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May 11, 2021

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

VIA eFILING

Re: 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 on behalf of PECO Energy Company (“PECO”) is an original of PECO’s Comments in the above-captioned Rulemaking proceeding. The enclosed comments are being filed pursuant to the Commission’s February 25, 2021 Tentative Order in this matter.

Due to the ongoing pandemic, PECO’s office personnel are working remotely. Accordingly, PECO will not have its usual access to photocopying and U.S. mail, among other services. PECO requests that all communications with PECO be transmitted by email.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Assistant General Counsel
PECO Energy Company

JSJ/jm
Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**

COMMENTS OF PECO ENERGY COMPANY

I. INTRODUCTION

On February 28, 2019, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) adopted a final rulemaking order revising the 52 Pa. Code Chapter 56 regulations that administer and enforce Chapter 14 of the Public Utility Code. *See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa.C.S. Chapter 14*, Docket No. L 2015-2508421, (February 28, 2019) (“Final Rulemaking Order”). On August 29, 2019, the Commission issued a Secretarial Letter announcing the establishment of a Chapter 56 working group to address the following issues, which relate to the amendments to 66 Pa.C.S. §§ 1403, 1406, and 1417: (1) form of medical certificate; (2) court orders regarding domestic violence; and (3) privacy guidelines. The Secretarial Letter also invited interested parties to file written comments regarding these issues. PECO Energy Company (“PECO”) participated in the working group and submitted comments on each of these issues. On February 25, 2021, the Commission issued a Tentative Order in this docket in which it invited interested parties to submit additional comments on the aforementioned topics.

PECO appreciates this opportunity to provide brief comments prior to the Commission's issuance of a Final Rulemaking Order on these important issues.

II. DISCUSSION

A. Standard Medical Certificate Form and Medical Certificate Guidance

PECO agrees with the form of standard medical certificate that the Commission has proposed. As defined in 66 Pa. C.S. § 1403, a medical certificate is “[a] written document, in a form approved by the commission.” Section 56.113 of the Commission’s Regulations identifies requirements of a medical certificate: (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. *See* 52 Pa. Code § 56.113(1)-(4). The Commission’s proposed medical certificate is appropriate because it contains all of the requirements prescribed by § 56.113.

In addition, PECO supports the view that medical certificate forms should include the license number of the health professional submitting the form.

B. Court Orders on Domestic Violence

With respect to the issue of court orders on domestic violence, the working group considered the following issues: (1) what types of orders should qualify; (2) how should an order from a court outside of the Commonwealth be treated; (3) what constitutes domestic violence and what qualifies as “clear evidence” of domestic violence; (4) whether these other orders should have time limitations; (5) appropriate notice of domestic violence exemption to consumers and training and consumer education materials; and (6) confidentiality expectations for handling

information about a customer's status as a victim of domestic violence.

With respect to court orders relating to domestic violence, the Commission's Tentative Order primarily addresses two issues: (1) how domestic violence should be defined; and (2) how utilities should treat an order from a court outside of the Commonwealth. Regarding the definition of domestic violence, the Commission maintained its position that when presented with cases where domestic violence is alleged and Protection from Abuse Orders ("PFA"), utilities should operate in good faith. *See* the Commission's February 25, 2021 Tentative Order, at 12. The Commission also stated that public utilities and the Commission should defer to groups with expertise in these areas such as the Pennsylvania Coalition Against Domestic Violence ("PCADV") and declined to further provide specific definitions of domestic violence.

PECO proposes to accept a wide range of domestic violence orders and commits to reviewing PFA orders in good faith. Additionally, PECO maintains that the Commission should have an accelerated review process in place to allow customers to have an easy and expedited method for obtaining Commission review in instances where a utility concludes that the customer has not presented clear evidence of domestic violence.

The Commission maintains that whether registered or not, PFAs are valid, enforceable, and entitled to the protections of 52 Pa. Code, Chapter 56, Subchapters L-V. The Commission has also adopted the position that PFAs that are issued outside of the Commonwealth of Pennsylvania are entitled to the protections of Subchapters L-V. However, the Commission has determined that non-PFA court orders that are issued outside of the Commonwealth are not subject to the protections under subchapters L-V.

