equitable and nondiscriminatory and shall be based on the credit risk of the individual without regard to area in which they live and without regard to race, sex, age over 18, national origin or marital status.

The Commission has proposed, and the council supports the requirement that applicants and customers be provided detailed and complete information when they are denied credit from a utility. Credit reporting and scoring are prone to error. To avoid any inappropriately placed burden upon the consumer, applicants must be informed of why they are being denied credit, what they must do to obtain credit and how to dispute a credit determination. Customers, who have additional obligations imposed upon them as a result of credit reports or scoring, must be informed of such obligations.

The requirement that applicants and customers be informed of their rights to provide a third party guarantor and that a more lenient credit standard is available for victims of domestic violence with a PFA order are both consistent with the other Chapter 56 regulatory proposals and the Council adds its support to the commission recommendation.

4 Payment Period For Deposits.

In its Comments to the NOPR, the Council previously stated that the requirement to pay security deposits to multiple utilities acts as a barrier to receipt or to reconnection of

utility service for many individuals with limited economic resources. The Commission should use particular care to ensure that the Chapter 14 public policy purpose of “ensuring that service remains available to all customers on reasonable terms and conditions” is not thwarted by the imposition of security deposit requirements that may exceed the specific requirements of Chapter 14. Given the high number of customers entering the winter with out a source of safe heating we advised the Commission that security deposit requirements be interpreted as liberally as possible.

The Council supports the determination by the Commission that §1404, except in the case of Philadelphia Gas Works, does not require immediate, up-front payments of the deposit amount and may be paid over a full 90-day period. This determination will create greater simplicity and understanding of the payment procedure and corresponds to the correct statutory construction and legislative intent.

5. Termination of Service

In its comments to the NOPR, the Council strongly agreed with the Commission that termination of service can have serious consequences, not only for the customers immediately affected but also for neighbors and the surrounding community and wholeheartedly supported the Commission in its determination to fulfill its duty to protect the health and safety of all citizens of the Commonwealth. We believe such an approach is in keeping with the mandate of Chapter 14 to ensure that service remains available to residential consumers on reasonable terms and conditions. To that end, the Council specifically supports the following Commission proposals:

1. Maintenance of §56.83 to the extent consistent with Chapter 14;
2. Maintenance of the distinction between “user without contract” and “unauthorized user” as determined by the Commission in the first Implementation Order;
3. Creating an interaction of the dispute procedures with the termination procedures and continuing to stay termination pending the resolution of the dispute;
4. Maintenance of §56.94 procedures prior to termination as unchanged by Chapter 14.
5. Incorporating into the regulations the requirement that termination notices must include and itemize critical information. Each notice should alert the consumer to programs and options available to them to help them maintain critical utility service. The protective information must include reference to universal service programs, emergency medical certification procedures, protections for tenants, and protections for victims of domestic violence with a PFA.
6. The requirement that if the utility will terminate on a Friday, the utility must be able to accept emergency medical certificates, negotiate payment agreements, and restore service, if required, on the day after a termination of service. This requirement assists all parties to understand the obligations to be assumed by utilities when they avail themselves of this additional opportunity to terminate service.
7. The inclusion of a new definition of “user without contract” in the new regulations. This action will provide needed clarity and assistance to consumers and utilities in recognizing the distinction between user without contract and unauthorized use.

6 Winter Termination Procedures

As the Council pointed out in its comment to the NOPR, winter termination rules at §1406 (e) dramatically change prior Commission policy and practice. On the one hand, the General Assembly established a clear and unequivocal prohibition against termination of low-income customers (250% of poverty outside of PGW and 150% for PGW) from December 1 through March 31 of each year:

Unless otherwise authorized by the commission, after November 30 and before April 1, an electric distribution utility or natural gas distribution utility **shall not terminate service** to customers with household incomes at or below 250% of the federal poverty level except for customers whose actions conform to subsection (c)(1). Pa. C. S. § 1406 (e) (1) [emphasis added].

On the other hand, utilities may now implement winter terminations of those households not within the low-income category without prior Commission review and approval. This dramatic change creates the need for the Commission to carefully review its regulations concerning winter terminations.