PECO believes that the Commission's position is supported by the plain language of the Public Utility Code. With respect to PFA orders, the Public Utility Code provides that Chapter 14

of the Code does 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 . . .*” 66 Pa. C.S. § 1417 (emphasis added). Thus, section 1417 identifies two categories of court orders that are sufficient for purposes of the domestic violence exemption: (1) PFAs; and (2) “a court order issued by a court of competent jurisdiction in this Commonwealth.” Thus, the plain language of § 1417 suggests that *non-PFA* court orders that are issued by courts outside of the Commonwealth are not sufficient to grant a domestic violence exemption. On the other hand, the Code permits utilities to accept *PFAs* that have been issued by courts outside of the Commonwealth for purposes of the domestic violence exemption.

C. Privacy Guidelines

With respect to the Commission’s privacy guidelines, the working group considered the following topics: (1) sharing of personal data with third parties; (2) type and form of consent required for termination notice by electronic means; (3) duration and expiration of consent, if any; and (4) revocation of consent at any time.

1. Sharing of Personal Data

In its Tentative Order, the Commission adopted the position that telephone numbers and email addresses should not be shared with third parties absent express and clearly defined permission from the customer. PECO agrees with this position and notes that the Commission’s Regulations provide specific guidance concerning maintaining the confidentiality of customer information. *See, e.g.,* 52 Pa. Code § 54.8(a); 52 Pa. Code § 54.43(d); 52 Pa. Code § 62.78(a); 52 Pa. Code § 62.114(3); and 52 Pa. Code § 56.32.

2. Form of Consent Required

The Commission suggests that “there should be a separate, distinct notice for customers

choosing to enroll in receiving electronic notifications,” which “should explain and inform the customer that this is voluntary and that the purpose is to receive notification of a pending termination electronically.” The Commission further suggests that “the consent should not be a check box.”

As an initial matter, PECO agrees that utilities should be required to obtain customer consent before sending electronic notifications to customers. However, PECO believes that customers are best served when utility companies have flexibility in the manner in which they are permitted to notify customers of a pending termination of service. To balance these interests, PECO suggests in the first instance privacy guidelines not be further codified in the Commission’s Regulations. Indeed, the Commission agreed that it should not be “overly prescriptive or detailed in the regulations, given ever-changing technology.” July 29, 2017 Order Seeking Additional Comments, Docket No. L-2015-2508421.

Moreover, any privacy guidelines should not create obligations that go beyond those imposed by federal law. After thoroughly considering the issues surrounding electronic communications to customers, the federal government has promulgated regulations that sufficiently balance the need for consumer protections with the business need for flexibility in communicating to customers. Thus, PECO believes that the Commission’s guidelines on electronic communication should be no more restrictive than the regulations promulgated by the federal government in the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 (relating to restrictions on the use of telephone equipment, including possibly text messaging) and the Controlling the Assault of Non-Solicited Pornography and Marketing (“CAN-SPAM”) Act¹.

¹ Congress enacted CAN-SPAM to set a national standard for the regulation of spam email. See 15 U.S.C. § 7701(a)(11). Among other things, the CAN-SPAM Act of 2003 prohibits the inclusion of deceptive or misleading information and subject headings, requires identifying information such

The Commission’s suggestion that a customer’s consent must be a standalone document and cannot take the form of a check box is overly restrictive as it goes beyond federal regulations. For example, the Federal Communications Commission’s (“FCC”) regulations under the TCPA governing the use of automatic telephone dialing systems (“ATDS”) or prerecorded or artificial voice to contact cellular phones differentiate between the type and scope of consent in its restrictions concerning text messages “that include[] or introduce[] an advertisement or constitutes telemarketing” and text messages that do not, such as non-telemarketing or so-called “informational” text messages.² *See*, 47 C.F.R. § 64.1200(a)(2). In other words, non-telemarketing text messages have fewer restrictions than telemarketing messages. For example, while prior express consent is required for non-telemarketing or informational autodialed messages, consent need not be made pursuant to a written disclosure, and may instead take any form (i.e., the voluntary provision of a phone number to a business without limiting instructions). *See id.*

Furthermore, the TCPA has an “emergency exception” which provides that its restrictions do not apply to calls made for an “emergency purpose.” *See* 47 U.S.C. §§ 227(b)(1)(A), (b)(1)(B). The term “emergency purposes” is defined as “calls made necessary in any situation affecting the health and safety of consumers.” 47 C.F.R. 64.1200(f)(4). As the FCC has previously recognized, “[t]he legislative history of the TCPA indicates a congressional intent to interpret the term ‘emergency’ broadly rather than narrowly.” *In the Matter of the Tel. Consumer Prot. Act of 1991*, 7 F.C.C. Rcd. 2736, 2738 (1992). Lastly, under the CAN-SPAM, and according to the FTC, the provision of an email address to a business means that a business may email the consumer for all

as a return address in email messages, and prohibits sending emails to a recipient after an explicit response that the recipient does not want to continue receiving messages (i.e., an “opt-out”). *See* 15 U.S.C. § 7704(a).

² The Federal Communications Commission (“FCC”) treats text messaging as calls under the TCPA.

routine matters, including transactional information and marketing, unless the consumer opts-out of such communication. Standalone written consent to certain email communications is not necessary. 16 C.F.R. §§ 316.1-316.6.

Here, notice of termination falls into the “informational” category, at most, and could arguably fall within the emergency exception, which would not require written consent under the TCPA. PECO believes that the Commission should allow customers to have flexibility in the method used to provide consent to receive notice of termination.

In summary, given the informational and/or emergency nature of the service termination notice, utilities should be given flexibility to implement procedures consistent with their application process, billing software, and online account management tools to allow customers to receive notice of and agree to receive electronic communications related to termination of service. The Commission should allow utilities to identify a customer’s preferred means of communication through any electronic format, without the need for a standalone notice related to service termination.

3. Duration and Expiration of Consent

The Commission noted that consent to notification of termination by one or more electronic means does not expire. This is consistent with the TCPA and CAN-SPAM requirements for texting and emails, respectively. The Commission proposes that utilities send annual reminder notices to customers prompting them to review account information, including electronic notification preferences. PECO has no objection to this proposal.

4. Revocation of Consent

The Commission proposes that customers be able to revoke their consent at any time and by any clear means. While this seems straightforward in theory, it is unduly burdensome in practice

and places unreasonable burdens on the utilities to track and process their customers’ revocation of and consent to notification of termination of service. For example, piecemeal revocation of consent as to one type of communication but not another (i.e., text message but not email) is unreasonably burdensome.

Finally, the customer should be required to revoke consent by “any reasonable means” as prescribed under the TCPA. The FCC provides that revocation may be communicated by “any reasonable means.” *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 30 FCC Rcd. 7961, 7996 ¶ 62 (2015). In the case of text messages for example, the FCC has required that consumers be able to opt-out of automated communications by replying with a simple keyword, such as “STOP,” “UNSUBSCRIBE,” “CANCEL,” or “END.” *See, e.g., Matter of Cargo Airline Ass’n Petition for Expedited Declaratory Ruling Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991*, 29 F.C.C. Rcd. 3432, 3438 ¶ 18 (2014) (in granting exemption for shipping notifications, requiring that “text notifications … include the ability for the recipient to opt out by replying ‘STOP.’”) These methods are widely recognized as “reasonable means.” Other reasonable means may include a method similar to the manner in which consent was provided in the first instance. And, in the case of emails, the mere ability to click “unsubscribe” at the bottom of an email communication should suffice for a customer to opt-out of all email communications, including those for notice of termination of services. PECO believes that the Commission should adopt these guidelines with respect to electronic communications to customers.

III. CONCLUSION

PECO appreciates this opportunity to provide its comments on the proposed revisions to Chapter 56.

Respectfully submitted,



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Dated: May 11, 2021

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a true and correct copy of the foregoing document upon the individuals listed below.

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