The Council previously supported, and continues to support the Commission's proposal that utilities be required to report to the Commission anytime they are aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service. The Council appreciates the fact that the Commission has issued, through Secretarial Letter, an interim policy regarding the reporting of a death following termination of service. However, the Council continues to respectfully submit that the Commission strengthens the proposed regulation.

As we have previously pointed out, utility termination-related deaths and serious injuries may occur as a result of fire, hypothermia, hyperthermia, asphyxiation or other causes.

They may also occur to visitors within the household and to neighbors. Although much attention is justifiably and properly focused on termination-related deaths, the responsibility of the Commission to protect *the health and welfare* of Pennsylvania citizens is one which requires a broader data base beyond just death-related incidents. We therefore recommend including “serious injuries” within the report.

Reporting an event only if and when a utility becomes ‘aware’ of it sets an indefinite and unreliable standard. The Council continues to recommend that the Commission require utilities to develop a specific plan to ensure that they obtain current and comprehensive information from reliable sources within their service territory such as fire departments, health clinics, or hospitals.

The Council supports the reporting of deaths and serious injuries occurring subsequent to service termination to be reported year-round.

The Council continues to strongly support the Commission proposal to revise the winter survey provisions found at § 56.100(4) and (5)) to require updates throughout the winter. The Council recognizes that since the enactment of Act 201 there have been a troubling number of utility consumers who enter the winter without a source of safe central heating service. Many others have vacated their residences subsequent to the termination. It is critically important that the Commission be apprised throughout the winter of how many homes are without heat related service, are using alternate and potentially unsafe alternate forms of space heating and how many homes continue to be vacant subsequent to termination. This is consistent with the obligation of the Commission to protect the health and welfare of Commonwealth residents and to fully develop the Biennial Report to the

General Assembly and Governor Pursuant to Section 1415. Although the Council had recommended in its Comments to the NOPR that the survey be updated on February 1 and March 1 of each year, the Council now strongly supports the Commission determination to update the survey on January 15 and February 15.

7. Emergency Medical Procedures

In its Comments to the NOPR, the Council recommended a number of procedures far more liberal in interpretation than those which the Commission has adopted. Those Comments are incorporated by reference. However, the Commission has made a number of proposals regarding the medical certification procedure which the Council supports and strongly recommends be included in the regulations. These are:

- Maintaining in the proposed regulations the longstanding standard of “...seriously ill or affected with a medical condition which will be aggravated by a cessation of service...” and leaving the medical determinations to medical professionals. Emergency medical determinations are important safeguards intended to protect the health and welfare of a household’s occupants. Neither the Commission nor a utility is in a position to substitute its judgment for that of a medical practitioner.
- Incorporating the definition of Certified Registered Nurse Practitioner found at 49 Pa. Code § 21.251 into these regulations. This definition will enable the Commission to be consistent with other statewide definitions and usage.
- The elimination from the definition of physician at § 56.2 the requirement that a physician must be licensed by the Commonwealth of Pennsylvania. Many individuals are treated by out-of-state physicians. Those individuals who live in communities bordering other states or require specialists or treatments located in other states should not be precluded from the intended protection of the statute.
- Clear specification that any refusal to honor a medical certificate under conditions recognized by the Commission should be treated as a dispute by the utility; requiring that the customer will be referred to the Commission.

- The attempt to clarify the requirements of § 56.116 by specifying that payment of current bills be considered an equitable effort at payment.

In addition, the Council continues to recommend, that the time period for the medical certificate protection should be based upon the medical impairment of the particular individual as stated by the physician. An arbitrary protective certification limitation of 30 days, although renewable, creates unnecessary administrative burdens on the customer and medical practitioner and is inconsistent with the commission's intent to place the medical expert as the determiner of the length of the medical impairment.

8. Reporting requirements.

The Council supports extending the monthly collections data reporting requirements specified at § 56.231 to also include Class A water utilities. We agree that water utility rates have increased significantly since this section was first promulgated and concerns with collection issues in the water industry are now sufficient to amend this section to include major water utilities.

Respectfully submitted,

Robert A. Christianson, Vice Chairperson, Consumer Advisory Council¹

Dated: April 20, 2009

¹ Due to a conflict-of-interest, Council Chairperson Renardo L. Hicks abstains from participating in these comments.